

1. INTERPRETATION & DEFINITIONS

1.1 These Conditions are supplementary to the "CPA Model Conditions for the hiring of plant (with effect from July 2011)" as amended by the Balfour Beatty CPA amendments set out in Annex A to these Conditions (collectively the "Balfour Beatty Amended CPA Conditions") which are incorporated into these Conditions and shall combined with these Conditions form the terms and conditions of hire of Plant and/or Equipment by Balfour Beatty as the Hirer from the Owner ("the Hire Conditions").

1.2 In the event of any inconsistency, conflict or ambiguity between any of the terms in these Conditions and/or the Balfour Beatty Amended CPA Conditions, these Conditions shall prevail and take precedence.

1.3 The capitalised terms used in these Conditions defined in the Balfour Beatty Amended CPA Conditions shall have the meaning set out therein unless otherwise set out in these Conditions and the following additional defined terms shall be interpreted and defined according to the following, unless the context requires otherwise:

"Accessories" means any physical addition to Plant;

"Affiliate" means: in relation to the Hirer, a Balfour Beatty Affiliate (other than the Hirer); and in relation to the Owner, an Owner Affiliate;

"Anti-Slavery Policy" means the Hirer's Code of Conduct at: <http://balfourbeatty.com/codeofconduct> and the 'Modern Slavery and Labour Exploitation Guidance and Requirements for Suppliers' at: <https://www.balfourbeatty.com/media/317038/prc-rm-0007d-modern-slavery-and-labour-exploitation-guidance-for-suppliers.pdf>

"Applicable EU Law" means any European Union (EU) law or EU Member State law;

"Balfour Beatty" means the Hirer and the Balfour Beatty entity named on the Order;

"Balfour Beatty Affiliate" means Balfour Beatty plc or any person which is from time to time controlled by Balfour Beatty plc and for this purpose a person is controlled or operated by Balfour Beatty plc if Balfour Beatty plc, either directly or through one or more intermediaries, beneficially owns shares (or their equivalent) carrying the majority of votes at a general meeting of shareholders (or its equivalent) of the person;

"Balfour Beatty Group" means all of the Balfour Beatty Affiliates;

"Balfour Beatty Materials" means any material owned by the Hirer and used by the Owner pursuant to the Hire Contract (howsoever created or stored), internal guidelines, technical documentation and operating manuals, correspondence, application forms, literature and policy statements;

"Balfour Beatty Plant Hire Requirements" means the Balfour Beatty and/or Hirer's standard requirements for Plant to be hired by the Hirer from the Owner as set out at [balfourbeatty.com/hirerequirementsv1\\_0\\_241018/](http://balfourbeatty.com/hirerequirementsv1_0_241018/) or as issued by the Hirer to the Owner from time to time;

"Balfour Beatty Policies" means the policies, procedures, standards and regulations in place from time to time within the Hirer and at each of the Hirer's premises including in relation to security, health and safety, information technology, conduct and otherwise as set out at;

<https://www.balfourbeatty.com/codeofconduct>

<https://www.balfourbeatty.com/how-we-work/supply-chain/supplier-code-of-conduct/>

<https://www.balfourbeatty.com/healthandsafety>

<https://www.balfourbeatty.com/supplychainprandmarketing>

<https://www.balfourbeatty.com/riskmanagement>

<https://www.balfourbeatty.com/quality>

<https://www.balfourbeatty.com/environment>

<https://www.balfourbeatty.com/recordsmanagement>

<https://www.balfourbeatty.com/informationsecurity>

<https://www.balfourbeatty.com/sustainableprocurement>

<https://www.balfourbeatty.com/sustainabilitypolicy>

"Business Day" means a day (other than a Saturday or Sunday) on which banks in London and Edinburgh are normally open for general business;

"Business Hours" means 8.00am to 5.00pm on any Business Day;

"Charges" means the hire charges and rates payable by the Hirer in consideration for the hire of the Plant and/or any Accessories, if applicable as set out on the Order or as otherwise agreed in writing between the Parties;

"Clauses" means the standard terms and conditions set out in this document;

"Confidential Information" means all information obtained from the other party which by its nature should be treated as confidential information or is marked as such which may come into its possession or into the possession of its employees, agents or subcontractors as a result of or in connection with the Hire Contract and any and all information which may be derived from such information;

"Conditions" means the terms and conditions set out in this document;

"Customer" means any person which is an actual or intended customer, client or employer of the Hirer, or in relation to whose project or other work the Hirer has engaged, or is contemplating engaging any third party;

"Damage and Defects" means any deterioration in the condition of the Plant or its Accessories excluding fair wear and tear and damage due to latent or manufacturing defects in the Plant or due to negligence of the Owner or Owner appointed operator;

"Data Protection Laws" means any law, statute, directive, legislation, order, regulation or other binding law (as amended or revised from time to time) relating to data protection and/or privacy to which a party is subject, including the Data Protection Act 2018 ("DPA") and the GDPR;

"Data Protection Particulars" has the meaning given in Clause 10.3;

"Data Subject Request" means any Data Subject access request, notice or complaint exercising rights under the Data Protection Laws;

"Data Transfer" means transferring, accessing or Processing the Hirer Personal Data, from or to a jurisdiction or territory that is a Restricted Country;

"Data Transfer Agreement" means the form of agreement supplied by the Hirer incorporating EU Model Clauses (EC Decision 2010/87/EU);

"Disclosing Party" has the meaning set out in Clause 11.1;

"Effective Date" means the date as set out on the Order;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

"Good Industry Practice" means, in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

"Hirer" means Balfour Beatty or any Balfour Beatty Affiliate, that places an Order as the hirer of the Plant and/or any Accessories with the Owner under these Hire Conditions;

"Hire Conditions" has the meaning set out in Clause 1;

"Hire Contract" means the document signed by the Hirer, detailing the hire which incorporates the Hirer's Order form and the Hire Conditions;

