



Llywodraeth Cymru  
Welsh Government

# Model Social Public Works Clauses

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## **Prompt Payment & Sub-Contracting**

**Clauses for NEC3/4 Engineering and Construction Contract:**

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

<sup>1</sup> 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:

	<b>Definitions</b>	
Clause 1.1	Insert the following new definition:	
	<p>“Payment Information</p>	<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]<sup>2</sup></p> <p>(e) any additional information supporting the entitlement to payment of the sums applied for, reasonably required by the [Client]/[Employer].</p>
	<b>Sub-Contracting</b>	
	<b>Consent to sub-contracting</b>	
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 must 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:	

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

	“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”
Clause 4.7.4	After “shall” insert: “contain the Payment Information and”. At the end of the clause insert: “Receipt of the Payment Information is a pre-requisite to payment to the Contractor of any sum in an Interim Payment Application.”

## 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><b>“Project Bank Account</b></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>[            ]”<sup>3</sup></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> <sup>4</sup> 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 <i>Project Bank Account clause</i> ].”
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><b>“Project Bank Account</b></p> <p>Z[ ].1 The <i>[Contractor]/[Employer]/[Client]</i><sup>5</sup> shall open the Project Bank Account as soon as reasonably practicable following the date of this contract.</p>

<sup>3</sup> 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.

<sup>4</sup> 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*.

<sup>5</sup> 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]<sup>6</sup> 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 <a href="https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form">link</a> (https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form) 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</p>
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<sup>6</sup> Delete the words in square brackets, as appropriate to reflect what has been agreed in relation to charges and interest.

	<p>relevant parties sign a Joining Deed as soon as reasonably practicable</p> <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.<sup>7</sup></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></p>
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<sup>7</sup> 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>authorises the Bank to make payment in accordance with 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 It is a condition precedent to the obligation of the <i>[Employer]/[Client]</i> to pay any sums under this contract that the <i>Contractor</i> has complied with its obligations under clause Z[ ].15 and clause Z[ ].16.</p> <p>[Z[ ].18If 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.]<sup>8</sup></p>
Add a new Annex/Schedule	<p><b>“Project Bank Account Documents”<sup>9</sup></b></p> <p>[insert form of Trust Deed and Joining Deed from the Welsh Government Model Social Public Works Clauses]</p>

<sup>8</sup> 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.

<sup>9</sup> 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

<p>At the end of the Contract Particulars insert a new section referencing clause 10.</p>	<p>“PBA Sub-Contractors <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>In clause 1.1 insert the following new definitions:</p>	<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]<sup>10</sup> 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>	
	<p>Clause 4.9.2</p>	<p>After "clause 4.9.5" insert:  “and subject to the Parties having entered into the Trust Deed”.</p>	
	<p>Insert new clause 10 Project Bank Account</p>	<p><b>“Project Bank Account</b>  10.1 The [Contractor]/[Employer]<sup>11</sup> shall open the Project Bank Account as soon as reasonably practicable following the date of this Contract.</p>	

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

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

	<p>10.2 The [Contractor]/[Employer]<sup>12</sup> shall pay any charges required in relation to the Project Bank Account and shall receive any interest paid by the Bank.</p> <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 <a href="https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form">link</a> (https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form) 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</p>
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<sup>12</sup> Delete the words in square brackets, as appropriate to reflect what has been agreed in relation to charges and interest.

	<p>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 Bank Account the amount due to be paid under and in accordance with this Contract. <sup>13</sup></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>
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<sup>13</sup> 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>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-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 It is a condition precedent to the obligation of the Employer to pay any sums under this contract that the Contractor has complied with its obligations under clause 10.15 and clause 10.16</p> <p>10.18 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><b>"Project Bank Account Documents"</b></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] <sup>14</sup> 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 expected 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 clause Project Bank Account	<p><b>“Project Bank Account</b></p> <p>(a) The [Contractor]/[Employer]<sup>15</sup> shall open the Project Bank Account as soon as reasonably practicable following the date of the contract.</p> <p>(b) The [Contractor]/[Employer]<sup>16</sup> 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>

<sup>14</sup> 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.

