



Llywodraeth Cymru
Welsh Government

Model Social Public Works Clauses

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Welsh Government

Prompt Payment & Sub-Contracting

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Clauses for NEC3/4 Engineering and Construction Contract:

Clause 11.2(19)	<p>Delete “with the <i>Contractor</i>”</p> <p>And replace with:</p> <p>“other than with the <i>[Employer]/[Client]</i>”</p>
Add new clause 11.2()	<p>The Payment Information is</p> <ul style="list-style-type: none"> • the sum that the <i>Contractor</i> considers to be or to have been due and the basis on which that sum is calculated; • a breakdown of the sums due to all suppliers and sub-contractors (of any tier); • a summary of the total amount previously paid (if any); • [evidence, reasonably satisfactory to the <i>[Client]/[Employer]</i> that the Contractor has paid to its sub-contractors and suppliers any sums due to them, which have been paid by the <i>[Client]/[Employer]</i> in respect of an earlier application for payment]¹ • any additional information supporting the entitlement to payment of the sums applied for, reasonably required by the <i>[Client]/[Employer]</i>.
Clause 26.3	<p>Delete “unless” and the two bullet points that follow it and insert “.”.</p> <p>After “A reason for not accepting the subcontract documents is that” insert a third bullet point, as follows:</p> <ul style="list-style-type: none"> • “they do not include a provision that all payments properly due under the subcontract, are made within 30 days of an assessment date.”
Clause 50.2	<p>Delete:</p> <p>“setting out the amount the <i>Contractor</i> considers is due at the assessment date. The Contractor’s application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.”</p> <p>And replace with:</p> <p>“containing the Payment Information.”</p>
Clause 50.3	<p>After the second bullet point, as a new paragraph, insert:</p> <p>“Provided that, the amount due at the assessment date shall be nil if the Contractor has not provided the Payment Information with its application for payment.”</p>

¹ Words in square brackets only to be included in contracts where a PBA is not in operation.

Clauses for JCT 2016/2024 Design and Build Contract:

	Definitions	
Clause 1.1	Insert the following new definition:	
	“Payment Information	<p>(a) the sum that the Contractor considers to be or to have been due and the basis on which that sum is calculated;</p> <p>(b) a breakdown of the sums due to all suppliers and sub-contractors (of any tier);</p> <p>(c) a summary of the total amount previously paid (if any);</p> <p>(d) [evidence, reasonably satisfactory to the [Client]/[Employer] that the Contractor has paid to its sub-contractors and suppliers any sums due to them, which have been paid by the [Client]/[Employer] in respect of an earlier application for payment]²</p> <p>(e) any additional information supporting the entitlement to payment of the sums applied for, reasonably required by the [Client]/[Employer].</p>
	Sub-Contracting	
	Consent to sub-contracting	
Clause 3.4	Delete the first sentence in its entirety and replace with: “The Contractor shall provide the Employer with the proposed form of sub-contract (in relation to the engagement of each sub-contractor.”	
Clause 3.4.2	Insert new clause 3.4.2.6, as follows: “that all payments properly due under the relevant sub-contract, are made within 30 days of receipt of an application for payment, made in accordance with the provisions of the relevant sub-contract”.	
Clause 3.4.4	Insert new clause 3.4.4, as follows: “The Employer may refuse to give the consent required by clause 3.3.1 where the requirements of clause 3.4.2 have not been complied with.”	
Clause 4.7.3	Delete: “stating the sum that the Contractor considers to be due to him at the due date and the basis on which that sum has been calculated”	

² Words in square brackets only to be included in contracts where a PBA is not in operation.

Clause 4.7.4	<p>After “shall” insert:</p> <p>“contain the Payment Information and”.</p> <p>At the end of the clause insert:</p> <p>“Receipt of the Payment Information is a pre-requisite to payment to the Contractor of any sum in an Interim Payment Application.”</p>
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NEC3/4 Engineering and Construction Contract Model Project Bank Account Clauses

In the Contract Data Part Two insert a new section at the end.	<p>“Project Bank Account</p> <p>The PBA Sub-Contractors who are to be party to the Trust Deed by entering into a Joining Deed as soon as reasonably practicable following completion of the Trust Deed are:</p> <p>[]</p> <p>[]”³</p>
Add new clause 11.2()	“11.2() Authorisation means the mandate to the Bank to make payments to the <i>Contractor</i> and the PBA Sub-Contractors in accordance with the Trust Deed.”
Add new clause 11.2()	“11.2() Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”
Add new clause 11.2()	“11.2() Joining Deed means an agreement in the form set out at [Annex]/[Schedule] [insert ref] by which a sub-contractor or sub-sub-contractor is added to the Trust Deed.”
Add new clause 11.2()	“11.2() Project Bank Account means a new interest bearing deposit bank account with the Bank in the name of the <i>[Employer]/[Client]</i> / <i>[Contractor]</i> and the <i>[Employer]/[Client]</i> ” ⁴ to be administered in accordance with the Trust Deed and which shall not permit cash withdrawals nor the issue of a debit card in association with the bank account.”
Add new clause 11.2()	“11.2() The PBA Sub-Contractors are, for the purposes of the Project Bank Account, all Subcontractors and all sub-sub-contractors engaged in relation to the <i>works</i> , save for any Subcontractor and/or sub-sub-contractor engaged in relation to the works who is excepted in accordance with Z.[refer to Project Bank Account clause].”
Add new clause 11.2()	“11.2() Trust Deed means an agreement between the <i>Contractor</i> and the <i>[Employer]/[Client]</i> in the form set out at [Annex []]/[Schedule []].”
Add a Z clause	<p>“Project Bank Account</p> <p>Z[].1 The <i>[Contractor]/[Employer]/[Client]</i>”⁵ shall open the Project Bank Account as soon as reasonably practicable following the date of this contract.</p>

³ Ensure that Y(UK)1 is not chosen as an optional clause to apply to the contract. Do not insert details of the PBA Sub-Contractors in the section for *named suppliers* in the Contract Data Part Two.

⁴ To be amended depending on whether the PBA will be in the name of the Contracting Authority or in the joint names of the *Contractor* and the Contracting Authority as *Employer/Client*.

⁵ Delete the words in square brackets, as appropriate to reflect whom it has been agreed will open the Bank Account.

	<p>Z[].2 The [Contractor]/[Employer]/[Client]⁶ pays any charges required in relation to the Project Bank Account and receives any interest paid by the Bank.</p> <p>Z[].3 The <i>Contractor</i> includes in its sub-contracts with PBA Sub-Contractors and procures that Subcontractors include in each sub-sub-contract the provisions in this contract for the operation of the Project Bank Account and requires the PBA Sub-Contractors to execute a Joining Deed.</p> <p>Z[].4 If a Subcontractor or sub-sub-contractor to be engaged in relation to the <i>works</i> notifies the <i>Contractor</i> of its objection to becoming a PBA Sub-Contractor, the <i>Contractor</i> must require the Subcontractor or sub-sub-contractor to complete an opt out form in the form set out at this link <i>[insert link]</i> and submit the opt out form to the [Employer]/[Client] prior to the engagement of the Subcontractor or sub-sub-contractor. The [Employer]/[Client] notifies the <i>Contractor</i> whether it accepts the request to opt out. If the [Employer]/[Client] accepts the request, the Subcontractor or sub-sub-contractor is excepted from becoming a PBA Sub-Contractor. If the [Employer]/[Client] does not accept the request, the Subcontractor or sub-sub-contractor either agrees to become a PBA Sub-Contractor or is not engaged in relation to the <i>works</i>.</p> <p>Z[].5 The <i>Contractor</i> notifies the PBA Sub-Contractors of the details of the Project Bank Account and the arrangements for payment of amounts due to PBA Sub-Contractors under their sub-contracts or sub-sub-contracts.</p> <p>Z[].6 The <i>Contractor</i> submits to the [Employer]/[Client] for acceptance, proposals for adding a Subcontractor or a sub-sub-contractor to the Trust Deed. The [Employer]/[Client] notifies the <i>Contractor</i> whether or not the Subcontractor or sub-sub-contractor is accepted, provided that any Subcontractor named in the Contract Data Part Two as a PBA Sub-Contractor will be deemed to have been accepted by the [Employer]/[Client]. If the Subcontractor or sub-sub-contractor is accepted, the <i>Contractor</i> (on behalf of the PBA Sub-Contractors (as defined in the relevant Joining Deed)) and the accepted Sub-contractor or sub-sub-contractor execute the Joining Deed. If the Subcontractor or sub-sub-contractor is not accepted it does not become a PBA Sub-Contractor. If a Subcontractor or sub-sub-contractor is accepted the relevant parties sign a Joining Deed as soon as reasonably practicable</p>
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⁶ Delete the words in square brackets, as appropriate to reflect what has been agreed in relation to charges and interest.

	<p>Z[].7 In relation to any payment to be made out of the Project Bank Account, the <i>Contractor</i> submits to the <i>[Employer]/[Client]</i>, an application for payment in accordance with the provisions of this contract to enable the <i>[Employer]/[Client]</i> to make any payment due under this contract through the Project Bank Account. All payments to be made out of the Project Bank Account are to be made by bank transfer only.</p> <p>Z[].8 Not later than seven business days before the final date for payment, the <i>[Employer]/[Client]</i> pays into the Project Bank Account the amount due to be paid under and in accordance with this contract.⁷</p> <p>Z[].9 If the amount paid into the Project Bank Account in accordance with Z[].8, is less than the total of the sums due to the <i>Contractor</i> from the <i>[Employer]/[Client]</i> and the sums due to the PBA Sub-Contractors from the <i>Contractor</i>, not later than seven days before the final date for payment the <i>Contractor</i> pays the difference into the Project Bank Account.</p> <p>Z[].10 Not later than six days before the final date for payment the <i>Contractor</i> provides the Bank with details of the payments to be made out of the Project Bank Account and such authorisation as may be required of the <i>Contractor</i> by the Authorisation to permit the Bank, subject to the authorisation of the <i>[Employer]/[Client]</i>, to release the relevant payments to the <i>Contractor</i> and the PBA Sub-Contractors from the Project Bank Account, by the final date for payment.</p> <p>Z[].11 Not later than five days before the final date for payment the <i>[Employer]/[Client]</i> either authorises the Bank to make payment in accordance with the information provided by the <i>Contractor</i> in accordance with Z[].10; or immediately notifies the <i>Contractor</i> of any errors or discrepancies in the information provided in accordance with Z[].10.</p> <p>Z[].12 If the <i>[Employer]/[Client]</i> notifies the <i>Contractor</i> of any error or discrepancy in accordance with Z[].11, the <i>Contractor</i> revises the relevant information and resubmits it to the Bank not later than four days before the final date for payment and immediately notifies the <i>[Employer]/[Client]</i> of the resubmission. Subject to its satisfaction with the resubmission, the <i>[Employer]/[Client]</i> authorises the Bank to make payment in accordance with</p>
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⁷ The periods in this clause are based on the information that banks take 3-5 days to make payment once authorisation has been received, Therefore, in order for beneficiaries to receive payment by the final date for payment, pay less notices and payments into the PBA will need to be made at least 7 days before the final date for payment and the authorisation process will need to be strictly adhered to.

	<p>the information provided by the <i>Contractor</i> in accordance with the requirements of the Authorisation.</p> <p>Z[].13 A payment which is due from the <i>Contractor</i> to the <i>[Employer]/[Client]</i> is not made through the Project Bank Account.</p> <p>Z[].14 The <i>Contractor</i> acknowledges that payment by the <i>[Employer]/[Client]</i> in accordance with Z[].8 discharges the <i>[Employer's]/[Client's]</i> obligation to make payment under this contract in respect of sums due at that time. Payments from the Project Bank Account are treated as payments from the <i>[Employer]/[Client]</i> to the <i>Contractor</i> in accordance with this contract or from the <i>Contractor</i> to PBA Sub-Contractors in accordance with their sub-contracts as applicable. A delay in payment by the <i>[Employer]/[Client]</i> due to a failure of the <i>Contractor</i> to comply with the requirements of this clause Z[] is not treated as late payment under this contract.</p> <p>Z[].15 The <i>[Employer]/[Client]</i> and the <i>Contractor</i> sign the Trust Deed before the first assessment date.</p> <p>Z[].16 The <i>[Employer]/[Client]</i>, the <i>Contractor</i> and the PBA Sub-Contractors identified in the Contract Data Part Two sign a Joining Deed before the first assessment date.</p> <p>[Z[].17 If the <i>[Employer]/[Client]</i> terminates this contract for any reason identified in the Termination Table and to which A3 applies, no further payment is made into the Project Bank Account.]⁸</p>
Add a new Annex/Schedule	<p>“Project Bank Account Documents”⁹</p> <p>[insert form of Trust Deed and Joining Deed from the Welsh Government Model Social Public Works Clauses]</p>

⁸ Only include this clause if an amendment has been made to clause 93.2 A3 to permit the Employer/Client to make no further payment under the contract until its loss and expense is ascertained.

⁹ These documents are to be used instead of selecting Y(UK)1 and the standard NEC PBA documents.

JCT 2016 Design and Build Contract Model Project Bank Account Clauses

At the end of the Contract Particulars insert a new section referencing clause 10.	<p>PBA Sub-Contractors</p> <p><i>(where sub-contractors who are to be paid through the Project Bank Account are engaged by the Contractor prior to the date for the first Interim Payment they shall be listed opposite.)</i></p>	<p>The PBA Sub-Contractors are:</p> <p>[]</p> <p>[]”</p>
In clause 1.1 insert the following new definitions:	<p>“Authorisation means the mandate to the Bank to make payments to the Contractor and the PBA Sub-Contractors in accordance with the Trust Deed.”</p> <p>“Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”</p> <p>“Joining Deed means an agreement in the form set out at [Annex]/[Schedule] [insert ref] by which a sub-contractor or sub-sub-contractor of the Contractor is added to the Trust Deed.”</p> <p>“Project Bank Account means a new interest bearing deposit bank account with the Bank in the name of the [Employer]/[Contractor and the Employer]¹⁰ to be administered in accordance with the Trust Deed and which shall not permit cash withdrawals nor the issue of a debit card in association with the bank account.”</p> <p>“The PBA Sub-Contractors are, for the purposes of the Project Bank Account, all sub-contractors engaged by the Contractor and all sub-sub-contractors engaged in relation to the Works, save for any sub-contractor and/or sub-sub-contractor engaged in relation to the Works who is excepted in accordance with clause 10.4.”</p> <p>“Trust Deed means an agreement between the Contractor and the Employer, in the form set out at [Annex []]/[Schedule []].”</p>	
Insert new clause 10 Project Bank Account	<p>“Project Bank Account</p> <p>10.1 The [Contractor]/[Employer]¹¹ shall open the Project Bank Account as soon as reasonably practicable following the date of this Contract.</p> <p>10.2 The [Contractor]/[Employer]¹² shall pay any charges required in relation to the Project Bank Account and shall receive any interest paid by the Bank.</p>	

¹⁰ To be amended depending on whether the PBA will be in the name of the Contracting Authority or in the joint names of the Contractor and the Contracting Authority as Employer.