"Hirer Data" means all data (including Hirer Personal Data), information, text, visual or graphic representations and other materials in any medium or format whether electronic,

tangible or otherwise) howsoever created or stored and which are provided to or accessed by the Owner or its subcontractors by or at the direction of the Hirer; or which the Owner or its subcontractors create, collect, process, store, generate, or transmit in connection with the Hire Contract;

"Hire Period" means the term of the hire of the Plant as set out in the Order and/or pursuant to Clause 3;

"Hirer Personal Data" means Personal Data Processed by either party pursuant to the Hire Contract set out in the Data Protection Particulars;

"Hirer Systems" means Systems (or part thereof) in which the Intellectual Property Rights are owned by or licensed to the Hirer and to be used in whole or in part in the provision of the Plant;

"ICO" means the Information Commissioner's Office or the UK regulator for Data Protection Laws and privacy (as renamed or reconstituted from time to time);

"ICO Correspondence" means correspondence or written or verbal communication from the ICO in relation to Hirer Personal Data;

"Intellectual Property Rights" means patents, trade marks, services marks, copyrights, topography rights, database rights, design rights, trade secrets and rights of confidence and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them;

"Plant" means any operated or non-operated plant or machinery or equipment made available by the Owner on a hire basis to the Hirer pursuant to these Hire Conditions and as set out in the Contract and the Order;

"Losses" means all losses, liabilities, costs (including legal costs), charges, expenses, actions, procedures, claims, demands, damages (including damages awarded by a competent court or paid pursuant to a settlement), penalties or regulatory fines, investigative, corrective or compensatory action costs required by a regulator or costs of defending enforcement action;

"Off-Hire" means return of the Plant to the Owner as further defined in the Balfour Beatty Plant Hire Requirements;

"Off Hire Paperwork" means the paperwork completed on return of the Plant to the Owner as set out in the Balfour Beatty Plant Hire Requirements;

"On Hire Paperwork" means the paperwork completed at the point of delivering the Plant to the Hirer Balfour Beatty Plant Hire Requirements;

"Order" means the order form attached to the front of the Hire Contract and any subsequent orders in written form and accepted by the Hirer;

"Owner" means the Owner of the Plant as named on the Order and Hire Contract;

"Personal Data Breach" has the meaning set out in the GDPR;

"Permitted Purpose" means the purpose of the Processing set out in the Data Protection Particulars;

"Principal" means: (i) any owner, officer or director; or (ii) any employee or other representative who has authority to make or influence decisions or recommendations regarding the relationship with the Hirer.

"Processing" has the meaning set out in the GDPR ("Process" and "Processed" shall be construed accordingly);

"Public Officials" include: i) Officers and employees of any national, regional, local or other governmental entity, including elected officials; (ii) any private person acting temporarily in an official capacity for or on behalf of any such governmental entity (such as a consultant retained by a government agency); (iii) Officers and employees of companies in which a government owns an interest; (iv) Candidates for political office at any level; (v) Political parties and their officials; and (vi) Officers, employees or official representatives of public (quasi-governmental) international organisations, such as the World Bank, United Nations, International Monetary Fund, etc.

"Recipient" has the meaning set out in Clause 11.1;

"Relevant Person" means any Customer, or any Principal of any Customer.

"Restricted Country" means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has deemed to provide inadequate protection in relation to Data Protection Laws;

"Safe Systems of Work" means detailed instructions outlining the Hirer's site processes and procedures that reduce hazards and risk to be complied with by the Owner when delivering the Plant on site at the Hirer's premises;

"Service Credits" means the amounts due from the Owner to the Hirer for any breaches of Service Levels by the Owner as set out in the Balfour Beatty Plant Hire Requirements and/or the Hire Contract;

"Service Levels" means the quality levels which the Owner shall ensure the Plant shall comply with throughout the term of the Hire Contract as set out in the Balfour Beatty Plant Hire Requirements and/or the Hire Contract;

"Technical Specification" means the Balfour Beatty UK Plant specifications and standards set out at <https://www.balfourbeatty.com/media/317153/hsf-rm-0046-plant-specification-booklet-march-2018.pdf> as updated from time to time and any other technical requirements specified in writing by the Hirer;

"Owner Affiliate" means any person which is from time to time directly controlled by the Owner and for this purpose a person is directly controlled by the Owner if the Owner beneficially owns shares (or their equivalent) carrying the majority of votes at a general meeting of shareholders (or their equivalent) of the person;

"Owner Materials" means any material owned by the Owner and used by the Hirer pursuant to any Hire Contract (howsoever created or stored) including internal guidelines, technical documentation and operating manuals, correspondence, application forms, literature and policy statements;

"Owner Proprietary Systems" means that part of the Owner's Systems in which the Intellectual Property Rights are owned by or licensed to the Owner;

"Systems" means computer programs, databases, the tangible media on which they are recorded, and their supporting documentation, including input and output format, program listings, narrative descriptions, source code, object code, algorithms, logic and development tools, operating instructions and user manuals;

1.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

1.5 Reference to "parties" means the parties to the Hire Contract and references to "a party" mean one of the parties to the Hire Contract.

1.6 In the event and only to the extent of any conflict between the Clauses and the Order, the Clauses shall prevail.

1.7 References to the words "include(s)" or "including" shall be construed without limitation to the generality of the preceding words.

1.8 The rights and remedies of the Hirer described in the Hire Contract and/or these Conditions shall be in addition and without prejudice to its other rights and remedies under the Hire Contract and/or these Conditions and at law.

## 2. BASIS OF HIRE

The Hirer may from time to time hire Plant from the Owner under the Hire Conditions pursuant to a valid Order being issued by the Hirer to the Owner. Any Hire Contract is formed on the basis of the Hire Conditions set out in the main body of these Conditions and the Balfour Beatty Amended CPA Conditions and any terms accepted by the Hirer in writing in the Order and sets out the only terms that shall apply between the Parties in relation to the hire of the any Plant by the Hirer from the Owner. Notwithstanding anything to the contrary in any quotation, tender, delivery note, invoice, order acknowledgement, correspondence or other document issued by the Owner, these Clauses shall apply to all Orders issued by the Hirer to the Owner and all other terms or conditions are excluded.