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

<sup>16</sup> 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 <a href="https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form">link</a> (https://www.gov.wales/project-bank-account-pba-subcontractor-opt-out-form) 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. <sup>17</sup></p> <p>(i) If the amount paid into the Project Bank Account in accordance with the contract is less than the total of the</p>
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<sup>17</sup> 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>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>(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 h] 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 n] shall not be treated as late payment under this Contract.</p>
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	<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> <p>(p) It is a condition precedent to the obligation of the Employer to pay any sums under this contract that the Contractor has complied with its obligations under clause [ ](o), above.</p> <p>(q) 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.</p>
Add Annex/Schedule	<p><b>“Project Bank Account Documents”</b></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] <sup>18</sup> ;
“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

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<sup>18</sup> 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 making up the Account Holder acting reasonably)]<sup>19</sup>;

“[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"><li>• 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</li><li>• the date of termination of the Contract.</li></ul>

## 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

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<sup>19</sup> Delete the words in square brackets if the Account Holder is a sole entity.

[provided that where the Account Holder is more than one entity, any interest shall be apportioned as set out in the Bank Mandate]<sup>20</sup>.

- 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)]<sup>21</sup>/[insolvent as defined within clause 91.1 of the Contract]<sup>22</sup>, 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.

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<sup>20</sup> Use words in square brackets where the Bank Account is a joint account.

<sup>21</sup> Use the words in these square brackets if the Contract is a JCT contract.

<sup>22</sup> Use the words in these square brackets if the Contract is a NEC contract.

2.7. If a PBA Sub-Contractor becomes [Insolvent]<sup>23</sup>/[insolvent]<sup>24</sup> (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 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, within 30 days of them falling finally 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;

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<sup>23</sup> Use the words in these square brackets if the Contract is a JCT contract.

<sup>24</sup> Use the words in these square brackets if the Contract is a NEC contract.

- (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]<sup>25</sup>/[Interim Valuation Date]<sup>26</sup> under the Contract, the Contractor shall identify any payments due under the Contract and the Sub-Contracts and shall promptly notify the [Project Manager]<sup>27</sup>/[Employer's Agent]<sup>28</sup> (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]<sup>29</sup> / [Interim Valuation Date]<sup>30</sup> 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

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<sup>25</sup> Use the words in these square brackets if the Contract is an NEC contract.

<sup>26</sup> Use the words in these square brackets if the Contract is a JCT contract.

<sup>27</sup> Use the words in these square brackets if the Contract is an NEC contract.

<sup>28</sup> Use the words in these square brackets if the Contract is a JCT contract.

<sup>29</sup> Use the words in these square brackets if the Contract is an NEC contract.

<sup>30</sup> Use the words in these square brackets if the Contract is a JCT contract.

accordance with clause 3.5 and]<sup>31</sup> 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.

- 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]<sup>32</sup> and may be withdrawn following [payment of the final amount due under the Contract]<sup>33</sup>/[the due date for the final payment as set out in the Final Statement or Employer's Final Statement (as defined in the Contract)]<sup>34</sup>.
- 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]<sup>35</sup>.
- 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 authorize 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

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<sup>31</sup> Use the words in square brackets only if the Account Holder is the Client/Employer.

<sup>32</sup> Use the words in square brackets where the PBA is a joint account.

<sup>33</sup> Use the words in these square brackets if the Contract is an NEC contract.

<sup>34</sup> Use the words in these square brackets if the Contract is a JCT contract.

<sup>35</sup> Use the words in square brackets where the PBA is a joint account.

that PBA Sub-Contractor of any monies held on trust for the benefit of that PBA Sub-Contractor.

- 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]<sup>36</sup>**

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:

.....

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<sup>36</sup> Insert an execution block for each PBA Sub-Contractor named in the [Contract Data]/[Contract Particulars]. If none are named delete execution block.



“Project Account”	Bank	the bank account held in the name of the [Client/Employer]/ [Contractor and the Client/Employer] <sup>37</sup> at [BANK] account number [NUMBER] into which all monies due in respect of the Contract are to be paid.
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## 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.