¹¹ Delete the words in square brackets, as appropriate to reflect whom it has been agreed will open the Bank Account.

¹² Delete the words in square brackets, as appropriate to reflect what has been agreed in relation to charges and interest.

	<p>10.3 The Contractor shall include in its sub-contracts with PBA Sub-Contractors the provisions in this Contract for the operation of the Project Bank Account and shall require the PBA Sub-Contractors to execute a Joining Deed.</p> <p>10.4 If a sub-contractor or sub-sub-contractor to be engaged in relation to the Works notifies the Contractor of its objection to becoming a PBA Sub-Contractor, the Contractor must require the sub-contractor or sub-sub-contractor to complete an opt out form in the form set out at this link [insert link] and submit the opt out form to the Employer prior to the engagement of the sub-contractor or sub-sub-contractor. The Employer shall notify the Contractor whether it accepts the request. If the Employer accepts the request, the sub-contractor or sub-sub-contractor is excepted from becoming a PBA Sub-Contractor. If the Employer does not accept the request, the sub-contractor or sub-sub-contractor either agrees to become a PBA Sub-Contractor or is not engaged in relation to the Works.</p> <p>10.5 The Contractor shall notify the PBA Sub-Contractors of the details of the Project Bank Account and the arrangements for payment of amounts due to PBA Sub-Contractors under their sub-contracts.</p> <p>10.6 The Contractor shall provide the Employer with details of each proposed PBA Sub-Contractor and obtain the Employer's written consent to add a sub-contractor or sub-sub-contractor to the Trust Deed prior to the Contractor (on behalf of the PBA Sub-Contractors (as defined in the relevant Joining Deed)) and the relevant sub-contractor or sub-sub-contractor executing the Joining Deed provided that the Employer's written consent shall not be required in respect of any sub-contractor named in the Contract Particulars. If the sub-contractor or sub-sub-contractor is not accepted it shall not become a PBA Sub-Contractor. If a sub-contractor or sub-sub-contractor is accepted the relevant parties shall sign a Joining Deed as soon as reasonably practicable</p> <p>10.7 The Contractor shall submit an application for payment to the Employer, in accordance with the provisions of this Contract to enable the Employer to make any payment due under this Contract through the Project Bank Account. All payments to be made out of the Project Bank Account are to be made by bank transfer only.</p> <p>10.8 Not later than seven business days before the final date for payment, the Employer shall pay into the Project</p>
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	<p>Bank Account the amount due to be paid under and in accordance with this Contract. ¹³</p> <p>10.9 If the amount paid into the Project Bank Account in accordance with clause 10.8 is less than the total of the sums due to the Contractor from the Employer and the sums due to the PBA Sub-Contractors from the Contractor, not later than seven days before the final date for payment the Contractor shall pay the difference into the Project Bank Account .</p> <p>10.10 Not later than six days before the final date for payment the Contractor shall provide the Bank with details of the payments to be made out of the Project Bank Account and such authorisation as may be required of the Contractor by the Authorisation to permit the Bank, subject to the authorisation of the Employer, to release the relevant payments to the Contractor and the PBA Sub-Contractors from the Project Bank Account, by the final date for payment.</p> <p>10.11 Not later than five days before the final date for payment the Employer either authorises the Bank to make payment in accordance with the information provided by the Contractor in accordance with clause 10.10; or immediately notifies the Contractor of any errors or discrepancies in the information provided in accordance with clause 10.10.</p> <p>10.12 If the Employer notifies the Contractor of any error or discrepancy in accordance with clause 10.11, the Contractor revises the relevant information and resubmits it to the Bank not later than four days before the final date for payment and immediately notifies the Employer of the resubmission. Subject to its satisfaction with the resubmission, the Employer authorises the Bank to make payment in accordance with the information provided by the Contractor in accordance with the requirements of the Authorisation.</p> <p>10.13 No payment due from the Contractor to the Employer shall be made through the Project Bank Account.</p> <p>10.14 The Contractor acknowledges that payment by the Employer in accordance with clause 10.8 discharges the Employer's obligation to make payment under this Contract in respect of sums due at that time. Payments from the Project Bank Account are treated as payments from the Employer to the Contractor in accordance with this Contract or from the Contractor to PBA Sub-</p>
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¹³ The periods in this clause are based on the information that banks take 3-5 days to make payment once authorisation has been received, Therefore, in order for beneficiaries to receive payment by the final date for payment pay less notices and payments into the PBA will need to be made at least 7 days before the final date for payment and the authorisation process will need to be strictly adhered to.

	<p>Contractors in accordance with their sub-contracts as applicable. Any delay in payment by the Employer due to a failure of the Contractor to comply with the requirements of this clause 10.14 shall not be treated as late payment under this Contract.</p> <p>10.15 The Employer and the Contractor shall sign the Trust Deed before the date for the first Interim Payment.</p> <p>10.16 The Employer, the Contractor and the PBA Sub-Contractors identified in the Contract Particulars shall sign a Joining Deed before the date for the first Interim Payment.</p> <p>10.17 If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6, no further payment is made into the Project Bank Account.</p>
Add a new Annex/Schedule	<p>"Project Bank Account Documents"</p> <p>[insert form of Trust Deed and Joining Deed from the Welsh Government Model Social Public Works Clauses]</p>

Bespoke Contract Model Project Bank Account Clauses

Insert the following definitions:		“Authorisation means the mandate to the Bank to make payments to the Contractor and the PBA Sub-Contractors in accordance with the Trust Deed.”
		“Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”
		“Joining Deed means an agreement in the form set out at [Annex []]/[Schedule []] by which a sub-contractor or sub-sub-contractor of the Contractor is added to the Trust Deed.”
		“Project Bank Account means a new interest bearing deposit bank account with the Bank in the name of the [Employer]/[Contractor and the Employer] ¹⁴ to be administered in accordance with the Trust Deed and which shall not permit cash withdrawals nor the issue of a debit card in association with the bank account.”
		“The PBA Sub-Contractors are, for the purposes of the Project Bank Account, all sub-contractors engaged by the Contractor and all sub-sub-contractors (of all tiers) engaged in relation to the Works save for any sub-contractor and/or sub-sub-contractor who is excepted in accordance with clause [insert Project Bank Account clause number] (e).”
		“Trust Deed means an agreement between the Contractor and the Employer in the form set out at [Annex []]/[Schedule []].”
Insert Project Account	clause Bank	<p>“Project Bank Account</p> <p>a) The [Contractor]/[Employer]¹⁵ shall open the Project Bank Account as soon as reasonably practicable following the date of the contract.</p> <p>b) The [Contractor]/[Employer]¹⁶ shall pay any charges required in relation to the Project Bank Account and shall receive any interest paid by the Bank.</p> <p>c) The Contractor shall include in its sub-contracts with PBA Sub-Contractors the provisions in the contract for the operation of the Project Bank Account and shall require the PBA Sub-Contractors to execute a Joining Deed in accordance with this contract.</p> <p>d) The Contractor shall notify the PBA Sub-Contractors of the details of the Project Bank Account and the</p>

¹⁴ To be amended depending on whether the PBA will be in the name of the Contracting Authority or in the joint names of the Contractor and the Contracting Authority as Employer.

¹⁵ Delete the words in square brackets, as appropriate to reflect whom it has been agreed will open the Bank Account.

¹⁶ Delete the words in square brackets, as appropriate to reflect what has been agreed in relation to charges and interest.

	<p>arrangements for payment of amounts due to PBA Sub-Contractors under their sub-contracts.</p> <p>e) If a sub-contractor or sub-sub-contractor to be engaged in relation to the Works notifies the Contractor of its objection to becoming a PBA Sub-Contractor, the Contractor must require the sub-contractor or sub-sub-contractor to complete an opt out form in the form set out at this link [insert link] and submit the opt out form to the Employer prior to the engagement of the sub-contractor or sub-sub-contractor. The Employer shall notify the Contractor whether it accepts the request. If the Employer accepts the request, the sub-contractor or sub-sub-contractor is excepted from becoming a PBA Sub-Contractor. If the Employer does not accept the request, the sub-contractor or sub-sub-contractor either agrees to become a PBA Sub-Contractor or is not engaged in relation to the Works.</p> <p>f) The Contractor shall provide the Employer with details of each proposed PBA Sub-Contractor and obtain the Employer's written consent to add a sub-contractor or sub-sub-contractor to the Trust Deed prior to the Contractor (on behalf of the PBA Sub-Contractors (as defined in the relevant Joining Deed)) and the relevant sub-contractor or sub-sub-contractor executing the Joining Deed. If the sub-contractor or sub-sub-contractor is not accepted it shall not become a PBA Sub-Contractor. If a sub-contractor or sub-sub-contractor is accepted the relevant parties shall sign a Joining Deed as soon as reasonably practicable.</p> <p>g) The Contractor shall submit an application for payment to the Employer, in accordance with the provisions of the contract to enable the Employer to make any payment due under the contract through the Project Bank Account. All payments to be made out of the Project Bank Account are to be made by bank transfer only.</p> <p>h) Not later than seven business days before the final date for payment, the Employer shall pay into the Project Bank Account the amount due to be paid under and in accordance with the contract.¹⁷</p> <p>i) If the amount paid into the Project Bank Account in accordance with the contract is less than the total of the sums due to the Contractor from the Employer and the sums due to the PBA Sub-Contractors from the</p>
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¹⁷ The periods in this clause are based on the information that banks take 3-5 days to make payment once authorisation has been received, Therefore, in order for beneficiaries to receive payment by the final date for payment pay less notices and payments into the PBA will need to be made at least 7 days before the final date for payment and the authorisation process will need to be strictly adhered to.

	<p>Contractor, not later than seven days before the final date for payment the Contractor shall pay the difference into the Project Bank Account.</p> <p>j) Not later than six days before the final date for payment the Contractor shall provide the Bank with details of the payments to be made out of the Project Bank Account and such authorisation as may be required of the Contractor by the Authorisation to permit the Bank, subject to the authorisation of the Employer, to release the relevant payments to the Contractor and the PBA Sub-Contractors from the Project Bank Account, by the final date for payment.</p> <p>k) Not later than five days before the final date for payment the Employer either authorises the Bank to make payment in accordance with the information provided by the Contractor, in accordance with paragraph (j), or immediately notifies the Contractor of any errors or discrepancies in the information provided in accordance with paragraph (j).</p> <p>l) If the Employer notifies the Contractor of any error or discrepancy in accordance with clause paragraph (k), the Contractor revises the relevant information and resubmits it to the Bank not later than four days before the final date for payment and immediately notifies the Employer of the resubmission. Subject to its satisfaction with the resubmission, the Employer authorises the Bank to make payment in accordance with the information provided by the Contractor in accordance with the requirements of the Authorisation.</p> <p>m) No payment due from the Contractor to the Employer shall be made through the Project Bank Account.</p> <p>n) The Contractor acknowledges that payment by the Employer in accordance with [paragraph g] discharges the Employer's obligation to make payment under this Contract in respect of sums due at that time. Payments from the Project Bank Account are treated as payments from the Employer to the Contractor in accordance with this Contract or from the Contractor to PBA Sub-Contractors in accordance with their sub-contracts as applicable. Any delay in payment by the Employer due to a failure of the Contractor to comply with the requirements of this [paragraph m] shall not be treated as late payment under this Contract.</p> <p>o) The Employer and the Contractor shall sign the Trust Deed before the due date for the first payment to be made under this contract.</p>
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	p) If the Contractor's employment is terminated due to a breach of the contract or the insolvency of the Contractor no further payment is made into the Project Bank Account.
Add Annex/Schedule	<p>"Project Bank Account Documents"</p> <p>[insert form of Trust Deed and Joining Deed from the Welsh Government Model Social Public Works Clauses]</p>

Forms of PBA Documents

TRUST DEED

THIS DEED is made the day of

20[]

BETWEEN: -

- (1) **The [Client]/[Employer];** and
- (2) **The Contractor**

as defined in clause 1 of this Deed and collectively referred to in this Deed as “the Parties”, which term shall include any PBA Sub-Contractor who becomes a party to this Deed by virtue of a Joining Deed.

Background

- A. The [Client]/[Employer] has engaged the Contractor to carry out the Project.
- B. The PBA Sub-Contractors have been or will be engaged to carry out certain parts of the work required in respect of the Project as set out in more detail in the Sub-Contracts.
- C. The Parties wish to adopt a payment mechanism which will (i) ensure the fair and faster payment to both the Contractor and the PBA Sub-Contractors (by avoiding payments having to cascade through layers of different contracts); and (ii) that the PBA Sub-Contractors receive payment to which they are entitled in a timely fashion in accordance with the terms of the relevant Sub-Contract. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

1. Definitions

- 1.1. In this Deed, the following words have the following meanings:

“Account Holder”	the [Client/Employer]/[Contractor and the Client/Employer] ¹⁸ ;
“Bank”	[insert name] (Company No. [number]) whose registered office address is [address];
“Bank Account”	a bank account opened with the Bank which has no overdraft facility and into which all monies due under the Contract will be paid by the [Client]/[Employer] in accordance with this Deed;
“Bank Mandate”	the instructions as to the operation of the Bank Account as agreed between the Account Holder and

¹⁸ Delete as appropriate depending on whether the account holder will be the Contracting Authority or a joint account between the Contractor and Contracting Authority as Client/Employer.

	the Bank which will be in a form to be issued by the Bank and agreed by the Account Holder (both parties acting reasonably);
"[Client]/[Employer]":	[]
"Contract"	the contract between (1) the [Client]/[Employer] and (2) the Contractor in respect of the Project and dated [date;]
"Contractor"	[insert name] (Company No. [number]) whose registered office address is [address];
"Joining Deed"	the joining deed in the form set out in Schedule 1 to this Deed;
"PBA Sub-Contractor"	any sub-contractor (of any tier) engaged in relation to the Project, which becomes a party to the Trust Deed by entering into a Joining Deed;
"Project"	[insert description of project];
"Sub-Contract"	a contract entered into between a PBA Sub-Contractor and the Contractor or a sub-contractor of the Contractor (of any tier) in relation to the Project; and
"Term"	the period from the date of this Deed until the earlier of the date: <ul style="list-style-type: none"> • falling [words] ([number]) calendar months after the expiry of the period during which the Contractor is obliged by the Contract to complete and/or remedy incomplete and/or defective works; or • the date of termination of the Contract.

