NORTH LONDON WASTE AUTHORITY

ICHEME

APPENDIX 1: RED BOOK SPECIAL CONDITIONS OF CONTRACT

Initialled:
Purchaser
Contractor

Project for the Design and Construction of an Energy Recovery Facility

OJEU Ref: 2020/S 135-333685

Special Conditions to the Model Form of Contract

The General Conditions of Contract being Clauses 1-49 as set out in the IChemE Form of Contract for Lump Sum Contracts, 5th Edition 2013 ("**Red Book**") shall be modified and supplemented as follows.

Clause 1 – Definitions, interpretation, waiver and Notices

The following definitions shall be inserted or, where the term is already defined in Clause 1 of the Red Book, shall be substituted for such definition or amended as indicated.

"**Abandons**" means not to carry out any of the Works or to otherwise act in a manner which demonstrates a clear intention on the part of the Contractor not to comply with its obligations under the Contract for twenty (20) consecutive Business Days or during forty (40) Business Days in the aggregate in any one Contract Year, except where any failure to carry out any of the Works or to not comply with the Contractor's obligations under the Contract is attributable to a Force Majeure or one of the events or circumstances referred to in Sub-Clause 14.4 (Delay).

"**Acceptable Bond Provider**" means a bank or insurer with a commercial short term debt rating of more than or equal to A- Standard & Poors and/or with a commercial long term debt rating of more than or equal to BBB+ Standard & Poors.

"**Access Roads**" means the roads providing access to the Site being Deephams Farm Road, Lea Park Way, Ardra Road and the entrance to Walthamstow Avenue each as more particularly shown on drawing NP-GAL-4XXX-ZZZ-DR-AR-010001 which is set out in Appendix 1 of Schedule 22.9 *Site Conditions, Permits and Constraints*.

"**Apprentice**" means a person undertaking an Apprenticeship.

"**Apprenticeship**" means a training work scheme:

(a) provided in connection with the Works;

(b) which, once successfully completed, will result in a nationally recognised qualification for the Apprentice (including but not limited to NVQ Level 3 and 2);

(c) for a duration of twelve (12) consecutive months or for such other period of time to be agreed with the Purchaser which contributes to a nationally recognised qualification for the Apprentice (including but not limited to NVQ Level 3 and 2);

(d) offering a minimum of thirty (30) hours per week; and

(e) offered on at least equivalent terms and conditions of employment to those benefitting Equivalent Workers, including paying an hourly Gross Wage (or equivalent of an hourly Gross Wage) that is no less than the then prevailing London Living Wage.

"**Availability Guarantees**" means those Plant availability guarantees set out in section 2.2 of Schedule 17 *Performance guarantees and damages for failure.*

"**Availability Test Period**" the period of eight thousand seven hundred and sixty (8,760) continuous hours during which the Availability Tests will be run as described in Schedule 17 *Performance guarantees and damages for failure.*

"**Availability Tests**" are those tests in connection with each of the Availability Guarantees detailed in Schedule 17 *Performance guarantees and damages for failure.*

"**Beneficiary**" means the Operator, any Funder and any first person who has or who agrees to purchase a freehold interest in the whole or any part of the Site.

"**Brexit**" means the United Kingdom's decision to leave (or its exit from) the European Union and all steps in the implementation of, consequent on or arising out of, its decision to leave (or its exit from) the European Union.

"**Bulk Items**" means any materials, equipment, plant and/or other items which are present in or form part of any Materials or the Plant and which are ordered by or on behalf of the Contractor in batches or quantities or which are used on several parts of the Works, including but not limited to bolts, valves, fastenings, instruments, coverings, cable, trays, piping accessories and heat tracing.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015 or any re-enactment thereof and any amendment thereto together with any associated guidance or code of practice published by the Health and Safety Executive.

"**Civil Engineering Works**" means those elements of the Works that comprise civil engineering works, permanent buildings including, but not limited to, their below-ground structures (including the bunker), drainage, buried and concealed services, roads, pavements, areas of hardstanding, concrete, steelwork (but not steelwork required solely for supporting equipment), internal and external walls, roofing, cladding, fencing, gates and landscaping, including all ancillary landscaping works, and associated supporting structures, insulation, building materials and fixings.

The "**Code**" means the Purchaser's Employment Relations Code of Practice adopted by the Purchaser and included at Schedule 22.8 *Purchaser Policies and Protocols*.

Delete the definition of "Contract Conditions" and replace with "**Conditions of Contract**" means the General Conditions of Contract as amended by these Special Conditions of Contract. All references in the Contract to "Contract Conditions" shall be to the "Conditions of Contract".

"**Confidential Information**" means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation.

"**Consents**" means the Contractor Consents and the Purchaser Consents required for the performance of any of the Contractor's obligations under the Contract including but not limited to:

(a) the DCO;

(b) all environmental permits including, but not limited to, the Environmental Permit;

(c) all planning permissions; and

(d) all planning obligations.

"**Construction Industry Scheme**" means the tax deduction scheme for the construction industry operated by HM Revenue and Customs under Chapter 3 of Part 3 of the Finance Act 2004 and The Income Tax (Construction Industry Scheme) Regulations 2005;

"**Construction Products Regulations**" means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

"**Contamination**" means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour).

"**Contract Documents**" means the documents comprising the Contract.

"**Contract Price**" means the sum stated at paragraph 3 in the Agreement, as the same may be adjusted in accordance with the Contract.

"**Contract Year**" means a period of twelve (12) months commencing on 1 January, provided that the first Contract Year shall be the period commencing on the Effective Date and ending on the following 31 December.

"**Contractor Consents**" means any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver or licence other than the Purchaser Consents required to provide the Works and enable the Purchaser to Take Over the Works.

"**Contractor Related Party**" means the Contractor's agents and subcontractors (including without limitation any Subcontractors) and its or their subcontractors of any tier and its or their directors, officers, employees and workmen employed in any way in relation to the Works and any person on or at the Site at the express or implied invitation of the Contractor (other than the Purchaser, any Purchaser Related Party, the Operator and any Operator Related Party).

"**Controller**" takes the meaning given in the General Data Protection Regulation (Regulation (EU) 2016/679).

"**Coronavirus**" means the pandemic virus known as COVID-19, commonly referred to as the Coronavirus, and any strains and/or mutations of the same.

"**Coronavirus Event**" means a change after the date of the Contract in:

(a) Legislation; and/or

(b) any recommended or mandatory measures (whether or not having the force of law) introduced by any person with statutory or regulatory powers having jurisdiction over the Works or a Party (including, without limitation, the Public Health England (or any successor organisation to it) guidelines or Construction Leadership Council Site Operating Procedures); and or

(c) in the laws applicable in any jurisdiction outside of the UK where Materials or Plant are manufactured, stored or transported through or where other works (including engineering and management) are being performed or any recommended or mandatory measures (whether or not having the force of law) introduced by any person with statutory or regulatory powers in such jurisdictions,

as a consequence of the Coronavirus which directly results in time and/or cost implications for the Works.

At the end of the definition of "**Cost**", **insert** "for the avoidance of doubt, "Costs" include, but are not limited to, those items of cost itemised in Schedule 18, *Valuation of Variations and Claims."*

"**Data Protection Legislation**" means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy (iii) all applicable Legislation pertaining to the processing of personal data and privacy.

"**DCO**" means the Development Consent Order entitled "The North London Heat and Power Generating Station Order" (215 of 2017).

"Deductible" at the end of the definition, **insert** the words "and Sub-clause 31.1A".

"**Defects Liability Period**" means a period of twenty four (24) months or such other period as may be established and/or extended in accordance with Sub-clauses 37.9 or 37.11, after the date of the relevant Take Over Certificate or other commencement date as described in Sub-clause 37.5.

"**Delay Liquidated Damages**" means the liquidated damages for delay referred to in Sub-clause 15.1.

"**Delay Liquidated Damages Cap**" has the meaning given to it in Sub-clause 45.3A.1.

"**Derogation**" means each item of non-compliance of the Works with the Contract which are detailed in the general communications that are set out in the Derogation List.

"**Derogation List**" means the list of Derogations appended at Part 3 of Schedule 1 of Settlement and Variation Agreement (No.3) to this Contract.

"**Design Data**" means all drawings, reports, documents, plans, programmes, software, formula calculations and other data relating to the design, construction, testing or operation of the Works in each case that is used by or on behalf of the Contractor and/or its subcontractors in connection with the provision of the Works or the performance of the Contractor's obligations under the Contract.

Replace the existing definition of **"Documentation"** with:

"means any documentation relevant to the performance of the Works that the Contractor is obliged to provide in accordance with the Contract, in paper or electronic form, including drawings, software, images, designs, manuals or records including, without limitation, the items identified in Schedule 2 *Documentation*."

"**Due Date for Payment**" has the meaning given to it at Sub-clause 41.4.

"**Early Warning Register**" is a register which will be maintained by the Project Manager and which will contain details of matters notified as early warning matters by the Contractor or Project Manager in accordance with Clause 13A. The Early Warning Register shall include a description of the early warning matter and the ways in which the effects of the matter are to be avoided or reduced.

"**Eastern Area**" means those areas of the Site which are shown shaded in magenta and the Laydown Area which is shown shaded in light grey and labelled as such on drawing NP-WOD-XXXX-XXX-DR-CE-069460 which is set out in Schedule 22.9 *Site Conditions, Permits and Constraints*.

"**EcoPark**" means the EcoPark, as shown edged in blue, on plan NP-WOD-6XXX-ZZZ-DR-CE-09_001.

"**Effective Date**" means the date of the Contract, being the date of the Agreement.

"**Employment Relations Plan**" means the Contractor's employment relations plan which shall set out the Contractor's approach to the employment of workers (including those performing construction works as well as construction support personnel) to be employed on Site in connection with the Works as more particularly described in Sub-clauses 28.7 and 28.7A.

"**Employment, Skills and Training Strategy Document**" means the document agreed between the Purchaser and the London Borough of Enfield as more particularly described in Sub-clause 28A.1 a copy of which is set out in Schedule 22.8 *Purchaser Policies and Protocols*.

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.

"**Environmental Permit**" means the environmental permit which was issued to the Purchaser in connection with the NLHPP Programme under the Environmental Permitting (England & Wales) Regulations 2016 on 16 June 2017 with number EPR/UP3232AC/V002 and which was subsequently varied and consolidated on 13 May 2019.

"**Equivalent Workers**" means the Contractor's employees or temporary workers appointed in connection with the Works who are of equivalent skills and experience (or of the nearest equivalent skills and experience) to the Apprentices or those undertaking Training Placements (as appropriate).

"**ERF**" means the energy recovery facility and all ERF Equipment required for its operation that the Contractor will deliver under the Contract (including, for the avoidance of doubt, the Plant).

"**ERF Contract Waste**" means waste falling within the waste characteristics described in section 4.1 of Schedule 1 *Description of the Works* that is delivered to the ERF in accordance with the Contract by or on behalf of the Contractor or by or on behalf of the Purchaser.

"**ERF Equipment**" means all plant and equipment to be provided by the Contractor in order to comply with its obligations under the Contract.

"**Exceptional Event**" has the meaning given to it in Sub-clause 35A.1A.

"**Exceptionally Severe Weather Conditions**" means weather conditions which, when measured against the weather records of past weather measurements for the corresponding calendar month as were recorded at the Met Office Weather Centre located at Myddelton House EN2 9HG in relation to other weather measurements, are shown to occur on average less frequently than once in every ten (10) years.

"**Final Availability Certificate**" has the meaning given to it in Sub-clause 35A.3.

"**Final Date for Payment**" has the meaning given to it at Sub-clause 41.5.

"**FOIA**" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000

from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act.

"**Funder**" means any party providing or who may provide finance in connection with the Works or the Site.

"**Good Building Practice**" means building practice as set down in all Eurocodes, BSI Group and other appropriate standards and codes of practice and proven up-to-date practices that are in force at the Effective Date applicable to the UK construction industry and relevant to the Works, including the most current version of the British Council for Offices (BCO) guide entitled "Good Practice in the Selection of Construction Materials". Where there is any conflict or overlap between the standards and codes of practice described in this definition, the standards of the BSI Group take priority.

"**Good Industry Practice**" means the degree of skill, care, diligence, prudence and foresight that a professionally qualified and competent contractor who is experienced in undertaking work of a similar value, size, nature and complexity as the Works would reasonably be expected to use.

"**Group**" means any company in relation to any Party any subsidiary undertaking or holding company undertaking for the time being of that Party or any other subsidiary undertaking for the time being of that holding company undertaking (as the terms "subsidiary" and "holding company" are defined in Section 1159 of the Companies Act 2006) or their equivalent in any other jurisdiction.

"**Gross Wage**" means the wage that is paid to the individual employees, workers, Apprentices or Training Placement trainees (as appropriate) after any deductions that may be made for employment agency or other third party fees in connection with their employment but prior to the deduction of any taxes, employment benefits or national insurance contributions.

"**Guidance**" means any applicable guidance or directions with which the Contractor is bound to comply.

"**Implementation Criteria**" means the Implementation criteria for the Opportunity Variations as set out in Part 3 of Schedule 4 of Settlement and Variation Agreement (No. 3) to this Contract.

"**Independent Testing House**" means a recognised and authorised independent testing house appointed by the Purchaser in connection with the performance tests in accordance with Sub-clause 35.3A.

"**In Scope NAECI Activities**" means those aspects of the Works to which the SPA applies including, but not limited to, mechanical works, electrical works and structural steel erection for the Plant.

"**Intellectual Property Rights**" means any and all patents, inventions, trade-marks, service marks, copyright, moral rights know how, rights in confidential information, registered design, rights in a design, database rights, computer software rights and all or any other intellectual or industrial property rights having equivalent or similar effect whether or not registered or capable of registration including any applications for registration in respect of the same subsisting or having effect in the United Kingdom together with all or any goodwill relating or attached thereto.

"**Key Subcontractor**" means any Subcontractor appointed to perform one of the subcontract works packages specified in Appendix C of Schedule 7 *Subcontracting* and who is incorporated outside of the United Kingdom.

"**Latent Defect**" means any Defect which only becomes apparent to the Purchaser after the expiry of the Defects Liability Period and which was not reasonably capable of being identified before or on the expiry of the Defects Liability Period.

"**Latent Defects Liability Period**" in relation to any Latent Defect appearing in any part of the Works means:

(a) with respect to those elements of the Works which do not comprise Civil Engineering Works but, for the purposes of this definition, including landscaping works, including all ancillary landscaping works and insulation, the period from the end of the Defects Liability period until four (4) years from the date of the Take Over Certificate; and

(b) with respect to Civil Engineering Works but, for the purposes of this definition, excluding landscaping works, including all ancillary landscaping works and insulation, the period from the end of the Defects Liability Period until twelve (12) years from the date of the Take Over Certificate.

For the purposes of this definition, where a Take Over Certificate is issued but parts of the Plant are excluded from Take Over, or take over tests and or procedures have not been carried out or where the Plant has failed certain take over tests in accordance with Sub-clause 33.9:

(c) the Latent Defects Liability Period for the majority of the Plant to which the original Take Over Certificate applies shall be defined by reference to the date of that Take Over Certificate; and

(d) the Latent Defects Liability Period for the balance of the Plant shall be defined by reference to the date of the separate Take Over Certificate issued in respect of the final take over test or procedure to be completed satisfactorily in accordance with Sub-clause 33.9.

For the purposes of this definition, where a Take Over Certificate is issued in the circumstances provided for in Sub-clause 33.10, the Latent Defects Liability period for the whole of the Works shall be defined by reference to the date of issue of the Take Over Certificate.

"**Laydown Area**" means the area shown outlined in blue and labelled "Construction Laydown Area" in drawing NP- GAL- 41XX- ZZZ- DR- AR- 010006 and which forms part of the Site.

"**Legislation**" means:

(a) any law, regulation, exercise of the Royal Prerogative, ordinance, order, notification, instruction, bye-law, guideline, code or standard (including legislation regulating, relating to or imposing liability or standards of conduct concerning environmental matters), in force or having the force of law in the United Kingdom at any time during the period of the Contract;

(b) any Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 or any and other legislative instruments, regulations and standards having the force of law in the United Kingdom or any current code of practice published at any time during the period of the Contract; and

(c) any conditions or requirements imposed by any other consent, permission, approval or licence including the Contractor Consents which the Contractor is required to obtain pursuant to the Contract and the Purchaser Consents which are obtained by the Purchaser with respect to the Works and a copy of which the Purchaser has provided to the Contractor.

"**London Living Wage**" means the living wage rate per hour for London as set by the Living Wage Foundation from time to time or any equivalent replacement organisation.

"**Maximum Performance Bond Amount**" has the meaning given to it in Sub-clause 3.20.1.

"**Maximum Retention Bond Amount**" has the meaning given to it in Sub-clause 3.20.2.

"**Milestone**" means each of the milestones as stated in Schedule 19 *Terms of Payment*.

"**NAECI**" means the National Agreement for the Engineering and Construction Industry.

"**NAECI Project**" means an engineering and construction project to which the terms of the NAECI will apply.

"**NJC**" means the National Joint Council for the Engineering Construction Industry.

"**NLHPP Programme**" means the programme of works in connection with the North London Heat and Power Project as more particularly described in the Agreement.

References in the Contract to a "**nominated Subcontractor**" shall be to a Subcontractor listed in Appendix B (Nominated supplier list) in Schedule 7 *Subcontracting.*

"**Notice to Continue**" has the meaning given to it in Sub-clause 14.10.

"**Off-Site Storage Location**" means Codham Hall, Kettering or any other off-site storage location as may be agreed between the Parties where the Contractor may store Materials prior to their delivery to the Site in accordance with Clause 24.

"**Operation and Maintenance Documentation**" has the meaning given to it in section 4 of Schedule 2 *Documentation*.

"**Operator**" means LondonEnergy Ltd (Company Registration Number 02732548) whose registered office is at EcoPark, Advent Way, Edmonton, London N18 3AG or such other replacement operator that is notified to the Contractor by the Purchaser as being appointed to operate the ERF.

"**Operator Related Party**" means

(a) an officer, servant or agent of the Operator, or any servant or agent of any such person;

(b) any subcontractor of the Operator of any tier and any of their officers, servants or agents; and

(c) any person on or at any of the Site at the express or implied invitation of the Operator (other than the Purchaser or any Purchaser Related Party).

"**Opportunity Variation Assessment**" or "**OVA**" means the assessment to be developed by the Contractor in relation to each Opportunity Variation in accordance with the requirements of section 2 of Schedule 4 of Settlement and Variation Agreement (No. 3) to this Contract.

"**Opportunity Direct Costs**" means any direct costs incurred by the Purchaser in the implementation of an Opportunity Variation including, but not limited to:

(a) consumables purchased by the Purchaser on behalf of the Contractor including absorbents, adsorbents, hydrated lime, powdered activated carbon / activated carbon and sodium hydroxide); and

(b) the net present value of additional capital, maintenance or operational costs for the Plant due to the implementation of the Opportunity Variation,

but, for the avoidance of doubt, excluding any commissioning resources required by the Purchaser in connection with Opportunity Variation C1.

"**Opportunity Variation**" means a Variation to the Works described in section 1 of Schedule 4 of Settlement and Variation Agreement (No.3) to this Contract, to be developed by the Parties and which the Project Manager shall, subject to the provisions of Clause 16A, instruct once the Contractor has developed a full OVA and the Implementation Criteria applicable to that Opportunity Variation are satisfied.

"**Order**" means each of the orders placed by the Contractor pursuant to this Contract for the complete manufacture of the relevant Milestone items, and which are further defined and set out in Schedule 19 *Terms of Payment*.

"**Overall Liability Cap**" has the meaning given to it in the Agreement.

"**Partial Availability Certificate**" has the meaning given to it in Sub-clause 35A.3

"**Party**" shall mean a party to the Contract and "Parties" shall be construed accordingly.

"**Performance Liquidated Damages**" means the non-performance and/or non-availability liquidated damages (as applicable) specified in section 4 of Schedule 17 *Performance Guarantees and damages for failure*.

"**Performance Liquidated Damages Cap**" has the meaning given to it in Sub-clause 45.3A.2.

"**Performance Test Certificate**" has the meaning given to it in Sub-clause 35.17A.

"**Productivity**" ~~means the actual progress measured on a monthly basis against the Approved Programme adjusted for any deviation in labour resources engaged in work activities~~Not used.

~~Progress (P) = Actual Progress/Planned Progress~~

~~Labour resource (L) = Planned Labour Resource/Actual Labour Resource~~

~~Productivity (P_{re}) = P x L~~

~~A worked example of this calculation, which is provided for illustrative purposes only, is set out below:~~

Month	10
Forecast progress	4.88
Forecast monthly progress	0.68
Actual monthly progress	0.68
Productivity percentage (%)	100.00

Month	11
Forecast progress	6.00
Forecast monthly progress	1.12
Actual monthly progress	1.09
Productivity percentage (%)	97.32

Month	12
Forecast progress	0.67
Forecast monthly progress	0.97
Actual monthly progress	0.81
Productivity percentage (%)	83.51

Month	13
Forecast progress	9.21
Forecast monthly progress	2.24

~~Actual monthly progress~~	~~2.18~~
~~Productivity percentage (%)~~	~~97.32~~

~~Month~~	~~14~~
~~Forecast progress~~	~~11.80~~
~~Forecast monthly progress~~	~~2.59~~
~~Actual monthly progress~~	~~1.78~~
~~Productivity percentage (%)~~	~~68.73~~

"**Productivity Baseline**" ~~means the progress and manpower according to the Approved Programme~~Not used.

"**Prohibited Act**" means

(a) offering, giving or agreeing to give to any director, officer, employee, representative or agent of the Purchaser any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Purchaser; or

(ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Purchaser;

(b) entering into the Contract or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Purchaser; or

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under the Modern Slavery Act 2015;

(iii) under any applicable Legislation creating offences in respect of fraudulent acts;

(iv) at common law in respect of fraudulent acts in relation to the Contract or any other contract with the Purchaser; or

(v) which causes any officer of the Purchaser to be in breach of Section 117(2) of the Local Government Act 1972.

(d) defrauding or attempting to defraud or conspiring to defraud the Purchaser;

"**Project Records**" means information, documents, records and the like, in the possession of or available to the Contractor and/or Contractor Related Parties, in each case relating to the Works and the Contract including information and documents about and records of:

(a) all Contract communications and Contract records passed between the Purchaser and the Contractor using a form of contract management software or methodology appropriate for the Works to be agreed between the Parties acting reasonably;

(b) minutes of meetings;

(c) the Contractor's monitoring of the Works against its quality management systems;

(d) all incidents relating to health, safety and security which occur in relation to the Works;

(e) hazardous materials or Equipment, substances requiring to be noted on a Control of Substances Hazardous to Health Register and all other matters relating to the performance of the Works;

(f) all notifications of claims and associated records and communications;

(g) the Contractor's actual progress in the provision of the Works as compared to the Approved Programme;

(h) (in relation to any matter identified on the Early Warning Register) details of all assumptions, calculations and methodologies used in connection with the matter allocation, analysis and

management procedure used together with full details of any matter in respect of which an early warning is given pursuant to Sub-clause 13A.1; and

(i) in relation to Purchaser or Contractor Consents and/or any approvals from relevant third parties received,

but excluding any confidential information relating to:

(a) pricing information under the Contractor's subcontracts or the subcontracts of other Subcontractors of any tier; and

(b) professional advice provided to the Contractor from its legal, finance or insurance advisers in connection with the Contract or the Works.

"**Protester Action**" means any picketing, demonstration, blockade, embargo or other protester action taking place at the Site or directly affecting access to the Site.

"**Purchaser Consents**" means any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver or licence which is the responsibility of the Purchaser to obtain in accordance with the requirements of Schedule 3 *Responsibilities of Purchaser*.

"**Purchaser Data**" means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including, without limitation, electronic, magnetic, optical and tangible media) and which are supplied to the Contractor by or on behalf of the Purchaser.

"**Purchaser Related Party**" means the Purchaser's agents and contractors and its or their subcontractors of any tier and its or their directors, officers, employees and workmen in relation to the Works and any person on or at the Site at the express or implied invitation of the Purchaser (other than the Contractor or any Contractor Related Party or the Operator or an Operator Related Party).

In the definition of "**Purchaser's Risk**" **delete** limb (b) and **insert** "not used".

"**Relevant Policies**" means any ethics, anti-bribery and anti-corruption policies of the Purchaser as provided to the Contractor prior to the date of the Contractor's tender as stated in the Agreement, all as may be subsequently amended, revised and updated from time to time.

"**Serial Defect**" has the meaning given to it in Sub-clause 37.3A(a).

"**Site**" means the areas shown outlined in blue on drawing NP- GAL- 41XX- ZZZ- DR- AR- 010006 located in Schedule 22.5.1 *Site Plan* together with all infrastructure contained therein (including the ERF). The Site comprises of an Eastern Area and a Western Area as defined in these Conditions of Contract.

"**SPA**" means a Supplementary Project Agreement as defined and referred to in the NAECI.

"**Specification**" means the documents contained in Schedule 22 of the Contract which set out the technical definition of the Plant.

"**Statutory Body/Bodies**" means any utility provider, government department, government agency, local authority, regulatory authority or other statutory undertaker and any persons employed, engaged or authorised by them.

"**Sub-clause 14.9(b) Termination Notice**" has the meaning given to it in Sub-clause 14.9(b).

"**Third Party Agreement**" means any third party agreements that the Purchaser has entered into in connection with the Works and/or the Site to the extent that copies or relevant extracts of the same have been provided to the Contractor including (without limitation):

- the interface agreement between (1) the Purchaser and (2) the Operator dated 5 January 2022; and
- any lease or agreement for lease in connection with the Site.

"**Time for Completion**" means the period of time for completion of the Works or any Section thereof as stated in Schedule 11 *Times of completion* (as the same may be extended in accordance with Sub-clause 14.1).

"**Training Placements**" means training offering relevant skills training and providing a practical and insightful experience in occupations directly relevant to the construction sector. These are to be provided throughout the Contract with each placement being:

(a) primarily within the Site, but which may have an element of off-site classroom training;

(b) offered on at least equivalent terms and conditions to those benefitting Equivalent Workers including paying an hourly Gross Wage (or equivalent of an hourly Gross Wage) that is no less than the then prevailing London Living Wage;

(c) two (2) weeks in duration (two (2) consecutive weeks or two (2) separate weeks); and

(d) provided primarily to a school or college leaver, or an adult who has not been employed in the previous six (6) months or more prior; or those of other EDI groups supported by the Works and a person undertaking such a training placement shall be an 'OSS Trainee'.