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<sup>37</sup> 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]<sup>38</sup> (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**

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<sup>38</sup> 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 Clauses for payment of the Retention**

<p>Add new clause 11.2( )</p>	<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"> <li>• identifying the Retention Sub-Contractor(s) to whom retention sums are to be released in addition to the <i>Contractor</i>; and</li> <li>• 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.”</li> </ul>
<p>Add new clause 11.2( )</p>	<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"> <li>• identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>• 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.”</li> </ul>
<p>Add new clause 11.2( )</p>	<p>“11.2( ) Interim Application for Release means a written request from the <i>Contractor</i> to the [Client]/[Employer] 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"> <li>• identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>• 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.”</li> </ul>
<p>Add new clause 11.2( )</p>	<p>11.2( ) A Retention Release Date occurs on each of the following:</p> <ul style="list-style-type: none"> <li>• the date on which the whole of the works to be undertaken by a Retention Sub-Contractor are</li> </ul>

	<p>assessed as being complete, in accordance with the relevant Sub-Contract;</p> <ul style="list-style-type: none"> <li>• <u>Completion of the whole of the works;</u></li> <li>• <u>the date on which the [Employer]/[Client] takes over the whole of the works;</u></li> <li>• <u>the defects date.</u></li> </ul>
Add new clause 11.2( )	<p>“11.2( ) Retention Sub-Contractors are 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”</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"> <li>• identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>• 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.”</li> </ul>
X16.2	<p>Delete X16.2 and replace with :</p> <p>“Subject to the assessment of the Project Manager in accordance with clause Z.[ ]4 the amount retained is halved</p> <ul style="list-style-type: none"> <li>• in relation to the amount retained from each Retention Sub-Contractor identified in an Interim Application for Release; and</li> <li>• in relation to the amount retained from the Contractor on submission of a Completion Application for Release or a Takeover Application for Release together with any Retention Sub-Contractor identified in those applications.</li> <li>• The amount retained remains at this amount until a Defects Application for Release is submitted by the Contractor or the defects date occurs.”</li> </ul>
[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</p>

	<p>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.”<sup>39</sup></p>
[X16.3	<p>In X16.3 delete “in the form set out in the Scope and replace with: “in the form appended to this contract at [Annex [ ]]/[Schedule [ ]]”<sup>40</sup></p>
X16.4	<p>Insert a new clause X16.4, as follows:</p> <p>“X14.1 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> <p>X14.2 a reason for not being able to provide a bond is that it is not available to the sub-contractor at commercially reasonable rates or on commercially reasonable terms due to</p> <ul style="list-style-type: none"> <li>• The sub-contractor’s financial records, and/or</li> <li>• The value of the retention.”</li> </ul>
X16.5	<p>Insert a new clause X16.5 as follows:</p> <ul style="list-style-type: none"> <li>• “The [<i>Employer</i>]/[<i>Client</i>] notifies the <i>Contractor</i> 14 days’ prior to making a demand under the Retention Bond.</li> <li>• The <i>Contractor</i> notifies the [<i>Employer</i>]/[<i>Client</i>] if it disputes the demand and refers the dispute to adjudication prior to expiry of the notification period in the [<i>Employer</i>’s]/[<i>Client</i>’s] notice.</li> <li>• The [<i>Employer</i>]/[<i>Client</i>] does not make a demand under the Retention Bond if the <i>Contractor</i> refers it to adjudication unless the Retention Bond expires during the notice period or may expire during the adjudication period.</li> </ul>

<sup>39</sup> This new clause to be included in NEC3 ECC only.

<sup>40</sup> This amendment to be included in NEC4 ECC only.

	<ul style="list-style-type: none"> <li>• The Employer may make a demand on the Retention Bond if the adjudicator finds in its favour.”</li> </ul>
Add a Z clause	<p>“Retention Payments</p> <p>Z[ ]1 The Contractor includes in its sub-contracts and procures that its sub-contractors include in each sub-sub-contract with Retention Sub-Contractors: the provisions in this clause Z[ ] for the arrangements for payment of retention amounts due to Retention Sub-Contractors.</p> <p>Z[ ]2 The Contractor gives the [Client]/[Employer] details of each Retention Sub-Contractor.</p> <p>Z[ ]3 Following a Retention Release Date, the Contractor submits to the Project Manager, with its next application for payment, the relevant:</p> <ul style="list-style-type: none"> <li>• Interim Application for Release; or</li> <li>• Completion Application for Release; or</li> <li>• Defects Application for Release; or</li> <li>• Takeover Application for Release,</li> </ul> <p>as appropriate and in accordance with the provisions of this contract.</p> <p>Z[ ]4 At the next assessment date following a Retention Release Date, the Project Manager assesses the amount of the retention to be paid to the Contractor on the occurrence of the preceding Retention Release Date whether or not the Contractor submits an Interim Application for Release, Completion Application for Release, Defects Application for Release and/or Takeover Application for Release.</p> <p>Z[ ]5 In assessing the amount of retention to be released the Project Manager takes into account any Interim Application for Release, Completion Application for Release, Defects Application for Release and/or Takeover Application for Release submitted by the Contractor before the assessment date.</p> <p>Z[ ]6 The Project Manager includes the amount of retention assessed as to be released in the certificate to be issued under and in accordance with clause 51.1</p>