2. Bank Account

- 2.1. The Account Holder undertakes to open a new deposit bank account with the Bank, such account to be opened and held in the name of the Account Holder. The Account Holder shall be entitled to the full beneficial interest in any interest accruing on such account and shall be under no duty to account for any such interest to any other Party [provided that where the Account Holder is more than one entity, any interest shall be apportioned as set out in the Bank Mandate]¹⁹.

¹⁹ Use words in square brackets where the Bank Account is a joint account.

- 2.2. The [Client]/[Employer] undertakes to pay all monies due to the Contractor under the Contract into the Bank Account as and when such monies become due for payment in accordance with the terms of the Contract.
- 2.3. The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable and shall be held on trust for each of the Contractor and the PBA Sub-Contractors in the amounts owing to them in accordance with the Contract and the Sub-Contracts and, subject to the terms of this Deed, as set out in the Account Holder's instructions to the Bank for the payment of monies to the Contractor and the PBA Sub-Contractors. The Contractor and the PBA Sub-Contractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than as a beneficiary of the monies owing to them in accordance with the terms of the Contract and the Sub-Contracts respectively.
- 2.4. If for any reason the anticipated balance of the Bank Account is insufficient to enable payments to be made to the Contractor and the PBA Sub-Contractors in accordance with their entitlements under the Contract and the Sub-Contracts, the Contractor will deposit monies into the Bank Account to allow payments to be made in accordance with the Sub-Contracts. Any such sums deposited shall, subject to the terms of this Deed, be held on trust for each PBA Sub-Contractor in the same proportions that the monies owed to them forms of the total monies owed to the PBA Sub-Contractors at the time of such payment in.
- 2.5. The [Client]/[Employer] acknowledges that, as and when monies are paid by it into the Bank Account in accordance with the Contract, it will cease to have any further rights and/or interest in such monies, other than as specifically set out in this Deed.
- 2.6. The Account Holder shall ensure that if the Contractor becomes [Insolvent (as defined in the Contract)]²⁰/[insolvent as defined within clause 91.1 of the Contract]²¹, no further sums shall be paid out of the Bank Account to the Contractor and that all sums held on trust for the Contractor shall no longer be held on trust for the Contractor, but shall be held on trust for the Contractor and/or the [Client]/[Employer], to the extent that the sums held finally become due to such of those parties in accordance with the terms of the Contract. The Account Holder shall authorise the Bank to release the sums held under this clause 2.6 in accordance with the terms of the Contract as soon as reasonably practicable after they finally fall due.
- 2.7. If a PBA Sub-Contractor becomes [Insolvent]²²/[insolvent]²³ (as defined in the relevant Sub-Contract) (an "Insolvent Party") on or after an instruction has been issued by the Account Holder to the Bank to make payment to an Insolvent Party, the Account Holder may issue an instruction to the Bank to stop the payment to the Insolvent Party. Any

²⁰ Use the words in these square brackets if the Contract is a JCT contract.

²¹ Use the words in these square brackets if the Contract is a NEC contract.

²² Use the words in these square brackets if the Contract is a JCT contract.

²³ Use the words in these square brackets if the Contract is a NEC contract.

previous instruction regarding payment to the relevant Insolvent Party shall be superseded by an instruction given under and in accordance with this clause 2.7. Any sums which are the subject of an instruction given in accordance with this clause 2.7 shall no longer be held on trust for the Insolvent Party, but shall be held on trust for the[Client]/[Employer], and/or the Contractor and/or the Insolvent Party to the extent that the sums held become due to such of those parties in accordance with the terms of the Contract and/or relevant Sub-Contract. The Account Holder shall authorise the Bank to release the sums held under this clause 2.7 in accordance with the terms of the Contract and/or the relevant Sub-Contract, as appropriate, as soon as reasonably practicable after they finally fall due.

3. Operation of the Bank Account

3.1. The Account Holder:

- (a) will ensure that the Bank Mandate contains terms which allow for the operation of the Bank Account in accordance with the terms of this Deed;
- (b) will sign the Bank Mandate as soon as reasonably practicable following execution of this Deed and, in any event, within 21 days of the date of this Deed;
- (c) will operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Contract, the documents shall take precedence in the following order:
 - (i) This Deed;
 - (ii) The Bank Mandate; and
 - (iii) The Contract.
- (d) will keep accurate, complete and up to date books of account and records of all transactions relating to the Bank Account, including but not limited to details of all payments out of the Bank Account authorised by the Account Holder and any bank charges payable;
- (e) is responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions under this clause 3;
- (f) shall not cause the Bank Account to become overdrawn;
- (g) if it has the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information and that such employees and/or representatives are aware of the confidential nature of the access details, the Bank Account details and the Bank Account transactions;

- (h) shall hold all monies in the Bank Account on trust for the full and exclusive benefit of the Contractor, the PBA Sub-Contractors and the [Client]/[Employer] in accordance with clauses 2.3 to 2.9 (inclusive) above.
- 3.2 On each [payment assessment date]²⁴/[Interim Valuation Date]²⁵ under the Contract, the Contractor shall identify any payments due under the Contract and the Sub-Contracts and shall promptly notify the [Project Manager]²⁶/[Employer's Agent]²⁷ (as defined in the Contract) and the [Client]/[Employer] of the same. Following receipt of the Contractor's notification;
- 3.2.1. The [Client]/[Employer] shall pay the monies due under the Contract into the Bank Account in accordance with the requirements of the Contract; and
- 3.2.2. Once the monies paid into the Bank Account, in accordance with clause 3.2.1, have cleared, the Account Holder shall promptly authorise the Bank to make payments to the Contractor and the PBA Sub-Contractors in accordance with the Contractor's notification issued under this clause 3.2.
- 3.3. The Contractor notifies each of the PBA Sub-Contractors by issuance of a payment certificate or pay less notice or otherwise in accordance with the relevant Sub-Contract of the amounts which are to be paid to them from the Bank Account and the date on which the PBA Sub-Contractors can expect to receive such payment.
- 3.4. All payments to the PBA Sub-Contractors and the Contractor shall be made by bank transfer.
- 3.5 At least 10 business days prior to the first [payment assessment date]²⁸ / [Interim Valuation Date]²⁹ under the relevant Sub-Contract, each PBA Sub-Contractor provides the Contractor with sufficient details of the bank account into which monies allocated to them from the Bank Account are to be paid, in order to allow the Bank to make any payments authorised by the Account Holder. PBA Sub-Contractors may update their bank details by written notice to the Contractor, from time to time.
- 3.6 Subject to compliance of the relevant PBA Sub-Contractor with clause 3.5, [the Contractor shall promptly provide the Account Holder with the details provided in accordance with clause 3.5 and]³⁰ the Account Holder shall provide the Bank with the bank details of the PBA Sub-Contractors in sufficient time for the Bank to process an instruction from the Account Holder.

²⁴ Use the words in these square brackets if the Contract is an NEC contract.

²⁵ Use the words in these square brackets if the Contract is a JCT contract.

²⁶ Use the words in these square brackets if the Contract is an NEC contract.

²⁷ Use the words in these square brackets if the Contract is a JCT contract.

²⁸ Use the words in these square brackets if the Contract is an NEC contract.

²⁹ Use the words in these square brackets if the Contract is a JCT contract.

³⁰ Use the words in square brackets only if the Account Holder is the Client/Employer.

- 3.7 The PBA Sub-Contractors acknowledge and accept that failure to comply with clause 3.5 may result in monies not being paid to them either in accordance with their Sub-Contract or at all and that the Account Holder has no liability for such failure.
- 3.8 Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the Account Holder[s in such proportions as they notify the Bank in writing]³¹ and may be withdrawn following [payment of the final amount due under the Contract]³²/[the due date for the final payment as set out in the Final Statement or Employer's Final Statement (as defined in the Contract)]³³.
- 3.9 Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the Account Holder[s in such proportions as they notify the Bank in writing]³⁴.
- 3.10 The Contractor and the PBA Sub-Contractors acknowledge that the [Client]/[Employer] is subject to audit by the Welsh Ministers and the Parties hereby agree that the Account Holder may authorise the Bank to give rights of access to the Bank Account to the Welsh Ministers for the purposes only of monitoring the activity of the Bank Account in accordance with their rights to audit the [Employer]/[Client].

4. New PBA Sub-Contractors

- 4.1 Subject to the Contractor obtaining the [Client]/[Employer]'s written consent, in accordance with the Contract, any party engaged to carry out works in relation to the Project may become a PBA Sub-Contractor and the [Client]/[Employer], the Contractor and the proposed new PBA Sub-Contractor shall execute a Joining Deed in order to complete that process.
- 4.2 The Parties agree that, in signing a Joining Deed, the [Client]/[Employer] is signing on behalf of itself and the Contractor is signing on behalf of itself and as agent for each of the PBA Sub-Contractors, which has become a party to the Trust Deed by virtue of a previous Joining Deed (an "Existing PBA Sub-Contractor"). Each Existing PBA Sub-Contractor agrees to be bound by the terms of any Joining Deed validly executed by the Contractor and the [Client]/[Employer].

5. Removal of PBA Sub-Contractor

- 5.1 If prior to the expiry of the Term a PBA Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holder shall arrange for payment out of the Bank Account to that PBA Sub-Contractor of any monies held on trust for the benefit of that PBA Sub-Contractor.

³¹ Use the words in square brackets where the PBA is a joint account.

³² Use the words in these square brackets if the Contract is an NEC contract.

³³ Use the words in these square brackets if the Contract is a JCT contract.

³⁴ Use the words in square brackets where the PBA is a joint account.

- 5.2. On payment of the monies due to it from the Bank Account in accordance with clause 5.1, the relevant PBA Sub-Contractor shall cease to have any further rights and/or interests in the Bank Account.

6. Confidentiality

No Party shall use or disclose any confidential information, which it acquires (howsoever acquired) in relation to another Party's business except in the proper performance of this Deed or its other obligations in relation to the Project.

7. Termination

- 7.1 This Deed shall continue for the Term, subject to early termination in accordance with clause 7.2 below.

- 7.2 This Deed shall immediately terminate on the date on which all monies have paid out from the Bank Account in accordance with clause 7.3, following the earlier of:

7.2.1 the date of any written agreement between the Parties terminating this Deed; and/or

7.2.2 the date of termination of the Contract,

- 7.3 As soon as reasonably practicable following either of the events in clause 7.2.1 or 7.2.2, the Account Holder undertakes to instruct the Bank to promptly pay the Contractor and the PBA Sub-Contractors all monies held on trust for those parties in the relevant amounts (less any outstanding bank charges and expenses) and to pay the Account Holder any interest which may have accrued, in accordance with the terms of this Deed.

8. General

- 8.1. This Deed contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Deed on the basis of any representation that is not expressly incorporated into this Deed. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.
- 8.2. No waiver by any Party of any breach of this Deed shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 8.3. The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.
- 8.4. No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, PBA Sub-Contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and

any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.

- 8.5. The PBA Sub-Contractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other PBA Sub-Contractors. The PBA Sub-Contractors are not jointly and severally liable under this Deed.
- 8.6. No Party may assign its interest in this Deed (or any part) without the written consent of the other Parties, such consent not to be unreasonably withheld or delayed.
- 8.7. None of the terms and conditions of this Deed shall be enforceable by any person who is not a party to it.
- 8.8. This Deed is governed by and interpreted in accordance with English and Welsh law (as it applies in Wales) and the Parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

IN WITNESS OF THE ABOVE the Parties execute this document as a Deed on the date written above.

EXECUTED as a DEED by:

[CLIENT]/[EMPLOYER]

by affixing hereto its common seal

in the presence of:

.....

Signature

.....

Print name

.....

Signature

.....

Job title

OR

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[CONTRACTOR]

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

[EXECUTED as a DEED by:

[PBA SUB-CONTRACTOR]³⁵

³⁵ Insert an execution block for each PBA Sub-Contractor named in the [Contract Data]/[Contract Particulars]. If none are named delete execution block.

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

Schedule 1: Joining Deed

THIS DEED is dated the day of 20[
]

BETWEEN: -

- (1) **THE CURRENT PARTIES** (as defined in clause 1); and
- (2) **[NEW PBA SUB-CONTRACTOR]** (Company number: [number]) whose registered office address is [address] ("New Party").

Collectively referred to in this Deed as "the Parties".

Background

- A. The Current Parties have entered into a Trust Deed (as defined below).
- B. The New Party is a sub-contractor or sub-sub-contractor (of any tier) of the Contractor.
- C. The [Client]/[Employer], the Contractor and the New Party have agreed that the New Party will be paid for the work and/or services to be carried out under its sub-contract or sub-sub-contract using the Project Bank Account (as defined below).
- D. This Deed constitutes the terms upon which the New Party agrees to be paid for the work and/or services it provides in respect of the Project via the Project Bank Account and sets out the New Party's rights and interests in the monies contained within the Project Bank Account.

1. Definitions

- 1.1. In this Deed the following words have the following meanings:

"Admission Date"	the date of this Deed;
"Contract"	the contract between the [Client]/[Employer] and the Contractor dated [date] for the Project;
"Contractor"	[name] (Company No. [number]) whose registered office is [address];
"Current Parties"	the persons/organisations whose names are set out in Appendix 1 to this Deed being the current parties to the Trust Deed;
"Trust Deed"	the deed between the Current Parties dated [DATE] which sets out the basis on which the Project Bank Account is to be operated in respect of the Project;
"[Client]/[Employer]"	[name] [(Company No. [number])] of/whose registered office is [address];
"Project"	[insert description of project];

“Project Account”	Bank the bank account held in the name of the [Client/Employer]/ [Contractor and the Client/Employer] ³⁶ at [BANK] account number [NUMBER] into which all monies due in respect of the Contract are to be paid.
-------------------	--

2. Agreement

2.1 The Parties to this Deed agree that:

- 2.1.1 The New Party becomes a party to the Trust Deed from the Admission Date and shall be a PBA Sub-Contractor for the purposes of that deed;
- 2.2.2 other sub-contractors and sub-sub-contractors engaged in relation to the Project may be added as parties to the Trust Deed by agreement between the [Client]/[Employer] and the Contractor, and the New Party acknowledges and agrees that any such agreement will be sufficient for the purposes of deeming the consent of the New Party to the adding of the relevant party to the Trust Deed;
- 2.2.3 this Deed is subject to the law of England and Wales (as applied in Wales); and
- 2.2.4 the benefit of this Deed may not be assigned.

³⁶ Delete as appropriate depending on whether the account holder is the Contracting Authority as Client/Employer or a joint account between the Contractor and Client/Employer.