## 3. HIRE PERIOD

3.1 The Hire Contract shall run for the Hire Period, unless and until terminated earlier in accordance with the terms of these Hire Conditions unless otherwise stated in the Order.

3.2 The Hire Period for each Hire Contract and the Charges will commence at the date and time detailed in the Hire Contract. The Hire Period will end on the Off-Hire Date agreed with the Owner for collection of the Plant and/or any Accessories, if applicable and keys by the Owner and completion of associated Off-Hire Paperwork by duly authorised representatives of both Parties. The Hirer shall be entitled to Off-Hire the Plant and/or Accessories under the Hire Contract at any time in accordance with the terms of the Balfour Beatty Plant Hire Requirements.

3.3 Risk in the Plant and/or any Accessories, if applicable shall pass from the Owner to the Hirer on written acceptance by the Hirer of completed delivery and where applicable installation by the Owner at the Hirer's delivery site. Risk shall pass back from the Hirer to the Owner in accordance with the Off-Hire process terms set out in paragraph 17 of the Balfour Beatty Plant Hire Requirements. Legal and beneficial title to the Plant and/or any Accessories, if applicable shall at all times remain with the Owner and the Hirer shall at no time have any proprietary right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to the Hire Conditions).

3.4 The Hirer shall not sell, mortgage, charge, pledge, assign, loan hire or attempt to transfer title of the Plant and/or any Accessories, if applicable unless otherwise permitted under these Hire Conditions.

## 4. THE PLANT

4.1 The Owner shall provide the Plant and/or any Accessories, if applicable to, and shall perform its other obligations under any Hire Contract for the benefit of, the Hire and the Hirer's Group, and the Hirer shall be entitled to enforce any rights under this Agreement on behalf of and for the benefit of the Balfour Beatty Group.

4.2 The Owner warrants and represents that the Plant and/or any Accessories shall conform to the Technical Specification and any other technical requirements agreed in writing with the Hirer and be free from material defects.

4.3 The Owner warrants and represents that it holds all necessary licences, accreditations, approvals, consents and permissions necessary for the provision of the Plant and/or any Accessories, if applicable to the Hirer on a hire basis for the intended purposes set out in the Order, if applicable and shall comply with the Hirer's Balfour Beatty Plant Hire Requirements at all times and Safe Systems of Work when at the Hirer's premises.

## 5. CHARGES AND PAYMENT

5.1 The Hirer shall pay the Charges (inclusive of any delivery, import or duty costs, mileage or shipping costs) relating to the Plant and/or any Accessories, if applicable in accordance with this Clause 5, the Hire Contract and the Order.

5.2 Unless otherwise stated in the Order and/or agreed in writing between the Parties, payment of invoices shall be made by the first Friday following the period of 60 (sixty) days from receipt of a valid invoice for the Plant provided in accordance with the Order.

5.3 Unless otherwise agreed in writing by the Hirer, the Owner shall register on the Hirer's e-invoicing system at: [www.causeway.com/balfour-beatty-tradex-registration](http://www.causeway.com/balfour-beatty-tradex-registration) and the Owner shall at no additional cost to the Hirer submit all invoices electronically via the Hirer's nominated e-invoicing platform and complete all reasonably required technical and functional tests required from the Owner by the Hirer's nominated e-invoicing platform provider to enable successful transmission of invoices and pay any associated fees for submitting invoices via the e-invoicing platform and submit all invoices via such e-invoicing platform.

5.4 The Owner acknowledges that where the Owner fails to submit invoices in accordance with Clause 5.3 and/or the Hirer's e-invoicing platform, any invoices submitted by other means shall not be valid and the Hirer reserves the right to reject such invoices and to require the Owner to re-submit invoices in accordance with Clause 5.3 in such circumstances.

5.5 The Hirer reserves the right to set off any amount at any time owing to it by the Owner against any amount payable by it to the Owner under these Hire Conditions or the Hire Contract and/or any other agreement between the Parties.

5.6 Except where otherwise stated, the Charges are exclusive of value added tax. If the Hirer fails to make payment of any undisputed sums validly due in accordance with this Clause 5, then the Owner shall be entitled to charge simple interest on the overdue amount at a rate of 2% above the base rate of the Bank of England from time to time in force from the date on which such amount fell due until payment.

## 6. DELIVERY REQUIREMENTS

6.1 Unless otherwise stated in the Order, the Owner shall ensure that the Plant is delivered in accordance with the delivery dates and requirements set out in the Order and in the Balfour Beatty Plant Hire Requirements to the Hirer's named delivery location and on a carriage insurance and duty paid basis by the Owner. Where such requirements are not so stated, delivery/supply shall be in accordance with any programme agreed between the Hirer and the Owner or, in the absence of such programme, in accordance with the reasonable directions of the Hirer. Time is of the essence in relation to the date and rate of supply of the Plant.

6.2 The Owner shall ensure that in relation to its delivery of the Plant the Owner complies with the Service Levels set out in the Balfour Beatty Plant Hire Requirements where applicable. The Owner shall pay or credit to the Hirer within 30(thirty) days of receipt of invoice (as instructed by the Hirer at its discretion) any Service Credit due from the Owner to the Hirer due to any breach by the Owner of the Service Levels as set out in the Balfour Beatty Plant Hire Requirements.

## 7. SECURITY REQUIREMENTS & COMPLIANCE WITH LAW AND REGULATION

7.1 The Owner shall procure that it has appropriate security measures in place to ensure that there can be no unauthorised access to the Hirer's Data, Hirer's Systems or premises.