	<p>Z[ ].7 The Project Manager: corrects any incorrectly assessed amount due in a later payment certificate.</p> <p>Z[ ].8 Payment of any retention included in the Project Manager's certificate is made in accordance with clause 51.</p> <p>Z[ ].9 The Contractor pays the Retention Sub-Contractors to whom it is contracted and procures that those Retention Subcontractors pay the Retention Sub-Contractors to whom they are contracted, the sums due to them as set out in the payment certificate or, otherwise in accordance with the Contractor's Interim Application for Release, Completion Application for Release, Defects Application for Release and/or Takeover Application for Release, as relevant.</p> <p>Z[ ].10 Where, at the defects date, there are outstanding defects which have been notified to the Contractor, the [Client]/[Employer] may retain from any sums to be paid under Z[ ].8 the cost, reasonably estimated by the Project Manager, of engaging an alternative contractor to remedy such defects. Where the actual cost to the [Client]/[Employer] of remedying such defects exceeds the sums retained, the [Client]/[Employer] may recover the shortfall from the Contractor, as a debt.</p> <p>Z[ ].11 If there is any dispute in respect of the sums to be paid under Z[ ].8 and/or Z[ ].10 either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under this contract.</p> <p>Z [ ].12 The Contractor acknowledges that payment by the [Client]/[Employer] in accordance with Z[ ].8 and/or Z[ ].10 discharges the [Client's]/[Employer's] obligation to release the amount retained under this contract in respect of sums due at the time of release.</p> <p>Z[ ].13 If the Client terminates this contract for any reason identified in the Termination Table and to which A3 applies, the [Client]/[Employer] is not obliged to make any further release of the amount retained.</p>
Add a new Annex/Schedule	<p><b>“Retention Bond”</b></p> <p>[insert form of Retention Bond from the Welsh Government Model Social Public Works Clauses]</p>

## JCT 2016 Design and Build Contract Model Clauses for payment of the Retention

<p>In clause 1.1 insert the following new definitions:</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> <ul style="list-style-type: none"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”</li> </ul>
	<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> <ul style="list-style-type: none"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”</li> </ul>
	<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> <ul style="list-style-type: none"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”</li> </ul>
	<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> <ul style="list-style-type: none"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”</li> </ul>
	<p>“A Retention Release Date occurs on each of the following:</p>

	<ul style="list-style-type: none"> <li>the date on which the whole of the works to be undertaken by a Retention Sub-Contractor are assessed as being practically complete, in accordance with the relevant Sub-Contract;</li> <li>practical completion of the whole of the works;</li> <li>the date on which the Employer takes possession of the Works in accordance with clause 2.30;</li> <li>the expiry of the Rectification Period.”</li> </ul>
	“The Retention Sub-Contractors are 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.”
	Delete “The Employer’s fiduciary in interest in the Retention referred to in clause 4.16 shall not prevent him” and insert “Nothing in this Contract shall prevent the Employer from”.
4.10.4	Delete “The Employer’s fiduciary in interest in the Retention referred to in clause 4.16 shall not prevent him” and insert “Nothing in this Contract shall prevent the Employer from”.
<b>Interim Payments – calculation of sums due</b>	
<b>Gross Valuation – Alternative A</b>	
4.12	Insert a new clause 4.12.2.6:  “the value of the Retention which is due for payment in accordance with clause 4.18A.”
<b>Gross Valuation – Alternative B</b>	
4.13	Insert a new clause 4.13.2.6:  “the value of the Retention which is due for payment in accordance with clause 4.18A
	<b>Retention</b>  <b>Rules on treatment of Retention</b>
Clauses 4.16.1 & 4.16.2	Delete and insert:
“4.16.1	the Employer’s interest in the Retention shall not be fiduciary, either as trustee for the Contractor or any other person, or in any other capacity;

