

# A5 WTC

Western Transport Corridor

## Section 1

### New Buildings to South of Strabane

## Volume 1

## Part 1

### Conditions of Contract Professional Services

## **Form of Agreement and Contract Conditions**

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Prompt payment certificate

VAT Registration

Aggregate Tax undertaking

Fair Employment and Treatment (Northern Ireland) 1998

Principal Contractor – CDM Regulations (Northern Ireland)

Insurance undertaking

Environmental Protection (Duty of Care)



EXECUTED AS A DEED BY THE EMPLOYER

\* ..... (the Employer)  
by affixing his common seal in the presence of

\*or by ..... (name of Chief Executive)

..... (signature of Chief Executive)

and..... (name of Director)

..... (signature of Director)

AND AS A DEED BY THE CONSULTANT

acting by ..... (name of Director)

..... (signature of Director)

and

..... (name of Director or Company Secretary)

..... (signature of Director or Company Secretary)

## CONTRACT DATA

### Part one – Data provided by the *Employer*

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

Statements given in  
all contracts

#### 1. General

- The *conditions of contract* are the core clauses and the clauses for main Option **E**, dispute resolution Option **W2** and secondary Options **X2, X10, X11, Y(UK)2, Y(UK)3 and Z** of the NEC3 Professional Services Contract (June 2005) as amended herein and incorporating amendments dated June 2006.
- The *Employer* is  
Name **Department for Regional Development – Roads Service**  
Address **Clarence Court, 10 – 18 Adelaide Street, Belfast BT2 8GB**
- The *Adjudicator* is  
Name **To be Advised**  
Address **To be Advised**
- The Services are  
**Design development services as defined in the Phase 1 Scope of Services document**
- The Scope is in  
**As defined in the Phase 1 Scope of Services document**
- The *language of this contract* is **English**
- The *law of the contract* is the law **applicable to Northern Ireland subject to the jurisdiction of the Courts of Northern Ireland**
- The *period for reply* is **2 weeks**.
- The *period for retention* is **12 years** following Completion or earlier termination.
- The Adjudicator nominating body is **ICE Northern Ireland**
- The tribunal is **Arbitration**

- The following matters will be included in the Risk Register  
**None**.....  
.....  
.....  
.....

2. The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things

access to	access date
1 <b>The Employer's Agent</b>	<b>From the starting date</b>
2 .....	.....
3 .....	.....

3. Time

- The *starting date* is **4 December 2009**

4. Quality

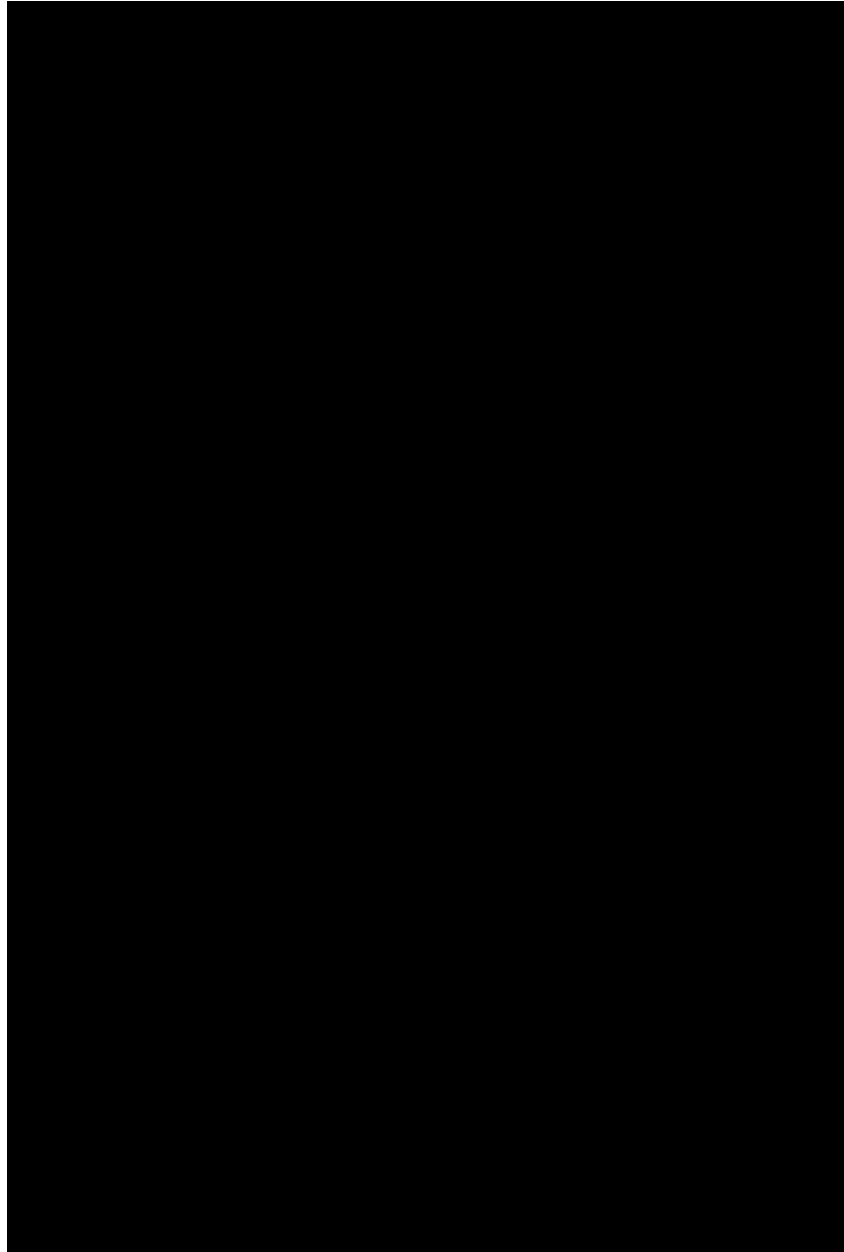
- The quality policy statement and quality plan are provided within 2 weeks of the Contract Date.
- The *defect date* is **52** weeks after Completion of the whole of the *services*.