7.2 The Owner shall comply with the Balfour Beatty Policies.

7.3 The Owner shall comply with all applicable laws and regulations in performing its respective obligations under the Hire Contract and these Hire Conditions, and shall ensure that at all times the Plant comply with all applicable laws and regulations.

7.4 Any alleged or suspected violation of the Balfour Beatty Policies by the Owner or its personnel in the performance of this Agreement shall be promptly reported to the Hirer. The Owner shall permit the Hirer to conduct an investigation into the matter, co-operate with any such investigation and take whatever corrective action the Hirer deems to be appropriate with respect to any such violation.

7.5 The Owner represents, warrants and undertakes to the Hirer that:

7.5.1 in carrying out its responsibilities under the Hire Contract, it shall at all times comply with all applicable local and international laws. In particular, neither it nor any of its officers, employees, directors or agents shall, directly or indirectly offer, promise, pay or give, or authorise any offer, promise, payment or gift of, money or anything else of value to any person, including any Public Official or other Relevant Person, either as an improper inducement to make, or as an improper reward for making, any decision favourable to the interests of the Hirer or the Owner;

7.5.2 none of its Principals is a Public Official or Relevant Person;

7.5.3 neither it nor any of its Principals has any connection with a Public Official or Relevant Person that has not been disclosed to the Hirer; and

7.5.4 the information provided to the Hirer in response to the Hirer's third party questionnaire, if applicable, is complete, accurate and not misleading.

7.6 Notwithstanding any other provision of these Hire Conditions, if the Hirer becomes aware of what it determines in good faith to be a breach of the above representations and warranties, the Hirer is entitled to terminate the Hire Contract, and any other agreement between the parties, with immediate effect. In the event of such termination, the Hirer shall have no liability to the Owner under the Hire Contract for any fees, reimbursements or other compensation or for any other loss, cost, claim or damage resulting, directly or indirectly, from such termination except for charges validly due for the hire of the Plant up to and until the date of such termination.

## 8. INTELLECTUAL PROPERTY

8.1 All Intellectual Property Rights in the Plant belonging to the Owner prior to the Effective Date will remain vested in the Owner.

8.2 The Owner hereby grants to the Hirer a non-exclusive, non-transferable, royalty-free licence to use any Intellectual Property Rights in the Owner Materials to the extent necessary to use the Plant pursuant to the Hire Contract.

## 9. INDEMNITIES

9.1 The Owner will indemnify and keep fully and effectively indemnified the Hirer on demand from and against any and all claims made against the Hirer as a result of or in connection with:

9.1.1 a claim alleging that the use of the Plant permitted under the Hire Contract infringes the Intellectual Property Rights of a third party; or

9.1.2 defective workmanship, quality, materials or breakdown due to manufacturing faults in or in relation to the Plant; or

9.1.3 any liability, loss, damage, cost or expense in relation to loss or damage to the Hirer's or third party property and/or any third party claims or proceedings brought against the Hirer to the extent caused by, relating to or arising from the Plant or as a consequence of a direct or indirect breach, negligent performance or failure or delay in performance of the Hire Contract by the Owner, and such indemnities will include all losses of any nature incurred by the Hirer directly or indirectly to the extent arising as a consequence of or in connection with such claim. The indemnities in this clause shall remain in full force and effect notwithstanding the termination or expiry of the Hire Contract.

## 10. DATA SECURITY AND DATA PROTECTION

10.1 The Owner shall ensure that any system on which the Owner holds Hirer Data, is secure and ensures complete data integrity in accordance with Good Industry Practice.

10.2 The terms "Controller", "Data Subject", "Personal Data" and "Processor" in this Clause 10 shall have the meanings set out in the GDPR.

10.3 The Hirer shall be Controller of Hirer Personal Data Processed by the Owner and the Owner shall be Processor where Processing the Personal Data in accordance with the Data Protection Particulars. The Owner shall confirm in writing to the Hirer the subject matter, duration, nature and purpose of the Processing, the type of Personal Data and categories of Data Subjects in relation to the Processing ("Data Protection Particulars") prior to commencement of any Hire Contract.

10.4 Where acting as a Processor for the Permitted Purpose, the Owner shall:

10.4.1 Process Hirer Personal Data for the purposes of performing its obligations, strictly in accordance with these Hire Conditions and the Hirer's instructions and comply with the obligations of a Processor under the Data Protection Laws;

10.4.2 unless prohibited by law, notify the Hirer immediately and within twenty-four (24) hours if it considers (acting reasonably) that it is required by Applicable EU Law to act other than in accordance with the Hirer's instructions;

10.4.3 deal promptly and properly with all enquiries relating to Processing of Hirer Personal Data;

10.4.4 not make nor permit a third party to make a Data Transfer unless it has: (i) obtained the Hirer's prior written consent; (ii) provided, in advance, a risk assessment to

the Hirer of the Personal Data to be transferred and the Restricted Country or Countries to which Personal Data will be transferred; and (iii) put in place measures to ensure compliance with Data Protection Laws including safeguards for such Personal Data and entering into a Data Transfer Agreement with the Hirer, Balfour Beatty Affiliate and/or the Owner's sub-processors;

10.4.5 notify the Hirer promptly and within forty-eight (48) hours of receipt of any Data Subject Request or ICO Correspondence and shall: (i) not disclose Hirer Personal Data in response to any Data Subject Request or ICO Correspondence without the Hirer's prior written consent; (ii) provide the Hirer with all reasonable co-operation and assistance required;

10.4.6 notify the Hirer promptly and within twenty-four (24) hours of becoming aware of any actual, suspected or 'near miss' Personal Data Breach, and: (i) inform the Hirer with the known facts; (ii) implement any measures necessary to restore security of Hirer Personal Data; and (iii) subject to Clause 10.4.7, assist the Hirer in any notifications the Hirer is required to make to the ICO and affected Data Subjects;

10.4.7 not disclose Hirer Personal Data to any third parties (including subcontractors) in any circumstances without the Hirer's prior written consent; and

10.4.8 use all reasonable endeavours to assist the Hirer to comply with the obligations imposed on the Hirer by the Data Protection Laws.