4.16.2	the relationship of the Employer and the Contractor with regard to the Retention shall be solely that of debtor and unsecured creditor, subject to the terms hereof;
4.16.3	the Employer shall have no obligation to invest the Retention or any part thereof;
4.16.4	the Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever;
4.16.5	the Employer shall be entitled to the full beneficial interest in the Retention and every part thereof (and, without limitation, interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract.”
	<b>Retention Bond</b>
Clause 4.17.2	Delete from “Part 3 of Schedule 6” to the end of the sentence and replace with:  “[Annex [ ]]/[Schedule [ ]].”
Clause 4.17.6	Insert a new clause 4.17.6 as follows:  “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.”
Clause 4.17.7	Insert a new clause 4.17.7 as follows:  “4.17.7 The Employer shall give the Contractor 14 days’ written notice prior to making any demand under the Retention Bond. If during that notice period, the Contractor raises a dispute in relation to the subject matter of the proposed demand and refers it to adjudication, the Employer shall not make a demand on the Retention Bond unless and until an adjudicator decides the dispute in favour of the Employer. Provided that, where the Retention Bond would or would be likely to expire during the notice period and/or during the adjudication period, the Employer need not give the notice required by this clause 4.17.7.”

4.18A	<p>Insert a new clause 4.18A as follows:</p> <p>“Payment of Retention</p> <p>.1 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 the provisions in this clause 4.18A for the arrangements for payment of retention amounts due to Retention Sub-Contractors.</p> <p>.2 The Contractor shall provide the Employer with details of each Retention Sub-Contractor.</p> <p>.3 Following a Retention Release Date, the Contractor shall submit to the Employer, with its next Interim Payment Application or its Final Payment Notice (as appropriate), the relevant:</p> <ul style="list-style-type: none"> <li>• Interim Application for Release; or</li> <li>• Practical Completion Application for Release; or</li> <li>• Rectification Application for Release; or</li> <li>• Possession Application for Release,</li> </ul> <p>as appropriate and in accordance with the provisions of this Contract.</p> <p>.4 At the next Interim Valuation Date following a Retention Release Date, the Employer’s Agent values the amount of the retention to be paid to the Contractor on the occurrence of the preceding Retention Release Date whether or not the Contractor submits an Interim Application for Release, Practical Completion Application for Release, Rectification Application for Release and/or Possession Application for Release.</p> <p>.5 In valuing the amount of Retention to be released the Employer’s Agent takes into account any Interim Application for Release, Practical Completion Application for Release, Rectification Application for Release and/or Possession Application for Release submitted by the Contractor before the Interim Valuation Date.</p> <p>.6 The amount of retention valued as due for payment is included in the Payment Notice for the next Interim Payment.</p> <p>.7 Following payment by the Employer to the Contractor of any part of the Retention, the Contractor shall pay the</p>
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	<p>Retention Sub-Contractors to whom it is contracted and shall procure that those Retention Subcontractors pay the Retention Sub-Contractors to whom they are contracted, the sums due to them as set out in the Payment Notice or as set out in the Interim Application for Release, Practical Completion Application for Release, Defects Application for Release and/or Possession Application for Release, as relevant, submitted with the Interim Payment Application.</p> <p>.8 If there are defects, shrinkages or other faults in the Works or a Section, which under clause 2.35 the Employer has required to be made good and which have not been made good on expiry of the Rectification Period, the Employer may retain from any sums to be paid under clause 4.18.6 the cost, reasonably estimated by the Employer’s Agent, of engaging an alternative contractor to remedy such defects, shrinkages or other faults. Where the actual cost to the Employer of remedying the same exceeds the sums retained, the Employer may recover the shortfall from the Contractor, as a debt.</p> <p>.9 If there is any dispute in respect of sums due or paid to the Contractor under clause 4.18.6 either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under this Contract.</p> <p>.10 The Contractor acknowledges that payment by the Employer in accordance with clause 4.18.6 discharges the Employer’s obligation to pay sums due for payment under this Contract in respect of the sums due at the time of payment.</p> <p>.11 If the Contractor’s employment is terminated due to breach of this Contract by or, insolvency of the Contractor, the Employer is not obliged to make any further payment in respect of the Retention.</p>
	<p><b>“Retention Bond”</b></p> <p>[insert form of Retention Bond 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 Clauses for payment of the Retention