5. Payment

- The *assessment interval* is **4** weeks (no more than five)
- The *currency of this contract* is the **Pound Sterling**
- .....  
.....

8. Indemnity, insurance and liability

- The amounts of insurance for each and every event and the periods for which the *Consultant* maintains insurance are



**Optional Statements**



**If no programme is identified in part two of the Contract Data**

~~• The Contractor is to submit a first programme for acceptance within .... weeks of the Contract Date~~

**~~If the Employer has identified work which is to meet a stated condition by a key date~~**

~~• The key dates and conditions to be met are  
condition to be met ..... key date  
1. ....  
2. ....  
3. ....~~

**~~If the period in which payments are made is not three weeks and Y(UK)2 is not used~~**

~~• The period within which payments are made is  
.....~~

**~~If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due~~**

~~• The period for payment is  
.....~~

**~~If the Employer states any expenses~~**

~~• The expenses stated by the Employer are~~

<del>Item</del> .....	<del>amount</del>
.....	.....
.....	.....
.....	.....

**~~If the Consultant is to provide additional insurances~~**

~~• The Consultant provides these additional insurances~~

~~1. Insurance against .....  
Cover is .....  
Period of cover .....  
Deductibles are .....~~

~~2. Insurance against .....  
Cover is .....  
Period of cover .....  
Deductibles are .....~~



**If the *tribunal* is arbitration**

- The arbitration procedure is **The Arbitration Rules of The Chartered Institute of Arbitrators.**
- The place where arbitration is to be held is **Belfast**
- The person or organization who will choose an arbitrator
  - if the Parties cannot agree a choice or
  - if the arbitration procedure does not state who selects an arbitrator is **The President of The Chartered Institute of Arbitrators**

~~**If this contract is a subcontract and the main contract provides for joint adjudication of disputes**~~

- ~~• The main contract Adjudicator is~~

~~.....~~

- The *Consultant* prepares forecasts of the total Time Charge and expenses at intervals no longer than **12** weeks.
- ~~the *exchange rates* are those published in .....~~  
~~on ..... (date)~~

**If Option X2 is used**

- The *law of the project* is **the law applicable to Northern Ireland subject to the jurisdiction of the Courts of Northern Ireland**

**If Option X10 is used**

- The Employer's Agent is

Name **Mouchel**

Address

**[REDACTED]**  
**[REDACTED]**

**If Option Y(UK)3 is used**

- term Person or organisation  
.....  
.....  
.....  
.....

**If Option Z is used**

- The *additional conditions* of contract are included on **Page 17** of this document.