"**Unions**" means the General, Municipal, Boilermakers Union (GMB) and Unite the Union.

"**Utilities Information Register"** means the NLHPP Programme site wide utilities information register prepared on behalf of the Purchaser and made available to all contractors engaged in connection with the NLHPP Programme including the Contractor. The Utilities Information Register contains a record of some but not all of the information available to the Purchaser in connection with buried services or utilities or site records and information concerning the EcoPark. The Utilities Information Register is an evolving document and the Purchaser updates or procures the updating of the Utilities Information Register as the NLHPP Programme progresses.

"**Western Area**" means the rest of the Site which is shown shaded in magenta on drawing NP-WOD-XXXX-XXX-DR-CE-069465 which is set out in Schedule 22.9 *Site Conditions, Permits and Constraints*.

"**Works**" means all of the works including (but not limited to), the design, engineering, procurement, manufacture, fabrication, factory/pre-delivery inspection, testing and approval, delivery to Site, off-loading and storage as required, pre-installation inspection and testing, assembly, erection, cranage, installation, commissioning (including but not limited to the trial operation and take over procedures) and assisting the Purchaser and Operator in connection with the required performance tests and Availability Tests and handover procedures along with provision of any works necessary for obtaining all safe and secure access that the Contractor will require to the Site required to construct and develop the ERF and deliver it to the Purchaser in accordance with all of the requirements of the Contract. It also includes other services to be provided by the Contractor pursuant to the Contract including, but not limited to the design, provision, construction, commissioning (and other relevant services listed above), of the Plant, along with all associated civil, structural, mechanical, electrical, heating, ventilation and equipment controls works, all necessary builder's works, temporary works and any other work and/or service to be carried out by the Contractor in accordance with the Contract.

1.2 **Delete** from and including the "the order of precedence" on line three until the end of the Sub-clause and **insert**:

"the order of precedence shall be as follows:

(a) the Agreement;

(b) the Special Conditions;

(c) the General Conditions;

(d) the Specification;

(e) Schedules 1 to 21 inclusive, Schedule 24 and Schedule 25;

(f) Schedule 23."

1.6 **Delete** the clause and **insert** "Other than communications in relation to the termination of the Contractor's employment under the Contract, or in relation to a dispute under the Contract or any other Notice which is to be given in accordance with Sub-clause 1.8, any communication in connection with the Contract shall be communicated through any web based collaboration tools or communication systems referred to in Schedule 2 *Documentation* or any such other web based collaboration tools or communication systems as may be notified to the Contractor by the Project Manager from time to time provided that the Contractor has access to the same."

Insert a new Sub-clause 1.10:

"Any reference to an enactment or code of practice includes any consolidation, re-enactment or replacement of it and any subordinate legislation enacted under it."

Insert a new Sub-clause 1.11:

"References to a Statutory Body shall be deemed to include a reference to any successor to such organisation or any organisation or entity which has taken over either of or both the functions and responsibilities of such organisation. References to other persons shall include their successors and permitted assignees."

Insert a new Sub-clause 1.12:

"The Parties agree that Schedule 20 *Contract Co-ordination* and Schedule 21 *Reports and Records* shall not be used in the Contract. Any reference to Schedule 20 *Contract Co-ordination* and/or

Schedule 21 *Reports and Records* in the Contract shall be construed as a reference to Schedule 2 *Documentation*."

Insert a new Sub-clause 1.13

"The document entitled "Specification and Schedules Glossary of Defined Terms" which is set out in Appendix 9 contains a glossary of terms which are used in the Specification and the Schedules. The terms set out in that glossary shall supplement the terms defined in Sub-clause 1.1 of the Contract in relation to the Specification and Schedules. Any terms which are specifically defined in individual Schedules shall apply to the individual Schedules in which they are defined unless otherwise specified."

Clause 3 – Contractor's Responsibilities

3.2 **Delete** and **insert**:

3.2 "The Contractor undertakes and warrants that all work carried out by the Contractor under the Contract has been carried out and shall be carried out:

3.2.1 with sound workmanship and in a proper and workmanlike manner using Materials that are of a satisfactory quality and entirely suitable for their intended purpose and:

(a) in the case of Civil Engineering Works, new or a recycled sustainable material that is of an equivalent or higher standard and, in either case, which is capable of being recycled to the extent possible; or

(b) in the case of all other aspects of the Works, new and capable of being recycled to the extent possible.

The Contractor shall not substitute any Materials specified in the Specification or Schedules without the prior written consent of the Project Manager;

3.2.2 safely and in accordance with Good Industry Practice;

3.2.3 insofar as the work relates to Civil Engineering Works, in accordance with Good Building Practice;

3.2.4 in accordance with all Consents, all applicable Legislation and Guidance and to the reasonable satisfaction of the Project Manager; and

3.2.5 so that the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers and clean and tidy so far as is practicable having regard to the nature of the Works."

3.4 **Delete** the words "as defined in the Specification or in any other provision of the Contract" and **insert:**

"as defined in:

(a) the Specification;

(b) Schedule 1 *Description of the Works*;

(c) Schedule 2 *Documentation*;

(d) Schedule 9 *Training by Contractor;*

(e) Schedule 13 *Pre-installation tests and procedures*;

(f) Schedule 14 *Criteria for the completion of Construction*;

(g) Schedule 15 *Take Over Procedures*;

(h) Schedule 16 *Performance tests and procedures*; and/or

(i) Schedule 17 *Performance guarantees and damages for failure*."

3.7 **Delete** the words "including any proposed revisions to the Approved Programme".

Insert the following new Sub-clauses:

3.10 "The Contractor warrants that:

(a) the Contractor has not and shall not use or specify for use or permit to be used by or on behalf of the Contractor in relation to the Works or any part or parts thereof, any products, substances or materials which at the time of their use or specification for use:

(i) subject to Sub-clause 3.10(b), do not conform with British Standards or European Standards or Codes of Practice or, in the case of the Civil Engineering Works only, the recommendations of the publication "Good

Practice in the Selection of Construction Materials" (British Council for Offices 2011); and/or

(ii) in the case of the Civil Engineering Works only, are generally known to the building profession to be deleterious to health and safety, the performance or deliverability of buildings or structures, or damaging to the environment in the particular circumstances in which they are specified to be used or are used; and/or

(iii) in the case of the Civil Engineering Works only, do not conform with the requirements of the Construction Products Regulations; and/or

(iv) contravene any relevant or standard code of practice issued from time to time by the BSI Group or under a European directive relating to standards or Good Industry Practice.

(b) if the Contractor proposes the use or specification (or proposes to permit the use or specification) in the Works of any products, substances or materials which do not conform with British Standards or European Standards but which conform with equivalent international standards, the Contractor shall submit the proposed equivalent international standards to the Project Manager for approval. The Contractor shall not use or specify (or permit the use or specification) in the Works of any such products, substances or materials without the Project Manager's approval of the proposed equivalent international standards. The Project Manager shall approve or reject the proposed equivalent international standards within ten (10) Business Days of their receipt. If the Project Manager fails to respond within such ten (10) Business Day time period the proposed equivalent international standards shall be deemed to be approved.

(c) if the Contractor becomes aware of the use in or about the Works of any prohibited materials as referred to in this Sub-clause 3.10 the Contractor shall notify the Purchaser in writing."

3.11 Notwithstanding any other term, provision or requirement of the Contract, the Contractor shall be fully responsible in all respects for:

(a) the whole of the design of the Works, including all design work proposed by or on behalf of the Purchaser prior to the Effective Date forming part of the Specification and/or Schedule 1 *Description of the Works* (this obligation is deemed to include an obligation on the Contractor to verify any and all such design provided by or procured on behalf of the Purchaser); and

(b) for ensuring that the design of the Works complies with the Contract and all relevant Legislation and Consents.

3.12 The Contractor is responsible for obtaining the Contractor Consents. The Contractor shall comply with the terms of and observe all conditions attaching to any and all Consents and any and all planning agreements insofar as they may apply to the Site from time to time, regardless of whose obligation it is to obtain such Consents.

3.13 Not used.

3.14 The Contractor shall provide the Project Manager with such of the Design Data and other information required by the Specification and Schedule 2 *Documentation* and such other information as the Project Manager may reasonably deem necessary to enable the Project Manager to assess and monitor the detailed design of the Works and comment on its compatibility with the Specification and the Contract. In the design and construction of the Works, the Contractor shall take all proper account of:

(a) the considerations of health and safety as required by and contained in the CDM Regulations;

(b) all relevant geological, geo-technical and environmental conditions of, on or affecting the Site; and

(c) physical and other conditions of, on, relating to or affecting the Site.

3.15 Any design, design development and/or other elements of the Works carried out by the Contractor prior to the Effective Date including, but not limited to any design contained in Schedule 23 *Contractor's Proposal* will not obviate, diminish or alter the Contractor's obligations hereunder and will be deemed to have been carried out pursuant to and subject to the Contract.

3.16 The Contractor warrants and represents that it has not committed and will not commit any Prohibited Act in the performance of the Works and/or its obligations under the Contract and the Contractor shall ensure that its Subcontractors shall not commit any Prohibited Act.

3.17 Subject to complying with its obligations under Sub-clause 23.4A in relation to Statutory Bodies, the Contractor shall:

3.17.1 give all notices; and

3.17.2 pay all fees required to be paid or given,

by any Legislation and/or Guidance and/or in relation to all Contractor Consents relevant to the provision of the Works and as required for the proper performance of the Contractor's duties and obligations under the Contract.

3.18 Subject to Sub-clause 3.18A.2, the Contractor shall carry out and complete the Works in accordance with the Purchaser's obligations under the Third Party Agreements.

Subject to Sub-clause 3.18A.2, the Contractor undertakes to the Purchaser that they have performed and will perform their obligations under the Contract in such a manner and at such times that no breach of the Contract by the Contractor or any of its Subcontractors or their respective employees or agents shall cause or contribute to any breach of any of the Purchaser's obligations under the Third Party Agreements. Subject to Sub-clause 3.18A.2, to the extent that a breach of any of the Purchaser's obligations under the Third Party Agreements is caused due to a breach by the Contractor of its obligations under the Contract, the Contractor shall be liable to the Purchaser for any liability, claims, damages, costs and losses that the Purchaser may incur as a result of or arising out of a breach by the Contractor of its obligations under this Sub-clause 3.18.

The Contractor shall not be obliged to comply with the terms of any new or existing Third Party Agreements (including any amended existing Third Party Agreement) if to do so would infringe any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site. The Contractor shall notify the Project Manager if it believes that compliance with the terms of any Third Party Agreement would infringe any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site where details of such a right, reservation, covenant, restriction, stipulation or other encumbrance have previously been provided to the Contractor by the Purchaser.

3.18A Where the Purchaser requires the Contractor to comply with the terms of any new or existing Third Party Agreements (including any amended existing Third Party Agreement), furnished to the Contractor in accordance with Sub-clause 14.4(i)(i) after the date of the Contractor's tender as stated in the Agreement, the Parties agree that:

3.18A.1 the Contractor shall, after receiving any such Third Party Agreements, perform the Works in accordance with the Purchaser's obligations under the new or existing Third Party Agreements (including any amended existing Third Party Agreement); and

3.18A.2 the Contractor shall not be liable to the Purchaser to the extent that any of the Works already performed by the Contractor prior to the date on which any new or existing Third Party Agreements (including any amended existing Third Party Agreement) are furnished to the Contractor in accordance with Sub-clause 14.4(i)(i) may cause or contribute to a breach of any of the Purchaser's obligations under such new or existing Third Party Agreements (including any amended existing Third Party Agreement); and

3.18A.3 to the extent that compliance with the new or existing Third Party Agreements (including any amended existing Third Party Agreement) affects the Contractor's performance of the Works, the Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19.

3.18B.1 Subject to Sub-clause 3.18B.2.1, the Contractor shall carry out and complete the Works without infringing any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site where details of such a right, reservation, covenant, restriction, stipulation or other encumbrance have previously been provided to the Contractor by the Purchaser. Where the Purchaser requires the Contractor to comply with any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site and information relating to the same has not been provided before the date of the Contractor's tender as stated in the Agreement, the Project Manager shall provide information regarding the same with the effect of:

(i) modifying such previously known right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affecting the Site;

(ii) removing such right, reservation, covenant, restriction, stipulation or other encumbrance from being binding upon or affecting the Site;

(ii) removing the obligation upon the Contractor from carrying out and completing the Works without infringing such right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site; or

(iv) adding such right, reservation, covenant, restriction, stipulation or other encumbrance and specifying the same as being binding upon or affecting the Site.

3.18B.2 Where the Contractor is required to comply with any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site and information relating to the same is provided after the date of the Contractor's tender as stated in the Agreement, the Parties agree that:

3.18B.2.1 the Contractor shall not be liable to the Purchaser to the extent that any of the Works already performed by the Contractor prior to the date on which details of any such right, reservation, covenant, restriction, stipulation or other encumbrance is provided to the Contractor infringe such right, reservation, covenant, restriction, stipulation or other encumbrance and the Contractor shall not be obliged to perform the Works in compliance with such right, reservation, covenant, restriction, stipulation or other encumbrance until the Project Manager has provided the Contractor with the information relating to the same; and

3.18B.2.2 to the extent that compliance with such right, reservation, covenant, restriction, stipulation or other encumbrance affects the Contractor's performance of the Works, the Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19.

3.19 The Contractor shall provide to the Purchaser on the Effective Date a parent company guarantee executed and delivered by the Contractor's ultimate holding company (or such other company as has been previously approved by the Purchaser) in the form set out in Appendix 2 to the Contract. The provision of this parent company guarantee shall be a condition precedent to any sums being payable by the Purchaser to the Contractor under the Contract.

3.20 The Contractor shall provide to the Purchaser:

3.20.1 on the Effective Date, a performance bond in the sum equivalent to ten (10%) of the Contract Price ("**Maximum Performance Bond Amount**") until the date stated on the Take Over Certificate (at which time the Maximum Performance Bond Amount shall reduce to a sum equivalent to five per cent (5%) of the Contract Price), executed and delivered by an Acceptable Bond Provider substantially in the form set out in Appendix 3 to the Contract and which shall remain in force until the date stated on the Performance Test Certificate and a legal opinion in a form to be approved in advance by the Purchaser (acting reasonably) in favour of the Purchaser confirming the enforceability of the performance bond. The Purchaser shall be entitled to withhold a sum equivalent to the Maximum Performance Bond Amount (at the relevant time) until the earlier of (a) the date the performance bond (and any replacement performance bond or alternative performance security under Sub-clause 3.21) is delivered in accordance with this clause or (b) the date stated on the Performance Test Certificate; and

3.20.2 prior to the date of issue of the Take Over Certificate, a retention bond in the sum equivalent to five per cent (5%) of the Contract Price ("**Maximum Retention Bond Amount**") until the date stated in the Acceptance Certificate (at which time the Maximum Retention Bond Amount shall reduce to a sum equivalent to two and a half per cent (2.5%) of the Contract Price), executed and delivered by the Contractor and an Acceptable Bond Provider substantially in the form set out in Appendix 4 to the Contract, which shall remain in force until the date of the Final Certificate and a legal opinion in a form to be approved in advance by the Purchaser (acting reasonably) in favour of the Purchaser confirming the enforceability of the retention bond. The Purchaser shall be entitled to withhold a sum equivalent to the Maximum Retention Bond Amount (at the relevant time) from the Contract Price until the earlier of (a) the date that the retention bond (and any replacement retention bond or alternative performance security under Sub-clause 3.21) is provided by the Contractor and (b) the date of the Final Certificate.

3.21 If at any time before expiry of the performance bond or the retention bond (as the case may be) the bond becomes void, invalid or unenforceable; and/or the provider of such bond ceases to be an Acceptable Bond Provider; then the Contractor shall within twenty (20) Business Days:

3.21.1 provide to, and maintain for the benefit of, the Purchaser a replacement performance bond or retention bond (as applicable) in substantially the same form as the agreed form set out in Appendix 3 (performance bond) or Appendix 4 (retention bond) (as applicable) or on such other terms approved by the Purchaser, from an Acceptable Bond Provider; or

3.21.2 provide such other performance security which is approved by the Purchaser as being an equivalent form of performance security, such performance security being in respect of the same amount and in a form approved by the Purchaser (acting reasonably).

3.21A.1 If the Take Over Certificate has not been issued on or before the date being sixty (60) days prior to the date on which the Maximum Performance Bond Amount is to reduce to five per cent (5%) of the Contract Price in accordance with the terms of the performance bond, the Contractor shall, on or before such date, procure that the Maximum Performance Bond Amount under the performance bond is maintained at ten percent (10%) of the Contract Price until a date on or after the date being sixty (60) days after the then programmed date for the issue of the Take Over Certificate, failing which the Contractor acknowledges that the Purchaser may make a demand under the performance bond in accordance with its terms or may withhold a sum equivalent to five percent (5%) of the Contract Price from the Contract Price, in either case until the earlier of (a) the date the condition referred to above has been satisfied or (b) the date stated on the Take Over Certificate.

3.21A.2 If the Performance Test Certificate has not been issued on or before the date being sixty (60) days prior to the expiry of the performance bond, the Contractor shall, on or before such date, procure that the date of expiry of the performance bond is extended to a date on or after the date being sixty (60) days after the then programmed date for the issue of the Performance Test Certificate failing which the Contractor acknowledges that the Purchaser may make a demand under the performance bond in accordance with its terms or may withhold a sum equivalent to the outstanding value of the performance bond from the Contract Price, in either case until the earlier of (a) the date the condition referred to above has been satisfied or (b) the date stated on the Performance Test Certificate.

3.21A.3 If the Acceptance Certificate has not been issued on or before the date being thirty (30) days prior to the date on which the Maximum Retention Bond Amount is to reduce to two and a half per cent (2.5%) of the Contract Price in accordance with the terms of the retention bond, the Contractor shall, on or before such date, procure that the Maximum Retention Bond Amount under the retention bond is maintained at five percent (5%) of the Contract Price until a date on or after the date being thirty (30) days after the then programmed date for the issue of the Acceptance Certificate, failing which the Contractor acknowledges that the Purchaser may make a demand under the retention bond in accordance with its terms or may withhold a sum equivalent to two and a half percent (2.5%) of the Contract Price from the Contract Price, in either case until the earlier of (a) the date the condition referred to above has been satisfied or (b) the date stated on the Acceptance Certificate.

3.21A.4 If the Final Certificate has not been issued on or before the date being thirty (30) days prior to the expiry of the retention bond, the Contractor shall, on or before such date, procure that the date of expiry of the retention bond is extended to a date on or after the date being thirty (30) days after the then programmed date for the issue of the Final Certificate, failing which the Contractor acknowledges that the Purchaser may make a demand under the retention bond in accordance with its terms or may withhold a sum equivalent to the outstanding value of the retention bond from the Contract Price, in either case until the earlier of (a) the date the condition referred to above has been satisfied or (b) the date stated on the Final Certificate.

3.22 The Contractor shall execute and deliver to the Purchaser on the Effective Date, as a deed, a collateral warranty agreement in favour of the Operator. The Contractor shall execute and deliver to the Purchaser, as a deed, a collateral warranty agreement in favour of any other Beneficiary within ten (10) Business Days of the Purchaser's request to do so and receipt of the engrossed documents. The collateral warranties shall be in the form appended to the Contract at Appendix 5 with such amendments that the Purchaser may reasonably require or approve from the Contractor.

3.23 The Parties acknowledge and agree:

(a) the existence of the Coronavirus as at the Effective Date;

(b) that in addition to its obligations to comply with all Legislation under Sub-clause 7.1, the Contractor shall perform the Works:

(i) on the Site or outside of the Site but within the EcoPark in accordance with Construction Management Plan, a copy of which is set out in Schedule 22.8 *Purchaser Policies and Protocols,* and the Construction Leadership Council Site Operating Procedures issued in response to the Coronavirus as the same may be updated from time to time;

(ii) within the UK, including but not limited to when on the Site or outside of the Site but within the EcoPark, in accordance with any recommended or mandatory measures (whether or not having the force of law) introduced in connection with the Coronavirus by any person with statutory or regulatory powers having jurisdiction over the Works or a Party; and

(iii) outside of the UK in accordance with any laws applicable in any jurisdiction outside of the UK where Materials or Plant are manufactured, stored or transported through or where other works (including engineering and management) are being performed or any recommended or mandatory measures (whether or not having the force of law) introduced in connection with the Coronavirus by any person with statutory or regulatory powers in such jurisdictions;

(c) that the Contractor shall be deemed to have allowed for the time and cost implications of complying with each of the Legislation, Construction Management Plan, Construction Leadership Council Site Operating Procedures, laws in non-UK jurisdictions and recommended or mandatory measures referred to in Sub-clauses 3.23(b)(i) to (iii) (inclusive) each current as at the date of the Contractor's tender as stated in the Agreement in the programme for the Works and in the Contract Price; and

(d) on the occurrence of a Coronavirus Event which increases the cost to the Contractor in performing the Works the Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19. On the occurrence of a Coronavirus Event which reduces the cost to the Contractor in performing the Works, the Project Manager shall determine an appropriate deduction from the Contract Price by means of a Variation Order. For the avoidance of doubt, any such Variation Order in connection with a Coronavirus Event shall remain subject to the Contractor's rights of objection as set out in Sub-clause 16.6."

Clause 4 – Purchaser's Responsibilities

Insert a new Sub-clause 4.2A as follows:

4.2A.1 "The Purchaser shall be responsible for the provision and maintenance of (and the payment of all fees and costs in relation to) those utilities and services which are indicated as its responsibility in Schedule 3 *Responsibilities of Purchaser*.

4.2A.2 If ERF Contract Waste has been delivered by the Purchaser (or the Operator on behalf of the Purchaser) to the Site in accordance with the requirements of the Approved Programme but cannot be processed or stored by the Contractor in accordance with the Environmental Permit due to a breach of the Contractor or due to the Contractor being in delay, the Purchaser shall dispose of such ERF Contract Waste at its own cost. The Contractor shall reimburse to the Purchaser the costs the Purchaser incurs in effecting such disposal of ERF Contract Waste up to a maximum cost of £150 (one hundred and fifty pounds) per tonne provided that the Purchaser complies with Sub-clause 4.3 and submits a claim in accordance with Sub-clause 19.5 and provided further that the Contractor shall not be obliged to reimburse the Purchaser:

(a) where the ERF Contract Waste cannot be processed or stored by the Contractor due to a matter or circumstance which entitles the Contractor to an extension of time under Clause 14; or

(b) where the Contractor has failed to achieve Take Over by the date set for Take Over in accordance with Schedule 11 *Times of completion* and the Contractor has become liable for Delay Liquidated Damages in accordance with Sub-clause 15.1."

4.5 After "The Purchaser shall provide" **insert** the words "(either through itself or the Operator)".

Clause 5 – Decisions and Contract co-ordination

Insert a new Sub-clause 5.5:

5.5 "Without prejudice to the operation of Sub-clause 5.1, no direction, admission, consent, approval, examination, inspection, confirmation, comment, sanction, acknowledgement or advice made or given (or not made or given) by or on behalf of the Project Manager, the Project Manager's Representative or the Purchaser shall, unless expressly stated or allowed for in the Contract, in any way relieve the Contractor from its liabilities or obligations under

the Contract, nor unless expressly stated or allowed for in the Contract, shall such liabilities or obligations be restricted or qualified in any way."

Clause 6 – Sufficiency of Contract Price

Delete Sub-clause 6.2 and **replace** with:

6.2 "The Contractor shall satisfy itself as to the accuracy of the information provided by or on behalf of the Purchaser as referred to in Schedule 1 *Description of the Works*, Schedule 3 *Responsibilities of Purchaser* and the Specification. If the Contractor consequently incurs any increase in the cost of performing their obligations under the Contract in connection with the information provided by or on behalf of the Purchaser, then subject to the second paragraph of this Sub-clause, the Contractor shall bear its own costs, without any addition to the Contract Price.

Where the Contractor incurs any increase in the cost of performing their obligations under the Contract in connection with the information provided or to be provided by or on behalf of the Purchaser in relation to:

(a) the quantities for contaminated soil which are set out in the two tables entitled "From Start on Site to Piling mat completion - Quantities considered for Contaminated soil material" and "From Piling Works - Quantities considered for Contaminated soil material" in section 1.1 of Schedule 22.2.9 *Earthworks;* and/or

(b) the information set out in Schedule 22.9 *Site Conditions, permits and constraints* including the appendices attached thereto which includes (without limitation) the ground conditions surveys and borehole location plan and records set out in Appendix 2 of Schedule 22.9 *Site Conditions, Permits and Constraints* and which are to be provided by the Purchaser in Schedule 3 *Responsibilities of Purchaser*,

the Contractor shall be entitled to claim an addition to the Contract Price determined in accordance with and subject to Clause 19 and, if applicable, an extension of time in accordance with Clause 14."

6.3 On line 2 after "physical condition" **insert** "including, without limitation, any existing structures above or below ground on the Site, unexploded ordinance, fossils and antiquities, service media, utilities, human remains, Contamination or other unforeseen conditions". On line 4

delete the words "which the Contractor then had or" and **insert** "that is contained or referred to in the Contract Documents or that the Contractor".

On line 5 after "by reasonable enquiry" **insert** "including (without limitation) by reference to any publicly available information regarding the Site referred to in the Contract Documents but on the basis that no physical or intrusive surveys or physical or intrusive investigations of the Site could have been carried out,".

After "Clause 19." on line 9, **insert** the following new sentence "The Parties acknowledge and agree that the Contractor was not afforded the opportunity to and did not in fact carry out any physical or intrusive surveys or physical or intrusive investigations of the Site prior to the date of the Contractor's tender as stated in the Agreement."

Insert the following new sentence at the end of the Sub-clause:

"If, when performing the Works, the Contractor becomes aware of or encounters any utilities within the Site or the EcoPark including, without limitation, as a result of any site surveys or investigations it shall notify the Project Manager and provide to the Project Manager any information discovered and captured in such form and in accordance with such processes as the Project Manager may reasonably request so that the Purchaser may update and maintain the Utilities Information Register."