10.5 Save as required by Applicable EU Law, upon termination or expiry of the Hire Contract and/or the date on which the Hirer Personal Data is no longer relevant to, or necessary for, the Permitted Purpose, the Owner shall cease Processing all the Hirer Personal Data and (as directed in writing by the Hirer) return or permanently and securely destroy all Hirer Personal Data and all copies in its possession or control.

10.6 The Owner shall only disclose Hirer Personal Data to personnel or sub-processors, vetted by the Owner for reliability and integrity and required to access such Hirer Personal Data to assist the Owner in meeting its obligations under these Hire Conditions or any Hire Contract and whom the Owner has ensured that it has contractually-binding confidentiality undertakings with and, in the case of sub-processors, a contract with obligations equivalent to those imposed on the Owner in Clause 10.

10.7 Within thirty (30) calendar days of request, the Owner will allow the Hirer, its representatives and auditors to audit the Owner's data processing facilities, procedures and records to ascertain compliance with this Clause 8 and shall provide reasonable information, assistance and co-operation to the Hirer in relation to such audit.

10.8 The Owner shall indemnify the Hirer on demand and shall keep the Hirer indemnified from and against all Losses arising out of or in connection with any breach by the Owner of its obligations under this Clause 10.

#### 11. CONFIDENTIALITY

11.1 All Confidential Information given by one party (the "Disclosing Party") to the other party (the "Recipient") or otherwise obtained, developed or created by the Recipient relating to the Disclosing Party will be treated by the Recipient, as confidential and will not, other than as necessary for the performance of this Agreement be used or disclosed without the prior written consent of the Disclosing Party.

11.2 The contents of the Hire Contract or these Hire Conditions shall be treated by the parties as Confidential Information.

11.3 The provisions of this Clause 11 and the Owner's rights to protect its Confidential Information will not limit or restrict the Hirer's right to use and permit the use of any information contained in any operational or procedural documentation relating to the Plant both before and after termination of this Agreement.

#### 12. REPRESENTATIONS AND WARRANTIES

12.1 Each party warrants and represents that, as at the date of the Hire Contract:

12.1.1 it has full capacity and authority to enter into and perform the Hire Contract and its obligations under the Hire Conditions;

12.1.2 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under the Hire Contract; and

12.1.3 once duly executed the Hire Contract will constitute its legal, valid and binding obligations.

12.2 The Owner warrants, undertakes and represents on an ongoing basis that:

12.2.1 its obligations under the Hire Contract will be performed promptly and diligently and with due skill and care, and in accordance with Good Industry Practice;

12.2.2 the performance of its obligations under the Hire Contract will not infringe any Intellectual Property Rights of any third party;

12.2.3 all information provided by or at the direction of the Owner to the Hirer is true, accurate and complete.

#### 13. REMEDIES

13.1 If any of the Plant is not supplied in accordance with, or the Owner fails to comply with, any terms of the Hire Contract or these Hire Conditions, the Hirer may exercise any one or more of the following rights or remedies, whether or not any part of the Plant has been accepted by the Hirer:

13.1.1 Cancel and/or Off-Hire the Hire Contract without liability; or

13.1.2 return the Plant to the Owner at the risk and cost of the Owner on the basis that a full refund for the Plant so returned shall be paid immediately by the Owner; or

13.1.3 require the Owner, at the Owner's expense, either (at the Hirer's option) to remedy any defect in the Plant and carry out such other work as is necessary to ensure that the Plant are in all respects in accordance with the Order or to supply replacement Plant; or

13.1.4 in any case, to claim such damages as it may have sustained in connection with the Owner's breach of the Hire Contract not otherwise covered by this Clause 13.

#### 14. LIMITATIONS OF LIABILITY

14.1 Neither party limits its liability:

14.1.1 for fraud or fraudulent misrepresentation;

14.1.2 for death or personal injury caused by its negligence or that of its employees, agents or subcontractors (as applicable);

14.1.3 under Clause 9, 10 or Clause 11;

14.1.4 deliberate repudiatory breach or wilful default; and

14.1.5 for any regulatory fines or penalty, or damages, expenses or other losses arising from a breach by a party of any law, statute, or regulation.

14.2 Subject to Clause 14.1, the total aggregate liability of the Hirer and its Affiliates under or in relation to the Hire Contract for all claims and Losses whether arising under tort (including negligence) breach of contract, or otherwise shall not exceed the total

charges paid or payable by the Hirer to the Owner for the Plant for the Hire Period under the Hire Contract.

14.3 Subject to Clauses 14.1, neither party (or its Affiliates) shall be liable to the other party (or its Affiliates) for any loss of profit, any loss of business, any loss of opportunity, any loss of revenue or any indirect or consequential loss or damage, in each case whether arising under tort (including negligence), breach of contract or otherwise.

#### 14A. MAINTENANCE

Unless otherwise stated in the Balfour Beatty Plant Hire Requirements or agreed in writing in the Order, the Owner shall be responsible throughout the term of the Hire Contract for providing repair and maintenance services in relation to any reported manufacturing defects or faults in the Plant including but not limited to servicing, repair and/or maintenance of the Plant, tyres, lights, wheel nuts, fluid levels, condition and/or accessories, oils, lubricants, anti-freeze and consumables and shall carry out any repairs or replacement required in accordance with the Service Levels set out in the Balfour Beatty Plant Hire Requirements.

#### 15. INSURANCE

15.1 The Owner shall, throughout the term of the Hire Contract and for a period of 6(six) years after the end of the Hire Contract, maintain in place the following minimum insurance arrangements covering its assets, risks and liabilities:

15.1.1 Public and products liability insurance of at least £10(ten) million GBP per event;

15.1.2 Professional Indemnity insurance of at least £10(ten) million GBP per event;

15.1.3 Employer's liability insurance to the level required at law;

15.1.4 Contractor's all risk insurance to the extent required for installation works undertaken by the Owner;

and shall provide from time to time provide such evidence of those insurance arrangements as the Hirer shall reasonably require.