**Part two – Data provided by the *Consultant***

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

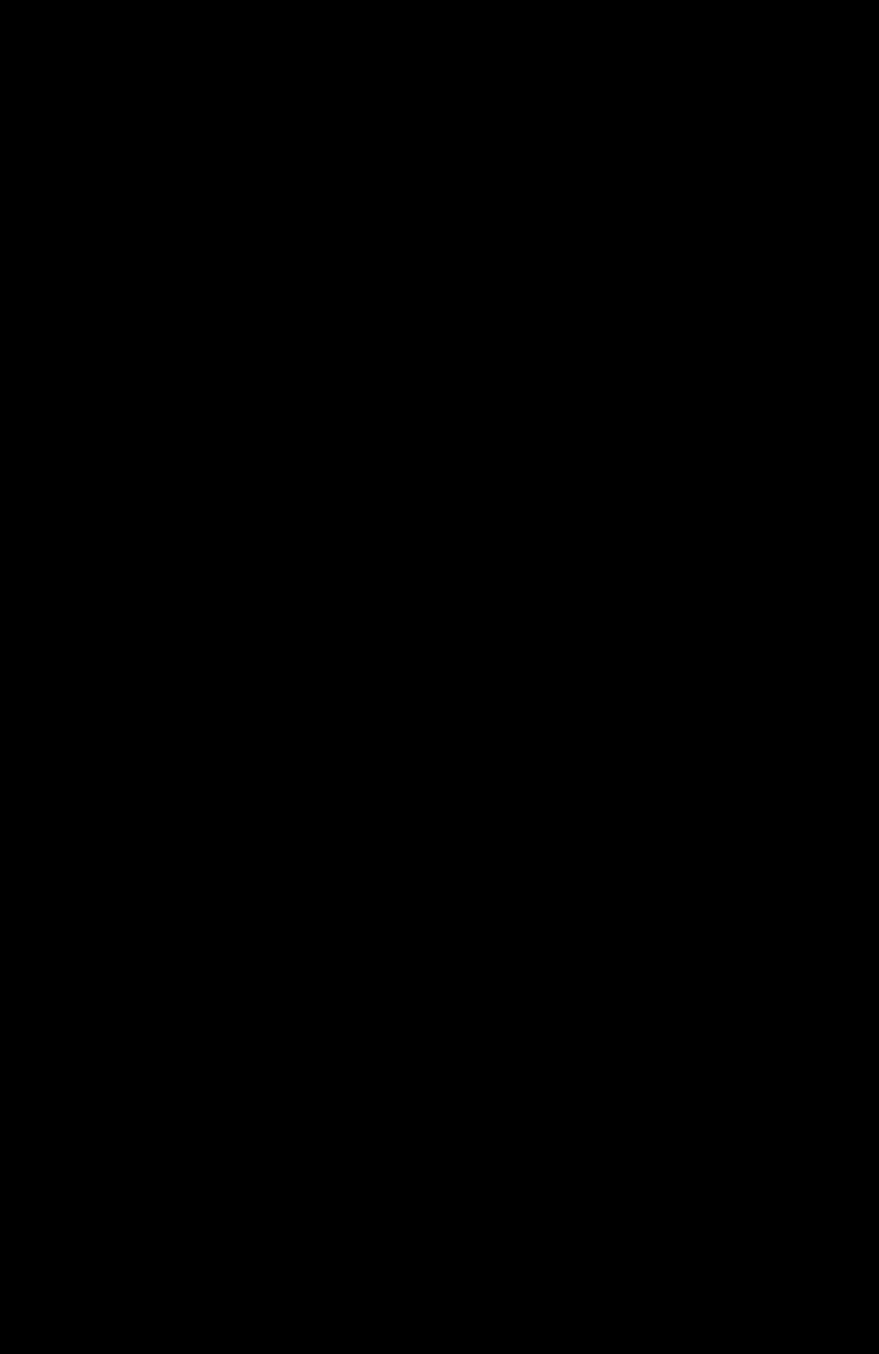
**Statements given in all contracts**

- The *Consultant* is

Name **BbM (Balfour Beatty, BAM Civils, FP McCann)**.....

Address [REDACTED].....  
[REDACTED].....