<p>Insert the following definitions:</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> <ul style="list-style-type: none"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”</li> </ul>
	<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"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(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.”]<sup>41</sup> </li></ul>
	<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"> <li>(a) identifying the Retention Sub-Contractor(s) to whom retention sums are to be released; and</li> <li>(b) 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.”</li> </ul>

<sup>41</sup> 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>Insert the following definitions:</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>(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 the contract and the relevant sub-contract or sub-sub-contract.”</p> <p>“A Retention Release Date occurs on each of the following:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• practical completion of the whole of the works;</li> <li>• [the date on which the Employer takes possession of the whole of the Works provided that date is prior to practical completion;]</li> <li>• the expiry of any period in the contract for the rectification of defects.”</li> </ul> <p>“The Retention Sub-Contractors are 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) engaged in relation to the Works, whose sub-contract or sub-sub-contract provides for the retention of sums”</p>
<p>Insert clause</p>	<p><b>Retention Rules on treatment of Retention</b></p>
<p>.1</p>	<p>the Employer’s interest in the Retention shall not be fiduciary, either as trustee for the Contractor or any other person, or in any other capacity;</p>
<p>.2</p>	<p>the relationship of the Employer and the Contractor with regard to the Retention shall be solely that of debtor and unsecured creditor, subject to the terms hereof;</p>
<p>.3</p>	<p>the Employer shall have no obligation to invest the Retention or any part thereof;</p>
<p>.4</p>	<p>the Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever;</p>

.5	the Employer shall be entitled to the full beneficial interest in the Retention and every part thereof (and, without limitation, interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract.”
Insert clause	<b>Retention Bond</b>
“.1	If agreed by the Employer and subject to the Employer’s approval of the bondsman (not to be unreasonably withheld or delayed), the Contractor may give the Employer a retention bond for the total amount to be retained and in the form appended to this contract at [Annex [ ]]/[Schedule [ ]]. The Employer shall not be unreasonable in refusing its consent to a bondsman if it reasonably concludes that the bondsman’s commercial position is not strong enough to carry the bond.
.2	If the Contractor provides a retention bond in accordance with this clause, the Employer is not entitled to retain any sums from any further payments due to the Contractor under the contract. Any sums retained prior to provision of the retention bond are repaid to the Contractor with the next payment.
.3	The Employer shall give the Contractor 14 days’ written notice prior to making any demand under the retention bond. If during that notice period, the Contractor raises a dispute in relation to the subject matter of the proposed demand and refers it to adjudication, the Employer shall not make a demand on the retention bond unless and until an adjudicator decides the dispute in favour of the Employer. Provided that, where the retention bond would or would be likely to expire during the notice period and/or during the adjudication period, the Employer need not give the notice required by this clause prior to making a demand.”
Insert clause	<p><b>Payment of Retention</b></p> <p>.1 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 the provisions in this clause [ ] for the arrangements for payment of retention amounts due to Retention Sub-Contractors.</p> <p>.2 The Contractor shall provide the Employer with details of each Retention Sub-Contractor.</p> <p>.3 Following a Retention Release Date, the Contractor shall submit to the Employer, with its next application for payment, the relevant:</p>

- Interim Application for Release; or
- Practical Completion Application for Release; or
- Rectification Application for Release;]; or
- Possession Application for Release,],

as appropriate and in accordance with the provisions of this contract.

- .4 Following a Retention Release Date, the Employer values the amount of the retention to be paid to the Contractor on the occurrence of the preceding Retention Release Date whether or not the Contractor submits an Interim Application for Release, Practical Completion Application for Release, Rectification Application for Release [and/or Possession Application for Release].
- .5 In valuing the amount of Retention to be paid the Employer takes into account any Interim Application for Release, Practical Completion Application for Release, Rectification Application for Release [and/or Possession Application for Release] submitted by the Contractor with its application for payment.
- .6 The Employer notifies the Contractor of the amount of retention valued as due for payment. The notice contains details of the Retention Sub-Contractors to whom payment of any part of the Retention is due and the amount to be paid to each such Retention Sub-Contractor (the "Employer's Notice"). The amount set out in the Employer's notice is included in the next payment to the Contractor.
- .7 If the Employer fails to value the amount of Retention to be paid, the amount of Retention to be included in the next payment to the Contractor is as set out in any Interim Application for Release, Practical Completion Application for Release, Rectification Application for Release [and/or Possession Application for Release] submitted by the Contractor with its application for payment.
- .8 Following payment by the Employer to the Contractor of any part of the Retention, the Contractor shall pay the Retention Sub-Contractors to whom it is contracted and shall procure that those Retention Subcontractors pay the Retention Sub-Contractors to whom they are contracted, the sums due to them as set out in the Employer's Notice, or failing receipt of an Employer's Notice, the amount set out in any Interim Application for Release, Practical Completion Application for Release, Defects Application for Release [and/or Possession Application for Release], as relevant, submitted by the Contractor with its application for payment.