APPENDIX 1: THE CURRENT PARTIES

1. The [Client]/[Employer]
2. The Contractor
3. [list any PBA Sub-Contractors who are already party to the Trust Deed by virtue of entering into a Joining Deed]³⁷ (the “PBA Sub-Contractors”)]

IN WITNESS OF THE ABOVE the Parties execute this document as a Deed on the date written above.

EXECUTED as a DEED by:

[CLIENT]/[EMPLOYER]

by affixing hereto its common seal

in the presence of:

.....

Signature

.....

Print name

.....

Signature

.....

Job title

OR

³⁷ Insert details of each party (other than the [Client]/[Employer] and Contractor) who is party to the Trust Deed (by virtue of executing a Joining Deed). There will be no sub-contractor details in respect of the first Joining Deed.

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[CONTRACTOR]

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[NEW SUBCONTRACTOR]

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

NEC3/4 Engineering and Construction Contract Model Retention Bank Account Clauses

In the Contract Data Part Two, insert a new section at the end.	<p>“Retention Bank Account</p> <p>The Retention Sub-Contractors who are to be party to the Retention Trust Deed by entering into an Adherence Deed as soon as reasonably practicable following completion of the Retention Trust Deed are:</p> <p>[]</p> <p>[]”</p>
Add new clause 11.2()	“11.2() Adherence Deed means an agreement in the form set out at [Annex []]/[Schedule []] by which a sub-contractor or sub-sub-contractor is added to the Retention Trust Deed.”
Add new clause 11.2()	“11.2() Authorisation means the mandate to the Bank to make payments to the <i>Contractor</i> and/or the Retention Sub-Contractors in accordance with the Retention Trust Deed.”
Add new clause 11.2()	“11.2() Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”
Add new clause 11.2()	<p>“11.2() Completion Application for Release means a written request from the Contractor to the [Client]/[Employer] on or after Completion:</p> <ul style="list-style-type: none"> identifying the Retention Sub-Contractor(s) to whom retention sums are to be released in addition to the <i>Contractor</i>; and stating the amount to be released to the <i>Contractor</i> and each Retention Sub-Contractor identified in the request in accordance with this contract and the relevant sub-contract or sub-sub-contract.”
Add new clause 11.2()	<p>“11.2() Defects Application for Release means a written request from the <i>Contractor</i> to the [Client]/[Employer] on or after the <i>defects date</i>:</p> <ul style="list-style-type: none"> identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and stating the amounts to be released to the <i>Contractor</i> and each Retention Sub-Contractor

	identified in the request in accordance with this contract and the relevant sub-contract or sub-sub-contract.”
Add new clause 11.2()	<p>“11.2() Interim Application for Release means a written request from the <i>Contractor</i> to the <i>[Client]/[Employer]</i> following practical completion of the whole of the <i>works</i> required to be undertaken by a Retention Sub-Contractor:</p> <ul style="list-style-type: none"> • identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and • stating the amount to be released to each Retention Sub-Contractor identified in the request in accordance with the relevant sub-contract or sub-sub-contract.”
Add new clause 11.2()	<p>“11.2() Retention Bank Account means a new interest bearing deposit bank account with the Bank in the name of the <i>[Client]/[Employer]</i> to be administered in accordance with the Retention Trust Deed.”</p>
Add new clause 11.2()	<p>“11.2() Retention Sub-Contractors are, for the purposes of the Retention Bank Account, all sub-contractors engaged by the <i>Contractor</i> and all sub-sub-contractors engaged in relation to the <i>works</i>, whose sub-contract or sub-sub-contract provides for the retention of sums save for any sub-contractor and/or sub-sub-contractor engaged in relation to the <i>works</i> who is excepted in accordance with Z[<i>Retention Bank Account clause</i>].4.”</p>
Add new clause 11.2()	<p>“11.2() Retention Trust Deed means an agreement between the <i>[Client]/[Employer]</i> and the <i>Contractor</i> in the form set out at [Annex[]]/[Schedule []].”</p>
Add new clause 11.2()	<p>“11.2() Takeover Application for Release means a written request given to the <i>[Client]/[Employer]</i> from the <i>Contractor</i> following the take over of the whole of the <i>works</i> by the <i>[Client]/[Employer]</i> prior to Completion:</p> <ul style="list-style-type: none"> • identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and • stating the amount to be released to the <i>Contractor</i> and each Retention Sub-Contractor in accordance with this contract and the relevant sub-contract or sub-sub-contract.”

X16.2	<p>In X16.2 delete both bullet points and replace with:</p> <ul style="list-style-type: none"> • In relation to the amount retained from each Retention Sub-Contractor identified in accordance with Z[].9; and • In relation to the amount retained from the <i>Contractor</i> and each Retention Sub-Contractor (who is not the subject of an Interim Application for Release), in accordance with Z[].11 or Z[].12.
[X16.3	<p>Insert a new clause X16.3, as follows:</p> <p>“If agreed by the <i>Employer</i>, the <i>Contractor</i> may give the <i>Employer</i> a retention bond, provided by a bank or insurer which the <i>Project Manager</i> has accepted, for the total amount to be retained and in the form appended to this contract at [Annex []]/[Schedule []]. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. No sums are retained from payments to the <i>Contractor</i> following the provision of a retention bond in accordance with this clause and any amount retained prior to provision of the retention bond is paid to the <i>Contractor</i> in the next assessment.”³⁸</p>
[X16.3	<p>In X16.3 delete “in the form set out in the Scope and replace with:</p> <p>“in the form appended to this contract at [Annex []]/[Schedule []]”³⁹</p>
X16.4	<p>Insert a new clause X16.4, as follows:</p> <p>“If the <i>Contractor</i> provides a Retention Bond it may request a retention bond from a sub-contractor, but where the sub-contractor is not reasonably able to provide a retention bond the <i>Contractor</i> may not include in its subcontracts a provision for the retention of sums from any sub-contractor and must use reasonable endeavours to ensure that sums are not retained from any sub-sub-contractor (of any tier) engaged in relation to the works.”</p>
Add a Z clause	<p>“Retention Bank Account”⁴⁰</p> <p>Z[].1 The <i>[Client]/[Employer]</i> shall open the Retention Bank Account as soon as reasonably practicable following the date of this contract.</p> <p>Z[].2 The <i>[Client]/[Employer]</i> pays any charges required in relation to the Retention Bank Account and receives any interest paid by the Bank.</p>

³⁸ This new clause to be included in NEC3 ECC only.

³⁹ This amendment to be included in NEC4 ECC only.

⁴⁰ This Z clause only to be used if a Retention Bond is not being provided.

	<p>Z[].3 The <i>Contractor</i> includes in its sub-contracts and procures that its sub-contractors include in each sub-sub-contract with Retention Sub-Contractors:</p> <ul style="list-style-type: none"> • a requirement for each Retention Sub-Contractor to execute an Adherence Deed, • the provisions in this contract for the operation of the Retention Bank Account and the arrangements for payment of amounts due to Retention Sub-Contractors. <p>Z[].4 If a sub-contractor or sub-sub-contractor to be engaged in relation to the <i>works</i> notifies the <i>Contractor</i> of its objection to becoming a Retention Sub-Contractor, the <i>Contractor</i> must, prior to the engagement of the sub-contractor or sub-sub-contractor, notify the <i>[Employer]/[Client]</i> of the objection. The <i>[Employer]/[Client]</i> notifies the <i>Contractor</i> whether it accepts the objection. If the <i>[Employer]/[Client]</i> accepts the objection, the sub-contractor or sub-sub-contractor is excepted from becoming a Retention Sub-Contractor. If the <i>[Employer]/[Client]</i> does not accept the objection, the sub-contractor or sub-sub-contractor either agrees to become a Retention Sub-Contractor or is not engaged in relation to the <i>works</i>.</p> <p>Z[].5 The <i>[Client]/[Employer]</i> notifies the <i>Contractor</i> and the <i>Contractor</i> notifies the Retention Sub-Contractors of the details of the Retention Bank Account.</p> <p>Z[].6 The <i>Contractor</i> gives the <i>[Client]/[Employer]</i> details of each sub-contractor and sub-sub-contractor to be admitted as a Retention Sub-Contractor, from time to time, and the <i>[Client]/[Employer]</i>, the <i>Contractor</i> (on behalf of the Retention Sub-Contractors (as defined in the relevant Adherence Deed)) and the relevant sub-contractor or sub-sub-contractor, execute an Adherence Deed.</p> <p>Z[].7 In relation to any payment to be made out of the Retention Bank Account, the <i>Contractor</i> submits to the <i>[Client]/[Employer]</i> and the <i>Project Manager</i>, either:</p> <ul style="list-style-type: none"> • an Interim Application for Release; or
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	<ul style="list-style-type: none"> • a Completion Application for Release; or • a Defects Application for Release; or • a Takeover Application for Release, <p>in accordance with the provisions of this contract.</p>
Z[]8	The <i>Project Manager</i> assesses the works carried out under a Sub-Contract and notifies the <i>[Client]/[Employer]</i> when the part of the <i>works</i> to be undertaken by a Retention Sub-Contractor are complete.
Z[]9	<p>Within 3 business days of receipt of the <i>Project Manager's</i> notification the <i>[Client]/[Employer]</i>:</p> <ul style="list-style-type: none"> • Where an Interim Application for Release is received in respect of any Retention Sub-Contractor identified in the <i>Project Manager's</i> notice, the <i>[Client]/[Employer]</i> issues an Authorisation to pay those parties, in the amounts set out in the Interim Application for Release; or • where no Interim Application for Release is received in respect of a Retention Sub-Contractor identified in the <i>Project Manager's</i> notice, the <i>Project Manager</i> assesses the amount to be released to relevant Retention Sub-Contractor and the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the <i>Project Manager's</i> assessment.
Z[]10	Any Retention Sub-Contractor identified in an Interim Application for Release, who has not been identified in a notice given by the <i>Project Manager</i> in accordance with Z[]8, may be included in any subsequent Interim Application for Release provided that release of the relevant part of the amount retained to the <i>Contractor</i> and each Retention Sub-Contractor may only be made once on completion of the relevant <i>works</i> and once following the occurrence of the <i>defects date</i> .
Z[]11	<p>Within 5 business days of receipt of certification of Completion by the <i>Project Manager</i>:</p> <ul style="list-style-type: none"> • Where a Completion Application for Release is received, the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in the

	<p>Completion Application for Release in the amounts set out in that application; or</p> <ul style="list-style-type: none"> • where no Completion Application for Release is received, the <i>Project Manager</i> assesses the amount to be released to the <i>Contractor</i> and each Retention Sub-Contractor and the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the <i>Project Manager's</i> assessment. <p>Z[].12 Within 5 business days of the next assessment after the <i>[Client]/[Employer]</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i>:</p> <ul style="list-style-type: none"> • where a Takeover Application for Release is received, the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the Takeover Application for Release; or • where no Takeover Application for Release is received, the <i>Project Manager</i> assesses the amount to be released to the <i>Contractor</i> and each Retention Sub-Contractor and the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the <i>Project Manager's</i> assessment. <p>Z[].13 Subject to Z[].14, within 5 business days of the <i>defects date</i>:</p> <ul style="list-style-type: none"> • Where a Defects Application for Release has been received, the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the Defects Application for Release; or • where no Defects Application for Release is received, the <i>Project Manager</i> assesses the amount to be released to the <i>Contractor</i> and each Retention Sub-Contractor and the <i>[Client]/[Employer]</i> issues an Authorisation to pay each party identified in and in the amounts set out in the <i>Project Manager's</i> assessment. <p>Z[].14 Where, at the <i>defects date</i>, there are outstanding defects which have been notified to the <i>Contractor</i>, the</p>
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	<p><i>[Client]/[Employer]</i> may retain from any sums to be released under Z[].13 the cost, reasonably estimated by the <i>Project Manager</i>, of engaging an alternative contractor to remedy such defects. Where the actual cost to the <i>[Client]/[Employer]</i> of remedying such defects exceeds the sums retained, the <i>[Client]/[Employer]</i> may recover the shortfall from the <i>Contractor</i>, as a debt.</p> <p>Z[].15 If there is any dispute in respect of sums due to a Party under Z[].9, Z[].11, Z[].12 and/or Z[].13 either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under this contract.</p> <p>Z[].16 The <i>Contractor</i> acknowledges that payment by the <i>[Client]/[Employer]</i> in accordance with Z[].9, Z[].11, Z[].12 and/or Z[].13 discharges the <i>[Client's]/[Employer's]</i> obligation to release the amount retained under this contract in respect of sums due at the time of release.</p> <p>Z[].17 The <i>[Client]/[Employer]</i>, the <i>Contractor</i> and the Retention Sub-Contractors identified in the Contract Data sign the Retention Trust Deed before the first assessment date.</p> <p>[Z[].18 If the <i>Client</i> terminates this contract for any reason identified in the Termination Table and to which A3 applies, the <i>[Client]/[Employer]</i> is not obliged to make any further release of the amount retained.]⁴¹</p>
Add a new Annex/Schedule	<p>“Retention Bank Account Documents”</p> <p>[insert form of Retention Trust Deed and Adherence Deed from the Welsh Government Model Social Public Works Clauses]</p>
Add a new Annex/Schedule	<p>“Retention Bond”</p> <p>[insert form of Retention Bond from the Welsh Government Model Social Public Works Clauses]</p>

⁴¹ For this clause to work an amendment needs to be made to clause 93.2 A3 to permit the Employer/Client to make no further payment under the contract until its loss and expense is ascertained.