Insert new Sub-clause 6.4

"6.4 The Contractor shall satisfy itself as to the suitability of the Access Roads and any roads within the Site to withstand the loading that will be imposed on them by heavy plant and equipment being brought to the Site by the Contractor. The Contractor shall take all reasonable steps to maintain such Access Roads and any roads within the Site, keep them clean and clear of mud and to prevent damage to them and shall forthwith rectify any damage caused to such Access Roads and any roads within the Site arising out of the use thereof by the Contractor and any Contractor Related Parties. The Contractor shall be responsible for and shall indemnify the Purchaser from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing their obligations under this Sub-clause 6.4 and shall assist the Purchaser in the defence of such action, claim or proceedings."

Insert new Sub-clause 6.5

"6.5 The Contractor shall scrutinize and shall be deemed to have scrutinized the Contract Documents (including any design criteria and calculations included therein) and shall be responsible for completing the design and execution of the Works in accordance with those Contract Documents and:

(a) by the relevant Time for Completion set out in Schedule 11 *Times of completion* and without adjustment to the Contract Price (save as expressly set out in the Contract);

(b) in compliance with all applicable Legislation and Consents;

(c) in fulfilment of the performance requirements set out in Schedule 16 *Performance tests and procedures* and the Guarantee Data performance levels set out in Schedule 17 *Performance guarantees and damages for failure*."

Insert new Clause 6A as follows:

"6A**: <u>Protester Action</u>**

6A.1 The Contractor shall use all reasonable endeavours to prevent Protester Action affecting the Site and/or the Works including for the avoidance of doubt providing appropriate security and security fencing and providing reasonable additional security measures in the event that and for so long as there are reasonable grounds for believing that a higher risk of Protester Action exists.

6A.2 Notwithstanding the provisions of Clause 6A.1, in the event that Protester Action arises at or around the Site or on any of the Access Roads to the Site, the Contractor shall take such actions as are reasonable, proportionate and lawful to deal with Protester Action and where necessary shall involve, co-operate with and assist the emergency services to allow them to deal with it. For the avoidance of doubt, the Contractor shall not be required to seek injunctive relief or pay or contribute to the costs of such in connection with Protester Action.

6A.3 If Protester Action (other than as a result of industrial action which affects only the employees of the Contractor or its Subcontractors or in respect of matters which relate specifically to the Contractor or its Subcontractors and which do not relate to the Contract or the ERF to be constructed pursuant to the Contract) delays or disrupts the Works, the Contractor shall be

entitled to claim an addition to the Contract Price determined in accordance with and subject to Clause 19 and, if applicable, an extension of time in accordance with Clause 14."

Clause 7 – Statutory and other obligations

7.3 On line 2 after the word "Legislation", **insert** "(other than any new or amended Consents arising in connection with a Variation in respect of which, subject to Sub-clause 7.3A, the Contractor is entitled to an addition to the Contract Price under Clause 18)".

Insert the following at the end of this Sub-clause:

"The provisions of this Sub-clause 7.3 shall not apply to any Legislation not yet enacted or in force at the date of the Contractor's tender but which could have reasonably been foreseen by a competent contractor at the date of the Contractor's tender as stated in the Agreement, provided always that any Legislation enacted more than thirty (30) months after the date of the Contractor's tender will be deemed incapable of being reasonably foreseeable. The Parties acknowledge and agree that there are likely to be changes in Legislation during the Contract which arise as a consequence of Brexit and agree further that:

(a) the provisions of this Sub-clause 7.3 shall not apply to any Legislation enacted pursuant to the European Union (Withdrawal) Act 2018 (the "**Withdrawal Act**") or otherwise arising as a consequence Brexit which is not yet enacted or in force at the date of the Contractor's tender and where such specific Legislation could have reasonably been foreseen by a competent contractor at the date of the Contractor's tender as stated in the Agreement; and

(b) Legislation enacted pursuant to the Withdrawal Act or otherwise arising as a consequence Brexit which is not yet enacted or in force at the date of the Contractor's tender and which could not reasonably have been foreseen by a competent contractor at the date of the Contractor's tender shall not subsequently be deemed to have been foreseeable solely on the basis that the Legislation in question is enacted pursuant to the Withdrawal Act or otherwise in connection with Brexit. Further such Legislation enacted pursuant to the Withdrawal Act or otherwise arising as a consequence of Brexit shall not be deemed to have been foreseeable where retained European Union law is transposed into Legislation pursuant to the Withdrawal Act and interpreted and/or applied differently in the United Kingdom following the transposition of such Legislation or any applicable judgment of a relevant court of law which establishes or

changes a binding precedent in England and Wales in relation to such Legislation as compared to how that retained European Union law was interpreted and/or applied in the United Kingdom prior to such enactment."

Insert the following new Sub-clause 7.3A:

"7.3A The Parties agree that a change to the Environmental Permit which requires a change to be made to the design of the Works shall be the responsibility of the Purchaser other than where the change to the Environmental Permit arises as a consequence of a Variation proposed by the Contractor to change the design of the Works. The Contractor shall only be entitled to claim an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 18 following a change to the Environmental Permit which requires a change to be made to the design of the Works if the reason for the change is the responsibility of the Purchaser."

7.4 After "Clause 7" on line 1, **insert** "and subject to the provisions of Sub-clause 7.5,".

Insert the following new Sub-clause 7.5:

"7.5 Notwithstanding the terms of Sub-clause 7.4, the Contractor shall not be obliged to bear any increased costs or expenses due to the imposition by a relevant tax authority or similar body (which, for the avoidance of doubt, shall not include the NJC or the Unions) in relation to:

(a) new, or changing existing, taxes, duties, levies, fees or tariffs payable when importing Materials and/or Contractor's Equipment into the United Kingdom or bringing personnel sourced from outside of the United Kingdom into the United Kingdom;

(b) any taxes, levies, rates, charges and the like imposed upon the construction of energy from waste or similar thermal treatment facilities or electricity and/or heat generation facilities;

(c) any taxes, levies, rates, charges and the like related to the holding of shares in businesses providing construction services for energy from waste or similar thermal treatment facilities;

(d) any taxes, levies, rates, charges and the like assessed upon the Contractor related to emissions from industrial facilities;

(e) any taxes, levies, rates, charges and the like imposed upon the Works but not imposed on similar works;

(f) any taxes, levies, rates, charges and the like imposed upon the Contractor but not other persons; and

(g) any other unforeseeable and material new tax, levy, rate or charge or increase in an existing tax, levy, rate or charge assessed upon the Contractor.

Provided always that there shall be no adjustment to the Contract Price pursuant to: (i) sub-clauses (b) to (f) above to the extent, subject to the terms of Sub-clause 7.3, that the specific change in taxes, levies, rates and charges was reasonably foreseeable by a competent contractor at the date of the Contractor's tender as stated in the Agreement and (ii) sub-clauses (e) and/or (f) above to the extent that any change in taxes, levies, rates and charges is caused directly by the Contractor's breach of the Contract.

In the event that any such taxes, levies, rates, charges and the like are assessed against the Contractor, it shall give the Project Manager notification within fourteen (14) days of such circumstances and the Project Manager shall determine an appropriate addition to or deduction from the Contract Price by means of a Variation Order."

Clause 8 – Patent and other protected rights

8.1 **Insert** "including by a Subcontractor" at the end of 8.1(a).

8.3 **Insert** "including by a Subcontractor" after "If any design of the Plant provided by the Contractor" and **delete** "him" in both places in the first sentence and replace with "them". **Replace** "intellectual property right" with the defined term "Intellectual Property Right". After "provided always that this indemnity shall not apply to" **delete** "any such patent, registered design, design right, trade mark, copyright or any other property rights protected by law first granted, registered or created after the date of the Contractor's tender as stated in the Agreement" and replace with "any Intellectual Property Right protected by law first created after the date of termination of the Contractor's employment".

8.5 **Delete** the words "patent registered design … protected by law" from lines 3 and 4 and **insert** "Intellectual Property Right".

8.8 At the end of the Clause **insert**:

"The Purchaser's right to use such Documentation includes the right to grant sub-licences to use the Documentation on the same terms and the Purchaser's right (and any sub-licences) shall be freely transferrable."

Clause 9 Subcontracting and third party rights

9.1 **Delete** and **insert**:

9.1 "Subject to Sub-clause 9.2, the Contractor shall not assign, subcontract, underlet, charge, sell, bargain, novate or otherwise deal with the benefit of the Contract or any rights assigned under it, in whole or in part, without the prior written consent of the Purchaser."

9.1A **Insert** a new Sub-clause:

9.1A.1 "The Purchaser may assign the entire benefit of the Contract to any party appointed to replace the Purchaser and assume responsibility for waste management in North London and may additionally assign by way of security (and reassignment on redemption) and charge the entire benefit of the Contract to any Funder without the Contractor's consent. The Purchaser shall not otherwise be entitled to assign or charge the benefit of the Contract. The Contractor shall not contend that any person to whom the Contract is assigned is precluded from recovering under the Contract any loss incurred by such assignee resulting from a breach of the Contract (whenever happening) by reason that such party is an assignee and not a named party to the Contract.

9.1A.2 The Contractor shall enter into a deed of novation novating the Contract from the Purchaser and the Contractor to any party appointed to replace the Purchaser and assume responsibility for waste management in North London and the Contractor in the following circumstances:

(a) where required by the Purchaser in order to comply with Legislation; or

(b) where otherwise requested by the Purchaser provided that any such party is demonstrably capable to the Contractor's reasonable satisfaction of complying with the Purchaser's obligations under the Contract.

Any such deed of novation shall be in a form proposed by the Purchaser with such amendments that the Contractor may reasonably require.

If the Purchaser becomes aware that it is to be wound up and a third party appointed to replace the Purchaser and assume responsibility for waste management in North London, the Purchaser shall notify the Contractor of its intention to novate the Contract in the circumstances provided for in this Sub-clause 9.1A.2 and shall, to the extent it has such information, inform the Contractor as to when such novation will likely take place."

9.2 **Delete** and **insert**:

9.2.1 ~~Subject to the remainder of this sub-clause, the Contractor shall not be entitled to subcontract parts of the Works to~~Prior to appointing any Subcontractor in respect of any of the subcontract packages listed or, in the case of architectural Subcontractors the requirements of which are set out in Schedule 22.4 *Architectural Specification*, referred to in Appendix A (Critical Plant systems/component list) in Schedule 7 *Subcontracting* or, in respect of any other subcontract package, where the value of the subcontract is equal to or more than three million, five hundred thousand pounds (£3,500,000) ~~without the prior written consent of~~, the Contractor shall submit the identity of the proposed Subcontractor to the Purchaser for review and comment in accordance with Schedule 7 *Subcontracting*. For the avoidance of doubt, the Parties agree that the companies listed in Appendix A (Critical Plant systems/component list) in Schedule 7 *Subcontracting* are Subcontractors that have already been ~~consented to~~reviewed and commented on by the Purchaser as at the ~~Effective Date~~date of Settlement and Variation Agreement (No. 3) to this Contract. Otherwise, subject to the foregoing, the Contractor shall be entitled to subcontract parts of the Works to any Subcontractor without the prior ~~written consent~~consultation of the Purchaser.

The Contractor shall submit the subcontract documents it proposes to use to appoint any Subcontractor in respect of:

(a) any of the subcontract packages listed or, in the case of architectural Subcontractors the requirements of which are set out in Schedule 22.4 *Architectural Specification*, referred to in Appendix A (Critical Plant systems/component list) in Schedule 7 *Subcontracting* including, for the avoidance of doubt, for any Subcontractors that have already been consented to by the Purchaser as at the Effective Date or as at the date of Settlement and Variation Agreement (No. 3) to this Contract;

(b) any of the subcontract packages listed in Appendix B (Nominated supplier list) in Schedule 7 *Subcontracting;* or

(c) any subcontract package where the value of the subcontract is equal to or more than three million, five hundred thousand pounds (£3,500,000),

to the Purchaser for ~~prior approval. The Purchaser shall be entitled to refuse to give consent to any subcontracting where the requirements of~~review and comment in accordance with Schedule 7 *Subcontracting* ~~are not met or if in the Purchaser's reasonable opinion~~. The Contractor shall ensure that its subcontracts in relation to the subcontract packages referred to in (a) to (c) above:

~~9.2.1.1 the proposed form of subcontract does not include provisions acceptable to the Purchaser (acting reasonably). For the avoidance of doubt, the Purchaser need not approve the form of subcontract if:~~

(a) ~~the subcontract does not~~ appropriately pass down the relevant obligations on the Contractor under the Contract having regard to the scope, value, nature and complexity of the subcontract package in question and ~~will not~~so enable the Contractor to perform the Works in accordance with and comply with the requirements of the Contract;

(b) ~~it does not~~ oblige the Subcontractor to comply with the requirements of the Contractor's current approved Employment Relations Plan and to pay its employees and workers working primarily on the Site the London Living Wage as set out in Sub-clause 28.9;

(c) ~~it does not~~ permit the Contractor to assign the benefit of the subcontract and ~~(where required under Sub-clause 9.2.1.1(f))~~ the benefit of the subcontract performance security package to the Purchaser or another third party or to permit the Purchaser or another third party to assume the Contractor's role of purchaser under the subcontract in case of termination of the Contract; or

(d) ~~where the subcontract does not~~ require the Contractor to pay the Subcontractor or require the Subcontractor to pay its Sub-subcontractors any sums due under the subcontract or any sub-subcontracts the Subcontractor may enter into within thirty (30) days of receipt of a valid and undisputed invoice~~;~~."

~~(e) the Subcontractor does not have the competence or technical ability to satisfactorily carry out the Works it is proposed should be sub-let or subcontracted to it;~~

~~(f) the Subcontractor does not have sufficient financial standing and has not provided a suitable performance security package in relation to the element of the Works it is proposed should be sub-let or subcontracted to it;~~

~~(g) the Subcontractor will not fully and properly perform all the duties, obligations or responsibilities of the Contractor that it is proposed will be subcontracted to it; or~~

~~(h) the Subcontractor does not have the legal capacity, power or authority to become a party to the relevant subcontract.~~

9.2.2 The Contractor acknowledges that the Purchaser is required under the DCO issued in connection with the NLHPP Programme to provide notice and information of appropriate contracts and subcontract opportunities to businesses within boroughs local to the Site. The Contractor shall comply with its obligations in relation to providing opportunities for local businesses as set out in Schedule 25 *Social Value*. ~~The Purchaser shall not refuse to grant approval to a proposed Subcontractor purely on the grounds that they are not located within the local boroughs specified in Schedule 25 *Social Value*.~~

9.2.3 The subcontracting by the Contractor of any part of the Works shall not relieve the Contractor in any way from its obligations under the Contract.

9.2.4 The Contractor shall only be entitled to:

(a) assign the benefit of the Contract to any of the Contractor's Group, without the prior written consent of the Purchaser; and

(b) request that the Purchaser enters into a deed of novation novating the Contract from the Purchaser and the Contractor to the Purchaser and any of the Contractor's Group,

in the following circumstances:

(c) where the assignment or novation arises as a consequence of the universal or partial succession into the position of the Contractor by a member of the Contractor's Group following corporate restructuring as envisaged by Regulation 72(d)(ii) of the Public Contracts Regulations 2015 (as the same may be amended or replaced);

(d) where, in the case of a novation, the Contractor is able to demonstrate to the reasonable satisfaction of the Purchaser that the replacement member of the

Contractor's Group is capable of fulfilling the Contractor's obligations under the Contract; and

(e) where the assignment or novation (as applicable) does not adversely affect the benefit to the Purchaser of the guarantee, any of the bonds or any of the Subcontractor collateral warranties provided to the Purchaser pursuant to the Contract.

Any such deed of novation shall be in a form proposed by the Purchaser with such amendments that the Contractor may reasonably require.

9.2.5 The Contractor's:

~~(a) subcontracting of any parts of the Works without the Purchaser's consent to the subcontracting or without the Purchaser's approval of the subcontract documents in breach of Sub-clause 9.2.1; or~~

(a) not used;

(b) failure to comply with its obligations under Sub-clause 9.2.2; or

(c) breach of Sub-clause 9.2.4,

shall be a material breach of the Contract,"

9.9 **Insert** a new Sub-clause:

"9.9 **Subcontractors**

9.9.1 Each Subcontractor to be appointed in respect of Civil Engineering Works who may be required to provide a collateral warranty in accordance with Sub-clause 9.9.3 shall be appointed by deed. ~~Any Subcontractor to be appointed in respect of any of the subcontract packages listed or, in the case of architectural Subcontractors the requirements of which are set out in Schedule 22.4 *Architectural Specification*, referred to in Appendix A (Critical Plant systems/component list) or Appendix B (Nominated supplier list) in Schedule 7 *Subcontracting* or where the value of the subcontract is equal to or more than three million, five hundred thousand pounds (£3,500,000), shall be appointed using a form of subcontract that is to be approved in advance by the Purchaser in accordance with Sub-clause 9.2.1.~~

9.9.2 Within six (6) days after the execution by both parties and dating of the subcontract appointing a:

(a) Subcontractor required to provide a collateral warranty in accordance with Sub-clause 9.9.3; or

(b) any Subcontractor appointed directly by the Contractor,

the Contractor shall supply a complete and certified copy of the relevant subcontract to the Purchaser provided that any commercially sensitive or confidential information such as that relating to pricing may be redacted.

9.9.3 Subject to Sub-clause 9.9.4, the Contractor has and shall use reasonable endeavours to ensure that:

(a) each Subcontractor appointed in respect of a subcontract package listed in the table in Appendix C in Schedule 7 *Subcontracting* as at the Effective Date; or

(b) any other Subcontractor with a material design responsibility appointed in connection with any Variation to the Works or any new works instructed under a Variation Order after the Effective Date that the Purchaser may determine (acting reasonably),

forthwith upon (and, in any event, within twenty eight (28) days of) the later of:

(c) the execution by both parties and dating of its subcontract; or

(d) a request from the Purchaser and the provision of the engrossed documents,

executes and delivers a deed of collateral warranty in favour of the Purchaser and any other Beneficiary in the form of the appropriate draft contained in Appendix 6, mutatis mutandis (subject to such amendments as the Purchaser may request or approve acting reasonably), or such other form as the Purchaser shall have approved.

9.9.4 The Purchaser reserves the right to request a legal opinion in a form to be approved in advance by the Purchaser (acting reasonably) confirming the enforceability of a collateral warranty to be provided by a Key Subcontractor in favour of the Purchaser or the Operator. If the Purchaser requests a legal opinion in relation to a collateral warranty to be provided:

(a) to a Beneficiary other than the Purchaser or the Operator; and/or

(b) by any Subcontractors who are not Key Subcontractors,

the Contractor shall be entitled to claim an addition to the Contract Price for the cost of procuring the legal opinion in accordance with Clause 19. For the avoidance of doubt, if the Purchaser requires a legal opinion to be provided in respect of any Subcontractor referred to in Sub-clause 9.9.3(b) the Contractor shall not be entitled to claim an addition to the Contract Price under Clause 19 to the extent that the Contractor has already been compensated for the cost of the legal opinion in connection with the Variation in accordance with Clause 18. Where a legal opinion is requested in addition to a collateral warranty, the Contractor shall use reasonable endeavours to ensure that any such Key Subcontractor or other Subcontractor from whom a legal opinion is required delivers an executed deed of collateral warranty and an executed legal opinion in the approved form within eight (8) weeks of the Purchaser's request to do so.

9.9.5 If the Contractor is in breach of Sub-clauses 9.9.1, 9.9.2. 9.9.3 and/or 9.9.4 then the Purchaser shall be entitled to give the Contractor written Notice specifying the breach. If such breach is not rectified by the Contractor within fourteen (14) days after service of such Notice then the Purchaser shall be entitled to withhold a sum equal to five per cent (5%) of the amount applied for by the Contractor in respect of work carried out under the subcontract or subcontracts to which the default(s) relate(s) until such breach is rectified."

Clause 10 Nominated Subcontractors

10.1 After the words "the Contractor shall" on line 3 **insert** ", once the proposed form of subcontract has been ~~approved by~~been submitted to the Purchaser for review and comment in accordance with Sub-clause 9.2.1,".

10.7 **Delete** the words "payment to a nominated Subcontractor has" on line 1 and **insert** "sums in respect of a nominated Subcontractor have been paid to the Contractor by the Purchaser and any such sums are due and undisputed under the nominated Subcontractor's subcontract but have".

Clause 11 The Project Manager

11.1(d) After the words "make a judgment" on line 2, **insert** the words "or determination".

At the end of the clause **insert** the following new sentence "Where the Project Manager so exercises his discretion, makes a judgment or determination or forms an opinion he shall communicate to the Contractor his reasons for doing so."

Clause 13A Early Warning Notices

Insert the following new Clause 13A before Clause 13:

13A.1 The Contractor and the Project Manager shall give each other early warning by notifying the other as soon as either becomes aware of any matter which could:

(a) increase the Contract Price;

(b) delay the progress or the completion of the Works; or

(c) impair the performance of the Plant or Works once in use.

The Project Manager or the Contractor may give an early warning by notifying the other of any other matter which could increase the Contractor's total Cost. The Project Manager shall maintain an Early Warning Register and shall enter early warning matters in the Early Warning Register as and when they arise or are notified.

13A.2 The Project Manager shall prepare a first Early Warning Register and issue it to the Contractor within one (1) week after the Effective Date. The Project Manager shall instruct the Contractor to attend a first early warning meeting within two (2) weeks of the Effective Date. Later early warning meetings shall be held if either the Project Manager or Contractor instructs the other to attend an early warning meeting and, in any event, no less frequently than monthly for the duration of the Works. The Project Manager or Contractor may instruct other people to attend an early warning meeting if the other agrees.

13A.3 At an early warning meeting, those who attend shall co-operate in order to:

(a) make and consider proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced;

(b) seek solutions that will bring advantage to all those who would otherwise be adversely affected;

(c) decide on the actions that will be taken and who, in accordance with the Contract, will take them;

(d) decide which matters can be removed from the Early Warning Register; and

(e) review actions recorded in the Early Warning Register and decide if different actions need to be taken and who, in accordance with the Contract, shall be required to take them.

13A.4 The Project Manager shall revise the Early Warning Register to record the decisions made at each early warning meeting and shall issue the revised Early Warning Register to the Contractor within one (1) week of each early warning meeting. If a decision made at an early warning meeting requires the Project Manager to instruct a Variation under Clause 16, the Project Manager shall instruct the Variation at the same time that it issues the revised Early Warning Register to the Contractor."

Clause 13 – Times of completion and Approved Programme

13.2 **Delete** this Sub-clause and **insert** "Not used". **Insert** the following new Sub-clause 13.2A:

"13.2A

13.2A.1 "The Contractor shall submit a first programme to the Project Manager for approval within the period stated in Schedule 11 *Times of completion*. The Contractor shall show on each programme submitted to the Project Manager for approval:

(a) the dates on which the Contractor intends to commence the Works, the order and any intended key dates for the Works including the dates by which it requires further information and documentation to be provided by the Purchaser;

(b) the dates on which the Contractor intends to perform its obligations under the Contract including the critical path for the programme and the dates on which it intends to complete construction of the Works;

(c) the order and timing of and the logical linkages between the operations which the Contractor plans to carry out in order to perform the Works;

(d) the order and timing of the work of the Purchaser and other third parties on or around the Site as last agreed with them by the Contractor;

(e) the dates when the Contractor plans to complete work in order to allow the Purchaser and other third parties do their work;

(f) provisions for

– float or buffers (as more specifically detailed in Schedule 2 *Documentation*);

– health and safety requirements; and

– the procedures set out in the Contract,

(g) the dates when, in order to perform the Works in accordance with the Approved Programme, the Contractor will need:

– access to a ~~parts~~part of the Site if access has not already been granted;

– approvals;

– Materials and other things to be provided by the Purchaser

– further documentation or other information or other action from the Purchaser; and

– information from other third parties in relation to the Works,

(h) for each element of the Works, a statement of how the Contractor plans to do the work identifying the predecessor and successor elements of the Works, any other dependencies and the principal equipment and other resources which will be used; and

(i) other information which Schedule 2 *Documentation* ~~and Schedule 11 *Times of completion* require~~requires the Contractor to show on a programme.

.2 Within two (2) weeks of the Contractor submitting a programme (including any revised programme) for approval, the Project Manager shall notify the Contractor of its approval of the programme or the reasons for not approving it. The Project Manager may refuse to approve a programme if:

(a) the Contractor's plans as set out in the programme are not practicable;

(b) it does not show the information which the Contract requires;

(c) it does not represent the Contractor's plans properly or realistically; or

(d) it does not comply with the requirements of Schedule 2 *Documentation* ~~and Schedule 11 *Times of completion*~~.

If the Project Manager does not notify the Contractor of its approval or non-approval of the programme (or any subsequent revised programme) within one (1) week of the submission, the Contractor may notify the Project Manager of that failure. If the failure continues for a further one (1) week after the Contractor's notification, the Project Manager shall be deemed to have approved the Contractor's programme. Where the Project Manager approves the programme or, by failing to respond, is deemed to have approved the Contractor's programme, it shall become the Approved Programme.

.3 The Contractor shall use reasonable endeavours to perform its obligations under the Contract in accordance with the Approved Programme. The Contractor shall notify the Project Manager in advance to request a deviation from the Approved Programme. The Project Manager shall either approve or reject the Contractor's request. The Project Manager shall be entitled to reject the Contractor's request where such deviation would interfere with the Operator's planned activities in connection with the operation and maintenance of the energy from waste facility at the EcoPark which have been notified to the Contractor in the Site Working Group Meetings referred to in the Construction Management Plan, a copy of which is located in Schedule 22.8 *Purchaser Policies and Protocols*.

.4 Notwithstanding Sub-clause 13.4, the Contractor shall submit a ~~revised~~draft programme update to the Project Manager for ~~acceptance~~review and comment at monthly intervals from the Effective Date until the issue of the Take Over Certificate. ~~Draft revised programmes shall be submitted~~The Parties acknowledge that the draft programme updates are Documentation and that the Contractor shall submit draft programme updates to the Project Manager for ~~comment no later than seven (7) days before the last Friday in each calendar month and the Project Manager shall notify the Contractor of any comments it may have by no later than 5.00pm on the Tuesday before the last Friday in each calendar month. The Contractor shall submit its revised programme, accounting for any comments received from the Project Manager, to the Project Manager~~approval in accordance with Sub-clause 21.2 by midday on the ~~Thursday before the last~~first Friday in each calendar month. The Contractor shall show on each ~~revised~~draft programme update:

(a) the information specified and required in paragraph 6.4 of Schedule 2 *Documentation;*

(~~a~~b) the actual progress achieved on each operation and its effect upon the timing of the remaining work;

(~~b~~c) how the Contractor plans to deal with any delays and to correct notified Defects in the Works; and

(~~c~~d) any other changes which the Contractor proposes to make to the Approved Programme."