	<p>9 If there are defects, shrinkages or other faults in the works to be carried out under the contract, which the Employer has required the Contractor to remedy in accordance with the provisions of the contract and which the Contractor has not remedied in accordance with its obligations under the contract, the Employer may retain from any sums to be paid under this clause [ ] its reasonable estimation of the cost of engaging an alternative contractor to fulfil the Contractor's contractual obligations in respect of such defects, shrinkages or other faults. Where the actual cost to the Employer of remedying the same exceeds the sums retained, the Employer may recover the shortfall from the Contractor, as a debt.</p> <p>10 If there is any dispute in respect of sums due or paid to the Contractor under this clause [ ], either Party may refer it to adjudication or commence such other dispute resolution procedures as are available under the contract.</p> <p>11 The Contractor acknowledges that payment by the Employer in accordance with this clause [ ] discharges the Employer's obligation to pay sums due for payment under the contract in respect of the sums due at the time of payment.</p> <p>12 If the Contractor's employment is terminated due to breach of the contract by or, insolvency of the Contractor, the Employer is not obliged to make any further payment in respect of the Retention.</p>
Add Annex/Schedule	<p><b>“Retention Bond”</b></p> <p>[insert form of Retention Bond from the Welsh Government Model Social Public Works Clauses]</p>

**MODEL FORM OF RETENTION BOND**

**DATED**

**20**

(1) **[CONTRACTOR]**

(2) **[GUARANTOR]**

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



**RETENTION BOND**

relating to

[insert description of Works]





- 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.



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



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## **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 are 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) Unless previously provided, 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): <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].*

### **Notes on Additional Clauses:**

The model clauses also include certain additional clauses (indicated by italics and square brackets) which provide for the Contractor (and any sub-contractor) 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,
- Disability Confident Scheme,
- Diversity Champions; and
- Race - Business in the Community.

There is also an optional clause to adopt 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.

These additional clauses are included to assist Contracting Authorities in bringing about improvements to the employment opportunities provided by Contractors (and sub-contractors) they are not mandated clauses and Contracting Authorities can determine their appropriateness in the context of the contract being awarded. If a Contracting Authority does not intend to include the additional clauses in their major construction contract, a notification to the Welsh Ministers is not required.



## 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).

**Notes on Additional Clauses:**

The model clauses also include additional clauses (indicated by italics and square brackets). The additional clauses enable the Contracting Authority to require the Contractor (and any sub-contractor) to put in place a plan that details how it will implement and maintain policies

and procedures to ensure compliance with Modern Slavery, Human Rights and offshore labour standards and undertake a risk assessment in relation to each of these aspects. There are reporting obligations on the Contractor in relation to these aspects and Contracting Authorities can request information on the Contractor's compliance with these aspects.

These additional clauses are included to assist Contracting Authorities in bringing about improvements to these additional aspects of legal compliance, however if a Contracting Authority does not intend to include the additional clauses in their major construction contract, a notification to the Welsh Ministers is not required.



# Training Model Clauses

- 1.1 In relation to the subject matter of this contract, the Contactor 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**

- 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 protection 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) Protecting and 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

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

The following definitions apply to this clause:

<b>“Applicable Law”</b>	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.
<b>“Data Protection Law”</b>	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.
<b>“FOIA”</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice pertaining to it, issued by the Information Commissioner
<b>“MSA Laws”</b>	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
<b>“SPPP Act”</b>	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 Contract and Data Protection Law and promptly make copies of such records available to the [Client]/[Employer] upon request.
- (iii) 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.
- (iv) 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.