JCT 2016 Design and Build Contract Model Retention Bank Account Clauses

At the end of the Contract Particulars insert a new section referencing clause 10.	<p>“Retention Sub-Contractors (<i>where payment to sub-contractors (of any tier) is subject to a retention they shall be listed opposite.</i>)</p>	<p>The Retention Sub-Contractors are:</p> <p>[]</p> <p>[]”</p>
In clause 1.1 insert the following new definitions:	<p>“Adherence Deed means an agreement in the form set out at [Annex []]/[Schedule []] by which a sub-contractor or sub-sub-contractor is added to the Retention Trust Deed.”</p>	
	<p>“Authorisation means the mandate to the Bank to make payments to the Contractor and the Retention Sub-Contractors in accordance with the Retention Trust Deed.”</p>	
	<p>“Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”</p>	
	<p>“Practical Completion Application for Release means a written request from the Contractor to the Employer on or after the issue of the Practical Completion Statement:</p> <p>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</p> <p>(b) stating the amounts to be released to the Contractor and each Retention Sub-Contractor in accordance with this Contract and the relevant sub-contract or sub-sub-contract.”</p>	
	<p>“Rectification Application for Release means a written request from the Contractor to the Employer on or after the expiry of the Rectification Period:</p> <p>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</p> <p>(b) stating the amounts to be released to the Contractor and each Retention Sub-Contractor in accordance with this Contract and the relevant sub-contract or sub-sub-contract.”</p>	
	<p>“Interim Application for Release means a written request from the Contractor to the Employer following practical completion of the whole of the works required to be undertaken by a Retention Sub-Contractor:</p>	

	<p>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released:</p> <p>(b) stating the amount to be released to each Retention Sub-Contractor identified in the request in accordance with the relevant sub-contract or sub-sub-contract.”</p>
	<p>“Retention Bank Account means a new deposit bank account with the Bank in the name of the Employer to be administered in accordance with the Retention Trust Deed.”</p>
	<p>“The Retention Sub-Contractors are, for the purposes of the Project Bank Account, all sub-contractors engaged by the Contractor and all sub-sub-contractors engaged in relation to the Works, whose sub-contract or sub-sub-contract provides for the retention of sums save for any sub-contractor and/or sub-sub-contractor engaged in relation to the Works who is excepted in accordance with clause 10.4.”</p>
	<p>“Retention Trust Deed means an agreement between the Contractor and the Employer, in the form set out at [Annex []]/[Schedule []].”</p>
	<p>“Possession Application for Release means a written request submitted to the Employer by the Contractor following possession of the Works in accordance with clause 2.30:</p> <p>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</p> <p>(b) stating the amount to be released to the Contractor and each Retention Sub-Contractor in accordance with the Contract and the relevant sub-contract or sub-sub-contract.”</p>
	<p>Retention Rules on treatment of Retention</p>
Clause 4.16.2	<p>Delete and substitute “The Employer, to the extent that it exercises its right under clause 4.18, shall at the time of each Interim Payment, place the Retention in the Retention Bank Account and notify the Contractor that the amount has been so placed.”</p>
	<p>Retention Bond</p>
Clause 4.17.2	<p>Delete from “Part 3 of Schedule 6” to the end of the sentence and replace with:</p> <p>“[Annex []]/[Schedule []].”</p>

Clause 4.17.6	<p>Insert a new clause 4.17.6 as follows:</p> <p>“4.17.6 If the Contractor provides a Retention Bond it may request a retention bond from a sub-contractor, but where the sub-contractor is not reasonably able to provide a retention bond the Contractor shall not include in its subcontracts a provision for the retention of sums from any sub-contractor and must use reasonable endeavours to ensure that sums are not retained from any sub-sub-contractor (of any tier) engaged in relation to the works.”</p>
Insert new clause 10 Retention Bank Account	<p>“Retention Bank Account</p> <p>10.1 The Employer shall open the Retention Bank Account as soon as reasonably practicable following the date of this Contract.</p> <p>10.2 The Employer shall pay any charges required in relation to the Retention Bank Account and shall receive any interest paid by the Bank.</p> <p>10.3 The Contractor shall include in its sub-contracts and shall procure that its sub-contractors include in each sub-sub-contract with Retention Sub-Contractors:</p> <ul style="list-style-type: none"> (a) a requirement for each Retention Sub-Contractor to execute an Adherence Deed. (b) the provisions in this Contract for the operation of the Retention Bank Account and the arrangements for payment of amounts due to Retention Sub-Contractors. <p>10.4 The Employer shall notify the Contractor and the Contractor shall notify the Retention Sub-Contractors of the details of the Retention Bank Account.</p> <p>10.5 If a sub-contractor or sub-sub-contractor to be engaged in relation to the Works notifies the Contractor of its objection to becoming a Retention Sub-Contractor, the Contractor shall, prior to the engagement of the sub-contractor or sub-sub-contractor, notify the Employer of the objection. The Employer shall notify the Contractor whether it accepts the objection. If the Employer accepts the objection, the sub-contractor or sub-sub-contractor is excepted from becoming a Retention Sub-Contractor. If the Employer does not accept the</p>

	<p>objection, the sub-contractor or sub-sub-contractor either agrees to become a Retention Sub-Contractor or is not engaged in relation to the Works.</p> <p>10.6 The Contractor shall provide the Employer with details of each sub-contractor and sub-sub-contractor to be admitted as a Retention Sub-Contractor, from time to time, and the Employer, the Contractor (on behalf of the Retention Sub-Contractors (as defined in the relevant Adherence Deed)) and the relevant sub-contractor or sub-sub-contractor shall execute an Adherence Deed.</p> <p>10.7 Not later than the final date for payment of each payment from which the Retention may be deducted, the Employer shall pay into the Retention Bank Account the Retention for that payment.</p> <p>10.8 In relation to any payment to be made out of the Retention Bank Account, the Contractor shall submit to the Employer and the Employer's Agent, either:</p> <ul style="list-style-type: none"> (a) an Interim Application for Release; or (b) a Practical Completion Application for Release; or (c) a Rectification Application for Release; or (d) a Possession Application for Release, <p>in accordance with the provisions of this Contract.</p> <p>10.9 The Employer's Agent shall notify the Employer when the part of the Works to be undertaken by a Retention Sub-Contractor are complete.</p> <p>10.10 Within 3 business days of receipt of the Employer's Agent's notification the Employer:</p> <ul style="list-style-type: none"> (a) Where an Interim Application for Release is received in respect of any Retention Sub-Contractor identified in the Employer's Agent's notice, the Employer issues an Authorisation to pay those parties, in the amounts set out in the Interim Application for Release; or (b) where no Interim Application for Release is received in respect of a Retention Sub-Contractor identified in the Employer's Agent's notice, the Employer shall assess the amount to
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	<p>be released to relevant Retention Sub-Contractor and shall issue an Authorisation to pay the relevant Retention Sub-Contractor(s) the amounts assessed.</p>
10.11	<p>Any Retention Sub-Contractor identified in an Interim Application for Release, whose works have not been notified as practically complete to the Employer by the Employer's Agent, may be included in any subsequent Interim Application for Release provided that release of the relevant part of the Retention to the Contractor and each Retention Sub-Contractor may only be made once on practical completion of the relevant works and once following the expiry of the Rectification Period.</p>
10.12	<p>Within 5 business days of receipt of the Practical Completion Statement:</p> <ul style="list-style-type: none"> (a) Where a Practical Completion Application for Release is received, the Employer shall issue an Authorisation to pay each party identified in the Practical Completion Application for Release in the amounts set out in that application; or (b) where no Practical Completion Application for Release is received, the Employer shall assess the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.
10.13	<p>Within 5 business days of the next Interim Valuation Date following possession by the Employer in accordance with clause 2.30:</p> <ul style="list-style-type: none"> (a) where a Possession Application for Release is received, the Employer shall issue an Authorisation to pay each party identified in and in the amounts set out in the Possession Application for Release; or (b) where no Possession Application for Release is received, the Employer shall assess the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an

	<p>Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.</p>
10.14	<p>Subject to clause 10.15, within 5 business days of expiry of the Rectification Period:</p> <p>(a) Where a Rectification Application for Release has been received, the Employer shall issue an Authorisation to pay each party identified in and in the amounts set out in the Rectification Application for Release; or</p> <p>(b) where no Rectification Application for Release is received, the Employer shall assess the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.</p>
10.15	<p>Where, at the expiry of the Rectification Period, there are outstanding defects which have been notified to the Contractor, the Employer may retain from any sums to be released under clause 10.14 the cost that the Employer reasonably estimates it will incur in engaging an alternative contractor to remedy such defects. Where the actual cost to the Employer of remedying such defects exceeds the sums retained, the Employer may recover the shortfall from the Contractor, as a debt.</p>
10.16	<p>If there is any dispute in respect of sums due or paid to a Party under clauses 10.10, 10.12, 10.13 or 10.14 either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under this Contract.</p>
10.17	<p>The Contractor acknowledges that payment by the Employer in accordance with under clauses 10.10, 10.12, 10.13 or 10.14 discharges the Employer's obligation to release the Retention under this Contract in respect of sums due at the time of release.</p>
10.18	<p>The Employer, the Contractor and the Retention Sub-Contractors identified in the Contract Particulars shall</p>

	<p>sign the Retention Trust Deed prior to the first Interim Valuation Date.</p> <p>10.19 If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6, no further payment is made into the Project Bank Account.</p>
Add a new Annex/Schedule	<p>"Retention Bank Account Documents"</p> <p>[insert form of Retention Trust Deed and Adherence Deed from the Welsh Government Model Social Public Works Clauses]</p>
Add a new Annex/Schedule	<p>"Retention Bond"</p> <p>[insert form of Retention Bond from the Welsh Government Model Social Public Works Clauses]</p>

Bespoke Contract Model Retention Bank Account Clauses

Insert the following definitions:	“Adherence Deed means an agreement in the form set out at [Annex []]/[Schedule []] by which a sub-contractor or sub-sub-contractor is added to the Retention Trust Deed.”
	“Authorisation means the mandate to the Bank to make payments to the Contractor and the Retention Sub-Contractors in accordance with the Retention Trust Deed.”
	“Bank means [insert name of bank] (Company No. [number]) whose registered office address is [address].”
	<p>“Interim Application for Release means a written request from the Contractor to the Employer following practical completion of the whole of the works required to be undertaken by a Retention Sub-Contractor:</p> <ul style="list-style-type: none"> (a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released: (b) stating the amount to be released to each Retention Sub-Contractor identified in the request in accordance with the relevant sub-contract or sub-sub-contract.”
	<p>[“Possession Application for Release means a written request submitted to the Employer by the Contractor following the taking of possession of the whole of the Works by the Employer prior to practical completion:</p> <ul style="list-style-type: none"> (a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and <p>stating the amount to be released to the Contractor and each Retention Sub-Contractor in accordance with the Contract and the relevant sub-contract or sub-sub-contract.”]⁴²</p>
	<p>“Practical Completion Application for Release means a written request from the Contractor to the Employer on or after the issue of the statement or certificate confirming that practical completion of the whole of the works has been achieved:</p> <ul style="list-style-type: none"> (c) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and

⁴² This definition only to be included where the contract provides for early possession by the Employer and which possession triggers deemed practical completion and the release of a proportion of the retention.

	<p>stating the amounts to be released to the Contractor and each Retention Sub-Contractor in accordance with the contract and the relevant sub-contract or sub-sub-contract.”</p>
	<p>“Rectification Application for Release means a written request from the Contractor to the Employer on or after the expiry of any contractual period for the rectification of defects in respect of the whole of the works:</p> <p style="padding-left: 40px;">(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</p> <p>stating the amounts to be released to the Contractor and each Retention Sub-Contractor in accordance with the contract and the relevant sub-contract or sub-sub-contract.”</p>
	<p>“Retention Bank Account means a new deposit bank account with the Bank in the name of the Employer to be administered in accordance with the Retention Trust Deed.”</p>
	<p>“The Retention Sub-Contractors are, for the purposes of the Project Bank Account, all sub-contractors engaged by the Contractor and all sub-sub-contractors (of any tier) (each a “Sub-Contractor” for the purposes of the provisions in the contract relating to the Retention Bank Account) engaged in relation to the Works, whose sub-contract or sub-sub-contract provides for the retention of sums save for any Sub-contractor who objects to becoming a Retention Sub-Contractor and whose objection is notified to and accepted, in writing, by the Employer and where an objection is not accepted the Sub-Contractor must become a Retention Sub-Contractor or be excluded from engagement in relation to the works.”</p>
	<p>“Retention Trust Deed means an agreement between the Contractor and the Employer in the form set out at [Annex []]/[Schedule []].”</p>
	<p>Retention Rules on treatment of Retention</p>
Insert clause	<p>“The Employer, to the extent that it has and exercises a right to deduct and retain an amount from sums otherwise due to the Contractor, shall at the time of each payment, place such amount in the Retention Bank Account and notify the Contractor that the amount has been so placed.”</p>

<div>Insert clause</div> <div>Retention Bank Account</div>	<div>“Retention Bank Account</div> <div> <p>a) The Employer shall open the Retention Bank Account as soon as reasonably practicable following the date of the contract.</p> <p>b) The Employer shall pay any charges required in relation to the Retention Bank Account and shall receive any interest paid by the Bank.</p> <p>c) The Contractor shall include in its sub-contracts and shall procure that its sub-contractors include in each sub-sub-contract with Retention Sub-Contractors a requirement for each Retention Sub-Contractor to execute an Adherence Deed and for the provisions in this Contract for the operation of the Retention Bank Account and the arrangements for payment of amounts due to Retention Sub-Contractors.</p> <p>d) The Employer shall notify the Contractor and the Contractor shall notify the Retention Sub-Contractors of the details of the Retention Bank Account.</p> <p>e) The Contractor shall provide the Employer with details of each Sub-Contractor to be admitted as a Retention Sub-Contractor, from time to time, and the Employer, the Contractor (on behalf of the Retention Sub-Contractors (as defined in the relevant Adherence Deed)) and the relevant Sub-Contractor shall execute an Adherence Deed.</p> <p>f) Not later than the final date for payment of each payment from which sums may be deducted, the Employer shall pay into the Retention Bank Account the amount deducted for that payment.</p> <p>g) In relation to any payment to be made out of the Retention Bank Account, the Contractor shall submit to the Employer and the Employer’s Agent, either:</p> <div> <p>(a) an Interim Application for Release; or</p> <p>(b) a Practical Completion Application for Release; or</p> <p>(c) a Rectification Application for Release;[or</p> <p>(d) a Possession Application for Release.]</p> </div> </div>
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	<p>in accordance with the provisions of the contract.</p> <p>h) The Employer's Agent shall notify the Employer when the part of the Works to be undertaken by a Retention Sub-Contractor are complete.</p> <p>i) Within 3 business days of receipt of the Employer's Agent's notification the Employer:</p> <p>(a) Where an Interim Application for Release is received in respect of any Retention Sub-Contractor identified in the Employer's Agent's notice, the Employer issues an Authorisation to pay those parties, in the amounts set out in the Interim Application for Release; or</p> <p>(b) where no Interim Application for Release is received in respect of a Retention Sub-Contractor identified in the Employer's Agent's notice, the Employer shall assess the amount to be released to relevant Retention Sub-Contractor and shall issue an Authorisation to pay the relevant Retention Sub-Contractor(s) the amounts assessed.</p> <p>j) Any Retention Sub-Contractor identified in an Interim Application for Release, whose works have not been notified as practically complete to the Employer by the Employer's Agent, may be included in any subsequent Interim Application for Release provided that release of the relevant amount to the Contractor and each Retention Sub-Contractor may only be made once on practical completion of the relevant works and once following the expiry of the Rectification Period.</p> <p>k) Within 5 business days of receipt of a statement or certificate issued by the employer's agent confirming that practical completion has been achieved:</p> <p>(a) Where a Practical Completion Application for Release is received, the Employer shall issue an Authorisation to pay each party identified in the Practical Completion Application for Release in the amounts set out in that application; or</p> <p>(b) where no Practical Completion Application for Release is received, the Employer shall assess</p>
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	<p>the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.</p> <p>l) [Within 5 business days of the next contract date for valuation of payments due to the Contractor, following possession of the whole of the works by the Employer:</p> <p>(a) where a Possession Application for Release is received, the Employer shall issue an Authorisation to pay each party identified in and in the amounts set out in the Possession Application for Release; or</p> <p>(b) where no Possession Application for Release is received, the Employer shall assess the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.]</p> <p>m) Subject to [paragraph n], within 5 business days of expiry of any contractual period for the rectification of defects:</p> <p>(a) Where a Rectification Application for Release has been received, the Employer shall issue an Authorisation to pay each party identified in and in the amounts set out in the Rectification Application for Release; or</p> <p>(b) where no Rectification Application for Release is received, the Employer shall assess the amount to be released to the Contractor and each Retention Sub-Contractor and shall issue an Authorisation to pay the Contractor and each Retention Sub-Contractor the amounts assessed.</p> <p>n) Where, at the expiry of the Rectification Period, there are outstanding defects which have been notified to the Contractor, the Employer may retain from any sums to be released under [paragraph m] the cost that the Employer reasonably estimates it will incur in engaging an alternative contractor to remedy such</p>
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	<p>defects. Where the actual cost to the Employer of remedying such defects exceeds the sums retained, the Employer may recover the shortfall from the Contractor, as a debt.</p> <p>o) If there is any dispute in respect of sums due or paid to a Party under [paragraph i, k, l or m] either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under this Contract.</p> <p>p) The Contractor acknowledges that payment by the Employer in accordance with [paragraph i, k, l or m] discharges the Employer's obligation to release sums due for release under the contract in respect of sums due at the time of release.</p> <p>q) The Employer and the Contractor shall sign the Retention Trust Deed prior to the first payment due under the contract.</p> <p>r) If the Contractor's employment is terminated due to breach of the contract by or, insolvency of the Contractor, no further payment is made into the Project Bank Account.</p>
Add Annex/Schedule	<p>"Retention Bank Account Documents"</p> <p>[insert form of Retention Trust Deed and Adherence Deed from the Welsh Government Model Social Public Works Clauses]</p>
Add Annex/Schedule	<p>"Retention Bond"</p> <p>[insert form of Retention Bond from the Welsh Government Model Social Public Works Clauses]</p>