~~If the Project Manager approves the revised programme or, by failing to respond in accordance with the provisions of Sub-clause 13.2A.2, is deemed to have approved the Contractor's revised programme, it shall become the Approved Programme."~~

13.3 **Delete** the second sentence and **insert** "The details to be provided shall follow the requirements of the template personnel qualification table set out in section 2 of Schedule 8 *Contractor's named personnel*."

13.4 **Delete** the words "If at any time progress" up to and including "that it will fall behind" and **insert**:

"If:

(a) at any time progress falls behind the Approved Programme, or it becomes clear it will fall behind; or

(b) based on the Contractor's programme update submitted in accordance with Sub-clause 13.2A.4 and/or other information available to the Project Manager it becomes reasonably apparent to the Project Manager that the Approved Programme:

(i) is no longer practicable;

(ii) is no longer in compliance with the Contract; or

(iii) does not represent the Contractor's plans for the Works realistically or practically."

Insert the following new sentence before the final sentence in the Sub-clause:

"The Project Manager may additionally at any time instruct the Contractor to revise the Approved Programme and re-submit it for the Project Manager's approval provided that the Project Manager shall not exercise this additional right more than once in any three month period."

~~13.4~~ **Insert** the words ", or it is deemed to be approved in accordance with Sub-clause 13.2A.2," after the words "revised programme" on the final line.

13.6 **Delete** the words "for good reason" on line 4 and **insert** "for not being compliant with the requirements of Sub-clause 13.2A".

Clause 14 – Delay

14.1 In line 3 after "as soon as possible" **insert** "(and in any event within twenty (20) Business Days)". At the end of the sentence **insert** "Compliance with this time limit by the Contractor shall be a condition precedent to any right the Contractor may otherwise have to an extension to any date or period specified in the Contract under this Clause 14."

14.2(a) After the words "of Force Majeure", **insert** "(provided that in either case (with the exception of the events listed in Sub-clause 14.6(e)), the delay to the progress of the Works has not been caused or contributed to by any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor Related Party in carrying out the Works)".

Insert the following at the end of the Sub-clause: "and provided that the Contractor has complied with its obligations in Sub-clause 14.1".

14.2(c) **Delete** the "and" at the end of the Sub-clause.

14.2(d) At the end of the Sub-clause, **delete** the full stop and **insert** "; and" and the following new Sub-clause:

14.2(e) whether the Contractor issued an early warning under Clause 13.A in relation to the matter causing the delay. If the Contractor did not issue an early warning in relation to the matter causing the delay and the Project Manager determines that an experienced contractor could have given an early warning, the Project Manager shall assess the extension as if an early warning had been issued."

14.4(a) **Delete** the words "to which Sub-clause 6.2. 6.3 or 7.3 applies" and **insert** "to which Sub-clause 6.2, 6.3, 7.3 or 7.5 applies".

14.4(b) After the words "other than a Variation ordered by reason of the Contractor's default" **insert** "or the order of an Opportunity Variation or the order of a Variation in connection with a Derogation".

~~14.4(b) at~~At the end of the Sub-clause **insert** "or any deemed Variation under Sub-clause 21.13 unless the exception set out in the final paragraph of Sub-clause 21.13 entitling the

Contractor to claim an extension of time or any addition to the Contract Price applies". The Contractor shall only be entitled to an extension of time in connection with a follow up instruction under the Contract further to Variation 75 requiring the Contractor to carry out the procurement and construction work in connection with the designs captured by Variation 75 where that instruction is ordered after 9 April 2027".

14.4(g) **Delete** the full stop at the end of the Sub-clause and **insert** "; or

14.4(h) any works or services carried out at any time by other contractors appointed on behalf of the Purchaser provided the Contractor has taken all reasonable steps to co-operate with the contractor in question and co-ordinate the Works with those of that contractor; or

14.4(i) compliance by the Contractor with:

(i) the terms of any new Third Party Agreement or any existing Third Party Agreement (including any amended existing Third Party Agreement), copies of which (or the relevant extract or extracts thereof) are furnished to the Contractor on or after the date of the Contractor's tender as stated in the Agreement; and/or

(ii) any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site and where information relating to the same is provided to the Contractor after the date of the Contractor's tender as stated in the Agreement; or

14.4.(j) compliance by the Contractor with the terms of any new, updated or amended:

(i) Relevant Policies, or

(ii) Operator's site rules for the EcoPark,

copies of which are furnished to the Contractor after the date of the Contractor's tender as stated in the Agreement; or

14.4(k) any impediment, prevention or default attributable to the Purchaser, or any Purchaser Related Party or the Operator or an Operator Related Party, save to the extent that such party is acting in accordance with the Purchaser's rights under and in accordance with the Contract; or

14.4(l) any other event referred to in the Contract as being a ground for an extension of time (including, without limitation, those referred to in Sub-clause 22.9); or

14.4(m) the occurrence of a Coronavirus Event. For the avoidance of doubt, the Parties agree that the Contractor shall not be granted an extension of time or an addition to the Contract Price based solely on the existence of the Coronavirus; or

14.4(n) the occurrence of Protester Action (other than as a result of industrial action which affects only the employees of the Contractor or its Subcontractors or in respect of matters which relate specifically to the Contractor or its Subcontractors and which do not relate to the Contract or the ERF to be constructed pursuant to the Contract) which delays or disrupts the Works~~; or~~.

14.4(o) ~~the occurrence of one or more of the NAECI related circumstances as specified in Sub-clause 28.6A~~not used."

14.6(d) After "epidemic" **insert** "(classified as such by the United Kingdom government but excluding the Coronavirus, the existence of which is acknowledged by the Parties at the Effective Date)".

14.6(e) After "fire" **insert** "explosion, escape of water from any water tank, apparatus or pipe".

After "or natural physical disaster" **insert** "including (without limitation) lightning, or aircraft and other aerial devices or articles dropped therefrom".

14.6(f) **Delete** "exceptionally severe weather conditions" and **insert** "Exceptionally Severe Weather Conditions".

~~14.6(h) At the end of the Sub-clause **insert** "and other than an industrial dispute in connection with NAECI and any of the In Scope NAECI Activities as specified in Sub-clause 28.6A".~~

14.9 **Delete** the Sub-clause and **insert** the following clauses in its place:

"14.9 If the performance of the Works is substantially prevented by Force Majeure for:

(a) a continuous period of ninety days (90 days) then either Party may by Notice to the other terminate the employment of the Contractor; or

(b) an aggregate period of one hundred and eighty (180) days then, subject to Sub-clause 14.10, either Party may by Notice to the other taking effect twenty (20) Business Days after the date of receipt (or deemed receipt pursuant to Sub-clause 1.8) of the Notice

(the "**Notice Period**"), terminate the employment of the Contractor (a "**Sub-clause 14.9(b) Termination Notice**").

In the event of such termination under either of Sub-clauses 14.9 (a) or (b) above, the rights and obligations of the Parties shall be the same as if the Purchaser had issued a Notice of Termination under Sub-clause 43.1, provided that the Contractor shall have no entitlement to lost Profit.

14.10 Where the Contractor serves a Sub-clause 14.9(b) Termination Notice then, if before expiry of the Notice Period, the Purchaser by Notice to the Contractor requires the Contractor to continue the performance of the Works (a "**Notice to Continue**"), the Sub-clause 14.9 (b) Termination Notice shall be of no effect. The Contractor shall not take any steps in anticipation of termination during the Notice Period including (without limitation) demobilising staff. If the Force Majeure abates during the Notice Period but prior to the issue of a Notice to Continue, the Contractor shall be entitled to suspend the performance of the Works until such time as the Purchaser issues a Notice to Continue or the expiry of the Notice Period.

Following the issue of a Notice to Continue, the Purchaser shall, subject to Clause 19, reimburse the Contractor for any reasonably incurred additional Cost caused by the event of Force Majeure (including without limitation, the cost of demobilising and remobilising Contractor staff, staff travel costs and costs incurred by the Contractor in maintaining adequate resources available for the Works as and when the event or events of Force Majeure cease) and incurred by the Contractor from the date of the Notice to Continue until the earlier of the date of termination by the Purchaser pursuant to Sub-clause 14.9(b) or the cessation of the event or events of Force Majeure. The Contractor shall be entitled to claim for the Costs referred to in this Sub-clause 14.10 on a monthly basis for the period in which the Force Majeure subsists. The Purchaser's right to terminate the Contract under Sub-clause 14.9(b) shall continue notwithstanding the issue of a Notice to Continue.

14.10A.1 If the performance of the Works continues to be substantially prevented by Force Majeure for:

(a) a continuous period of ninety (90) days; or

(b) an aggregate period of one hundred and eighty (180) days,

in each case measured from the date of the Notice to Continue, then the Contractor may by Notice to the Purchaser terminate the employment of the Contractor.

14.10A.2 In the event of termination under either of Sub-clauses 14.10A.1 (a) or (b) above, the rights and obligations of the Parties shall be the same as if the Purchaser had issued a Notice of Termination under Sub-clause 43.1, provided that the Contractor shall have no entitlement to lost Profit."

Clause 15 – Damages for Delay

15.1 **Delete** the words "complete the construction of the Plant or any Section or to do any other thing" and **insert** "achieve Take Over by the date which is six (6) months after the date set for Take Over". After "Schedule 11 (Times of Completion)" **insert** the words "(as extended in accordance with Sub clause 14.1)."

At the end of the Sub-clause **delete** the words "maximum (if any) stated in Schedule 12" and **insert** "Delay Liquidated Damages Cap".

Insert new Sub-clause 15.3:

"15.3 The Contractor confirms and agrees that the rates of Delay Liquidated Damages payable pursuant to this Clause 15 are a genuine pre-estimate of the loss that the Purchaser might suffer as a result of the failure of the Contractor to achieve Take Over by the date set for Take Over in accordance with Schedule 11 *Times of completion* (as extended in accordance with Sub clause 14.1). The Parties hereby agree that such Delay Liquidated Damages shall, subject to the Purchaser's right to terminate the Contract pursuant to Clause 44, be the Purchaser's sole and exclusive remedy for delay in relation to the Works."

Clause 15A – Bonus for early completion

Insert a new Clause 15A as follows:

"15A.1In the event that the Take Over Certificate is issued before the date set out in Schedule 11 *Times of completion* (as extended in accordance with Sub clause 14.1), the Purchaser shall, subject to Sub-clause 15A.2, pay the Contractor a bonus at the rate set out in Schedule 12 *Liquidated damages for delay* for each day from the date of the issue of the Take Over Certificate until the date for Take Over set out in Schedule 11 *Times of completion.*

15A.2 Notwithstanding the date that the Take Over Certificate is issued, the Contractor's entitlement to be paid a bonus and the Purchaser's obligation to pay a bonus under Sub-clause 15A.1 shall be limited to a maximum period of thirty (30) days."

Clause 16 - Variations

16.1 After the words "to the method of working" in line 2, **insert** the words "(other than a change to the Contractor's Social Value Proposals in accordance with section 1.13 of Schedule 25 *Social Value*)".

16.2 At the end of the Sub-clause **insert** the following "The Project Manager shall not order any Variation after the expiry of the Defects Liability Period and subject to this Clause 16 the Contractor shall perform any Variations ordered between Take Over and the expiry of the Defects Liability Period before the expiry of the Defects Liability Period. The Project Manager shall not artificially subdivide a Variation ordered after Take Over into multiple Variation Orders with the aim of circumventing the provisions in Sub-clause 18.1C to ensure that all Variations issued after Take Over are valued at or below one percent (1%) of the Contract Price."

16.6(b) In line 2, **delete** "five percent" and **insert** "two and a half percent (2.5%)".

16.6(c) At the end of the Sub-clause before the semi-colon **insert** "or which would, in the Contractor's opinion, represent an unacceptable risk to the health, safety and wellbeing of any of the Contractor's or their Subcontractors' workers, employees, Apprentices or Training Placement trainees working on Site".

16.7 After the words "The Contractor shall" on line 1 **insert** the words ", other than in the case of a deemed Variation under Sub-clause 21.13 unless the exception set out in the final paragraph of Sub-clause 21.13 entitling the Contractor to claim an extension of time or any addition to the Contract Price applies,".

Insert new Clause 16.10 as follows:

16.10 "If it shall be necessary to obtain or amend any of the Consents in respect of any Variation (whether pursuant to a Variation proposed by the Contractor or otherwise) then the Contractor shall assist the Purchaser in obtaining any Purchaser Consents and shall use all reasonable endeavours to obtain any Contractor Consents. The Purchaser shall (where its co-operation

is required) use reasonable endeavours to assist and co-operate in obtaining any such Contractor Consent."

Clause 16A – Opportunity Variations

Insert a new Clause 16A as follows:

"16A.1 The Parties shall use all reasonable and commercially prudent endeavours to develop and study each Opportunity Variation as soon as reasonably practicable with a view to the Contractor then producing an Opportunity Variation Assessment that satisfies the relevant Implementation Criteria for the particular Opportunity Variation. Any Opportunity Variations must be instructed by no later than six (6) months after the date of Settlement and Variation Agreement (No.3) to this Contract. Where any Opportunity Variation has not been instructed by the date falling six (6) months after the date of Settlement and Variation Agreement (No.3) to this Contract, the relevant Opportunity Variation shall be deemed to have been rejected and no further work will be undertaken on the Opportunity Variation.

16A.2 Subject to Sub-clause 16A.3, where the Implementation Criteria for a particular Opportunity Variation is satisfied, the Project Manager shall, within ten (10) Business Days of such Implementation Criteria being satisfied, order that Opportunity Variation as a Variation.

16A.3 The Project Manager shall not be required to instruct any Opportunity Variation as a Variation, notwithstanding that the relevant Implementation Criteria are satisfied, where the Opportunity Variation:

(a) does not comply with Legislation and/or would result in the Works not complying with Legislation; and/or

(b) would reduce the performance standards, guarantees and/or functionality of the Plant under the Contract.

16A.4 The Contractor shall prepare and submit to the Project Manager an Opportunity Variation Assessment demonstrating that the relevant Opportunity Variation has been sufficiently developed and assessed to enable the Project Manager to determine whether each applicable Implementation Criterion has been satisfied. The Opportunity Variation Assessment shall be developed in accordance with and contain the information specified in section 2 of Schedule 4 to Settlement and Variation Agreement (No.3) to this Contract. The Project Manager shall not be required to confirm that the Implementation Criteria for a particular Opportunity Variation has been satisfied and the Project Manager's ten (10)

Business Day review period referred to in Sub-clause 16A.5 shall not commence, unless the Contractor's Opportunity Variation Assessment contains all the information required in section 2 of Schedule 4 to Settlement and Variation Agreement (No.3) to this Contract.

16A.5 The Project Manager shall, within ten (10) Business Days of receipt of the relevant Opportunity Variation Assessment which complies with the requirements of section 2 of Schedule 4 to Settlement and Variation Agreement (No.3) to this Contract issued under Sub-clause 16A.4, confirm in writing to the Contractor whether it agrees that the relevant Implementation Criteria have been satisfied. Where the Project Manager determines that the relevant Opportunity Variation Assessment does not meet the requirements of Part 2 of Schedule 4 to Settlement and Variation Agreement (No.3) to this Contract, it shall set out those aspects of the Implementation Criteria that are yet to be satisfied and/or confirm to the Contractor what further supporting information and evidence are to be provided to demonstrate their satisfaction. The Contractor shall rectify any outstanding Implementation Criteria and/or provide such further supporting information and evidence in an updated Opportunity Variation Assessment and resubmit them to the Project Manager in accordance with Sub-clause 16A.4 and the time period for the Project Manager's review shall recommence on receipt.

16A.6 If the Project Manager fails to respond within the ten (10) Business Day period referred to in Sub-Clause 16A.5 or, where the Project Manager does respond, and the Contractor disagrees with the Project Manager's decision, the Contractor may may refer the matter for determination in accordance with Clause 46.

16A.7 Where the Project Manager orders an Opportunity Variation, the Project Manager may award an extension of time in connection with any Key Events or other dates set out in Schedule 11*Times of completion.* As set out in Sub-clause 14.4 (b), the Project Manager's order of an Opportunity Variation, shall not entitle the Contractor to any other extension of time under the Contract including, without limitation, any extension to the date set for Take Over in Schedule 11 *Times of completion* (as extended in accordance with Sub-clause 14.1)."

Clause 17 – Variations proposed by the Contractor

17.1 At the end of the first sentence **insert** "in accordance with the requirements of section 9.2 of Schedule 2 *Documentation*."

17.3 On the second line after "he shall so order" **insert** the words "(in accordance with section 9.2 of Schedule 2 *Documentation*)".

Clause 17A – Derogations

Insert a new Clause 17A as follows:

"17A.1 The Contractor shall, within sixty (60) days of the date of Settlement and Variation Agreement (No.3) to this Contract, submit to the Project Manager separate proposals for each Derogation to be formally ordered as a Variation under the Contract. Where the Contractor fails to submit separate proposals for each Derogation within such sixty (60) day period, the Project Manager may withhold a sum equal to one (1%) of the total value of interim payments following the expiry of that sixty (60) day period and such sum shall not be payable to the Contractor until such time as separate proposals for each Derogation have been submitted to the Project Manager in accordance with this Sub-clause 17A.1.

17A.2 The Project Manager shall review each proposal for a Derogation to be formally ordered as a Variation and within twenty (20) Business Days following receipt shall:

(a) where the Contractor's proposed Variation is consistent with the relevant Derogation as described in the Derogation List and is sufficiently detailed to enable the Project Manager to order the Variation, formally order the Variation; or

(b) where the Project Manager considers that a Variation proposal is not sufficiently detailed to enable it to order the Variation, notify the Contractor in writing of the respects in which further detail is required.

If the Project Manager determines that further detail is required, the Contractor shall thereafter resubmit the Variation proposal with the additional detail required, and the twenty (20) Business Day period shall run afresh from the Project Manager's receipt of the resubmitted Variation proposal."

Clause 18 – Valuation of Variations

18.1 After "Schedule 18 *Valuation of Variations and claims*" on line 1, **insert** "and to Sub-clauses 18.1A, 18.1B ~~and~~, 18.1C and 18.1D".

At the end of the Sub-clause **insert** "In deciding any such amount, the Project Manager shall consider whether the Contractor issued an early warning under Clause 13.A in relation to the Variation. If the Contractor did not issue an early warning in relation to the Variation and the

Project Manager determines that an experienced contractor could have given an early warning, the Project Manager shall assess the sum as if an early warning had been issued."

Insert the following new Sub-clauses 18.1A, 18.1B ~~and~~, 18.1C and 18.1D:

"18.1A The Parties agree that any reduction in the Contract Price as a result of a Variation which arises:

(a) as a consequence of a relaxation of the working restrictions in the Construction Leadership Council Site Operating Procedures in response to the Coronavirus being those applicable at the date of the Contractor's tender as stated in the Agreement; or

(b) where the Parties agree that the Construction Leadership Council Site Operating Procedures need no longer apply,

shall be shared in equal 50:50 proportions between the Purchaser and the Contractor.

18.1B Where the value of a Variation ordered after Take Over is between zero percent (0%) and one percent (1%) (inclusive) of the Contract Price, the amount to be added or deducted from the Contract Price shall be such amount as the Project Manager and the Contractor may agree. In the absence of such agreement, the Project Manager shall as soon as practicable decide such amount which shall in all circumstances be reasonable having regard to Schedule 18 *Valuation of Variations and claims*.

18.1C Where the value of a Variation ordered after Take Over is more than one percent (1%) of the Contract Price, the amount to be added or deducted from the Contract Price shall be such amount as the Project Manager and the Contractor may agree. In the absence of such agreement, the amount shall be the additional Cost the Contractor properly incurs plus Profit, where applicable, in accordance with Sub-clause 18.3.

18.1D The Parties agree that where the Variation is an Opportunity Variation or a Variation ordered in connection with a Derogation:

(a) There shall be no adjustment to the Contract Price; and

(b) Where the Purchaser incurs any Opportunity Direct Cost as a consequence of the Opportunity Variation, the Parties shall agree the quantum of the Opportunity Direct Cost (which, in the absence of agreement shall be determined by the Project Manager) and the value of the Opportunity Direct Cost shall be deducted from the final Milestone in

Schedule 19 *Terms of payment*. Where the value of the agreed quantum of the Opportunity Direct Cost in connection with all Opportunity Variations ordered under this Contract exceeds the value of the final Milestone in Schedule 19 *Terms of payment*, the outstanding balance of Opportunity Direct Cost in excess of the final Milestone amount shall be payable by the Contractor to the Purchaser as a debt."

18.3 **Delete** the words "Where so agreed" from the start of the Sub-clause and **insert**:

"Where the Project Manager and the Contractor are unable to agree a lump sum figure for a Variation and the Project Manager is then unable to decide on a lump sum figure for the Variation in accordance with Sub-clauses 18.1 and 18.1B, subject to the provisions of the table in section 1.2 of Schedule 18 *Valuation of Variations and claims,*".

Clause 19 – Claims

19.1 **Delete** "fourteen days" on lines 2 and 3 and **insert** "twenty (20) Business Days".

19.2 At the end of the Sub-clause **insert** "Full compliance by the Contractor with all of its obligations under Sub-clauses 19.1 and 19.2 shall be a condition precedent to the Contractor's right to claim any addition to the Contract Price under this Clause 19."

19.3 At the end of the Sub-clause **insert** "In deciding any such amount, the Project Manager shall consider whether the Contractor issued an early warning under Clause 13.A in relation to the particular claim. If the Contractor did not issue an early warning in relation to the claim and the Project Manager determines that an experienced contractor could have given an early warning, the Project Manager shall assess the sum as if an early warning had been issued."

19.4 **Delete** "Where" from the start of the Sub-clause and **insert** "Subject to Schedule 18 *Valuation of Variations and claims* which lists certain Variations and claims that shall only entitle the Contractor to Cost, where".

At the end of the Sub-clause **insert** "or as a result of any negligence or breach of statutory duty on behalf of the Contractor or any Contractor Related Party."

Clause 20 – Confidentiality and FOIA

20.1 In line 1 after "shall mean" **insert** "Confidential Information including".

20.3 At the end of the Sub-clause **insert**:

"provided always that this Sub-clause 20.3 shall not apply to any Confidential Information that the Purchaser or any Purchaser Related Party or the Contractor or any Contractor Related Party is required to disclose:

20.3.1 by Legislation, a competent legal authority or tribunal; and/or

20.3.2 by Sub-clause 20.3A; and/or

20.3.3 under a contract with another entity (where such entity is required to disclose the relevant information by Legislation (including, but not limited to, the FOIA and/or the Environmental Information Regulations)).

"Either Party shall be entitled to disclose Confidential Information to its professional advisers, legal advisers and insurance advisers."

Insert a new Sub-clause 20.3A as follows:

"20.3A The Contractor acknowledges that the Purchaser is subject to the requirements of FOIA, the Environmental Information Regulations and the Local Government Transparency Code 2015 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation or regulations and the Contractor agrees to:

(a) assist and co-operate with the Purchaser to enable it to comply with its disclosure obligations under that legislation;

(b) transfer to the Purchaser any requests for information made pursuant to FOIA and/or the Environmental Information Regulations received by the Contractor as soon as practicable and in any event within three (3) Business Days of receiving any such request for information;

(c) provide the Purchaser with a copy of all information in the Contractor's possession or power in the form that the Purchaser requires for the reasons set out in this Sub-clause 20.3A within six (6) days of any request from the Purchaser (or within such other period as it may specify acting reasonably);

(d) provide all necessary assistance that is reasonably requested by the Purchaser to respond to any request for information made pursuant to FOIA and/or the Environmental Information Regulations within the time for compliance set out in FOIA and/or the Environmental Information Regulations;

(e) not respond directly to any request for information made pursuant to FOIA and/or the Environmental Information Regulations unless expressly authorised to do so by the Purchaser; and

(f) the Contractor further acknowledges that the Purchaser may, acting in accordance with the codes of practice issued and revised from time to time under both Section 45 of FOIA and Regulation 16 of the Environmental Information Regulations, be obliged by that legislation to disclose information without consulting with the Contractor or its Subcontractors."

Clause 21 – Documentation

21.2 **Delete** the first paragraph and **insert** "The Contractor shall submit to the Project Manager for his approval the Documentation to be provided under Schedule 2 *Documentation* in accordance with the requirements of that Schedule 2 *Documentation* and at the time or times specified in Schedule 11 *Times of completion* or in the Approved Programme."

In the second paragraph, **delete** the references to "fourteen days" on lines 1 and 4 and replace with "ten (10) Business Days (or such other period of time as may be specified in Schedule 2 *Documentation*)".

21.7 **Delete** the Clause and **replace** with the following:

"In addition to the Documentation to be submitted for approval by the Project Manager under Sub-clause 21.2, Schedule 2 may include descriptions of other Documentation which is to be provided to the Project Manager, under the heading 'Documentation for review', 'Documentation for review and comment' or 'Documentation for information only'. The Contractor shall submit such Documentation to the Project Manager in accordance with the requirements of and in the form specified in Schedule 2 *Documentation*."

21.9 **Insert** the following at the end of the Sub-clause:

"The Parties agree that the Contractor shall be entitled to submit red marked as-built documents in accordance with Schedule 2 *Documentation* prior to Take Over. The Contractor shall submit clean as-built documents as soon as reasonably practicable and in any event within three (3) months following Take Over."

21.12 **Delete** the words "Documentation or information provided by the Purchaser or the Project Manager" and **insert** "documentation or information contained in:

(a) the quantities for contaminated soil which are set out in the two tables entitled "From Start on Site to Piling mat completion - Quantities considered for Contaminated soil material" and "From Piling Works - Quantities considered for Contaminated soil material" in section 1.1 of Schedule 22.2.9 *Earthworks;* or

(b) Schedule 22.9 *Site Conditions, Permits and Constraints* including (without limitation) the appendices attached thereto which includes the ground conditions surveys and borehole location plan and records set out in Appendix 2 of Schedule 22.9 *Site Conditions, Permits and Constraints* and which are to be provided by the Purchaser in Schedule 3 *Responsibilities of Purchaser*".

After "Clause 19 (Claims)" on line six, **insert** the words "and, if applicable, an extension of time in accordance with Clause 14 pursuant to the Contractor's rights under Sub-clause 6.2."