15.2 Where agreed to in writing by the Hirer and stated in the Order, the Hirer shall ensure that it maintains appropriate property and/or public liability insurance cover in relation to any damage to the Plant or third party damage or injuries due to the use of the Plant and caused by the negligence of the Hirer during the Hire Period with a reputable insurance provider subject to such cover remaining available at commercially reasonable rates.

#### 16. TERMINATION

16.1 Each of the Hirer and the Owner shall be entitled to terminate the Hire Contract or Order immediately by written notice to the other party if that other party:

16.1.1 is unable to pay its debts or becomes insolvent;

16.1.2 is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction);

16.1.3 has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets; or

16.1.4 enters into or proposes any composition or arrangement with its creditors generally.

16.2 The Owner may terminate the Hire Contract or Order only:

16.2.1 in accordance with Clause 17.1; or

16.2.2 by written notice to the Hirer if the Hirer is in material breach of the Hire Contract or Order and either such breach is not capable of remedy or, if the breach is capable of remedy, the Hirer has failed to remedy the breach within 20 Business Days of receiving written notice requiring it to do so, provided that the Hirer shall not be in material breach of the Hire Contract or Order for a failure to pay or procure the payment of any Charges that are disputed.

16.3 The Hirer may terminate the Hire Contract or Order immediately by written notice to the Owner:

16.3.1 if the Owner is in material breach of the Hire Contract or Order (which shall include a single event or a series of persistent minor events which together have a material adverse impact on the delivery of the Plant or the rights and benefits of the Hirer under the Hire Contract or Order) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Owner has failed to remedy the breach within 20 Business Days of receiving written notice requiring it to do so;

16.3.2 by giving written notice to the Owner at any time before delivery of the Plant, without liability, except that where the Owner at the Hirer's written instruction has incurred reasonable cost preparing the Plant for hire or the Plant has left the Owner's premises, the Hirer shall pay the Owner for reasonable costs incurred by the Owner as a direct result of the Hirer's written instruction and subject to the exclusions set out in Clause 14.3, provided that the Owner shall be under a duty to mitigate such costs as far as reasonably possible; and

16.3.3 if there is a breach of the Balfour Beatty Policies.

16.4 On expiry or termination of the Hire Contract:

16.4.1 the Parties shall comply with their respective obligations under the terms set out in the Balfour Beatty Plant Hire Requirements including but not limited to the Off-Hire process and procedures;

16.4.2 the Owner shall submit to the Hirer and collect from the Hirer any Off-Hire Paperwork required for the return of the Plant;

16.4.3 the Owner shall be responsible for collecting at its own cost the Plant from the Hirer's nominated premises or collection site subject to compliance with the Hirer's Off-Hire processes as set out in the Balfour Beatty Plant Hire Requirements;

16.4.4 the Owner shall inspect at its own cost the Plant and shall be entitled to recover reasonable actual costs incurred up to a maximum replacement value based on the depreciated net book value of the Plant for the replacement or repair of any Damage and Defects to Plant identified and confirmed by the Hirer following the inspection where permitted in the Balfour Beatty Plant Hire Requirements provided that the Owner notifies the Hirer as soon as reasonably possible of any Damage and Defects which have occurred to the Plant during the Hire Period and that the Owner shall be deemed to have accepted Damage and Defects free return of the Plant if it fails to notify the Hirer of any Damage and Defects within 10 days of the date of inspection;

16.4.5 the Owner undertakes, within 10 days of receipt of a written request from Hirer, to return all Balfour Beatty Materials, Hirer Data and other property in its possession or under its control that belongs to or has been provided by the Hirer and in relation to the Hirer's Confidential Information in its custody or control, at the Hirer's option, to return or destroy such Confidential Information and/or irretrievably delete the same if stored on electronic or magnetic media and certify to the Hirer that this has been done.

#### 17. PROMOTIONAL COMMUNICATION & MARKETING

17.1 Neither Party shall, and each Party shall procure that its Affiliates, employees, agents, contractors and subcontractors shall not:

17.1.1 make or authorise any public or private announcement or communication including but not limited to promotional communications including , media relations, social media and marketing activity such as sponsorship, advertising, digital communications, case studies or corporate presentations ("Promotional Communications") concerning the Hire Contract, the Plant or their relationship with the other party; or

17.1.2 refer to or use any business name, logo or trade marks (whether registered or not) of the other party or its Affiliates in any Promotional Communications; without the prior written approval of the other party and in the case of the Owner, without the prior written approval of the Hirer's Group Corporate Communications team located at the Balfour Beatty Canary Wharf office in London and without complying with the written instructions of the Hirer's Group Corporate Communications team, except in each case as required by law.

#### 18. ASSIGNMENT, SUBCONTRACTING AND RE-STRUCTURING

18.1 The Hirer may assign all of its rights under the Hire Contract without the Owner's consent to any person.

18.2 The Owner may not assign, novate, subcontract or otherwise dispose of the Hire Contract or any part thereof without the prior consent in writing of the Hirer.

#### 19. ENTIRE AGREEMENT

Subject to Clause 14.1, the Hire Contract together with all documents specifically referred to herein as governing the relationship between the parties constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements in relation thereto.

#### 20. INDEPENDENT CONTRACTOR

Nothing in the Hire Contract and no action taken by the parties under it will be deemed to constitute a partnership, joint venture or other co-operative entity between the parties, nor constitute either party the agent of the other party for any purpose.

#### 21. WAIVER

No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

#### 22. VARIATION

No variation of this the Hire Contract will be valid unless recorded in writing and signed by or on behalf of each of the parties to the Hire Contract.