- The *key persons* are



(5) Name: **Andy Keen**.....  
 Job: **Design Project Manager**.....  
 Responsibilities: **Co-ordination and management of design partners**.....  
 Qualifications: **MEng Civil Engineering, CEng, MICE**..  
 Experience: **Design project manager and team leader on a number of major highway and ECI projects across the UK and Ireland**.....

**Further details of the key persons for Phase 1 are included in sections 5 and 6 of the Phase 1 Service Delivery Plan.**

- The staff rates are  
 name / designation rate  
**The rates are those submitted in the Resource Schedule in the Phase 1 Service Delivery Plan and are included in Volume 2.**
- The following matters will be included in the Risk Register  
**None**.....  
 .....  
 .....  
 .....

**Optional Statements** ~~If the Consultant is to decide the completion date for the whole of the services~~

- ~~• The completion date for the whole of the services is .....~~

**If a programme is to be identified in the Contract Data**

- The programme identified in the Contract Data is **Outline Delivery Programme – Section 1**.....

~~**If the Consultant states any expenses**~~

- ~~• The expenses stated by the Consultant are  
 item amount  
 .....  
 .....~~

~~**If the Consultant requires additional access**~~

- ~~• The Employer provides access to the following  
 persons, places and things  
 access to access date  
 .....  
 .....~~

## **Schedule of Amendments / Additions to the NEC3 Professional Services Contract, Option E Time based contract**

### **Conditions of Contract**

The Conditions of Contract are The NEC3 (June 2005) Professional Services Contract Option E (Time based contract) incorporating the amendments dated June 2006 and Secondary Options W2, X2, X10, X11, Y(UK)2, Y(UK)3 and Z.

The following amendments are incorporated into the Contract.

### **1 General**

Identified and defined terms 11

11.2(16) Delete entirely and insert:

11.2(16) The Price for Services Provided to Date is calculated as the daily rate for each staff member multiplied by the number of days worked each month up to the capped amount for each month in the agreed Resource Schedule.

If the Price for Services Provided to Date is less than the monthly capped amount, the Employer may agree that the balance is carried forward to the following month.

11.2(19) Delete entirely and insert:

11.2(19) The Prices are the amounts included in the Resource Schedule for each activity unless later changed in accordance with this contract.

### **Prevention 18**

18.1 Delete entirely

## **2 The Parties' main responsibilities**

### **People 22**

Insert the following new clause:

22.3 The *Consultant* agrees the payment rate for each new person with the Employer prior to that person commencing work under this contract.

## **Subconsulting 24**

24.2 Delete entirely and insert:

24.2 The *Consultant* submits the name of each proposed Subconsultant to the *Employer* for acceptance. A reason for not accepting the Subconsultant is that

- his appointment will not allow the *Consultant* to Provide the Services or
- the *Consultant* has agreed to use a different Subconsultant or
- the *Employer* is concerned (on reasonable grounds) with the financial standing or expertise or experience or insurance cover of the proposed Subconsultant.

The *Consultant* does not appoint a proposed Subconsultant until the *Employer* has accepted him.

24.3 Add as an additional bullet points at the end of clause 24.3:-

- they are inconsistent with the requirements of this contract.

## **3 Time**

### **The programme 31**

31.3 Add as a further bullet point:

- it places more onerous requirements on the *Employer* or Others.

## **4 Quality**

### **Correcting Defects 41**

Insert the following new clause:

41.3 Nothing in this clause 41 affects any other right or remedy under the contract or at law, including the *Employer's* right to claim damages for a Defect as a breach of contract.

## **5 Payment**

### **Assessing the amount due 50**

50.3 Delete the second bullet point entirely

## 6 Compensation events

### Compensation events 60

- 60.1 (11) Delete entirely  
60.1 (12) Delete entirely

## 9 Termination

### Procedures on termination 91

- 91.1 Delete from the beginning of the last paragraph of clause 91.1 the words  
“After the final payment has been made”

Add at the end of clause 91.1:

- 91.1 The *Consultant* delivers to the *Employer* (whether or not any payment to the *Consultant* is outstanding):
- as soon as practicable, copies of drawings and other documents produced or obtained by the *Consultant* in the course of carrying out the *services* or seeking to establish or agree the construction contract
  - any information reasonably requested of the *Consultant* in relation to the *services* or the works which might have been the subject of a construction contract
  - any assistance reasonably requested by the *Employer* to enable the *Employer* to use the drawings, documents or information for the carrying out or completion of the *services* or the works to which they related.