21.13 **Delete** and **insert**:

"The Contractor shall correct any ambiguity, inconsistency, discrepancy, inadequacy or conflict (a "**Discrepancy**") within the Specification and the Schedules including any documentation provided by the Purchaser (including but not limited to, any design) and any Documentation provided by the Contractor. Where a Discrepancy:

(a) is dealt with in the Documentation provided by the Contractor and approved by the Project Manager or the Contractor's accepted design, then the Documentation provided by the Contractor and approved by the Project Manager or the Contractor's accepted design prevails and the Project Manager shall be deemed to have instructed a Variation for such Discrepancy to be dealt with in the manner set out in the Contractor's approved Documentation or the Contractor's accepted design (as the case may be); or

(b) is not dealt with in the Documentation provided by the Contractor and approved by the Project Manager or the Contractor's accepted design, the Contractor shall notify the Project Manager in accordance with the requirements of section 9.1 of Schedule 2 *Documentation* setting out the Contractor's proposed amendment to remove the Discrepancy (subject always to compliance with the Legislation) and the Project Manager shall decide how the Discrepancy should be dealt with or otherwise may accept the Contractor's proposed amendment. Any instruction by the Project Manager shall be deemed to be a Variation issued by the Contractor,

in either case, any such deemed Variation under this Sub-clause 21.13 shall not entitle the Contractor to any extension of time or any addition to the Contract Price in accordance with Clauses 14, 18 or 19 unless the Discrepancy is located within:

(c) the quantities for contaminated soil which are set out in the two tables entitled "From Start on Site to Piling mat completion - Quantities considered for Contaminated soil material" and "From Piling Works - Quantities considered for Contaminated soil material" in section 1.1 of Schedule 22.2.9 *Earthworks;* or

(d) Schedule 22.9 *Site Conditions, Permits and Constraints* including (without limitation) the appendices attached thereto or the documentation to be provided by the Purchaser in accordance with Schedule 22.9 *Site Conditions, Permits and Constraints,*

and the Contractor has not already been granted relief in accordance with Sub-clause 6.2 and/or Sub-clause 21.12."

For the avoidance of doubt, references in this Sub-clause 21.13 to "the Documentation provided by the Contractor and approved by the Project Manager or the Contractor's accepted design" shall only include any Documentation or reviewable Design Data that the Contractor is required to submit to the Project Manager for approval in accordance with Schedule 2 *Documentation* (and which has been so approved). It shall not include any Documentation or reviewable Design Data that the Contractor is required to submit to the Project Manager for "review" or "review and comment" in accordance with Schedule 2 *Documentation*."

21.14 **Delete** and **insert**:

"Provided that the Purchaser complies with Sub-clause 4.3 and submits a claim in accordance with Sub-clause 19.5, the Contractor shall reimburse to the Purchaser any cost which the Purchaser has incurred in reliance on any Documentation which pursuant to Sub-clause 21.12 the Contractor is to correct at their own cost. The liability of the Contractor to make such reimbursements shall not exceed in aggregate two per cent (2%) of the Contract Price."

Clause 22– Inspection and pre-installation tests

22.1 After "The Project Manager" on line 1, **insert** "(and any persons authorised by the Project Manager)".

Delete the last sentence and **insert**:

"The Project Manager shall give reasonable notice of the access and facilities he requires including the proposed date(s) on which such access is required. The Contractor shall within three (3) Business Days of the receipt of such notice:

(a) confirm that such access and facilities will be available on the date(s) requested; or

(b) object (acting reasonably) to providing such access and facilities on the date(s) requested and propose an alternative date(s) when such access and facilities will be made available.

The Contractor shall secure such access and facilities on the agreed date(s) both at those premises under his own control and those under the control of his Subcontractors."

22.4 **Delete** the clause and **insert**:

"The Project Manager may only require any additional pre-installation test not described in Schedule 13 *Pre-installation tests and procedures* to be conducted for the purposes of deciding whether any work or Materials are in accordance with the Contract in the following limited circumstances:

(a) where the Works are varied by a Variation in which case the additional pre-installation tests shall only apply to any part or parts of the Works affected by the Variation;

(b) in connection with new works which are instructed as a Variation in which case the additional pre-installation tests shall only apply to the new works and to any part or parts of the Works affected by the Variation; or

(c) where the pre-installation tests specified in Schedule 13 *Pre-installation tests and procedures* are required to be varied or additional pre-installation tests are required in order to comply with a change in Legislation.

Where the Project Manager instructs any such additional or varied pre-installation test(s), the Project Manager shall order the test(s) by means of a Variation Order in sufficient time to enable the Contractor to conduct such test without impeding the performance of his other obligations under the Contract. Sub-clauses 22.2 and 22.3 shall apply to any such test(s). For the avoidance of doubt, the Contractor's entitlement to any extension of time under Sub-clause 14 and/or addition to the Contract Price under Sub-clause 18 in connection with any varied or additional pre-installation test(s) required under Sub-clause 24.4(c) shall be subject to the provisions of Sub-clause 7.3."

22.9 **Insert** a new Sub-clause:

"22.9 The Project Manager may, at any time, prior to the issue of any Acceptance Certificate require the Contractor to open up any part of the Works for inspection if they believe, based on (i) actual data from the Control Management System (as described in Appendix 9 of the Contract) or (ii) any relevant information included in the Documentation or (iii) documentary evidence submitted by the Operator, that such part of the Works has not been carried out in accordance with the Contract, provided always that if such inspection reveals no failure by the Contractor to comply with its obligations under the Contract:

(a) all reasonable and proper costs and expenses incurred by the Contractor in opening up and reinstating the relevant part of the Works shall be reimbursed by the Purchaser in accordance with Clause 19 and the Contractor shall be entitled to such an extension of time in relation to any date or period specified in the Contract for completion of their obligations as the Project Manager decides (acting reasonably) in accordance with Clause 14 is appropriate to reflect any delay caused by such opening-up and reinstating; and

(b) for the purposes of the Availability Tests, the Plant shall be deemed to be "available" for the duration of any such opening-up and reinstating.

Where the opening up and inspection reveals a Defect, the Contractor shall rectify the Defect at its own cost and, to the extent relevant, where the opening up and inspection affects the availability of the Plant and the Availability Tests:

(c) and the Defect requires urgent action because it would affect safety or the integrity of the Plant, the affected Availability Tests shall be deemed to have been suspended until the earlier of:

(i) the rectification of the Defect and the completion of the opening up and reinstatement; or

(ii) the rectification of the Defect to such an extent that the Defect no longer affects safety or the integrity of the Plant at which point the operation of the Plant or the relevant part of the Works shall be resumed notwithstanding that a Defect may remain. Following the resumption of operations, the Contractor shall finish rectifying the Defect in accordance with the requirements of Clause 37.

The period of time of such suspension will be added to the end of the corresponding Availability Test Period of the Plant so that the effective duration is maintained at eight thousand, seven hundred and sixty (8760) hours; and

(d) for any Defect which does not affect safety or the integrity of the Plant, the Plant shall be deemed to be "available" for the duration of any opening up and reinstatement.

The Project Manager shall, in determining when to require the Contractor to open up and inspect parts of the Works during the Availability Tests, take account of:

(e) the requirement to maximise availability and the next scheduled outage for planned maintenance; and

(f) the urgency in rectifying any Defect the Project Manager believes to be present."

Clause 23 – The Site

23.1 At the beginning of the Sub-clause **delete** the word "The" and **insert** "Subject to Sub-clause 23.1A, the".

Insert the following new Sub-clause:

23.1A The Parties acknowledge and agree that:

(a) the Purchaser shall give the Contractor access to and possession of the Site in two (2) phases and that the first access and possession will be given to the Eastern Area of the Site, including the Laydown Area, as more particularly described in Schedule 22.9 *Site Conditions, Permits and Constraints*;

(b) the Laydown Area has been and is being occupied by another contractor in respect of the EcoPark South Construction Works which the Purchaser has procured at the EcoPark in connection with the NLHPP Programme. The Laydown Area will remain in the control of the contractor for the EcoPark South Construction Works until 30 September 2022;

(c) the Purchaser will procure the handover of the Laydown Area from the contractor for the EcoPark South Construction Works back to the Purchaser before then handing over the Laydown Area to the Contractor on 1 October 2022;

(d) the Purchaser shall grant access to and use of the Laydown Area by the Contractor from the Effective Date until 30 September 2022 in accordance with Appendix 21 of Schedule 22.9 *Site Conditions, Permits and Constraints*; and

(e) where the Contractor is given access to and use of the Laydown Area in accordance with Sub-clause 23.1A(d) the Contractor shall not have full control of the Laydown Area until such time as the Laydown Area is handed over to the Contractor by the Purchaser. Following the handover of the Laydown Area to the Contractor, the Contractor shall on the Purchaser's request grant access to and use of the Laydown Area by the Purchaser, the Operator and any other contractors (including, but not limited to, the contractor for the EcoPark South Construction Works) appointed by the Purchaser in connection with the NLHPP Programme. Details of such access, use and welfare requirements of the Purchaser, the Operator and the Purchaser's other contractors are set out in Appendix 21 of Schedule 22.9 *Site Conditions, Permits and Constraints*.

For the avoidance of doubt, in the event that the Purchaser intends to change the provisions for access and use of the Laydown Area referred to in Sub-clause 23.1A(d) and/or the requirements of the Purchaser, the Operator and the Purchaser's other contractors to access and use the Laydown Area referred to in Sub-clause 23.1A(e) (including, without limitation,

those set out in Appendix 21 of Schedule 22.9 *Site Conditions, Permits and Constraints)*, the Project Manager shall order a Variation in accordance with Clause 16 and the Contractor shall be entitled to claim an extension of time under Clause 14 and/or addition to the Contract Price under Clauses 18 and/or 19 (as applicable) in accordance with the Contract."

23.4 At the end of this Sub-clause, **insert** "The Contractor shall use reasonable endeavours not, to the extent that it is, at the date of the Contractor's tender as stated in the Agreement, aware of any works or services being carried out by other contractors (including the Operator), interfere with or impede the progress of the same and shall provide every reasonable facility (including access to and egress from the Site) for such persons to execute their work or services and shall observe all reasonable requirements of the same in relation to the carrying out of such works or services. The Contractor is aware of and acknowledges the activities performed by the Operator in connection with the operation and maintenance of the energy from waste facility at the EcoPark. The Contractor shall in performing any of its obligations under the Contract outside of the Site but within the EcoPark do so in accordance with the Operator's site rules and shall otherwise perform the Works in accordance with the procedures and interface obligations with the Operator and other contractors that are detailed in the Construction Management Plan, a copy of which is set out in Schedule 22.8 *Purchaser Policies and Protocols*."

23.4A **Insert** a new Sub-clause 23.4A as follows:

"The Contractor shall not and shall ensure that Contractor Related Parties shall not initiate contact with any Statutory Bodies in connection with the Works without obtaining the Purchaser's prior agreement. The Contractor shall report to the Purchaser and shall ensure that Contractor Related Parties report to the Contractor any direct communications received from any Statutory Bodies in connection with the Works. The Contractor shall request approval from the Purchaser to initiate contact with or to respond to Statutory Bodies and shall provide their reasons for doing so including the details of any information or request they wish to provide to or receive from the relevant Statutory Bodies. The Purchaser may refuse to grant such approval where it believes that the communication is not necessary or relevant to the Contractor performing the Works or if the Purchaser is better placed to liaise with the Statutory Bodies in connection with the Purchaser Consents. In any event, the Purchaser shall notify the Contractor of its approval or non-approval within fourteen (14) days of the Contractor's notification."

23.5 On the penultimate line, **delete** the word "significantly", **insert** the word "planned" before "performance" and after the words "his obligations" **insert** the words "in accordance with the Approved Programme".

23.6 At the end of Sub-clause 23.6 **insert** the words "The Contractor shall take all reasonable steps to prevent unauthorised access by protest groups and to prevent disruption to the Works caused by Protester Action."

23.7 At the end of the Sub-clause **insert**: "The Contractor shall comply and shall ensure that its Subcontractors comply with the Operator's site rules when outside the Site but within the boundaries of the EcoPark. Where the Contractor is provided with new, amended or updated Operator's site rules after the date of the Contractor's tender as stated in the Agreement, the Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19 and an extension of time in accordance with Clause 14."

Insert the following new Sub-clauses:

23.8 "The Contractor shall, at all times, use reasonable endeavours to prevent any actionable nuisance or other interference with the rights of any person, including, without limitation, any landowner, tenant or occupier on neighbouring land or land adjacent to the Site (including the Operator) or any statutory undertaker of which the Contractor is or ought reasonably to have been aware arising out of the carrying out of the Works. The Contractor shall be responsible for and shall indemnify the Purchaser from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing their obligations under this Sub-clause 23.8.

23.9 Without prejudice to the obligations of the Contractor under Sub-clause 23.8, the Contractor shall at all times ensure that there is no trespass by the Contractor or Contractor Related Parties (including without limitation the oversailing of tower, crane, jibs) on or over any adjoining or neighbouring property arising out or in the course of or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including without limitation the occupiers of adjoining or neighbouring property and members of the public).

23.10 The execution of the work by other contractors referred to in Sub-clauses 23.4 shall not be deemed to be or treated as taking possession of part or parts of the Works (or any Section of it) or the Site (or any part of it) under the Contract by the Purchaser.

23.11 During the carrying out of the Works the Contractor shall or shall procure that the Contractor and all Contractor Related Parties shall:

23.11.1 not use or occupy or permit the Site or any land upon which the Works are being undertaken to be used or occupied for any purpose other than the carrying out of the Works;

23.11.2 not deposit or manufacture or permit to be deposited or manufactured on the Site or any land upon which the Works are being undertaken any materials, equipment or vehicles (including caravans or campervans) which are not required for carrying out of the Works; and

23.11.3 at the Contractor's sole cost transport all surplus materials arising from the Works and arrange for their disposal at suitably licensed facilities and the Contractor shall ensure that such materials will not cause of give rise to pollution of the environment as defined by Section 29(3) Environmental Protection Act 1990.

23.12 If at any time the Contractor requires access to or any interest in any land which does not form part of the Site or any additional rights beyond those which the Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor."

Clause 24 – Delivery to Site

24.3 **Insert** the words ", subject to the remainder of this Sub-clause 24.3," after the words "he shall" on line 2.

Insert the following sentence at the end of the Sub-clause:

"The Contractor shall not be required to obtain the Project Manager's consent under this Sub-clause 24.3 in relation to deliveries to be delivered to the Site ahead of the time specified in the Approved Programme where such deliveries can access the Site via the main entrance and as such do not need to be delivered via the secondary access as specified in section 4.6 (DCO Limits, Access Points) of the Construction Management Plan, a copy of which is located in Schedule 22.8 *Purchaser Policies and Protocols*. The Project Manager's consent shall be required in relation to deliveries to be delivered to the Site ahead of the time specified in the Approved Programme which are required to be delivered to Site via the secondary entrance

as specified in section 4.6 (DCO Limits, Access Points) of the Construction Management Plan."

Clause 25 – Ownership of Materials

25.1 **Delete** the clause and **insert** the following:

"The ownership of Materials shall pass to the Purchaser at whichever is the earlier of the following:

(a) upon delivery to the Site; or

(b) upon delivery to the Off-Site Storage Location; or

(c) when the Contractor becomes entitled to the final payment in respect of such Materials and such payment has been made.

the Contractor shall insert such provisions Subcontracts as will cause this to happen."

25.1A **Insert** a new Sub-clause as follows:

.1 The Contractor shall not be entitled to any sums in respect of Materials (which for the purposes of this Sub-clause 25.1A does not include any Materials subject to an Order which are provided for under Sub-clause 25.5) unless and until:

(a) (if the Materials are on the Site) title has been demonstrated to have passed to the Purchaser to the reasonable satisfaction of the Project Manager; or

(b) (if the Materials are not on the Site) the following conditions are satisfied:

(i) the Contractor has complied with any criteria for payment set out in Schedule 19 *Terms of payment;*

(ii) the Materials are securely stored and have been marked by the seller as being the property of the Purchaser;

(iii) steps have been taken to protect the Materials to the reasonable satisfaction of the Project Manager in accordance with Sub-clause 25.2; and

(iv) the Project Manager reasonably believes that the Materials can be included in the Works without further work to the Materials."

Insert the following new Sub-clauses:

25.4 "The Contractor acknowledges and agrees that, subject to Sub-clause 7.5, they are responsible for any and all administrations costs, taxes, duties and/or other costs associated with Materials (including any costs associated with the Materials being transported to or from the Site). Where the Contractor is in breach of its obligations under this Clause the Purchaser may pay any such administrations costs, taxes, duties and/or other costs associated with Materials and the Contractor shall be responsible for any such costs reasonably incurred by the Purchaser in doing so, provided that the Purchaser complies with Sub-clause 4.3 and submits a claim in accordance with Sub-clause 19.5.

25.5 Whenever the Contractor wishes to be paid for any Order pursuant to Schedule 19 *Terms of Payment*, but not for other Milestones which are not Orders, it shall be a condition precedent to the Contractor's entitlement to payment for such Order that the following conditions have been fulfilled:

(a) the Order is in every respect in accordance with this Contract and covers the complete manufacture of the relevant Milestone item(s) to which the Order relates;

(b) the Contractor has complied with any criteria for payment set out in Schedule 19 *Terms of payment*;

(c) the Contractor has provided the Purchaser with proof or has procured for the Purchaser proof that the items or Materials subject to such Order shall at all times until such items are transported from their place of manufacture to the Site (during which time they shall be insured under the marine cargo insurance to be maintained in accordance with Sub-clause 31.1A.3) be insured by the Contractor and/or the manufacturer against any loss or damage howsoever arising and the Contractor has provided or procured from any manufacturer evidence of the existence of such insurance policy; and

(d) the progress of the Order can be inspected at any time upon reasonable notice by the Purchaser and/or the Project Manager and the Contractor shall procure entry for such persons into any such premises.

The Contractor shall be fully responsible to the Purchaser for any loss or damage to the subject matter of any Orders."

Clause 26 – Health, Safety and Environment

26.1 In line 7, **delete** "2007" and **insert** "2015 (and any associated guidance or code of practice published by the Health and Safety Executive)".

Insert a new Sub-clause 26.5A:

"26.5A Without prejudice to the Contractor's general responsibility for safety as set out in Sub-clause 26.1, the Contractor shall act as (and carry out all the duties of) principal contractor and principal designer under the CDM Regulations. The Contractor hereby warrants to the Purchaser that it has the necessary competence and has allowed in its price and the programme sufficient resources to comply with its obligations under the CDM Regulations and that it will apply such resources to comply with its obligations under this Sub-clause."

26.7 **Insert** the following at the start of the Sub-clause:

"The Contractor shall, to the extent it becomes aware of the same, notify the Project Manager of the escape or release of any Contamination during the performance of its obligations under the Contract."

Delete the references to "hazardous or polluting material" in paragraphs 1, 2 and 3 and in each case **replace** with "Contamination".

In the first paragraph, **delete** "The Contractor shall indemnify the Purchaser against" and **insert** "The Contractor shall, subject to the Purchaser complying with Sub-clause 4.3 and submitting a claim under Sub-clause 19.5, reimburse the Purchaser for".

In the second paragraph, **delete** the words "shall indemnify the Contractor against" and **insert** "shall, subject to Clause 19, reimburse the Contractor for".

Clause 28 – Site working conditions

Delete Sub-clauses 28.1, 28.2 and 28.3 and **insert** "Not used"

Insert the following new Sub-clauses after Sub-clause 28.5:

"28.6 The Parties acknowledge that the Purchaser has registered the Works as a potential NAECI Project with the NJC. Following the Effective Date, the Contractor shall negotiate an SPA to be entered into with the Unions which shall govern employment relations with employees and

workers of the Contractor and those of its Subcontractors employed in connection with the Works under the NAECI. The Contractor shall use all reasonable endeavours to ensure that the SPA has been successfully negotiated and entered into with the Unions before the Contractor is granted access to the Site. The Contractor shall ensure that the SPA shall comply with the requirements of the Code. The Contractor shall provide the Purchaser with a certified copy of the completed SPA once the same has been entered into. A failure to enter into the SPA shall be a material breach of the Contract.

28.6A The Parties acknowledge and agree ~~that, subject to the provisions of this Sub-clause 28.6A, the~~thatthe Contractor shall be deemed to have allowed for the time and cost implications of negotiating the SPA and of complying with the terms of the completed SPA in the performance of the Works. ~~The Contractor shall only be entitled to claim an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 19 in the following circumstances:~~

~~(a) in the event of any industrial dispute in connection with the In Scope NAECI Activities which directly results in a delay and/or increase in the cost of the Works; and/or~~

~~(b) in the event of any un-procedural actions of the Unions or actions of any employees or workers of the Contractor or their Subcontractors engaged or employed in relation to In Scope NAECI Activities (acting either under the direction of the Unions or independently) which directly results in a delay and/or increase in the cost of the Works; and/or~~

~~(c) where the Contractor's Productivity in the performance of the In Scope NAECI Activities falls to less than or equal to eighty percent (80%) of the Productivity Baseline in a one month period. Provided that the Contractor is able to demonstrate to the reasonable satisfaction of the Purchaser that such reduction in Productivity has been directly caused or contributed to by the fact that the In Scope NAECI Activities are governed by the requirements of NAECI and the SPA. The Contractor's entitlement to claim additional time under Clause 14 and/or an addition to the Contract Price under Clause 19 in respect of this limb (c) shall be limited to the proportion of the reduction in Productivity that the Contractor is able to demonstrate to the reasonable satisfaction of the Purchaser has been caused by the fact that the In Scope NAECI Activities are governed by the requirements of NAECI and the SPA,~~

~~provided further that, in all instances, the Contractor shall only be entitled to claim an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 19~~

~~to the extent that the Contractor has been found to have complied with the requirements of NAECI and the SPA under the dispute resolution procedures in the SPA.~~

~~The Parties shall, within two (2) months following the Effective Date, develop and agree a protocol in connection with any claim for an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 19 that the Contractor may make in accordance with limb (c) of this Sub-clause 28.6A. The protocol shall provide a framework setting out how any reduction in Productivity should be demonstrated and evidenced by the Contractor and assessed by the Purchaser.~~

~~Where the Parties are unable to agree on the terms of the protocol, the Purchaser shall (at the shared cost of the Parties) appoint an independent third party to determine the protocol to be followed by the Parties in connection with any claim for an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 19 that the Contractor may make in accordance with limb (c) of this Sub-clause 28.6A. The Purchaser shall, prior to any such appointment, notify the Contractor of the identity of the proposed independent third party for the Contractor's approval (such approval not to be unreasonably withheld or delayed). If the Contractor raises reasonable grounds for withholding approval, the Purchaser shall propose an alternative independent third party to the Contractor for approval and this process shall be repeated until such time as the Contractor has approved (on each occasion such approval not to be unreasonably withheld or delayed) an independent third party.~~

~~The Parties shall thereafter comply with the requirements of any protocol (whether agreed between themselves or determined by an independent third party) in connection with any claim for an extension of time under Clause 14 and/or an addition to the Contract Price under Clause 19 that the Contractor may make in accordance with limb (c) of this Sub-clause 28.6A~~

28.7 The Contractor shall provide a copy of its Employment Relations Plan to the Project Manager for approval within six (6) weeks after the Effective Date. The Project Manager may reject the Employment Relations Plan if it does not, as a minimum benchmark, achieve the requirements of the Code. If the Project Manager does not approve the Contractor's Employment Relations Plan the Contractor shall amend and resubmit its plan for approval until such time as the Project Manager approves the Employment Relations Plan.

28.7A Following receipt of the completed SPA the Project Manager may, to the extent that the Employment Relations Plan does not meet the requirements of the SPA, instruct the Contractor to resubmit an updated Employment Relations Plan for approval. If the Project

Manager does not approve the Contractor's updated Employment Relations Plan the Contractor shall amend and resubmit its plan for approval until such time as the Project Manager approves the updated Employment Relations Plan.

28.8 The Contractor shall comply with the requirements of the current approved Employment Relations Plan in the performance of the Works. The Contractor shall notify the Project Manager in advance of any circumstances which may require the Contractor to deviate from the current approved Employment Relations Plan. The Project Manager shall notify the Contractor of their approval or rejection of the deviation within fourteen (14) days of the Contractor's notice. If the Project Manager does not respond within fourteen (14) days of the Contractor's notice the deviation shall be deemed to have been approved.

28.9 The Contractor shall ensure that and shall procure that its Subcontractors ensure that each of its employees and any workers including temporary or agency employees and workers, Apprentices or Training Placement trainees working primarily at the Site for the Contractor or its Subcontractors are paid an hourly Gross Wage (or equivalent of an hourly Gross Wage) that is no less than the then prevailing London Living Wage.

28.10 The Contractor shall report to the Purchaser on its compliance with the current approved Employment Relations Plan and its obligations in relation to the London Living Wage under Sub-clause 28.9 in accordance with its reporting requirements which are set out in Schedule 2 *Documentation*. The Contractor shall cooperate, and shall procure the cooperation of its Subcontractors, with the Purchaser in any audit the Purchaser may reasonably carry out on its compliance with the current approved Employment Relations Plan and the payment of London Living Wage under the Contract.

28.11 Where the Project Manager or the Purchaser determines on the basis of any audit referred to in Sub-clause 28.10 or on the basis of information provided by the Contractor (including a lack thereof) that the Contractor is not complying with the current approved Employment Relations Plan or its obligations in relation to the London Living Wage the Project Manager shall instruct the Contractor to propose a remediation plan in order to ensure that it complies with its obligations under Sub-clauses 28.8 and 28.9. The Contractor shall provide a remediation plan to the Project Manager for approval within fourteen (14) days of the Project Manager's instruction. The Project Manager may refuse to accept the Contractor's remediation plan if it will not allow the Contractor to comply with its obligations under Sub-clauses 28.8 and 28.9. The Contractor shall not put the remediation plan into action until the

Project Manager has approved it. The Contractor shall comply with the requirements of any remediation plan which has been approved by the Project Manager.

28.12 The Contractor shall eliminate all forms of discrimination in its employment practices, ensuring that in performing the Works no person is discriminated against whether directly or indirectly or by way of victimisation or harassment in relation to sex, religion, race, disability, colour, nationality, ethnic or national origins, marital status, maternity, paternity, gender reassignment, age, part time or temporary status and sexual orientation in accordance with an established single equality scheme (as amended from time to time) and shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof (the "**Discrimination Acts**") together with any guidance or codes of practice issued by the relevant government departments concerning the Discrimination Acts. The Contractor shall provide a copy of its equal opportunities policy to the Purchaser upon request. The Contractor shall follow all codes of good practice relevant to the elimination of discrimination including those produced by the Equality and Human Rights Commission and its successors. In the event of any judicial or other official finding of unlawful discrimination by the Contractor, the Contractor shall take all reasonable steps to prevent a repetition of the unlawful discrimination and shall provide details of those steps to the Purchaser upon request.