Forms RBA Documents

RETENTION TRUST DEED

THIS DEED is made the day of

20[]

BETWEEN: -

- (1) **The [Client]/[Employer];** and
- (2) **The Contractor,**

All as defined in clause 1 of this Deed and collectively referred to in this Deed as “the Parties”, which term shall include any PBA Sub-Contractor who becomes a party to this Deed by virtue of an Adherence Deed.

Background

- A. The [Client]/[Employer] has engaged the Contractor to carry out the Project.
- B. The Retention Sub-Contractors have been engaged to carry out certain parts of the work required in respect of the Project as set out in more detail in the Sub-Contracts.
- C. The Parties wish to adopt a mechanism which will ensure the fair and prompt release of sums held by way of retention under both the Contract and the Sub-Contracts. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

1. Definitions

1.1. In this Deed, the following words have the following meanings:

“Account Holder”	means the [Client]/[Employer];
“Adherence Deed”	means the Adherence deed in the form set out in Schedule 1 to this Deed;
“Bank”	means [insert name] (Company No. [number]) whose registered office address is [address];
“Bank Account”	means a bank account opened with the Bank which has no overdraft facility and into which all sums held by way of retention under the Contract and the Sub-Contracts will be paid by the Employer in accordance with this Deed;
“Bank Mandate”	means the instructions as to the operation of the Bank Account as agreed between the Account Holder and the Bank which will be in a form to be issued by the Bank and agreed by the Account Holder (both parties acting reasonably);

"[Client]/[Employer]"	[
"Contract"	means the contract between (1) the Employer and (2) the Contractor in respect of the Project, dated [date;]
"Contractor"	[insert name] (Company No. [number]) whose registered office address is [address];
"Retention"	any sum withheld by the [Client]/[Employer] under and in accordance with the Contract from any payment properly due to the Contractor, which sum may include sums due to a Retention Sub-Contractor, from time to time.
"Retention Release Date"	occurs on each of the following: <ul style="list-style-type: none"> • the date on which the whole of the works to be undertaken by a Retention Sub-Contractor are assessed as being complete, in accordance with the relevant Sub-Contract; • the date on which the whole of the works to be undertaken by the Contractor are assessed as being complete in accordance with the Contract; • the date of takeover or possession of the works to be carried out under the Contract, as assessed in accordance with the provisions of the Contract; • the date of expiry of the period during which the Contractor is obliged by the Contract to complete and/or remedy incomplete and/or defective works.
"Retention Sub-Contractor"	any sub-contractor (of any tier) engaged in relation to the Project, which is or which becomes a party to this Deed (whether by virtue of executing this Deed or by entering into an Adherence Deed);
"Project"	[insert description of project];
"Sub-Contract"	a contract entered into between a Retention Sub-Contractor and the Contractor or a sub-contractor of the Contractor (of any tier) in relation to the Project; and
"Term"	the period from the date of this Deed until the earlier of the date:

- falling [words] ([number]) calendar months after the expiry of the period during which the Contractor is obliged by the Contract to complete and/or remedy incomplete and/or defective works; or
- the date of termination of the Contract.

2. **Bank Account**

- 2.1. The Account Holder undertakes to open a new interest bearing deposit bank account with the Bank, such account to be opened and held in the name of the Account Holder.
- 2.2. The Account Holder undertakes to pay all monies, which it withholds from payments due to the Contractor by way of retention, from time to time, under and in accordance with the terms of the Contract, into the Bank Account.
- 2.3. The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable and shall be held on trust for each of the Contractor and the Retention Sub-Contractors in the amounts owing to them under the Contract and the Sub-Contracts and, subject to the terms of this Deed, as set out in the Account Holder's instructions to the Bank for the payment of monies to the Contractor and the Retention Sub-Contractors. The Contractor and the Retention Sub-Contractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than as a beneficiary of the monies owing to them in accordance with the terms of the Contract or the Sub-Contracts.
- 2.4. The Account Holder acknowledges and accepts that, as and when monies are paid by it into the Bank Account in accordance with the Contract, its rights and/or interest in such monies shall only be as set out in this Deed.
- 2.5. If the Contractor becomes Insolvent (as defined in the Contract)]⁴³ / [insolvent as defined within clause 91.1 of the Contract]⁴⁴ , no further sums shall be paid out of the Bank Account to the Contractor and all sums held on trust for the Contractor shall no longer be held on trust for the Contractor, but shall be held on trust for the Contractor and/or [Client]/[Employer], to the extent that the sums held become due to such of those parties in accordance with the terms of the Contract. The Account Holder shall authorise the Bank to release the sums held under this clause 2.5 in accordance with the terms of the Contract and/or the relevant Sub-Contract, as appropriate, as soon as reasonably practicable after they finally fall due.

⁴³ Use the words in these square brackets if the Contract is a JCT contract.

⁴⁴ Use the words in these square brackets if the Contract is a NEC contract.

- 2.6 If a Retention Sub-Contractor becomes [Insolvent]⁴⁵/[insolvent as defined in the relevant Sub-Contract)]⁴⁶ (an “Insolvent Party”) on or after an instruction has been issued by the Account Holder to the Bank to make payment to an Insolvent Party, the Account holder may issue an instruction to the Bank to stop the payment to the Insolvent Party. Any previous instruction regarding payment to the Insolvent Party shall be overridden by an instruction given in accordance with this clause 2.6. Any sums which are the subject of an instruction given in accordance with this clause 2.6 shall no longer be held on trust for the Insolvent Party, but shall be held on trust for the [Client]/[Employer], and/ or the Contractor and/ or the Insolvent Party to the extent that the sums held become due to such of those parties in accordance with the terms of the Contract and/or relevant Sub-Contract. The Party to whom the sums held under this clause 2.6 finally fall due may apply for the same to be paid to it from the Bank Account.

3. Operation of the Bank Account

3.1 The Account Holder:

- 3.1.1 will ensure that the Bank Mandate contains terms which allow for the operation of the Bank Account in accordance with the terms of this Deed;
- 3.1.2 will sign the Bank Mandate as soon as reasonably practicable following execution of this Deed and, in any event, within 21 days of the date of this Deed;
- 3.1.3 will operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Contract, the documents shall take precedence in the following order:
 - 3.1.3.1 This Deed;
 - 3.1.3.2 The Bank Mandate; and
 - 3.1.3.3 The Contract.
- 3.1.4 will keep accurate, complete and up to records of all transactions relating to the Bank Account, including but not limited to details of all payments out of the Bank Account authorised by the Account Holder and any bank charges payable, and the Account Holder shall make such records available to the Contractor on request;
- 3.1.5 shall not cause the Bank Account to become overdrawn;
- 3.1.6 if it has the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information and that such employees

⁴⁵ Use the words in these square brackets if the Contract is a JCT contract.

⁴⁶ Use the words in these square brackets if the Contract is a NEC contract.

and/or representatives are aware of the confidential nature of the access details, the Bank Account details and the Bank Account transactions;

- 3.1.7 shall hold all monies in the Bank Account on trust for the full and exclusive benefit of the Contractor and the Retention Sub-Contractors in accordance with clauses 2.3 to 2.6 (inclusive).
- 3.2 The [Client]/[Employer] shall make payments in accordance with the Contract. Following each payment, in respect of which a Retention is applied, the [Client]/[Employer] shall promptly pay into the Bank Account the Retention applied to the relevant payment, as notified to the [Client]/[Employer] by the [Project Manager]⁴⁷/[Employer's Agent]⁴⁸.
- 3.3. Following a Retention Release Date, the [Client]/[Employer] shall issue an Authorisation to pay such part of the Retention as is properly due in accordance with the provisions of the Contract.
- 3.4 The Contractor notifies each of the Retention Sub-Contractors by issuance of a payment certificate or pay less notice or otherwise in accordance with the relevant Sub-Contract, of the amounts which are to be paid to them from the Bank Account and the date on which the Retention Sub-Contractors can expect to receive such payment
- 3.5. All payments to the Retention Sub-Contractors and the Contractor shall be made by bank transfer.
- 3.6 Within 10 business days of becoming a Retention Sub-Contractor each Retention Sub-Contractor provides the Contractor with sufficient details of the bank account into which monies allocated to them from the Bank Account are to be paid, in order to allow the Bank to make any payments authorised by the Account Holder. The Contractor promptly passes that information to the [Client]/[Employer]. Retention Sub-Contractors may update their bank details by written notice to the Contractor, from time to time.
- 3.7 Subject to compliance of the relevant Retention Sub-Contractor with clause 3.6, the Account Holder shall provide the Bank with the bank details of each Retention Sub-Contractor in sufficient time for the Bank to process an instruction from the Account Holder.
- 3.8 The Retention Sub-Contractors acknowledge and accept that failure to comply with clause 3.6 may result in monies not being paid to them either in accordance with their Sub-Contract or at all and that the Account Holder has no liability for such failure.
- 3.9. Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the Account Holder and may be withdrawn by it on expiry of the Term.

⁴⁷ Use the words in these square brackets if the Contract is an NEC contract.

⁴⁸ Use the words in these square brackets if the Contract is a JCT contract.

- 3.10. Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the Account Holder.
- 3.11 The Contractor and the Retention Sub-Contractors acknowledge that the [Client]/[Employer] is subject to audit by the Welsh Ministers and the Parties hereby agree that the Account Holder may authorise the Bank to give rights of access to the Bank Account to the Welsh Ministers for the purposes only of monitoring the activity of the Bank Account in accordance with their rights to audit the [Employer]/[Client].

4. New Retention Sub-Contractors

- 4.1 The Contractor shall use reasonable endeavours to ensure that it is aware or is made aware of any party engaged to carry out works in relation to the Project, whose contract for those works contains provision for a retention and shall use reasonable endeavours to procure that any such party agrees to be a Retention Sub-Contractor and arranges for that party, the Account Holder and the Contractor to execute an Adherence Deed.
- 4.2 The Parties agree that, in signing an Adherence Deed, the [Client]/[Employer] is signing on behalf of itself and the Contractor is signing on behalf of itself and as agent for each of the Retention Sub-Contractors which has become a party to the Trust Deed by virtue of a previous Adherence Deed (an "Existing Retention Sub-Contractor"). Each Existing Retention Sub-Contractor agrees to be bound by the terms of each Adherence Deed validly executed by the Contractor and the [Client]/[Employer].

5 Removal of Retention Sub-Contractor

- 5.1 If prior to the expiry of the Term a Retention Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holder shall arrange for payment out of the Bank Account to that Retention Sub-Contractor of any monies held on trust for the benefit of that Retention Sub-Contractor.
- 5.2. On payment of the monies due to it from the Bank Account in accordance with clause 5.1, the relevant Retention Sub-Contractor shall cease to have any further rights and/or interests in the Bank Account.

6 Confidentiality

- 6.1 No Party shall use or disclose any confidential information, which it acquires (howsoever acquired) in relation to another Party's business except in the proper performance of this Deed or its other obligations in relation to the Project.

7 Termination

- 7.1 This Deed shall continue for the Term, subject to early termination in accordance with clause 7.2 below.
- 7.2 This Deed shall immediately terminate on the date on which all monies have paid out from the Bank Account in accordance with clause 7.3, following the earlier of:

7.2.1 the date of any written agreement between the Parties terminating this Deed; and/or

7.2.2 the date of termination of the Contract,

7.3 As soon as reasonably practicable following either of the events in clause 7.2.1 or 7.2.2, the Account Holder undertakes to instruct the Bank to promptly pay the Contractor and the Retention Sub-Contractors all monies held on trust for those parties in the relevant amounts (less any outstanding bank charges and expenses).

8 General

8.1. This Deed contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Deed on the basis of any representation that is not expressly incorporated into this Deed. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.

8.2. No waiver by any Party of any breach of this Deed shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

8.3. The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

8.4. No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, Retention Sub-Contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.

8.5. The Retention Sub-Contractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Retention Sub-Contractors. The Retention Sub-Contractors are not jointly and severally liable under this Deed.

8.6. No Party may assign its interest in this Deed (or any part) without the written consent of the other Parties, such consent not to be unreasonably withheld or delayed.

8.7. None of the terms and conditions of this Deed shall be enforceable by any person who is not a party to it.

8.8. This Deed is governed by and interpreted in accordance with English and Welsh law (as it applies in Wales) and the Parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

IN WITNESS OF THE ABOVE the Parties execute this document as a Deed on the date written above.