#### 23. SEVERABILITY

If any provision of this these Hire Conditions or any Hire Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain unaffected and in force.

#### 24. FURTHER ASSURANCE

Each party shall, at the request and cost of the other party, sign all documents and do all other acts, which may be necessary to give full effect to the Hire Contract.

#### 25. COSTS

Except as otherwise agreed or specifically provided in the Hire Contract each party will pay the legal and other costs and expenses incurred by it in connection with the negotiation, preparation and entering into of the Hire Contract.

#### 26. THIRD PARTY RIGHTS

Subject to Clause 3.1, no term of the Hire Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person other than the Hirer and the Owner save that the Hirer may enforce any term of the Hire Contract as agent or trustee on behalf of any of its Affiliates.

#### 27. SURVIVORSHIP

Clauses 1, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, and 29 and Annex A paragraphs 1, 7, 8, 17, 23, 24, 33, 35 and 36 shall survive termination or expiry of these Hire Conditions and/or any Hire Contract.

#### 28. MODERN SLAVERY COMPLIANCE

28.1 The Owner represents, warrants and undertakes that:

28.1.2 neither it nor any of its officers, employees or other persons associated with it has: (a) been convicted of any offence involving slavery or human trafficking; (b) been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking;

28.1.3 in performing its obligations under the agreement, the Owner shall and shall ensure that each of its subcontractors shall comply with:

28.1.4 all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

28.1.5 Balfour Beatty's Anti-Slavery Policy and shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

28.2 The Owner shall maintain a complete set of records to trace the supply chain of all Plant provided to the Hirer in connection with these Hire Conditions; and implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the Anti-slavery Policy, the first of which shall be completed by within 3(three) months of the anniversary of the Hire Contract entered into pursuant to these Hire Conditions. The Owner shall represent the results of such audits to the Hirer and its nominated representatives on request by the Hirer and shall co-operate with requests from the Hirer to carry out its own audit on compliance with the provisions set out under this Clause 28 on reasonable prior written notice.

28.3 Notwithstanding any other provision of this Agreement, if the Hirer becomes aware of what it determines in good faith to be a breach of the above representations and warranties, the Hirer is entitled to terminate any Hire Contract entered into pursuant to the Hire Conditions, and any other agreement between the parties, with immediate effect. In the event of such termination, the Hirer shall have no liability to the Owner under these Hire Conditions or the Hire Contract for any fees, reimbursements or other compensation or for any other loss, cost, claim or damage resulting, directly or indirectly, from such termination except of charges due for the Hire Period up until the date of termination of the Hire Contract.

#### 29. GOVERNING LAW AND JURISDICTION

29.1 These Hire Conditions and any Hire Contract pursuant to these Conditions and any dispute or claim arising out of or in connection with it or its subject-matter or formation shall be governed by and interpreted in accordance with English law.

29.2 The courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with these Hire Conditions or any Hire Contract entered into pursuant to these Hire Conditions and the Parties hereby submit to the exclusive jurisdiction of the English courts.

#### ANNEX A

##### Balfour Beatty Amended CPA Conditions

##### Balfour Beatty amendments to CPA Model Conditions for the Hiring of Plant (with effect from July 2011)

The terms set out in this Annex A set out amendments to and shall replace in full and take precedence over the corresponding clauses as found in the Construction Plant-hire Association MODEL CONDITIONS FOR HIRING OF PLANT.

Capitalised terms in this Annex A that are not otherwise defined in this Annex A shall be interpreted in accordance with the relevant definition set out in the Hire Conditions.

##### 1. Definitions

- (i) replace (a) with "*The "Contract" incorporates the terms and conditions of this Agreement as executed between the parties, which incorporates any Order.*"
- (ii) replace (b) with "*The Hire Period shall commence from the time when the Plant arrives at the location specified by the Hirer on the Order and is available for use, and shall continue until the Owner is notified by Hirer that the Plant is due for Off-Hire and requires collection by the Owner. For the avoidance of doubt the Hire Period includes the time Plant is left on site during the Holiday Period.*"
- (iii) delete from (d) "Christmas and the New Year" and add to the end of (d) "*excluding Christmas and New Year, during which hire charges shall be suspended in each case subject to the Hirer providing two weeks prior notice of the same.*"
- (iv) replace (e) with "*"Order" is the Hirer purchase order to hire the Plant from the Owner which will include details of the Plant to be hired, the Hire Period, the relevant hire rates and charges and shall incorporate the terms and conditions of the Agreement.*"
- (v) replace all references to "Offer" and replace with "Order".

##### 2. Extent of Contract

NOT USED

##### 4. Unloading and Loading

- (i) delete entire Clause and replace with "*The Hirer shall be responsible for the unobstructed access and egress. The Owner shall, unless otherwise agreed in writing, be responsible for the unloading and loading of the Plant at site in accordance with instructions set out in the Order and any policy and procedures of the Hirer as may be in effect from time to time or set out explicitly in this Agreement. Any personnel supplied by the Owner for such unloading and / or loading shall be deemed to be under the direction and control of the Owner. Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Plant be regarded as the servants or agents of the Owner (notwithstanding any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.*"

##### 5. Delivery in Good Order and Maintenance Inspection Reports

- (i) Clause (a) delete "*delivered to the site*" and replace with "*utilised by the Hirer*".
- (ii) Clause (b) delete "*or indirectly*"

##### 6. Servicing and Inspection

- (i) insert at the end of the first sentence after "replace the same" "*subject to such access arrangements that may apply to any Site where the Plant is being used by the Hirer*".