28.13 The Contractor shall not commit and shall procure that its Subcontractors do not commit any breach of the Employment Relations 1999 Act (Blacklist) Regulations 2010 or Section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Data Protection Act 2018 in connection with any blacklisting activities.

28.14 The Contractor acknowledges the Purchaser's intention to keep members of the public informed of the progress of the Works as part of the wider NLHPP Programme. In assisting the Purchaser in this aim, the Contractor shall at all times comply with its obligations in Schedule 24 *Stakeholder Management and Collaboration*. The Contractor consents to the Purchaser operating CCTV cameras on Site and to streaming footage of the Works on its website as a means of updating members of the public. The Purchaser shall film and stream the Works on its website in such a way as to ensure that individual members of the Contractor's workforce are not identifiable."

Clause 28A – Social Value

Insert a new Clause 28A as follows:

"28A.1 As required by the DCO issued in connection with the NLHPP Programme the Purchaser has agreed an Employment, Skills and Training Strategy Document with the London Borough of Enfield. The Purchaser has provided the Contractor with a copy of this approved Employment, Skills and Training Strategy Document.

28A.2 The Contractor acknowledges that the Purchaser is required under the DCO issued in connection with the NLHPP Programme and the Employment, Skills and Training Strategy Document to provide or to procure the provision of Apprenticeships over the course of the programme of works comprising the NLHPP Programme.

28A.3 During the Works, the Contractor shall provide Apprenticeships for a minimum of ninety (90) new Apprentices in accordance with the requirements of Schedule 25 *Social Value*.

28A.4 The Contractor shall comply with the reporting and other obligations of the "Contractor" which are further detailed in the Employment, Skills and Training Strategy Document in connection with its appointed Apprentices and shall co-operate with the Purchaser in connection with its monitoring and reporting obligations under that document.

28A.5 The Contractor acknowledges that the Purchaser is required under the DCO issued in connection with the NLHPP Programme and the Employment, Skills and Training Strategy Document to provide Training Placements. Over the course of the Works, the Contractor shall provide Training Placements to a total of one hundred and eighty (180) trainees under the Contract in accordance with and as explicitly set out in the requirements of Schedule 25 *Social Value*.

28A.6 In addition to its obligations in connection with the provision of Apprenticeships and Training Placements, the Contractor shall in performing the Works comply with the other social value obligations which are set out in Schedule 25 *Social Value* and in accordance with the Contractor's Social Value Proposals contained within Schedule 23 *Contractor's Proposal*. As more specifically described in Schedule 25 *Social Value*, the Purchaser has created a Social Value Incentivisation Model to financially reward the Contractor or deduct amounts from the Contractor depending on the Contractor's performance against the Purchaser's Social Value Requirements and the Contractor's Social Value Proposals. Within fifteen (15) Business Days of the issue of the Take Over Certificate the Project Manager shall assess the sums to be paid to or permanently deducted from the Contractor. Any such sums shall be added to or deducted from the next payment to be made under the Contract."

Clause 29 - Meetings

29.1 **Insert** the words "the Purchaser, the Operator and" after "including" on the final line.

29.2 In line 5, after "return it to the Project Manager within a further seven days" **insert** "If the Contractor fails to return a signed copy of the minutes within the specified time then the minutes shall be deemed to have been accepted by the Contractor."

In line 5, replace "a further seven days" with "fourteen (14) days from the date of issue".

Clause 30 – Care of the Works

30.6 After the words "Temporary Works" on line 2, **insert** "from the commencement of the Works until after the Plant has been Taken Over by the Purchaser but before the issue of the applicable Final Certificate".

30.6(a) In limb (i) after "Deductible" **insert** "in relation to the insurance referred to in Sub-clause 31.1".

In limb (i) at the end of the Sub-clause **insert** "and any policy excess in accordance with Sub-clause 31.8".

In limb (ii) after "Deductible" **insert** "in relation to the insurance referred to in Sub-clause 31.1".

30.6 At the end of the Sub-clause **insert** "The Contractor's liability for Latent Defects shall be as specified in Sub-clause 37.13."

30.13 **Delete** "or, if no such sum is stated, to £5,000,000 (five million pounds)"

Clause 31 – Insurance

31.1 On line 1, **insert** the word "composite" before "policy or policies". **Delete** the words "in the joint names of" and **insert** "with the following co-insured parties each for their respective rights and interests:".

On line 2, **delete** the words "and Subcontractors" and **insert** ", Subcontractors and any company that has provided a parent company guarantee in accordance with Sub-clause 3.19 (to the extent they have an insurable interest)".

On line 3, after "all risks" **insert** "including (without limitation) terrorism".

In lines 4 and 5 **delete** the words "(or such other sum as may have been agreed)" and **insert** "(or such other first loss limit based on an estimated maximum loss as may have been agreed between the Purchaser and the Contractor following advice from the Purchaser's insurers)".

On line 1 of the third paragraph, **insert** the word "Purchaser," before "Project Manager". At the end of the paragraph, after "Subcontractors", **insert** "together with attendant non-vitiation and notice of cancellation provisions between all co-insured parties".

After the words "commencement of the Works" on line 1 of the fourth paragraph, **insert** the words "or the date of the Agreement (whichever is earlier)".

31.1 **Insert** the following new Sub-clause 31.1A:

"31.1A.1 The Purchaser shall provide and maintain a composite policy or policies of third party liability insurance with the following co-insured parties each for their respective rights and interests: the Purchaser, Project Manager, Contractor, Subcontractors and any company that has provided a parent company guarantee in accordance with Sub-clause 3.19 (to the extent they have an insurable interest), covering liability for death, illness or injury to persons (other than employees of the insured) and loss of or damage to property in the sum of fifty million pounds (£50,000,000) in respect of any one occurrence without limit to the number of occurrences in any policy period, but fifty million pounds (£50,000,000) any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy). The insurance shall contain a waiver of all rights of subrogation against the Purchaser, Project Manager, the Contractor and Subcontractors together with attendant non-vitiation and notice of cancellation provisions between all co-insured parties.

31.1A.2 The Purchaser shall provide and maintain a composite policy or policies of contractor's pollution liability insurance with the following co-insured parties each for their respective rights and interests: the Purchaser, Project Manager, Contractor, Subcontractors and any company that has provided a parent company guarantee in accordance with Sub-clause 3.19 (to the extent they have an insurable interest), covering liability in respect of Contamination being either:

(a) Contamination in existence at the Effective Date which is disturbed, aggravated or released by the Contractor's performance of the Works; or

(b) new Contamination caused in the performance of the Works.

The Purchaser shall maintain such insurance in the sum of twenty-five million pounds (£25,000,000) in respect of any one occurrence and twenty-five million pounds (£25,000,000) in the aggregate during the policy period (policy period not to exceed three (3) years)). The insurance shall contain a waiver of all rights of subrogation against the Purchaser, Project Manager, the Contractor and Subcontractors together with attendant non-vitiation and notice of cancellation provisions between all co-insured parties.

31.1A.3 The Purchaser shall provide and maintain a composite policy or policies of marine cargo insurance with the following co-insured parties each for their respective rights and interests: the Purchaser, Project Manager, Contractor, Subcontractors and any company that has provided a parent company guarantee in accordance with Sub-clause 3.19 (to the extent they have an insurable interest), in respect of physical loss damage or destruction to Contractor's equipment or Materials intended for the Works in connection with their transit to the Site by sea or air. The insurance shall contain a waiver of all rights of subrogation against the Purchaser, Project Manager, the Contractor and Subcontractors together with attendant non-vitiation and notice of cancellation provisions between all co-insured parties.

31.1A.4 The Purchaser shall ensure that each of the insurance policies referred to in Sub-clause 31.1A.1 and Sub-clause 31.1A.2 shall become effective on the commencement of the Works or the date of the Agreement (whichever is earlier) and shall remain in place until the issue of the last Final Certificate. The Purchaser shall ensure that the insurance policy referred to in Sub-clause 31.1A.3 is in place for each shipment of Contractor's equipment or Materials intended for the Works on an open shipment basis. Unless otherwise agreed, the Purchaser, as policy holder, shall represent the insured parties in all matters relating to the insurance policies to be maintained under this Sub-clause 31.1A.

31.1A.5 The Parties acknowledge that the Purchaser shall provide and maintain the insurance policies referred to in Sub-clause 31.1 and this Sub-clause 31.1A under an Owner Coordinated Insurance Programme ("**OCIP**")."

31.2 **Delete** this Sub-clause and **insert** "Not used".

31.3 In the first paragraph **delete** the words "the commencement of the Works or the date of the Agreement (whichever is earlier)" and **insert** "the commencement of "Start on Site – Phase 1 Eastern Area" as the same is described in Schedule 11 *Times of completion*".

At the end of the first paragraph, **insert** "The Contractor shall provide policies for such insurance to the Project Manager for review and approval no later than four (4) weeks prior to the date set for "Start on Site – Phase 1 Eastern Area" in accordance with Schedule 11 *Times of completion* (as extended in accordance with Sub-clause 14.1)."

Insert the following new paragraph at the end of the sub-clause "The Contractor shall take out and maintain a policy or policies of insurance covering loss or damage to any equipment, materials, tools or things brought onto the Site by the Contractor prior to the start of the commencement of Start on Site – Phase 1 Eastern Area. Such insurance shall become effective on the date of this Agreement and remain in place until the commencement of "Start on Site – Phase 1 Eastern Area" as the same is described in Schedule 11 *Times of completion."*

31.4 **Delete** this Sub-clause and **insert** "Not used".

31.5 After the words "Employer's liability insurance" **delete** the words "in accordance with Legislation" and **insert** "The Contractor shall maintain Employer's Liability insurance at a minimum level of ten million pounds (£10,000,000) any one occurrence inclusive of costs, the number of occurrences being unlimited during the annual period of insurance. The Contractor shall take out and maintain any other insurances required by Legislation including, but not limited to, motor third party (including passenger) liability insurance covering all vehicles registered for road use owned by, hired to or otherwise the responsibility of, the Contractor intended for use in connection with the Works at such level as is required by Legislation."

31.8 **Insert** a new Sub-clause 31.8 as follows:

"31.8 If any loss or damage suffered in connection with the insurances the Purchaser is to provide and maintain under the Contract arises from the acts or omissions of the Contractor or any Contractor Related Party the Contractor shall be liable to the Purchaser for the cost of the Deductible and any policy excess in respect of any claims made by the Purchaser under the terms of the relevant insurance policy."

Clause 32 – Completion of Construction

32.2 In line 2, after "Project Manager" **insert** "and the Purchaser".

Delete the last sentence and **insert**:

"The Project Manager may only require the Plant to comply with any criteria which are not included in Schedule 14 *Criteria for completion of construction* in the following limited circumstances:

(a) where the Works are varied by a Variation in which case the new criteria shall only apply to any part or parts of the Works affected by the Variation;

(b) in connection with new works which are instructed as a Variation in which case the new criteria shall only apply to the new works and to any part or parts of the Works affected by the Variation; or

(c) where the criteria specified in Schedule 14 *Criteria for completion of construction* are required to be varied or additional criteria are required in order to comply with a change in Legislation.

Where the Project Manager requires compliance with any such additional or varied criteria, the Project Manager shall order a Variation. For the avoidance of doubt, the Contractor's entitlement to any extension of time under Clause 14 and/or addition to the Contract Price under Clause 18 in connection with compliance with any varied or additional criteria required under Sub-clause 32.2(c) shall be subject to the provisions of Sub-clause 7.3."

32.3 In line 4, after "Project Manager" **insert** ", the Purchaser and the Operator".

32.8 In line 3 after "Sub-clause 32.6" **insert** "(and in any event within ten (10) Business Days of signing the last Construction Completion Certificate in accordance with Sub-clause 32.6)".

Insert the following new sentence at the end of the Sub-clause "If the Project Manager does not issue a Construction Completion Certificate for the Plant within such ten (10) Business Day period, the Construction Completion Certificate for the Plant shall be deemed to have been issued."

Clause 33 – Taking over

33.2 In line 5, after "Project Manager" **insert** "and the Purchaser".

Delete the last sentence and **insert**:

"The Project Manager may only require the Contractor to perform additional or varied take over procedures which are not specified in Schedule 15 *Take Over procedures* in the following limited circumstances:

(a) where the Works are varied by a Variation in which case the additional or varied take over procedures shall only apply to any part or parts of the Works affected by the Variation;

(b) in connection with new works which are instructed as a Variation in which case the additional or varied take over procedures shall only apply to the new works or to any part or parts of the Works affected by the Variation; or

(c) where the take over procedures specified in Schedule 15 *Take Over procedures* are required to be varied or additional take over procedures are required in order to comply with a change in Legislation.

Where the Project Manager instructs any such additional or varied take over procedure(s), the Project Manager shall order the take over procedure(s) as a Variation. For the avoidance of doubt, the Contractor's entitlement to any extension of time under Clause 14 and/or addition to the Contract Price under Clause 18 in connection with any varied or additional take over procedure(s) required under Sub-clause 33.2(c) shall be subject to the provisions of Sub-clause 7.3."

33.3 In lines 4 and 5, after both references to "Project Manager" **insert** ", the Purchaser and the Operator".

33.6 In line 4 after "the Project Manager" **insert** "the Purchaser, and the Operator".

33.7 In line 3 after the words "successfully carried out" **insert** "and approved or accepted by the Project Manager or Purchaser (as appropriate) as specified in Schedule 15 *Take Over procedures*".

In line 4, after the words "shall issue", **insert** "within ten (10) Business Days".

In line 5, after the word "Purchaser" **insert** the words "and the Operator".

At the end of the first paragraph, **insert** the following new sentence "If the Project Manager does not issue a Take Over Certificate within such ten (10) Business Day period, the Take

Over Certificate shall be deemed to have been issued."

In the second paragraph after the words "a list of minor items to be completed by the Contractor" **insert** "(provided that anything that affects safety or the reliable operation of the Plant shall not be considered to be a "minor item", together with timeframes by which those minor items must be rectified)".

33.8 After the words "reasonably possible" on line 1 **insert** "(and in any event within the timeframes set out in the list of minor items to be rectified appended to the Take Over Certificate)".

33.10 **Delete** the final sentence in the first paragraph and **insert** the following:

"The Project Manager may, during the Defects Liability Period, issue a notice instructing the Contractor to carry out any omitted take over procedure. The Contractor shall within ten (10) Business Days of receipt of the Project Manager's notice:

(a) carry out any such omitted take over procedure; or

(b) raise reasonable objections to the requirement to carry out any omitted take over procedure.

Where the Contractor carries out any omitted take over procedure and does not successfully pass the procedure, the Contractor shall, to the extent the failed procedure amounts to a Defect, rectify the Defect in accordance with its obligations under Clause 37.

If the Contractor raises a reasonable objection under Sub-clause 33.10(b) the Project Manager shall issue a notice confirming that the instruction to carry out such omitted take over procedure is withdrawn. For the purposes of the Availability Tests, the Plant shall be deemed to be "available" for the duration of the performance of any omitted take over procedures that are performed under this Sub-clause 33.10."

33.12 **Delete** and **insert** "Not used".

Insert new Sub-clauses as follows:

"33.14 Prior to commencing any of the tests referred to in Schedule 15 *Take Over procedures*, the Contractor shall provide to the Purchaser a copy of any Contractor Consents that are required to be issued in order that such tests can be successfully undertaken.

33.15 If any of the tests in Schedule 15 *Take Over procedures* require ERF Contract Waste for such tests to be successfully undertaken, the Contractor shall in any notice issued pursuant to Sub-clause 33.2 confirm to the Purchaser the waste delivery requirements for any such ERF Contract Waste (including, without limitation, the levels, timings and periods of deliveries of such ERF Contract Waste). Provided that the Contractor has complied with the foregoing notice requirement, the Purchaser shall procure that the levels, timings and periods of deliveries of ERF Contract Waste are made by the Operator in accordance with the waste delivery requirements confirmed in the relevant notice.

33.16 The Contractor shall be responsible for handling and processing the ERF Contract Waste for the tests as more particularly detailed in Schedule 15 *Take Over procedures* (including any repeat tests pursuant to Clause 33 of the Contract). The Purchaser shall be responsible for the disposal of any Residue (as the same is detailed in Schedule 15 *Take Over procedures*). The Contractor shall reimburse to the Purchaser the costs the Purchaser incurs in effecting such disposal of any Residue provided that the Purchaser complies with Sub-clause 4.3 and submits a claim in accordance with Sub-clause 19.5.

33.17 The Purchaser may refuse to Take Over the Works if the requirements for Take Over in Schedule 15 *Take Over procedures* have not been achieved or if:

(a) the Take Over procedures reveal Defects which are such that the Defects or the non-rectification of them will prevent the intended purpose of the Works; or

(b) the Take Over procedures reveal that the necessary Documentation stipulated in the Contract for assessing whether the Works are in accordance with the Contract does not exist; or

(c) the Contractor has not provided the Purchaser the retention bond and any associated legal opinion in accordance with Sub-clause 3.20."

Clause 34 - Site clearance

34.4 In line 4, after "stored" **insert** ", adequately insured (in the opinion of the Project Manager, acting reasonably), labelled".

34.5 In the second paragraph after "The proceeds of such disposal", **insert** the words "(less any reasonable costs incurred by the Contractor in arranging such disposal)".

Clause 35 – Performance Tests

35.2A **Insert** a new Sub-clause as follows:

"During the Defects Liability Period the Contractor shall comply with its obligations in connection with Defects which are set out in Clause 37 and its obligations in connection with the performance tests which are set out in section 9 of Schedule 15 *Take Over procedures* without any addition to the Contract Price*."*

35.3 At the end of the first sentence, **insert** ", for the avoidance of doubt the Availability Tests do not form part of the performance tests".

Delete the second and third sentences and **insert**:

"The Project Manager may require the Contractor to perform additional or varied performance test(s) in the following limited circumstances:

(a) where the Works are varied by a Variation in which case the additional or varied performance test(s) shall only apply to any part or parts of the Works affected by the Variation;

(b) in connection with new works which are instructed as a Variation in which case the additional or varied performance test(s) shall only apply to the new works and to any part or parts of the Works affected by the Variation; or

(c) where the performance tests specified in Schedule 16 *Performance tests and procedures* are required to be varied or additional performance tests are required in order to comply with a change in Legislation.

Where the Project Manager instructs any such additional or varied performance test(s), the Project Manager shall order the test(s) as a Variation. For the avoidance of doubt, the Contractor's entitlement to any extension of time under Clause 14 and/or addition to the Contract Price under Clause 18 in connection with any varied or additional performance test(s) required under Sub-clause 35.3(c) shall be subject to the provisions of Sub-clause 7.3."

35.3A **Insert** the following new Sub-clause 35.3A:

35.3A "Prior to the commencement of the performance tests, the Purchaser shall (at the Purchaser's cost) appoint a recognised and authorised independent testing house to carry out the performance tests. The Purchaser shall, prior to any such appointment, notify the Contractor of the identity of the proposed independent testing house for the Contractor's approval (such approval not to be unreasonably withheld or delayed). If the Contractor raises reasonable grounds for withholding approval, the Purchaser shall propose an alternative independent testing house to the Contractor for approval and this process shall be repeated until such time as the Contractor has approved (on each occasion such approval not to be unreasonably withheld or delayed) an independent testing house. Any independent testing house that is approved by the Contractor and appointed by the Purchaser shall be the Independent Testing House."

35.4 In lines 3 and 4 of the final paragraph, **delete** the words "the Contractor shall not be entitled to an addition to the Contract Price" and **insert** "and if the Contractor incurs additional Cost as a consequence of such delay the Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19 on the proviso that the Contractor and the Purchaser shall share any Costs incurred as a consequence of such delay on a 50:50 basis."

35.5 In line 1 **delete** the words "the Purchaser" and **insert** "the Independent Testing House".

In line 2 after the first occurrence of the word "Contractor" **insert** the words ", the Purchaser and the Operator" and after the second occurrence of the word "Contractor" **insert** the words ", the Purchaser and/or the Operator"

In line 3 **insert** before the word "notify" the words "procure that the Independent Testing House shall".

In line 4 **delete** "his readiness" and **insert** "the Independent Testing House's readiness".

In lines 6 and 7, **delete** the words "the Purchaser" and **insert** "the Independent Testing House".

35.6 In line 3 of the second paragraph **insert** after the word "Purchaser", the words "and/or the Independent Testing House".

Insert the following new paragraph between the second and third paragraphs in this Sub-clause:

"If:

(a) any of the performance tests have not been or cannot be completed; and/or

(b) repeat performance tests are required,

because of a delay or a reason which is caused by or is the responsibility of the Contractor under the Contract, the Contractor shall be responsible for the costs of the new or repeat performance tests and shall not be entitled to any addition to the Contract Price."

In line 3 of the final paragraph **insert** after the word "Purchaser", the words ", the Independent Testing House"

Delete the final sentence in the final paragraph and **insert** "The Contractor shall be entitled to claim an addition to the Contract Price in accordance with Clause 19 on the proviso that the Contractor and the Purchaser shall share any Costs incurred as a consequence of such delay on a 50:50 basis."

35.8 In line 2, **insert** "shall procure that the Independent Testing House" before "shall perform".

35.11 In line 3 of the final paragraph, after the word "Purchaser" **insert** the words "(including the Independent Testing House)".

35.12 **Delete** the references to "liquidated damages" in lines 3 and 4 and in each case **insert**" "Performance Liquidated Damages".

Insert the following at the end of the clause "The Parties hereby agree that without prejudice to the Contractor's obligations under Clause 37 (Liability for Defects) and save as regards the Purchaser's right to terminate the Contract pursuant to Clause 44, the Purchaser's entitlement to Performance Liquidated Damages under Schedule 17 *Performance guarantees and damages for failure* shall be the Purchaser's sole and exclusive remedy for the performance shortfall referred to in this Sub-clause 35.12 where the results of the performance tests are within any limit for the application of Performance Liquidated Damages specified in Schedule 17 *Performance guarantees and damages for failure*."

35.17 **Delete** the words "an Acceptance Certificate in accordance with Clause 36 (Acceptance)" and **insert** "a Performance Test Certificate in accordance with Sub-clause 35.17A".

Insert the following new Sub-clause 35.17A:

"35.17A When the Plant has passed all the performance tests or otherwise Sub-clause 35.17 has been complied with, the Project Manager shall within ten (10) Business Days issue to the Contractor a certificate (a "**Performance Test Certificate**") with a copy to the Purchaser stating that:

(a) the Contractor has passed all of the performance tests; or

(b) that Sub-clause 35.17 has been complied with.

If the Project Manager does not issue the Performance Test Certificate within such ten (10) Business Day period, the Performance Test Certificate shall be deemed to have been issued."

Clause 35A – Availability Testing

35A **Insert** a new Clause 35A as follows:

"35A.1 The Availability Tests shall be carried out on the Plant in one or more (as required pursuant to this Clause 35A) Availability Test Periods during and, if required, after the Defects Liability Period and as specified in Schedule 17 *Performance guarantees and damages for failure*.

35A.1A Subject to the remaining provisions of this Sub-clause 35A.1A, the Availability Tests for the applicable Availability Guarantee(s) shall be suspended on the occurrence of an Exceptional Event, which is defined as any event occurring during the Availability Tests for which the Contractor is responsible in accordance with the Contract which, for a continuous period of seventy two (72) hours or more, results in a reduction of greater than fifteen percent (15%) of the nominal waste throughput and/or a reduction of greater than fifteen percent (15%) of the export of electricity at nominal load but which does not affect the long-term availability of the Plant. The Parties agree that:

(a) the Contractor may only notify the Project Manager of its intention to suspend the Availability Tests for any affected Availability Guarantee(s) due to an Exceptional Event on a maximum of three (3) occasions in each Availability Test Period;

(b) the Availability Tests for any affected Availability Guarantee(s) shall not be suspended for a period of more than two (2) months in the aggregate in each Availability Test Period notwithstanding that any Exceptional Event may still persist; and

(c) if a repaired or replaced item of plant or equipment which was the underlying cause of an Exceptional Event, suffers a repeated failure during the Availability Test Period, then this new failure shall not be deemed to be an Exceptional Event.

The Contractor shall notify the Project Manager of any Exceptional Event or of any occurrence that the Contractor reasonably suspects will become an Exceptional Event once the requisite seventy two (72) hour period has passed. The Contractor shall include in its notice to the Project Manager (or where the Contractor suspects an Exceptional Event, in a second notice to the Project Manager as soon as reasonably practicable after the discovery of the root cause that meets the conditions of an Exceptional Event) records detailing the occurrence and confirming that the requirements of an Exceptional Even have been met. Following the notification and the receipt of records confirming the occurrence of an Exceptional Event, the Project Manager shall notify the Contractor that the Availability Tests for any affected Availability Guarantee (s) shall, subject to limb (b) above, be deemed to have been suspended from the beginning of the Exceptional Event and shall be suspended until the earlier of:

(d) the cessation of the Exceptional Event; and

(e) the date by which the Availability Tests for any affected Availability Guarantee(s) have been suspended for a period of more than or equal to two (2) months in the aggregate in the Availability Test Period notwithstanding that any Exceptional Event may still persist,

and the period of time of such suspension will be added to the end of the corresponding Availability Test Period for any affected Availability Guarantee(s) of the Plant so that the effective duration is maintained at eight thousand seven hundred and sixty (8760) hours. At the end of any such suspension, the Project Manager shall notify the Contractor that the Availability Tests for any affected Availability Guarantee(s) are to recommence. For the avoidance of doubt the Availability Tests for any Availability Guarantee(s) that is not affected by the Exceptional Event shall not be suspended.

In the event that the Availability Tests for any affected Availability Guarantee(s) are suspended in accordance with this Sub-clause 35A.1A, the Contractor shall pay Performance Liquidated Damages to the Purchaser in respect of the affected Availability Guarantee(s) from the date of the commencement of the Exceptional Event until the date that the Project Manager notifies the Contractor the Availability Tests for the affected Availability Guarantee(s) are to recommence. The Performance Liquidated Damages for the affected Availability

Guarantee(s) shall be at the one year LD rate set out in section 4.3 of Schedule 17 *Performance guarantees and damages for failure*, pro-rated to the duration of the actual suspension of the Availability Tests for the affected Availability Guarantee(s).