EXECUTED as a DEED by:

[Client]/[Employer]

by affixing hereto its common seal
in the presence of:

.....

Signature

.....

Print name

.....

Signature

.....

Job title

OR

acting by two directors or one director and
the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[CONTRACTOR]

acting by two directors or one director and the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

[EXECUTED as a DEED by:

[RETENTION SUB-CONTRACTOR]⁴⁹

acting by two directors or one director and the company secretary:

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

⁴⁹ Insert an execution block for each Retention Sub-Contractor named in the [Contract Data]/[Contract Particulars]. If none are named delete execution block.

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

Schedule 1: Adherence Deed

THIS DEED is dated the day of 20[]

BETWEEN: -

- (1) **THE CURRENT PARTIES** (as defined in clause 1); and
- (2) **[NEW RETENTION SUB-CONTRACTOR]** (Company number: [number]) whose registered office address is [address] ("New Party").

Collectively referred to in this Deed as "the Parties".

Background

- A. The Current Parties have entered into a Retention Trust Deed (as defined below).
- B. The New Party is a sub-contractor or sub-sub-contractor (of any tier) of the Contractor. The [Client]/[Employer], the Contractor and the New Party have agreed that any retention deducted from the New Party under its sub-contract or sub-sub-contract will be placed into the Retention Bank Account until it is due to be released in accordance with the sub-contract or sub-sub-contract.
- C. This Deed constitutes the terms upon which the Retention is to be dealt with and sets out the New Party's rights and interests in the relevant portion of the Retention placed in the Retention Bank Account.

1. Definitions

- 1.1. In this Deed the following words have the following meanings:

"Admission Date"	the date of this Deed;
"Contract"	the contract between the [Client]/[Employer] and the Contractor dated [date] for the Project;
"Contractor"	[name] (Company No. [number]) whose registered office is [address];
"Current Parties"	the persons/organisations whose names are set out in Appendix 1 to this Deed being the current parties to the Retention Trust Deed;
"Retention"	any sum withheld by the [Client]/[Employer] under and in accordance with the Contract from any payment properly due to the Contractor, which sum may include sums due to the New Party, from time to time.
"Retention Trust Deed"	means the deed between the Current Parties dated [DATE] which sets out the basis on which the Retention Bank Account is to be operated in respect of the Project;

"[Client]/[Employer] "	means [name] [(Company No. [number])] of/whose registered office is [address];
"Project"	means [insert description of project];
"Retention Bank Account"	means the bank account held in the name of the [Client]/[Employer] at [BANK] account number [NUMBER] into which all monies due in respect of the Retention are to be paid.

2. Agreement

2.1 The Parties to this Deed agree that:

- 2.1.1 The New Party becomes a party to the Retention Trust Deed from the Admission Date and shall be a Retention Sub-Contractor for the purposes of that deed;
- 2.2.2 other sub-contractors and sub-sub-contractors engaged in relation to the Project may be added as parties to the Retention Trust Deed by agreement between the [Client]/[Employer] and the Contractor, and the New Party acknowledges and agrees that any such agreement will be sufficient for the purposes of deeming the consent of the New Party to the adding of the relevant party to the Retention Trust Deed;
- 2.2.3 this Deed is subject to the law of England and Wales (as applied in Wales); and
- 2.2.4 the benefit of this Deed may not be assigned.

APPENDIX 1: THE CURRENT PARTIES

1. The [Client]/[Employer]
2. The Contractor
3. [Retention Sub-Contractors]⁵⁰
(the “Retention Sub-Contractors”)

IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.

EXECUTED as a DEED by:

[Client]/[Employer]

by affixing hereto its common seal
in the presence of:

.....
Signature

.....
Print name

.....
Signature

.....
Job title

OR

acting by two directors or one director and
the company secretary:

⁵⁰ Insert details of each party (other than the Client/Employer and Contractor) who is party to the Retention trust Deed (whether by virtue of executing the Retention Trust Deed or a Adherence Deed).

.....

Print name

.....

Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[CONTRACTOR]

acting by two directors or one director and
the company secretary:

.....
Print name

.....
Director signature

.....
Print name

.....
Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....
Print name

.....
Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

EXECUTED as a DEED by:

[NEW PARTY]

acting by two directors or one director and
the company secretary:

.....
Print name

.....
Director signature

.....

Print name

.....

Director/Company Secretary signature

OR

acting by one director in the presence of a
witness:

.....

Print name

.....

Director signature

Signature of witness:

.....

Name of Witness:

.....

Address of Witness:

.....]

.....

Occupation of Witness:

.....

Model Form of Retention Bond

MODEL FORM OF RETENTION BOND

DATED

20

(1) **[CONTRACTOR]**

(2) **[GUARANTOR]**

(3) **[CLIENT/[EMPLOYER]**

RETENTION BOND

relating to

[insert description of Works]

THIS RETENTION BOND is made this day of 20 []

BETWEEN

- (1) The “**Contractor**” as principal,
- (2) The “**Guarantor**” as guarantor and
- (3) The “[**Client**]/[**Employer**]”

Together the “**Parties**” whose names and registered office addresses are set out in the Schedule to this Retention Bond (the “**Schedule**”)

WHEREAS

- (1) By a contract (the “**Contract**”) entered into or to be entered into between the [Client]/[Employer] and the Contractor (particulars of which are set out in the Schedule) the Contractor has agreed with the [Client]/[Employer] to execute works (the “**Works**”) upon and subject to the terms and conditions set out within the Contract.
- (2) The Guarantor has agreed with the [Client]/[Employer] at the request of the Contractor to guarantee payment of sums equal to the retention sum, which the [Client]/[Employer] would be entitled to retain from the Contractor, from time to time, under and in accordance with the provisions of the Contract (the “**Retention**”) and upon the terms and conditions of this Retention Bond subject to the limitation set out in clause 2.
- (3) The [Client]/[Employer] has agreed that, subject to the provisions of the Contract, it will not exercise its right to deduct any sums by way of retention from any interim payments due to the Contractor under the Contract where the Contractor has provided a bond in accordance with the Contract in substitution for the sums that the [Client]/[Employer] would otherwise be entitled to deduct.

NOW THIS DEED WITNESSES as follows:

1. Capitalised terms in this Retention Bond shall have the meaning attributed to them in the body of this Retention Bond or in the Schedule.
2. In consideration of the payment of one pound (£1) by the [Client]/[Employer] to the Guarantor (the receipt of which is hereby acknowledged by the Guarantor) and subject to clause 5 and clause 8, the Guarantor irrevocably and unconditionally undertakes to immediately pay to the [Client]/[Employer], on receipt of the first and all subsequent written demands issued to the Guarantor in accordance with this Retention Bond (the “**Demand(s)**”), the sum stated in such Demand(s).
3. In order for the Guarantor to be obliged to make payment to the [Client]/[Employer] in accordance with clause 2, a Demand must:
 - 3.1 Be addressed in writing to the Guarantor at the Guarantor Address for Notice set out in the Schedule;
 - 3.2 Refer to this Retention Bond;

- 3.3 State the aggregate amount that the [Client]/[Employer] would have been entitled to have deducted under the Contract by way of retention, as at the date of the Demand, were it not for this Retention Bond (the “**Retention Sum**”);
- 3.4 State the amount demanded, which shall not exceed the amount applicable under clause 3.3;
- 3.5 State the purpose for which the [Client]/[Employer] requires the amount demanded, and provide reasonable evidence that:
- (a) the purpose is one to which the [Client]/[Employer] is entitled to apply the Retention under the Contract;
 - (b) the amount demanded is not more than that which is reasonably estimated to be required for the purpose.
4. Subject to clause 2, a Demand(s) shall be conclusive evidence of the Guarantor's liability and of the amount of the sum or sums which it is liable to pay to the [Client]/[Employer], notwithstanding any objection made by the Contractor or any other person, and the Guarantor shall within five (5) Business Days of receipt of a Demand, subject to the provisions of this Retention Bond, pay the sum stated in the Demand to the account detailed in the Demand.
5. The maximum aggregate liability of the Guarantor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the “**Bond Amount**”), which liability shall be reduced to 50% (fifty per cent) of the Bond Amount following production to the Guarantor of a copy of a statement or certificate issued under and in accordance with the Contract that the works required by the Contract have been completed to the extent required by the Contract to trigger the release of half of the Retention.
6. No termination of the Contract and no termination of the Contractor's employment under the Contract shall reduce the liability of the Guarantor under this Retention Bond.
7. The Guarantor shall not be discharged or released, and its liability shall not be affected, reduced or diminished in any way, by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works, nor by the liquidation, administration or dissolution of the Contractor, nor by any disclaimer of the Contract by a liquidator of the Contractor and no allowance of time or other forbearance, waiver or indulgence by the [Client]/[Employer] under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Retention Bond.
8. Whether or not this Retention Bond shall be returned to the Guarantor the obligations of the Guarantor under this Retention Bond shall be released and discharged absolutely upon Expiry save in respect of any breach of the Contract which has occurred and in respect of which a demand in accordance with clause 3 of this Retention Bond has been made upon the Guarantor before Expiry.

9. The Guarantor's obligation to make payment under this Retention Bond shall be a primary, independent and absolute obligation and it shall not be entitled to delay or withhold payment for any reason.
10. Payments due under this Retention Bond shall be made without reference to the Contractor and notwithstanding any dispute between the [Client]/[Employer] and the Contractor and/or whether or not the [Client]/[Employer] and the Contractor are or might be under any liability one to the other.
11. All payments under this Retention Bond shall be in pounds sterling, and shall be made free and clear of, and without any set off, counterclaim or deduction on account of any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
12. The Contractor, having requested the execution of this Retention Bond by the Guarantor, undertakes to the Guarantor (without limitation of any other rights and remedies of the [Client]/[Employer] or the Guarantor against the Contractor) to perform and discharge the obligations on its part, in relation to the Retention as set out in the Contract.
13. This Retention Bond and the benefit of it may be assigned without the prior written consent of the Guarantor or the Contractor (i) by way of security to any bank or other institution providing finance in connection with the Works (including reassignment on redemption) and / or (ii) to any party to whom the benefit of the Contract is assigned, but not otherwise, provided always that the Guarantor shall not be obliged to make any payment to any assignee which would break anti-money laundering or sanctions legislation.
14. The [Client]/[Employer] having taken the benefit of this Retention Bond, undertakes to the Contractor to notify the Guarantor that it is released from its duties and obligations under this Retention Bond within 5 (five) Business days of the [Client]/[Employer]'s entitlement to hold the Retention under the Contract having ceased.
15. Any notice to be served under this Retention Bond must be in writing and must be served by hand or recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the first working date after the date of delivery. If given by post, it shall take effect two (2) Business Days after posting.
16. The parties to this Retention Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
17. This Retention Bond shall be governed by and construed in accordance with the laws of England and Wales (as applied in Wales) and only the courts of England and Wales

shall have jurisdiction hereunder, provided that the [Client]/[Employer] may enforce any judgment or award in any jurisdiction.

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THE SCHEDULE

Contractor: [name] (registered in England and Wales with company number [number]) whose registered address is [address]

Guarantor: [name] (registered in England and Wales with company number [number]) whose registered address is [address]

[Client]/[Employer]: [name] (registered in England and Wales with company number [number]) whose registered address is [address]

Contract: A contract dated [date] between the [Client]/[Employer] and the Contractor for [insert description of the works] for the sum stated in that contract of £[figures] ([words] pounds)

Bond Amount: The sum of £[figures] ([words] pounds)

Business Day A day other than a Saturday or a Sunday on which banks are open for general business in England and Wales.

Defect Period the period set out in the Contract during which the Contractor is obliged to remedy any defects in the works required by the Contract.

Expiry: The earlier of (a) the date that is five (5) Business Days after [the expiry of the Rectification Period]⁵¹/[the *defects date* (as defined in the Contract)]^{52 53} and (b) receipt by the Guarantor of a notification from the [Client]/[Employer] (or any assignee that has been notified to the Guarantor in accordance with clause 13), releasing the Guarantor from its duties and obligations under this Retention Bond.

Guarantor Address

for Notice: []

IN WITNESS whereof the Contractor, the Guarantor and the [Client]/[Employer] have executed and delivered this Guarantee Bond as a Deed this day of 20

EXECUTED as a DEED by

[CONTRACTOR]

acting by:

⁵¹ Words in these square brackets to be used for a bond provided under a JCT contract.

⁵² Words in these square brackets to be used for a bond provided under an NEC contract.

⁵³ Where neither a JCT nor an NEC contract is used the expiry wording should be amended to reflect the provisions of the contract.