##### 7. Ground & Site Conditions

- (i) delete Clause (a)
- (ii) insert at the end of Clause (b) "*Hirer reserves the right to cancel the Order without liability except for up to 100% of the delivery Charges applicable to the Order, which shall be Owner's sole and exclusive remedy in the event of Order or delivery cancellation as a result of ground and/or site conditions.*"
- (iii) insert at the end of Clause (c) "*notwithstanding that if the Owner relies on their own timber or other material that has not be agreed with the Hirer to be adequate stability, the Hirer shall not be liable for any damage, loss or cost incurred by the Owner as a result of the use of the same*"

##### 8. Handling of Plant

- (i) delete from Clause (a) "*solely*"
- (ii) insert at the end of Clause (a) "*with the exception of claims arising as a result of said drivers / operators / persons; (a) negligence or provision of services without reasonable skill and care, or (b) failure to comply with instructions and/or supervision provided by Hirer.*"

##### 9. Breakdown, Repairs and Adjustment

- (i) insert at the end of Clause (a) "*(unless otherwise agreed)*"
- (ii) delete from Clause (a) "*and acknowledged*"
- (iii) delete from Clause (c) the last sentence and replace with "*The Hirer shall be responsible for a percentage value of any replacement tyre, which shall be calculated based on the percentage tread left in the tyre at the time of the damage occurrence. For example, if a tyre tread has 50% remaining, Hirer shall be liable only for 50% of the replacement cost, the Owner shall be liable for the balance of the cost.*"
- (iv) delete from Clause (d) "*and for the payment of hire at the idle time rate as defined in Clause 25, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage.*"
- (v) insert in Clause (d) after "spares" "*(to be charged at cost)*"
- (vi) insert in Clause (d) after "repairs" "*(in accordance with the charges set out in the Agreement)*"

##### 12. Limitation of liability

Delete entire Clause

##### 13. Hirers Responsibility for Loss and Damage

- (i) In paragraph (b) delete "*In the event of loss or damage to the plant, hire charges shall be continued at idle time rates as defined in Clause 25 until settlement has been agreed.*"
- (ii) In paragraph (c) insert after (iv):
  - (v) "*where the Plant has not been collected from a site within two (2) working days of the end of the Hire Period*"

(vi) "where such damage, loss or injury is caused by Owner or his agents negligence, contravention of industry best practice, regulatory requirements, safety standards or Hirers policies and procedures."

#### **17. Return of Plant for Repairs**

(i) remove "with similar Plant if available" and replace with "with similar Plant that meets Hirers Plant standards as set out in the Agreement"

(ii) remove "he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13) by giving written notice to the Hirer." and replace with "he shall, at Hirers option a. replace the Plant with a re-hired Plant from another Owner under the same terms as this Agreement or b. terminate the Contract for that specific item of Plant forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13)"

(iii) remove "If such termination occurs" and sub paragraph (a) and (b) and replace with "if such termination occurs the Owner shall pay all transport charges involved"

#### **18. Basis of Charging**

(i) add paragraph (g) "Plant shall be charged in accordance with the hire rates and charges set out in the Agreement, unless no charges are set forth in which case the hire rates and charges in the Order shall apply."

#### **23. Commencement and Termination of Contract (Transport of Plant)**

(i) delete entire Clause and replace with the following Clauses

"(a) The hire period shall commence from the later of (i) the date and time stated on the Order, or (ii) when the Plant is on-site and available to be utilised.

(b) The hire period shall cease when the Hirer informs the Owner that the Plant is off-hired and issues an Off-Hire number.

(c) Unless expressly set out in the Agreement, no travel time shall be chargeable by the Owner for either delivery or collection."

#### **24. Hirers Liability During the Notice of Termination of Contract**

(i) delete (a)

(ii) delete (b)

(iii) delete (c)

#### **25. Idle Time**

(i) Delete Clause and replace with "When the Plant is prevented from working for a Working Day, the hire charges shall be two thirds of the hire rate (inclusive of operator element of the hire rate where applicable)."

#### **26. Wages and Other Chargeable Items relating to Drivers and Operators of Plant**

(i) Delete entire Clause and replace with "All chargeable items shall be paid by the Hirer at the rates set out in the Agreement. Any variation to the hire rates or other charges shall be in accordance with the terms of the Agreement"

#### **27. Travelling Time and Fares**

(i) Delete entire Clause and replace with "travelling time, fares, expenses and other subsistence incurred by the Owner shall be not be recoverable from the Hirer."

#### **28. Fuel, Oil and Grease**

(i) Delete entire Clause and replace with the following.

(ii) "(a) Oil and grease shall be included in the hire rate as set out in the Agreement and no further charges shall be payable for the same by the Hirer."

(iii) "(b) Fuel shall be charged at the Hirers monthly fuel benchmark price plus 10%."

#### **29. Sharpening of Drills/Steels etc.**

(i) Delete entire Clause

#### **31. Transport**

(i) Delete entire Clause and replace with "The Hirer shall pay the cost of transport at rates a within set out in the Agreement."

#### **32. Government Regulation**

(i) delete (b) and replace with "Except where the Owner is responsible as set out in (a), the Hirer shall, subject to the liability limitations in the Hire Conditions, indemnify the Owner against any charges or fines that the Owner may become liable for as a direct result of the operation by the Hirer of the Plant during the Hire Period."

#### **33. Protection of Owner's Rights**

(i) delete references to "The Owner" in Clause (b) and replace with "Either Party"

(ii) delete references to "the Hirer" in Clause (b) and replace with "the other Party"

(iii) in (b) delete (i).

(iv) in (b) sub-paragraph (ii), delete "the" between "perform" and "terms" and replace with "material"

(iv) in (b) delete (v).

(v) (c) (i) add "within normal working hours" to the end of the Clause.

(vi) (c) (ii) insert to the beginning of the Clause "where such termination is due to default of the Hirer" and insert at the end of the Clause "for the avoidance of doubt where such termination is due to default of the Owner, the Owner shall only be entitled to claim for hire charges outstanding as at the date of termination of the hire under this clause."

(vii) (d) remove references to "Owner" and replace with "either Party".

(viii) (e) Delete entire Clause

#### **35. Dispute Resolution**

(i) Delete entire Clause

#### **36. Late Payments**

(i) Delete entire Clause