35A.2 For the avoidance of doubt, the Purchaser shall operate or shall procure that the Operator shall operate the Plant during the Availability Test Period to the extent that they are not prevented from doing so by a Defect. Where the Purchaser or the Operator intends to operate the Plant despite the presence of a Defect and the continued operation of the Plant may reasonably result in damage to the Plant, the Purchaser shall seek the Contractor's advice prior to continuing with the operation of the Plant.

35A.3 If the results of the Availability Tests (including any repeat Availability Tests carried out as envisaged under either under Sub-clause 35A.5(a) or Sub-clause 35A.5(b)) show that the Plant has achieved an Availability Guarantee, the Project Manager shall within ten (10) Business Days issue to the Contractor a certificate confirming that the particular Availability Guarantee has been achieved(a "**Partial Availability Certificate**") with a copy to the Purchaser. When all of the Partial Availability Certificates have been issued, the Project Manager shall within ten (10) Business Days of the issue of the last Partial Availability Certificate, issue to the Contractor a certificate confirming that the Plant has achieved all of the Availability Guarantees (the **"Final Availability Certificate"**). If the Project Manager does not issue a Partial Availability Certificate or the Final Availability Certificate within the applicable ten (10) Business Day period, the relevant Partial Availability Certificate or Final Availability Certificate (as the case may be) shall be deemed to have been issued.

35A.4 If the Plant has not achieved all of the Availability Guarantees by the end of the first Availability Test Period and the Availability Tests for the Availability Guarantees that have not been achieved are not repeated under Sub-clause 35A.5(a) and/or Sub-clause 35A.5(b), the Purchaser or Operator shall continue to be free to operate the Plant as they see fit. The Contractor shall pay any Performance Liquidated Damages due to the Purchaser in respect of the Availability Guarantees that have not been achieved at the long term LD rate in accordance with section 4.3 of Schedule 17 *Performance guarantees and damages for failure*.

35A.5(a) If the Plant has not achieved or will not, as reasonably demonstrated by the Contractor, achieve all of the Availability Guarantees by the end of the first Availability Test Period and:

(i) the shortfall in availability in any Availability Guarantee(s) that has/have not been

achieved is, or is projected to be, more than or equal to three hundred and thirty-six (336) hours then the Contractor shall repeat the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall during a second Availability Test Period in order to enable the Contractor to achieve the outstanding Availability Guarantees; or

(ii) the shortfall in availability in any Availability Guarantee(s) that has/have not been achieved is, or is projected to be, more than one hundred and sixty-eight (168) hours but less than three hundred and thirty-six (336) hours then the Purchaser shall notify the Contractor to confirm either that the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall shall be repeated during a second Availability Test Period or that the Contractor may decide whether or not to request the repetition of the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall in order to enable the Contractor to achieve the outstanding Availability Guarantee(s). Where requested by the Contractor, the Purchaser shall agree to a repetition of the applicable Availability Test(s) unless the Purchaser demonstrates to the reasonable satisfaction of the Contractor that there is no reasonable prospect that the Plant will achieve the applicable Availability Guarantee(s) by the end of that second Availability Test Period; or

(iii) the shortfall in availability in any Availability Guarantee(s) that has/have not been achieved is, or is projected to be, less than or equal to one hundred and sixty-eight (168) hours the Contractor may notify the Project Manager to request that the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall are repeated in order to enable the Contractor to achieve the outstanding Availability Guarantee(s). Where requested by the Contractor, the Purchaser shall agree to a repetition of the applicable Availability Test(s) unless the Purchaser demonstrates to the reasonable satisfaction of the Contractor that there is no reasonable prospect that the Plant will achieve the applicable Availability Guarantee(s) by the end of that second Availability Test Period.

For the avoidance of doubt, any shortfall in availability referred to in limbs (i), (ii) and (iii) above, shall be understood as the positive difference between the relevant Availability Guarantee and the availability achieved by the Plant, in accordance with this Clause 35A and Schedule 17 *Performance guarantees and damages for failure.*

Where the Contractor is required to repeat Availability Tests under limb (i) or (ii) or it is agreed that the Contractor shall repeat Availability Tests under limb (iii), the Contractor shall be allowed a reasonable period of time prior to the commencement of the second Availability Tests in which to carry out any required adjustment or modification to the Plant in order to enable the Contractor to achieve the outstanding Availability Guarantee(s). Where the Availability Tests are repeated under this Sub-clause 35A.5(a), the Contractor shall pay any Performance Liquidated Damages due to the Purchaser in respect of any Availability Guarantee(s) that has/have not been achieved at the one year LD rate set out in section 4.3 of Schedule 17 *Performance guarantees and damages for failure* in respect of the non availability of the first Availability Test Period.

35A.5(b) If the Plant has not achieved or will not, as reasonably demonstrated by the Contractor, achieve all of the Availability Guarantees by the end of the second Availability Test Period and:

(i) the shortfall in availability in any Availability Guarantee(s) that has/have not been achieved is, or is projected to be, more than or equal to three hundred and thirty-six (336) hours then the Contractor shall repeat the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall during a third and final Availability Test Period in order to enable the Contractor to achieve the outstanding Availability Guarantees; or

(ii) the shortfall in availability in any Availability Guarantee(s) that has/have not been achieved is, or is projected to be, more than one hundred and sixty-eight (168) hours but less than three hundred and thirty-six (336) hours then the Purchaser shall notify the Contractor to confirm either that the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall shall be repeated during a third and final Availability Test Period or that the Contractor may decide whether or not to request the repetition of the Availability Tests in order to enable the Contractor to achieve the outstanding Availability Guarantees. Where requested by the Contractor, the Purchaser shall agree to a repetition of the applicable Availability Test(s) unless the Purchaser demonstrates to the reasonable satisfaction of the Contractor that there is no reasonable prospect that the Plant will achieve the applicable Availability Guarantee(s) by the end of that third Availability Test Period; or

(iii) the shortfall in availability in any Availability Guarantee(s) that has/have not been

achieved is, or is projected to be, less than or equal to one hundred and sixty-eight (168) hours the Contractor may notify the Project Manager to request that the Availability Tests for the Availability Guarantee(s) that has/have not been achieved and are subject to such shortfall are repeated for a third and final time in order to enable the Contractor to achieve the outstanding Availability Guarantees. Where requested by the Contractor, the Purchaser shall agree to a second repetition of the applicable Availability Test(s) unless the Purchaser demonstrates to the reasonable satisfaction of the Contractor that there is no reasonable prospect that the Plant will achieve the applicable Availability Guarantee(s) by the end of that third Availability Test Period.

For the avoidance of doubt, any shortfall in availability referred to in limbs (i), (ii) and (iii) above, shall be understood as the positive difference between the relevant Availability Guarantee and the availability achieved by the Plant, in accordance with this Clause 35A and Schedule 17 *Performance guarantees and damages for failure.*

Where the Contractor is required to repeat the Availability Tests under limb (i) or (ii) or it is agreed that the Contractor shall repeat the Availability Tests under limb (iii), the Contractor shall be allowed a reasonable period of time prior to the commencement of the third Availability Tests in which to carry out any required adjustment or modification to the Plant in order to enable the Contractor to achieve the outstanding Availability Guarantees. Where the Availability Tests are repeated under this Sub-clause 35A.5(b), the Contractor shall pay any Performance Liquidated Damages due to the Purchaser in respect of any Availability Guarantee(s) that has/have not been achieved at the one year LD rate set out in section 4.3 of Schedule 17 *Performance guarantees and damages for failure* in respect of the non availability for the second Availability Test Period.

35A.6 If at the end of any Second Availability Test Period under Sub-clause 35A.5(a), the Plant has not achieved all of the Availability Guarantees and the Availability Tests are not repeated under Sub-clause 35A.5(b), the Purchaser or Operator shall continue to be free to operate the Plant as they see fit, and the Contractor shall pay any Performance Liquidated Damages due to the Purchaser in respect of any Availability Guarantee(s) that has/have not been achieved at the long term LD rate in accordance with section 4.3 of Schedule 17 *Performance guarantees and damages for failure*.

35A.7 If at the end of any third Availability Test Period performed under Sub-clause 35A.5(b), the

Plant has not achieved all of the Availability Guarantees, the Purchaser or Operator shall continue to be free to operate the Plant as they see fit, and the Contractor shall pay any Performance Liquidated Damages due to the Purchaser in respect of any Availability Guarantee(s) that has/have not been achieved at the long term LD rate in accordance with section 4.3 of Schedule 17 *Performance guarantees and damages for failure*.

35A.8 If the Plant has not achieved all of the Availability Guarantees and upon payment or allowance of Performance Liquidated Damages at the long term LD rate in accordance with section 4.3 of Schedule 17 *Performance guarantees and damages for failure* in respect of any Availability Guarantee(s) that has/have not been achieved in accordance with Sub-clause 35A.4, 35A.6 or 35A.7 (as appropriate), the Project Manager shall issue to the Contractor a Partial Availability Certificate in respect of any Availability Guarantee(s) that has/have not been achieved and a Final Availability Certificate in respect of the Plant stating that the applicable Performance Liquidated Damages have been paid in respect of the shortfall in availability.

35A.9 The issue of any Partial Availability Certificate and the Final Availability Certificate shall not affect any remaining obligations of the Contractor under Clause 37."

Clause 36 – Acceptance

36.3 **Delete** the words "As soon as the Plant has passed all the performance tests or otherwise Sub-clause 35.17 has been complied with" and **insert** "As soon as both the Performance Test Certificate and the Final Availability Certificate have been issued".

After the words "shall issue" on line 2, **insert** "within ten (10) Business Days".

Insert the following new sentence at the end of the Sub-clause "If the Project Manager does not issue the Acceptance Certificate within such ten (10) Business Day period, the Acceptance Certificate shall be deemed to have been issued."

Clause 37 – Liability for Defects

37.2 After "Defect" in the first line of the final paragraph **insert** "(and any damage caused to any property of the Purchaser not forming part of the Works as a consequence of the Defect)".

In the final paragraph **insert** the words "procure that the Operator shall" after "the Purchaser shall" on line 2.

In the final sentence **delete** the words "if so required by the Project Manager" and **insert** the words "including any timeframes" after "his proposals". At the end of the Sub-clause **insert** the following new sentence "The Project Manager may require that the Contractor performs the rectification of Defects at a time that is convenient for Plant operations."

Insert the following new sentence at the end of the Sub-clause: "The Purchaser shall procure that the Operator shall keep full and detailed records of each Defect in the Works together with full and detailed maintenance records for the Plant. The Purchaser shall procure that the Operator shall make such records available to the Contractor on the Contractor's reasonable request, The Contractor may provide the Purchaser with a template Defects notification report. Where the Contractor has provided such a template, the Purchaser shall procure that the Operator shall record and document each Defect in accordance with such template Defects notification report and the Project Manager shall include the Operator's Defects notification reports in the particulars of the Defect which are to be provided in (b) of this Sub-clause 37.2."

37.3 **Delete** the words "Subject to Sub-clause 37.12, if" from the start of the clause and **insert** "If".

After "Defect" at the end of line 2 **insert** "and all costs of repairing damage (including cleaning of the Plant and surroundings) caused to any property of the Purchaser not forming part of the Works as a consequence of the Defect."

Insert the following new Sub-clause at the end of the clause:

"37.3A

(a) If the Contractor discovers a Serial Defect at any time during the Defects Liability Period the Contractor shall notify the Purchaser and shall remedy the Serial Defect and any affected areas of the Works at its own cost as more particularly described in Sub-clause 37.3A(e) below. For the purposes of this Sub-clause 37.3A, A "**Serial Defect**" means:

(i) a Defect that occurs twice or more in the same item of material, equipment, plant or other item forming part of the Plant; or

(ii) two or more Defects that occur in the Plant and that have the same root cause in an item of material, equipment or plant including a sub-component of the same.

(b) The Purchaser may notify the Contractor at any time during the Defects Liability Period where it has a concern that a Serial Defect may exist. If the Contractor suspects a Serial Defect at any time during the Defects Liability Period the Contractor shall notify the Purchaser.

(c) Upon receipt of, or making, a notification under Sub-clause 37.3A(b), the Contractor shall, as quickly as reasonably possible (and commencing within no more than ten (10) Business Days after receipt of, or making, the notification):

(i) examine the Works to establish which parts of the Works may be affected; and

(ii) carry out a root cause analysis in order to ascertain the reasons for the matter that is the subject of such notification.

Upon completion, the Contractor shall provide the Purchaser with a detailed written report and analysis of the matters referred to in sub-paragraphs (i) and (ii) above. Where completion of the work referred to in sub-paragraphs (i) and (ii) above will take longer than seven (7) days, the Contractor shall provide weekly updates to the Purchaser detailing progress to the date of the report and work that will be undertaken prior to the next update being submitted.

(d) If and to the extent that the Contractor's report provided pursuant to Sub-clause 37.3A(c) concludes that the subject matter of the notification referred to above is not a Serial Defect, the Purchaser may perform an investigation of that matter and, subject to allowing time for such investigation by the Purchaser, the Parties shall, meet as soon as reasonably practicable to discuss that matter in detail with a view to reaching agreement on whether or not a Serial Defect exists. If the Parties cannot agree on whether or not that matter amounts to a Serial Defect, it shall be determined in accordance with the provisions of Clause 47 (Adjudication). If the Contractor's report, where produced in response to the Purchaser's notification under Sub-clause 37.3A(b), has concluded that the subject matter of the notification referred to above is not a Serial Defect and the Parties have agreed that there is no Serial Defect or, if the matter is referred to determination under Clause 47 (Adjudication) and it is determined

there is no Serial Defect the Contractor shall be entitled, subject to Clause 19 (Claims), to recover his Costs of carrying out the examination and analysis and producing the report, which shall be added to the Contract Price. For the avoidance of doubt, the Contractor shall not be entitled to any addition to the Contract Price where it notifies the Purchaser of a suspected Serial Defect in accordance with Sub-clause 37.3A(b) regardless of whether the matter is subsequently agreed or determined to be a Serial Defect or not.

(e) The Contractor shall (if it is acknowledged that a Serial Defect exists by the Contractor or a Serial Defect is found to exist in accordance with the provisions of Clause 47 (Adjudication)) at the Contractor's own cost, execute and complete all work required to remedy the Serial Defect and remedy the part or parts of the Works affected by the Serial Defect regardless of whether or not a Defect has yet manifested itself in such part or parts of the Works or whether or not such part or parts of the Works have yet failed. The Contractor shall, in the case of a Serial Defect, at the Purchaser's request change (rather than repair or replace like with like) such item of material, equipment, plant or other item forming part of the Plant provided that the Contractor shall only be required to change Bulk Items where:

(i) the Defect would affect safety;

(ii) the Defect would affect the reliable operation of the Plant; or

(iii) the Serial Defect has been detected in at least twenty-five per cent (25%) of the Bulk Items.

(f) The Contractor shall provide, at its own cost (subject to any entitlement under Sub-clause 37.3A(d)), such information as the Purchaser reasonably requires in relation to Serial Defects and shall ensure that he has the resources (including his technical, commercial and project management teams) with the pre-requisite expertise who are fully available to discuss potential Serial Defects with the Purchaser and to fully and meaningfully engage in the processes and discussions required pursuant to this Sub-clause 37.3A.

(g) Where rectification of a Defect requires modifications (including any Temporary Works) to existing Materials, equipment or structures, the Contractor shall be liable to the Purchaser for all costs directly incurred as a result of the modifications. The

Contractor's rectification of Defects shall not result in any reduction in performance or appearance of Materials compared to that envisaged at the Effective Date and as set out in the Environmental Permit or the other Consents.

(h) The Contractor shall keep a complete record of its handling of Defects and provide copies to the Purchaser upon request. The record shall include a database, in which details of all the Defects are filed. When requested by the Project Manager, the Contractor shall report on the status of all Defects at meetings convened by the Project Manager during the Defects Liability Period."

37.4 In line 1, after "Take-Over Certificate", **insert**, "or Construction Completion Certificate (as appropriate)".

In line 2, **delete** "take over" and **insert** "inspection and/or". After "test" **insert** "(excluding the three hundred (300) hours performance test)".

37.7 **Delete** the words "within a reasonable time" on line 3 and **insert** "as soon as reasonably practicable".

37.9 At the end of the Sub-clause **insert** "For the purposes of this Sub-clause 37.9, "attempting to put the Plant into such condition" shall mean the Contractor attempting to remedy any Defects so that the relevant test can be passed."

37.12 **Delete** this Sub-clause.

37.13 **Insert** a new Sub-clause 37.13 as follows:

"37.13 Notwithstanding Sub-clause 38.3, the Contractor shall be responsible for any Latent Defects in the Works which arise during the Latent Defects Liability Period and, subject to Clause 45, shall be liable for any costs, losses and expenses associated with or arising from such Latent Defects (including, but not limited to, the cost of rectifying the same and the cost of modifications or repairs to other elements of the Works required as a consequence of a Latent Defect). For the avoidance of doubt, in accordance with Sub-clause 45.1, the Contractor shall not be liable for any loss or deferment of anticipated or actual profit, loss of revenue, loss of use, loss of production, business interruption or any similar damage or for any consequential or indirect losses of any kind resulting out of or in connection with a Latent Defect."

"**Clause 37A – Operational Services**

Insert a new Clause 37A as follows:

"37A.1 The Purchaser may prior to the issue of the Take Over Certificate, instruct the Contractor to perform operational services in connection with the ERF following Take Over and during the Defects Liability Period. Any such operational services shall be as detailed in the instruction but may include, without limitation, the provision of a commissioning engineer(s) to assist the Operator's staff during the Defects Liability Period.

37A.2 Any such instruction under Sub-clause 37A.1 shall be treated as a Variation in accordance with Clause 16."

Clause 38 – Final Certificate

38.1 In line 4 after the words "or Section" **delete** "and" and **insert** ","

In line 5 after the word "(Acceptance)" **insert** "and the Contractor has completed the conditions precedent to the issue of the Final Certificate in accordance with section 10 of Schedule 15 *Take Over procedures*".

In line 6, after the words "shall issue" **insert** "within ten (10) Business Days".

In line 7 after the word "Purchaser" **insert** the words "and the Operator".

At the end of the Sub-clause, **insert** the following new sentence "If the Project Manager does not issue a Final Certificate within such ten (10) Business Day period, the Final Certificate shall be deemed to have been issued."

38.3 On line 3 after "shall" **insert** ", subject to the Contractor's obligations under Sub-clause 37.13,".

Clause 40 – Records and audits

40.1(a) **Delete** "six years" and **insert** "eight (8) years".

40.1(b) **Delete** "Sub-clause 40.2" and **insert** "the Contract".

40.2 Before the words "appointed by the Purchaser" on lines 3 and 4 and **insert** "approved by the Parties (acting reasonably) and".

Clause 41 – Payment

41.1 **Insert** the following new Sub-clause 41.1A at the end of the Clause:

"41.1A.1 Where such instalment is an advance payment, including, without limitation, the advance payment to be paid in accordance with Sub-clause 41.3C, such payment shall be conditional on the Contractor providing to the Purchaser an advance payment bond in the form set out in Appendix 8 equal to the amount of the advance payment from an Acceptable Bond Provider and a legal opinion in a form to be approved in advance by the Purchaser (acting reasonably) in favour of the Purchaser confirming the enforceability of the advance payment bond. If at any time the advance payment bond becomes void, invalid or unenforceable (other than in accordance with its terms); and/or the surety providing the advance payment bond ceases to be an Acceptable Bond Provider, the Contractor shall within twenty (20) Business Days either;

(a) provide to, and maintain for the benefit of, the Purchaser a replacement advance payment bond (in substantially the same form as the agreed form set out in Appendix 8 or on such other terms agreed with the Purchaser) from an Acceptable Bond Provider; or

(b) provide such other advance payment security which is accepted by the Purchaser as being an equivalent form of advance payment security, such advance payment security being in respect of the same amount and in a form acceptable to the Purchaser (acting reasonably).

41.1A.2 An advance payment bond to be provided in accordance with Sub-clause 41.1A.1 shall be released, in accordance with its terms, as follows:

(a) ~~41.1A.2 The~~in the case of the advance payment bond ~~shall be released upon~~to be provided in connection with MIGEPAY0000 referred to in Sub-clause 41.3B, on the date falling thirty (30) months after the date of placement of the advance payment bond~~.~~; and

(b) for any other advance payment bond, on the date the relevant advance payment has been repaid to the Purchaser by the Contractor or (as applicable) by the bond provider

41.1A.3 Failure to provide a replacement advance payment bond or other advance payment security in accordance with this Clause 41.1A shall be a material breach of the Contract and shall entitle the Purchaser to:

(a) withhold a sum equivalent to the value of the advance payment bond from the Contract

Price until the replacement advance payment bond has been provided by the Contractor or until the advance payment bond if provided would have expired; or

(b) where the same is still valid and enforceable, make a demand under the advance payment bond for the full amount of the bond."

41.2 At the end of the clause **insert**:

"The Contractor's entitlement to payment of the first Milestone after the date of Settlement and Variation Agreement (No. 3) to this Contract (being Milestone [ ]) shall be conditional on the Contractor providing:

(a) written confirmation to the Purchaser that it is fully and finally withdrawing its request made to the Purchaser under the Freedom of Information Act 2000 on 2 March 2026 and that it shall not issue a complaint to the Information Commissioner's Office in relation to that request; and

(b) the Purchaser with:

(i) a copy of the deed of release between the Contractor and the United Kingdom Government as signed by the Contractor showing that the Contractor has withdrawn its claims against the United Kingdom Government in connection with the ECT Arbitration; and

(ii) evidence that it has released the signed deed of release to the United Kingdom Government for countersigning and completion,

in accordance with the requirements of Settlement and Variation Agreement (No. 3) to this Contract."

41.3 **Delete** the first two lines of the Sub-clause and **insert** "Save in relation to the ~~advance payment which is dealt with in Sub-clause~~payments which are referred to in Sub-clauses 41.3B, 41.3C and 41.3D.2, the Contractor shall submit a request for payment (a Contractor's request for payment) to the Project Manager for payment of the Contract Price in relation to a Milestone on the last Friday of the calendar month in which the Contractor considers a Milestone has been achieved or substantially achieved notwithstanding that certain conditions for that Milestone remain to be achieved pursuant to section 2 of Schedule 19 *Terms of Payment*. The Contractor's request for payment shall set out what the Contractor

considers will be due to it on the Due Date for Payment and the basis on which that sum is calculated, and showing:"

Insert the following new Sub-clauses 41.3A ~~and~~, 41.3B, 41.3C and 41.3D at the end of the Sub-clause:

"41.3A The Project Manager shall decide when the first Contractor's interim request for payment is to be submitted which shall be conditional on the Effective Date as follows:

(a) where the Effective Date falls more than fourteen (14) days before the last Friday in that calendar month, the first Contractor's request for payment may be submitted on the last Friday in that calendar month;

(b) where the Effective Date falls less than or equal to fourteen (14) days before the last Friday in that calendar month, the first Contractor's request for payment may not be submitted until the last Friday in the subsequent calendar month,

the Project Manager shall notify the Contractor of the date when the first Contractor's request for payment may be submitted.

41.3B The Purchaser shall pay to the Contractor the advance payment specified as "MIGEPAY0000" and which is detailed in row one (1) of Appendix C to Schedule 19 *Terms of Payment* provided that the Contractor has complied with the criteria for completion set out therein. The Contractor shall, subject to the second paragraph of this Sub-clause 41.3B, submit a request for payment including a valid VAT invoice for the advance payment specified above on the date that it provides the advance payment bond and the legal opinion referred to in Sub-clause 41.1A. The advance payment shall become due on the later of the date that the Purchaser receives the valid VAT invoice and the advance payment bond and the legal opinion. The final date for payment of the advance payment shall be five (5) Business Days after the date on which the advance payment becomes due.

The Parties acknowledge that the Contractor has applied for VAT registration but is not registered for VAT in the United Kingdom as at the Effective Date. For the avoidance of doubt, where the Contractor submits a request for payment of the advance payment prior to it being registered for VAT in the United Kingdom, the requirement to provide a valid VAT invoice shall be deemed to be a requirement for the Contractor to provide an invoice which shall exclude any amount of or in respect of VAT chargeable (a "VAT exclusive invoice").

Within five (5) Business Days of being registered for VAT in the United Kingdom, the Contractor shall submit a credit note for the VAT exclusive invoice and replacement valid VAT invoices in replacement thereof. Payment for the VAT element shall become due on the date the Purchaser receives such valid VAT invoice and the final date for payment shall be five (5) Business Days thereafter."

41.3C The Contractor shall include in the request for payment following the date of Variation Agreement (No.2) an application for an advance payment in the sum of £50,000,000 (fifty million pounds). Subject to the Contractor providing a VAT invoice in respect of the advance payment, the advance payment bond and (where the bond provider is incorporated outside of the United Kingdom) a legal opinion referred to in Sub-clause 41.1A.1, the Purchaser shall pay the Contractor the advance payment in accordance with the provisions of this Clause 41.

The Contractor shall repay the value of the advance payment over a twelve (12) month period following the date of its payment on the basis of eleven equal monthly deductions of £4,200,000 (four million and two hundred thousand pounds) from Milestone payments and a final deduction for the twelfth month of £3,800,000 (three million and eight hundred pounds) as detailed in the following example which is provided for illustrative purposes only:

Schedule 1 **Month of request for payment**	**Schedule 2** **Value of deduction**	**Schedule 3** **Cumulative value of advance payment**
Schedule 4 0 (application for advance payment)	**Schedule 5** £0.00	**Schedule 6** £50,000,000.00
Schedule 7 1	**Schedule 8** - £4,200,000.00	**Schedule 9** £45,800,000.00
Schedule 10 2	**Schedule 11** - £4,200,000.00	**Schedule 12** £41,600,000.00
Schedule 13 3	**Schedule 14** - £4,200,000.00	**Schedule 15** £37,400,000.00
Schedule 16 4	**Schedule 17** - £4,200,000.00	**Schedule 18** £33,200,000.00

Schedule 19 5	**Schedule 20** - £4,200,000.00	**Schedule 21** £29,000,000.00
Schedule 22 6	**Schedule 23** - £4,200,000.00	**Schedule 24** £24,800,000.00
Schedule 25 7	**Schedule 26** - £4,200,000.00	**Schedule 27** £20,600,000.00
Schedule 28 8	**Schedule 29** - £4,200,000.00	**Schedule 30** £16,400,000.00
Schedule 31 9	**Schedule 32** - £4,200,000.00	**Schedule 33** £12,200,000.00
Schedule 34 10	**Schedule 35** - £4,200,000.00	**Schedule 36** £8,000,000.00
Schedule 37 11	**Schedule 38** - £4,200,000.00	**Schedule 39** £3,800,000.00
Schedule 40 12	**Schedule 41** - £3,800,000.00	**Schedule 42** £0.00

The Parties agree that where the deduction of the monthly sum of £4,200,000 (four million and two hundred thousand pounds) would result in a negative sum being due to the Contractor, the Project Manager shall reduce the amount of the deduction for that month to ensure that the sum due to the Contractor is either a positive sum or zero. The balance of the deduction for that month shall be added to the £4,200,000 (four million and two hundred thousand pounds) deduction for the following month. As such, the value of the deductions and the cumulative value of advance payment shown in the illustrative table above may be altered where the deduction for a particular month would otherwise result in a negative sum being due to the Contractor in accordance with this paragraph.