.....
Print Name

.....
Director Signature

.....
Print Name

.....
Director/Company Secretary Signature

EXECUTED as a DEED by
[GUARANTOR]

acting by:

.....
Print Name

.....
Director Signature

.....
Print Name

.....
Director/Company Secretary Signature

EXECUTED as a DEED by
[CLIENT]/[EMPLOYER]

acting by:

.....
Print Name

.....
Director Signature

.....
Print Name

.....
Director/Company Secretary Signature



Llywodraeth Cymru
Welsh Government

Employment Model Clauses



- 1.1 The Contractor will (and shall procure that any Sub-contractor will) in delivering the [Works] adopt inclusive recruitment and employment policies which seek to provide employment opportunities to:
 - (a) those who have a protected characteristic within the meaning of the Equality Act 2010;
 - (b) people under the age of 21 (but above compulsory school age);
 - (c) people over the age of 50;
 - (d) people who are long term unemployed; and
 - (e) those who otherwise disadvantaged.
- 1.2 The Contractor will (and shall procure that any Sub-contractor will) in delivering the [Works] seek to identify and address any skills gaps within the workforce.
- 1.3 The Contractor will (and shall procure that any Sub-contract will) seek to provide continuing employment opportunities to the workforce engaged in delivering the [Works] following their completion.
- 1.4 To demonstrate compliance with the obligations set out in 1.1 above, the Contractor will (and shall procure that any Sub-contract will):
 - (a) put in place an Employment Plan outlining how it will:
 - (i) Seek to provide employment opportunities to those groups identified in 1.1;
 - (ii) Seek to Identify and address skills gaps within the workforce;
 - (iii) Provide opportunities for continuing employment to the workforce engaged in delivering the [Works] following completion.
 - (b) Provide the Employment Plan to the Contracting Authority within [INSERT TIMESCALE] of the commencement of the Major Construction Contract.
 - (c) Provide such data to the Contracting Authority as is required by Statutory Guidance *to demonstrate its compliance with the obligations outlined in this clause 1.*
- 1.5 *[The Contractor is required to sign up to the Ethical Employment Code (Code of Practice - Ethical Employment in Supply Chains issued by the Welsh Government on 31 May 2017) and any similar applicable schemes or codes of practice promoted by the Welsh Government, available at the following link: <https://www.gov.wales/ethical-employment-supply-chains-code-practice>.]*
- 1.6 *[The Contractor adopts fair employment and labour practices, recruiting and retaining staff in a fair and ethical manner, providing a safe and competent workforce employed in accordance with Welsh Government's Guide to Fair Work.]*

- 1.7 *[The Contractor is required to sign up to the [Disability Confident Scheme],[Diversity Champions, Stonewall],[Race – Business in the Community].*

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Compliance Model Clauses

- 1.1 The Contractor will (and shall procure that any Subcontractors will) ensure that:
- (i) it is informed of its legal obligations;
 - (ii) performs its legal obligations (including implementing relevant policies and procedures); and
 - (iii) meets the requirements of all applicable law in relation to:
 - (i) employment and employment rights;
 - (ii) equality (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity, marriage, civil partnership or otherwise);
 - (iii) health and safety; and
 - (iv) trade union recognition.
- 1.2 The Contractor will (and shall procure that any Subcontractor will) ensure the compliance of any Employment Intermediary with the requirements of clause 1.1 above.
- 1.3 The Contractor will (and shall procure that any Subcontractor will) provide within [14] days of a request by the Contracting Authority accurate and complete information as requested by the Contracting Authority including but not limited to:
- (i) The number of Contractor Personnel [engaged] in undertaking the [Works];
 - (ii) The status of the Contractor Personnel's [engagement] (i.e. employee, worker, agency worker, self-employed);
 - (iii) The minimum hourly rate of pay applicable to each grade or category of Contractor Personnel;
 - (iv) The number of Contractor Personnel [engaged] on zero or non-guaranteed hours contracts and the terms upon which they are engaged;
 - (v) Health and safety policies, risk assessments and/or certification ;
 - (vi) Any Trade Union recognition agreement, works council or other information and consultation arrangements in place ;
 - (vii) The processes in place for ensuring its compliance with employment law and employment rights';
 - (viii) The processes in place for ensuring the compliance of any Subcontractor or Employment Intermediary with the obligations in clause 1.1 and 1.2 above.
- 1.4 The Contracting Authority may request the information outlined in clause 1.3 above in the form of:
- (i) Anonymised contracts of employment, payslips, policies and procedures; and

- (ii) any other relevant documentation.
- 1.5 The Contractor will (and shall procure that any Subcontractor will) put in place or provide information on any existing confidential mechanism by which any concerns regarding unethical employment practices, *[modern slavery, breaches of human rights or offshore labour standards]* can be reported. Details of this confidential mechanism must be made available to all Contractor Personnel *[and provided to the Contracting Authority]*.
- 1.6 *[The Contractor shall (and shall procure that any Subcontractor shall) put in place a plan that details how throughout the Contract the Contractor will:*
 - (i) Implement and maintain policies and procedures to ensure its compliance with:*
 - (i) The Modern Slavery Act 2015;*
 - (ii) Human Rights obligations; and*
 - (iii) Offshore labour standards.*
 - (ii) Undertake and maintain a risk assessment (for the UK and/or overseas) in respect of modern slavery, human rights and offshore labour standards in relation to the [Works] which includes regular expenditure assessments and details of how risks identified are to be addressed (including care for victims);*
 - (iii) Monitor and report [to the Contracting Authority and relevant national or local law enforcement agencies] any incidents of modern slavery or breaches of human rights or offshore labour standards.]*
- 1.7 *[The Contractor will (and shall procure that any Subcontractor will) provide within [14] days of a request by the Contracting Authority accurate and complete information as requested by the Contracting Authority in relation to the Contractor (or any Subcontractors) compliance with the obligations outlined in clause 1.5 (including the provision of policies, procedures and other relevant documentation).]*
- 1.8 In this clause the following definitions apply:
 - (i) Contracting Personnel; means any individuals engaged on site in relation to the [Works] in the capacity of employee, worker, apprentice, agency worker or self-employed.
 - (ii) Employment Intermediary; means any business or agency who supplies people in the employment of the Employment Intermediary to act for, or under the control of, the Contractor (or any relevant subcontractor).



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Training Model Clauses

- 1.1 In relation to the subject matter of this contract, the Contractor will (and shall procure that any Subcontractor will) put in place a Training Plan to ensure that:
- (i) Contractor Personnel are provided with relevant training in accordance with industry recognised standards and competencies, including in relation to the latest sustainable practices to enable them to undertake their duties under the Contract;
 - (ii) Training opportunities are provided to Contractor Personnel to enable them to obtain relevant skills and recognised qualifications based on current and future needs of the industry;
 - (iii) Contractor Personnel are enabled to take up relevant training opportunities offered to them during the Contract.
- 1.2 In relation to the subject matter of this contract, the Contractor will (and shall procure that any Subcontractor will) within [] days of the Contract Award provide the Contracting Authority with:
- (a) The Training Plan for Contracted Personnel.
 - (b) The number of Contractor Personnel who:
 - (i) Commenced a Work-based Learning Programme prior to the start of this contract and the number of months/years of training undertaken; and
 - (ii) Have or will commence a Work-based Learning Programme during the duration of the contract and the number of months/years of training undertaken.
 - (c) Details of any relevant skills and recognised qualifications attained and on-going in the duration of the contract.
 - (d) Health and safety and project induction training provided to Contracting Personnel.
- 1.3 In this clause Work-based Learning Programme has the definition provided for under the [Welsh Government Statutory Guidance].



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Sub-contracting Model Clauses

- 1.1 The Contractor shall provide to the Contracting Authority a plan ("the Sub-Contracting Plan") recording the actions that the Contractor shall take during the course of the Contract to promote and facilitate sub-contracting opportunities for small and medium-sized enterprises, micro enterprises and voluntary organisations. The Contractor shall provide the Contracting Authority with the plan within [] days of contract award and shall include details of:

- (a) Methods of advertising
- (b) Communications with small and medium-sized enterprises
- (c) Identifying and addressing any barriers that prevent or deter small and medium-sized enterprises, micro enterprises or voluntary organisations from doing business with the Contractor.

The plan shall identify sub-contracting arrangements that the Contractor has made at the commencement of the Contract and additional sub-contracting arrangements that the Contractor anticipates may be required during the course of the Contract and shall provide details of how the provisions in paragraphs (a) to (c) will be applied in respect of each of these.

- 1.2 If the Contractor invites proposals for a sub-contract required under this Contract the sources of advertising shall include the Sell2Wales service provided by the Welsh Government or any service that replaces Sell2Wales.
- 1.3 The Contractor shall for the duration of the Contract maintain a record of any sub-contracts it awards to meet the requirements of the Contract and shall provide a copy of such record to the Contracting Authority no later than five Working Days after the Contracting Authority requests a copy.
- 1.4 The Contractor shall provide the Contracting Authority with a written report once a year, or at such other intervals as the Contracting Authority specifies during the duration of the contract, on:
- (a) The Contractor's progress in delivering the Sub-Contracting Plan.

The report shall be provided on each anniversary of the Commencement Date of the contract or on such other date as the Contracting Authority specifies and shall be in a format agreed between the Contractor and the Contracting Authority.

- 1.5 For the purpose of this clause [] "sub-contracting" shall mean any arrangement by the Contractor to arrange for a third party ("a sub-contractor") to discharge any of its obligations under the Contract.



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Environment Model Clauses

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- 1.1 The Contractor shall and shall procure that any subcontractor or agent of the Contractor shall in delivering the Works seek to use methods and materials that are designed to achieve sustainable management of natural resources, use of sustainable materials, resilience to the impact of climate change, reduction of greenhouse gas emissions and enhancement of the natural environment and biodiversity.
- 1.2 The Contractor shall provide to the Contracting Authority an environmental plan ("the Environmental Plan") recording the actions that the Contractor shall take during the course of the Contract and in the Completed Works to address the following issues:
- (a) Resilience to climate change.
 - (b) Enhancing the natural environment and biodiversity.
 - (c) Minimising whole life carbon emissions.
 - (d) Reducing global ecological footprint.
- 1.3 The plan shall explain how the Contractor shall identify any risk that action on one area could have a negative effect on another area and take action to address such risk.
- 1.4 The Contractor shall provide the Contracting Authority with any data relating to the Contract or the Works as the Contracting Authority requires, within [] days of a request, to enable the Contracting Authority to comply with any legal obligations or statutory guidance.
- 1.5 The Contractor shall and shall procure that any subcontractor or agent of the Contractor shall in delivering the Works have regard to any guidance issued or specified by the Welsh Ministers or by the Contracting Authority.
- 1.6 The Contractor and the Contracting Authority have agreed the targets set out at Schedule [] for:
- (a) Increasing the use of re-used and re-cycled material required for delivering the contract.
 - (b) Reducing the amount of waste and the delivery of waste to landfill in delivering the contract.
 - (c) Reducing whole life carbon emissions in the delivery of the contract.
- 1.7 The Contractor shall provide the Contracting Authority with a written report once a year or at such other intervals as the Contracting Authority specifies during the duration of the contract and at project completion on:
- (a) The Contractor's progress in delivering the Environmental Plan.
 - (b) The Contractor's achievements of the targets set out at Schedule [].

The report shall be provided on each anniversary of the Commencement Date of the contract or on such other date as the Contracting Authority specifies and shall be in a format agreed between the Contractor and the Contracting Authority.

Clauses for NEC 4 Contracts

Design Build and Operate Contract, Alliance Contract, Engineering and Construction Contract, Facilities Management Contract, Professional Service Contract, Supply Contract, Term Service Contract, Engineering and Construction Subcontract, Facilities Management Subcontract, Professional Service Subcontract, Term Service Subcontract

Option X29 to be amended as follows:

- (i) X29.1(1) to be amended to “The Environmental Requirements are the requirements relating to Resilience to climate change, Enhancing the natural environment and biodiversity, and Minimising whole life carbon emissions stated in the Scope.
- (ii) X29.1(2) All references to “Climate Change Plan” to be amended to “Environmental Plan”.
- (iii) X29.1(3) to be amended to: “The Environmental Partners are the people or organisations who contribute to the achievement of the Environmental Requirements and are identified in the Environmental Requirements.”
- (iv) X29.2 All references to “Climate Change Partners” to be amended to “Environmental Partners”. All references to “Climate Change Requirements” to be amended to “Climate Change Requirements”.
- (v) X29.3: “Climate Change Requirements” to be amended to “Environmental Requirements”.
- (vi) X29.4 to be replaced by:

The Contractor shall provide to the Contracting Authority an environmental plan (“the Environmental Plan”) recording the actions that the Contractor shall take during the course of the Contract to address the following issues:

Resilience to climate change.

Enhancing the natural environment and biodiversity.

Minimising whole life carbon emissions.

Reducing global ecological footprint.

The plan shall identify how these issues shall be addressed during the course of the Contract and in the completed Works delivered for the Contracting Authority.

The plan shall explain how the Contractor shall identify any risk that action on one area could have a negative effect on another area and take action to address such risk.

The Contractor shall provide the Contracting Authority with any data relating to the Contract or the Works as the Contracting Authority requires to enable the Contracting Authority to comply with any legal obligations or statutory guidance.

The Contractor shall and shall procure that any subcontractor or agent of the Contractor shall in delivering the Works have regard to any guidance issued or specified by the Welsh Ministers or by the Contracting Authority.

The Contractor and the Contracting Authority have agreed the targets set out at Schedule [] for:

- (i) Increasing the use of re-used and re-cycled material required for delivering the contract.
- (ii) Reducing the amount of waste and the delivery of waste to landfill in delivering the contract.
- (iii) Reducing whole life carbon emissions in the delivery of the contract.

The Contractor shall provide the Contracting Authority with a written report once a year or at such other intervals as the Contracting Authority specifies during the duration of the contract on:

- (i) The Contractor's progress in delivering the Environmental Plan.
- (ii) The Contractor's achievements of the targets set out at Schedule [].

The report shall be provided on each anniversary of the Commencement Date of the contract or on such other date as the Contracting Authority specifies and shall be in a format agreed between the Contractor and the Contracting Authority.

- (vii) X29.5 "climate change" to be amended to "the environment". "Climate Change Requirements" to be amended to "Environmental Requirements".



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Transparency Model Clauses

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Monitoring Clauses (for use with NEC or JCT or bespoke contracts)

The following definitions apply to this clause:

“Applicable Law”	any applicable statute, act, statutory rule, order or other law, directive, regulation or by-law or any rule, code, direction or other instrument having the force of law.
“Data Protection Law”	all Applicable Law relating to data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.
“FOIA”	the Freedom of Information Act 2000 together with any guidance and/or codes of practice pertaining to it, issued by the Information Commissioner
“MSA Laws”	all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
“SPPP Act”	the Social Partnership and Public Procurement (Wales) Act 2023, any regulations made thereunder and any guidance issued pertaining to it.

- (a) The Contractor acknowledges that the [Client]/[Employer] is subject to Data Protection Law and MSA Laws and the requirements of the FOIA and the SPPP Act and the Contractor shall assist and co-operate with the [Client]/[Employer] (at the Contractor’s expense) to enable the [Client]/[Employer] to comply with its obligations, disclosure and auditing requirements (as appropriate) under and in accordance with those laws and in respect of all Applicable Law.
- (b) The Contractor shall:
- (i) maintain a complete set of records to trace the supply chain of all works provided to the [Client]/[Employer] and all payments made to all suppliers and sub-contractors (of any tier) in connection with this contract and promptly make copies of such records available to the [Client]/[Employer] upon request;
 - (ii) maintain complete, accurate and up to date records of the processing carried out on behalf of the [Client]/[Employer] under this Contract and of the steps taken by the Contractor to ensure its compliance with the provisions of this

- (iii) Contract and Data Protection Law and promptly make copies of such records available to the [Client]/[Employer] upon request.
- (iv) permit the [Client]/[Employer] and its representatives, on reasonable notice during normal business hours but without notice in case of any reasonably suspected breach of this clause []:
 - (a) to have access to the Contractor's facilities and equipment and to take copies of the Contractor's records and any other relevant information (in any form) and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations in this clause; and
 - (b) to inspect the Contractor's operations, facilities and working conditions and its quality, environmental, ethical and health and safety procedures and systems to ensure the Contractor has the appropriate facilities, procedures, systems and personnel appropriate to and as may be required for the Contractor to perform the Works in accordance with this Contract and for that purpose shall be entitled to have access to the Contractor's premises and to any premises of the Contractor's sub-contractors or agents where the Works are being performed.
- (v) agree with the [Client]/[Employer] the nature, extent and timing of any remedial action required to address any issues or failures identified by an audit carried out pursuant to clause [](iii) and shall undertake such remedial action at its own cost.