41.3D.1 The Purchaser shall pay to the Contractor the first Milestone after the date of Settlement and Variation Agreement (No. 3) to this Contract (being defined in Schedule 19 *Terms of payment* as [ ]) provided that the Contractor has complied with the criteria for completion set out in Schedule 19 *Terms of payment* and the conditions precedent in relation to that Milestone referred to in Sub-clause 41.2.

41.3D.2 Where Settlement and Variation Agreement (No.3) to this Contract is entered into on or before [14 December 2026], the Contractor shall submit a request for payment including a valid VAT invoice for Milestone [ ] and payment shall become due on the later of the date on which (i) the Purchaser receives the valid VAT invoice and (ii) the criteria for completion set in Schedule 19 *Terms of payment* and the conditions precedent in relation to that Milestone referred to in Sub-clause 41.2 have been satisfied. Provided that the due date for payment is no later than [TBC] December 2026, the final date for payment of Milestone [ ] shall be five (5) Business Days after the date on which the advance payment becomes due. Where the due date for payment s after [TBC] December 2026, the final date for payment of Milestone [ ] shall be twenty-six (26) days after the due date for payment.

41.3D.3 Where Settlement and Variation Agreement (No.3) to this Contract is entered into after [14 December 2026], the Contractor shall submit a request for payment including a valid VAT invoice for Milestone [ ] on the last Friday of the calendar month in which the Settlement and Variation Agreement No.3) to this Contract in accordance with Sub-clause 41.3 of the Contract and the relevant provisions of Clause 41 that apply to all interim payments shall apply." 41.4 **Delete** the first sentence and **insert** " Save in relation to the ~~advance~~ payments which are ~~dealt with in Sub-clause~~referred to in Sub-clauses 41.3B, 41.3C and 41.3D.2and the final request for payment which shall become due within fifty-six (56) days of its receipt, the Contractor's request for payment shall become due on the date falling two (2) days after it is received by the Project Manager (the "**Due Date for Payment**"). The Project Manager shall issue a certificate, the Project Manager's payment certificate, certifying a payment within five (5) days after the relevant Due Date for Payment."

In the second sentence, **delete** the words "payment due date determined in accordance with Sub-clause 41.5" and **insert** "Due Date for Payment".

At the end of the second sentence, **insert** the following new sentence:

"Where the Plant has not achieved Take Over by the date set for Take Over in Schedule 11 *Times of completion* (as extended in accordance with Sub clause 14.1), any Project Manager's payment certificate following the date set for Take Over in Schedule 11 *Times of completion* (as extended in accordance with Sub clause 14.1) up to and including the Milestone payment to be made after the issue of the Take Over Certificate shall include records of all Authority Residual Waste (as the same is defined in Schedule 12 *Liquidated Damages for delay*) the Authority has received and records of any volumes that have been processed through the existing energy from waste facility at the EcoPark since the previous

payment was made to the Contractor."

At the end of the Sub-clause, **insert:**

"Save in relation to the advance payment which is dealt with in Sub-clause 41.3B and subject to the final paragraph of this Sub-clause 41.4, the Contractor shall provide to the Project Manager a valid VAT invoice in the amount of the Project Manager's payment certificate addressed to the Purchaser as soon as practicable following the issue of the Project Manager's payment certificate. Where the Project Manager has failed to issue a payment certificate within five (5) days of the Due Date for Payment, the Contractor shall, subject to the final paragraph of this Sub-clause, provide to the Project Manager a valid VAT invoice in the amount of the Contractor's request for payment addressed to the Purchaser as soon as practicable following the expiry of that five (5) day period. The Purchaser shall accept and process an electronic invoice submitted by the Contractor where it complies with the standard on electronic invoicing and is in the amount stated in the Project Manager's payment certificate or, where no payment certificate has been issued by the Project Manager within five (5) days of the Due Date for Payment, is in the amount of the Contractor's request for payment. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard referred to in the Public Procurement (Electronic Invoices etc.) Regulations 2019 (2019/624).

For the avoidance of doubt, any requirement for the Contractor under this Sub-clause 41.4 to provide a valid VAT invoice prior to the Contractor being registered for VAT in the United Kingdom shall be deemed to be a requirement for the Contractor to provide a VAT exclusive invoice. Within five (5) Business Days of being registered for VAT in the United Kingdom, the Contractor shall submit credit note(s) for any VAT exclusive invoice(s) it has issued under this Sub-clause 41.4 and which have been paid or for which payment has become due together with a replacement valid VAT invoice in respect of each of the same. The Contractor shall submit replacement valid VAT invoices in replacement thereof within five (5) Business Days of the Contractor being registered for VAT in the United Kingdom. Where the Purchaser has already paid the Contractor in respect of a VAT exclusive invoice, the VAT element shall become due on the date of receipt of the valid VAT invoice by the Purchaser and the Purchaser shall pay the Contractor the VAT element as soon as reasonably practicable and in any event within twenty-eight (28) days of it becoming due."

Insert the following new Sub-clauses 41.4A and 41.4B:

"41.4A In assessing the sum which the Project Manager considers due under Sub-clause 41.4, the Project Manager shall take into account any failure by the Contractor to provide to the Project Manager substantiation reasonably necessary and reasonably required by the Project Manager and any failure by the Contractor to comply with its obligations under:

(a) Sub-clause 3.19 (parent company guarantee);

(b) Sub-clause 3.20.1 (performance bond);

(c) Sub-clause 3.20.2 (retention bond);

(d) Clause 9 (Subcontracting and third party rights)~~:~~;

(e) Sub-clause 17A.1 (Derogations);

(~~e~~f) Sub-clause 25.1A.1 (Ownership of Materials);

(~~f~~g) Sub-clause 25.5 (Orders);

(~~g~~h) Sub-clause 28A.6 (failure to deliver the Purchaser's Social Value Requirements for Apprentices and Training Placements in accordance with Schedule 25 *Social Value)*; or

(~~h~~i) Sub-clause 41.1A (advance payment bond).

The Project Manager may not reduce the amount due to the Contractor as a consequence of any failure by the Contractor to comply with its obligations under Clause 9 (Subcontracting) in respect of any subcontract by more than five percent (5%) of the amount which but for such failure would be due and payable to the Contractor in respect of that subcontract.

41.4B If any programme ~~or~~, revised programme ~~is~~or programme update required under Sub-clause 13.2A.4is not submitted by the Contractor to the Project Manager for ~~acceptance~~approval or review and comment (as applicable) showing the information which the Contract requires within the timescales required by Sub-clause 13.2A, five percent (5%) of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme shall be retained in all assessments of the amount due and shall not be payable to the Contractor until such revised programme showing the information which the Contract requires has been submitted to the Project Manager for approval."

41.5 **Delete** and **insert** " Save in relation to the ~~advance~~ payments which are ~~dealt with in Sub-clause 41.3B~~referred to in Sub-clauses 41.3B, 41.3C and 41.3D.2 the Purchaser shall pay the amount notified in the Project Manager's payment certificate by the Final Date for Payment which shall be the date falling twenty six (26) days after the Due Date for Payment".

41.6 **Delete** from the start of the Sub-clause up to and including the words "by the payment due date determined in accordance with Sub-clause 41.5" and **insert** "If the Project Manager fails to issue a certificate certifying a payment within five (5) days after the relevant Due Date for Payment in accordance with Sub-clause 41.4,".

41.7 On line 5, **delete** the words "one day" and **insert** "five (5) days".

Insert the following new sentence at the end of the Sub-clause: "Where the Purchaser notifies the Contractor of its intention to pay less the Contractor shall issue to the Purchaser a valid VAT invoice in respect of the revised amount as soon as reasonably practicable."

41.8 At the end of the Sub-clause **insert** "The Parties agree that this is a substantial remedy for late payment of any sum payable under the Contract in accordance with the provisions of Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998."

41.13A **Insert** a new Sub-clause 41.13A as follows:

"41.13A

(a) The Parties acknowledge that the Contractor is not registered for the Construction Industry Scheme at the Effective Date. Where the Construction Industry Scheme applies to any payment made in relation to this Contract, the Contractor warrants to the Purchaser that:

(i) it will provide its unique tax payer number to the Purchaser promptly after receipt from HM Revenue and Customs; and

(ii) it shall at all times comply with its obligations under the Construction Industry Scheme.

(b) Where the Construction Industry Scheme applies to any payment made in relation to this Contract, the Contractor shall provide to the Purchaser such information as the Purchaser may reasonably request in writing to enable the Purchaser to verify the

Contractor as required by the Construction Industry Scheme.

(c) If the Purchaser is a "contractor" for the purposes of the Construction Industry Scheme, its obligations to make any payment under this Contract will be subject to the provisions of the Construction Industry Scheme.

(d) If a deduction has not been made which should have been made in accordance with the Construction Industry Scheme from any payment to the Contractor under this Agreement, then the Purchaser may at its reasonable discretion recover the amount that should have been deducted by repayment from the Contractor or by further deduction from future payments due to the Contractor.

(e) In the event of any conflict between this Sub-clause 41.13A and any other term of the Contract, the provisions of this Sub-clause 41.13A shall apply."

41.14 **Insert** a new Sub-clause 41.14 as follows:

"The issue of any payment certificate or the payment of any amount by the Purchaser to the Contractor shall not constitute or imply or be evidence of the Project Manager's or the Purchaser's acceptance of any design, work and Materials forming part of the Works or relieve the Contractor of any of its obligations under the Contract."

Clause 42 – Suspension of the Works

42.5 In line 2, **delete** the words "other than by reason of the Contractor's default, at any time thereafter" and **insert**:

"other than:

(a) by reason of the default or negligence of the Contractor or any Contractor Related Party; or

(b) where (i) such suspension was caused by a Coronavirus Event; and (ii) the Contractor was granted an extension of time pursuant to Sub-clause 14.1 in respect of such suspension,

at any time thereafter".

Clause 43 – Termination by the Purchaser for convenience

43.5 On each of line 1 and line 2, **delete** the reference to "ninety days" and **insert** "forty-five (45) Business Days".

43.5(c) **Insert** the words "authorised by the Project Manager and" after "Cost" and **delete** the words "authorised by the Project Manager" after "termination".

At the end of limb (c), **insert** "and" and the following new limb (d):

"43.5(d) where the Contract is terminated within the first twelve (12) months following the Effective Date only, the amount representing five per cent (5%) of the Contract Price which would have been payable to the Contractor for the first six (6) months following the date of the Purchaser's Notice of Termination by reference to Schedule 19 *Terms of Payment*;"

In lines 2 and 3 of the penultimate paragraph, **delete** the references to "(a), (b) and (c)" and **insert** "(a), (b), (c) and (where applicable) (d)".

Insert the following new Sub-clause 43.10:

"43.10 If the Purchaser exercises its rights under Sub-clause 43.1 to instruct the Contractor to cease carrying out the Works, the Purchaser's liability to the Contractor arising out of such instruction whether by reason of any breach of contract or of statutory duty or tortious or negligent act or omission shall be limited to the damages, remedies and reimbursements expressly provided in the Contract and the Purchaser shall not be liable to pay the Contractor any further sums, costs or damages howsoever arising from such instruction including (but not limited to) any loss of future profits in connection with the appointment by the Purchaser of a replacement contractor to complete the Works**."**

Insert the following new Clause 43A:

43A **Termination for Purchaser's Default**

43A.1 The Contractor may, subject to the terms of any collateral warranties provided pursuant to Sub-clause 3.22, terminate its employment under the Contract:

(a) by giving thirty (30) Business Days' Notice to the Purchaser if the Purchaser fails to pay:

(i) a Milestone included in Schedule 19 *Terms of Payment*; or

(ii) any other amount (either singly or in the aggregate including any resulting from a Variation or claim exceeding seven hundred and fifty thousand pounds (£750,000)),

to the Contractor under this Contract by the Final Date for Payment (and provided always that the Purchaser does not dispute any amount due in good faith and/or has not paid such amount within such Notice period); or

(b) subject to the second paragraph of this Sub-clause 43A.1(b), forthwith by Notice if:

(i) a court makes an order that the Purchaser be wound up or a resolution for a voluntary winding up of the Purchaser is passed;

(ii) any receiver or receiver manager in respect of the Purchaser is appointed or possession is taken by or on behalf of any creditor of any property of the Purchaser that is the subject of a charge;

(iii) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 or the Enterprise Act 2002 in respect of the Purchaser;

(iv) an administration order is made or an administrator is appointed in respect of the Purchaser; or

(v) the occurrence of any event or the commencement of any proceedings analogous to those described in paragraphs (i) - (iv) above in any jurisdiction in respect of the Purchaser.

The Contractor shall not exercise its right to terminate the Contract under this Sub-clause 43A.1(b) where the Purchaser has, prior to being wound up or suffering any of the events listed in limbs (i) to (v) above, notified the Contractor in accordance with Sub-clause 9.1A.2 that the Contract is required to be novated to any party appointed to replace the Purchaser and assume responsibility for waste management in North London in either of the circumstances provided for in Sub-clause 9.1A.2, provided that the Contractor may, to the extent another right has not already arisen under the Contract and the Contractor has not already done so, suspend the performance of the Works immediately on such winding up of the Purchaser or suffering by the Purchaser of any of the events listed in limbs (i) to (v) above, and further that if within twenty (20)

Business Days of the Purchaser being so wound up or suffering any of the events listed in limbs (i) to (v) (or such other period of time as may be prescribed by Legislation) a deed of novation novating the Contract has not been entered into between the Contractor and such replacement party, in accordance with Sub-clause 9.1A.2, the Contractor shall be entitled to terminate the Contract forthwith by Notice. Where the Contractor has previously suspended the performance of the Works, the Contractor shall after entering into a deed of novation between the Contractor and the replacement party and subject to the replacement party having paid any sums which have become due and payable to the Contractor under the Contract, recommence the performance of the Works; or

(c) forthwith by Notice if a breach by the Purchaser of its obligations under this Contract substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months and the Project Manager has not issued any instruction or Variation in connection with the Purchaser's breach (excluding an instruction to suspend the Works) in order to alleviate the frustrating event and enable the Contractor to recommence the performance of the Works; or;

(d) forthwith by Notice if a breach by the Purchaser of Sub-clause 9.1A occurs; or

(e) forthwith by Notice upon any deemed termination in accordance with Sub-clause 42.5; or

(f) forthwith by Notice if the Purchaser is in breach of any applicable Legislation relating to anti-competition, anti-bribery or corruption, including, without limitation, if the Purchaser gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to this Contract and/or the Works; or

(ii) for showing or forbearing to show favour or disfavour to any person in relation to this Contract and/or the Works; or

(g) by giving fourteen (14) days' Notice to the Purchaser if the Purchaser commits any other material breach of the Contract provided always that the Purchaser

does not commence the rectification of the default within this Notice period.

Where the Purchaser does commence the rectification as aforesaid, if the Purchaser does not thereafter diligently rectify such default the Contractor may within fifty-six (56) days of such Notice issue a further Notice terminating the employment of the Contractor under the Contract.

43A.2 In the event of termination in accordance with Sub-clause 43A.1, the provisions of Clause 43 (Termination by the Purchaser for Convenience) shall apply as if the Purchaser had issued a Notice of Termination under Sub-clause 43.1.

43A.3 Nothing in this Clause 43A shall affect the continuing operation of Sub-clauses 9.6, 9.7 and 9.8, Clauses 8 (Patent and other protected rights), 20 (Confidentiality), 45 (Limitations on liabilities and remedies), 46 (Disputes), 47 (Adjudication), 48 (Reference to an Expert) and 49 (Arbitration) and, to the extent that the Contractor has carried out the Works, Clauses 30 (Care of the Works), 31 (Insurance) and 37 (Liability for Defects)."

Clause 44 - Termination for Contractor's default

44.1 In line 1 after "If the Contractor" **insert** "(which shall include the party providing its parent company guarantee under Sub-clause 3.19)".

44.2 In limb (a), **delete** the word "abandons" and **insert** "Abandons".

At the end of the Sub-clause, **insert** the following new Clause 44.2A:

"44.2A.1 The Purchaser may terminate the Contract immediately on Notice:

(a) if the provisions of Regulation 73(1)(b) of the Public Contracts Regulations 2015 apply and the Contractor should have been excluded from the procurement procedure in relation to the Contract; or

(b) if any of the provisions of Regulation 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015 apply to the Contract; or

(c) if the Contractor has failed to propose a remediation plan for acceptance within fourteen (14) days of the Project Manager's instruction in accordance with Sub-clause 28.11 and the Contractor has been notified in writing of such failure; and such failure

has not been remedied within fourteen (14) days of receipt by the Contractor of the notification pursuant to this Sub-clause; or

(d) if the Contractor has failed to implement the requirements of an approved remediation plan in accordance with Sub-clause 28.11 within three (3) months of its approval; or

(e) if the Contractor has failed to comply with its anti-blacklisting obligations under Sub-clause 28.13; or

(f) if the Contractor has committed a Prohibited Act; or

(g) if one hundred per cent (100%) of the Overall Liability Cap is exceeded; or

(h) if one hundred per cent (100%) of the Delay Liquidated Damages Cap or the Performance Liquidated Damages Cap is exceeded; or

(i) if the Contractor has failed to provide a parent company guarantee or a performance bond within twenty (20) Business Days following the Effective Date and the Contractor has been notified in writing of such failure; and such failure has not been remedied within twenty (20) Business Days of receipt by the Contractor of the notification pursuant to this Sub-clause; or

(j) if the Contractor has failed to provide a Contractor collateral warranty within ten (10) Business Days of receipt of the engrossed documents in accordance with Sub-clause 3.22 and the Contractor has been notified in writing of such failure; and such failure has not been remedied within ten (10) Business Days of receipt by the Contractor of the notification pursuant to this clause."

44.3 On line 1, **delete** "under Sub-clause 44.1 or 44.2" and **insert** "under Sub-clause 44.1, 44.2 or 44.2A".

44.3(b) On lines 5 and 6, **delete** the words "Contractor's Equipment, Temporary Works or Materials" and **insert** the words "Contractor's Equipment or Temporary Works. The Parties agree that the Contractor shall not be required to continue to lease or hire any Contractor's Equipment for more than thirty (30) days after the date of termination of the Contractor's employment under Sub-clause 44.1, 44.2 or 44.2A. Where the leasing or hiring arrangements for the Contractor's Equipment have not been assigned to or taken over by the Purchaser or any replacement contractor appointed to complete with Works within such thirty (30) day period,

the Project Manager shall by reasonable notice permit the Contractor (on the date and at the time stated in any such notice) to re-enter the Site in order to remove any Contractor's Equipment."

44.3(c) After "or Subcontractors" on line 3, **insert** "(whether or not completed or in the course of preparation or production)".

44.6 On line 1, **delete** "ninety days" and **insert** "forty-five Business Days".

Insert the following at the end of limb (a) ". The Default Certificate shall include details of the costs incurred by the Purchaser in completing the Works in accordance with Sub-clause 44.3(b) together with records confirming that such costs have been competitively tested either through the provision of quotes from different contractors or, in the absence of competition, against a benchmark price developed by the Purchaser. Any benchmark price for completing the Works shall take account of the status of the Works at the time that the Contract is terminated."

44.7 On line 1, **delete** "sixty days" and **insert** "thirty (30) Business Days".

On line 4, **delete** "ninety days" and **insert** "forty-five (45) Business Days".

Clause 45 – Limitations on liability and remedies

45.1 In (b)(ii) **delete** the reference to "liquidated damages for delay" and **insert** "Delay Liquidated Damages".

In (b) (iii) **delete** "liquidated damages" and **insert** "Performance Liquidated Damages". After "Sub-clause 35.12" **insert "**or any sum included within the Performance Liquidated Damages for failure to pass Availability Tests under Clause 35A".

At the end of (v), **delete** the full stop, **insert** "; or" and the following new limb (vi):

"(vi) any amount to be paid to the Contractor under Sub-clause 43.5(d) following the termination of the Contractor's employment under the Contract by the Purchaser for convenience in the circumstances specified in Sub-clause 43.5(d)."

45.2 On line 4 after the words "whether by reason of" **insert** "termination of the Contractor's employment other than under Clause 44 (Termination for Contractor's default),".

45.3 At the end of the first paragraph after "the amount stated in the Agreement" **insert** the words "(the "**Overall Liability Cap**")".

Insert a new Sub-clause 45.3A as follows:

"45.3A.1 Subject to Sub-clause 45.3, the Contractor's maximum liability for Delay Liquidated Damages shall not exceed twelve and a half per cent (12.5%) of the Contract Price (the "**Delay Liquidated Damages Cap**"); and

45.3A.2 Subject to Sub-clause 45.3, the Contractor's maximum liability for Performance Liquidated Damages shall not exceed twelve and a half per cent (12.5%) of the Contract Price (the "**Performance Liquidated Damages Cap**")."

Insert a new Sub-clause 45.6 as follows:

"45.6 The Contractor's liability under the Contract or otherwise arising out of Latent Defects shall cease and no claim shall be made against the Contractor arising out of Latent Defects (whether for breach of contract, negligence, breach of statutory duty or otherwise) after the expiry of the relevant Latent Defects Liability Period save where proceedings have been commenced against the Contractor within this time. The Contractor's liability under the Contract shall cease and no claim shall be made against the Contractor arising out of the Contract after the expiry of the last Latent Defects Liability Period save where proceedings have been commenced against the Contractor within this time."

Clause 47 - Adjudication

47.1 **Delete** this Sub-clause.

47.2 In line 9, after "IChemE" **insert** "(including any amendments to that edition published by the IChemE)".

47.4 Add a new sentence at the end of the Sub-clause: "The adjudicator shall give reasons for

their decision."

Additional Clauses:

Insert new following new Clauses 50-55:

Clause 50 - Purchaser Data

50.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Purchaser Data.

50.2 The Contractor shall not store, copy, disclose or use the Purchaser Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Purchaser.

50.3 To the extent that Purchaser Data, the Documents or Project Records are held and/or processed by the Contractor, the Contractor shall supply the same to the Purchaser as the Purchaser requests in the format specified by the Purchaser.

50.4.4 Upon receipt or creation and in the course of collecting, processing, storing and transmitting of any Purchaser Data or Documents, the Contractor shall take all precautions necessary to preserve the integrity of the Purchaser Data or Documents and to prevent any corruption or loss of such data.

50.5 The Contractor shall perform secure back-ups of all Purchaser Data, Documents and Project Records in accordance with procedures agreed with the Purchaser and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that the back-ups are available to the Purchaser at all times upon request.

50.6 The Contractor shall ensure that any information technology equipment or system on which the Contractor holds any Purchaser Data, Documents and Project Records, including back-up data, is a secure system that complies with the security policies which the Purchaser shall notify the Contractor of from time to time.

50.7 If any data within the Purchaser Data, Documents or Project Data is corrupted, lost or degraded as a result of any act or omission of the Contractor, the Purchaser may:

(a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the data, in which case the Contractor shall do so as soon as practicable; and/or

(b) itself restore or procure the restoration of the data, in which case the Contractor shall repay the Purchaser any reasonable expenses incurred in doing so.

50.8 If at any time the Contractor suspects or has reason to believe that any data within the Purchaser Data, Documents or Project Records has or may become corrupted, lost or degraded in any way for any reason, then the Contractor shall notify the Project Manager immediately and inform the Project Manager of the remedial action the Contractor proposes to take. The Contractor shall not proceed with the remedial action unless the Project Manager has approved the remedial action proposed by the Contractor.

50.9 The Contractor shall provide access to the Purchaser and its auditors on reasonable notice to the Documents, Project Records and to such staff of the Contractor as the Purchaser may reasonably require in connection with any audit or investigation into the Contract.

50.10 The Contractor shall procure that the Subcontractors comply with the requirements of this Clause 50 in respect of any Purchaser Data, Documents or Project Records held or used by them.

Clause 51 - Anti-Bribery Provisions

51.1 The Contractor:

(a) shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

(b) shall not engage in any activity, practice or conduct which constitutes an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) shall comply with any Relevant Policies. Where the Contractor is provided with new, amended or updated Relevant Policies after the date of the Contractor's tender as stated in the Agreement, the Contractor shall be entitled to claim an addition to the

Contract Price in accordance with Clause 19 and an extension of time in accordance with Clause 14;

(d) has and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010), the Relevant Policies and Sub-clause 51.2, and the Contractor shall enforce them where appropriate;

(e) shall promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract;

(f) shall immediately notify the Purchaser (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor and the Contractor warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Effective Date;

(g) shall within six (6) months of the Effective Date, and annually thereafter, certify to the Purchaser in writing signed by an officer of the Contractor, compliance with this Sub-clause 51 by the Contractor and all persons associated with it under Sub-clause 51.2. The Contractor shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

51.2 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 51 ("**Relevant Terms**"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be liable to the Purchaser for any breach by such persons of any of the Relevant Terms.

51.3 For the purpose of this Clause 51 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively. For

the purposes of this Clause 51 a person associated with the Contractor includes but is not limited to any Subcontractor.

Clause 52 – Data Protection

52.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation.

52.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, both the Purchaser and the Contractor are Controllers and shall comply with their obligations thereunder.

Clause 53 - Severance

53.1 If any provision of the Contract shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of the Contract which shall remain in full force and effect to the extent permitted by law.

53.2 If any provision of the Contract is found to be invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

Clause 54 - Counterparts

The Contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

Clause 55 - Governing Law and Jurisdiction

The Contract shall be governed by the laws of England and the Parties submit to the jurisdiction of the courts of England and Wales.

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Embedded Excel	0
Format changes	0
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