### Payment on termination 92

- 92.2 Delete entirely and insert:

92.2 If the *Employer* terminates because of the:

- insolvency of the *Consultant* or
- Substantial failure of the *Consultant* to comply with his obligations,

the amount due shall be the amount in accordance with clause 92.1 less a deduction of any loss or costs or expenses incurred by the *Employer* as a result of such termination including the additional cost to the *Employer* of completing the *services* and after termination the *Employer* shall not be obliged to make any further payment until the full extent of loss or costs or expenses can be fully ascertained. In the event that such loss or costs or expenses exceeds the amount in accordance with Clause 92.1, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Consultant* as a debt.

## Dispute Resolution

### Option W2

W2.4 (1) Delete entirely and insert:

W2.4 (1) Either Party may refer any dispute to the tribunal at any time, whether or not that dispute has or has not been referred to the Adjudicator.

### Option X11: Termination by the *Employer*

X11.2 Delete entirely and insert:

X11.2 The *Employer* may, by notice to the *Consultant* to this effect, terminate this contract at any time such that no construction contract is entered into, at its absolute discretion and for any reason.

Add in the following new clause:

X11.3 In the event of a termination under this clause X11 (or under clause 90):-

- The *Consultant* shall have no right to any compensation or other right to recover any loss of profit or other loss or costs or expenses (save as stated in clause 92):
  - as a result of the *Consultant* no longer carrying out any *services* or works following termination, or
  - in preparation for or in anticipation of the construction contract; and
- the *Employer* is entitled to award a construction contract to another contractor.

## Option Z Additional Conditions of Contract

<b>Prevalence of amended and additional conditions of contract</b>	<b>Z1</b> Z1.1	<p>The provisions of</p> <ul style="list-style-type: none"><li>• the <i>Employer's</i> amendments to the conditions of contract, and</li><li>• the Z clauses</li></ul> <p>prevail where a conflict or inconsistency arises with the published documents.</p>
<b>Intellectual property rights</b>	<b>Z2</b> Z2.1	<p>The <i>Consultant</i> assigns to the <i>Employer</i> all present and future intellectual property rights in any materials created by or on behalf of the <i>Consultant</i> in Providing the Services.</p>
<b>Equality of opportunity</b>	<b>Z3</b> Z3.1	<p>The <i>Consultant</i> complies with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular</p> <ul style="list-style-type: none"><li>• the Employment (Northern Ireland) Order 2002,</li><li>• the Fair Employment and Treatment (Northern Ireland) Order 1998,</li><li>• the Sex Discrimination (Northern Ireland) Order 1976 and 1988,</li><li>• the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003,</li><li>• the Equal Pay Act (Northern Ireland) 1970,</li><li>• the Disability Discrimination Act 1995,</li><li>• the Race Relations (Northern Ireland) Order 1997,</li><li>• the Employment Relations (Northern Ireland) Order 1999 and</li><li>• the Employment Rights (Northern Ireland) Order 1996.</li></ul> <p>The <i>Consultant</i> uses his best endeavours to ensure that in his employment policies and practices and in the provision of the Services he has due regard to the need to promote equality of treatment and opportunity between</p> <ul style="list-style-type: none"><li>• persons of different religious beliefs or political opinions,</li><li>• men and women or married and unmarried persons,</li><li>• persons with and without dependents (including women who are pregnant or on maternity leave and men on paternity leave),</li><li>• persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997),</li><li>• persons with or without a disability (within the meaning of the</li></ul>



- Disability Discrimination Act 1995),
- persons of different ages and
  - persons of differing sexual orientation.

The *Consultant* takes all reasonable steps to ensure the observance of the provisions of this clause by all servants, agents, employees, consultants and Subconsultants of the *Consultant*.

**Corrupt practices Z4**

Z4.1

The *Consultant* does not:

- offer or gives to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or
- enter into this contract or any other with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

**Confidentiality Z5**

Z5.1

The *Consultant*:

- has the right to use the Scope of Services or any other material relating to the *services* only for the purpose of providing the *services* and may make this right available to Subconsultant's,
- returns the Scope of Services or any other material relating to the *services* to the *Employer* at the expiry of the *defects date*,
- does not disclose information obtained in connection with the *services* or this contract to any other person without the *Employer's* written consent,
- does not give information concerning the *services* for publication in the press or radio, television, screen or any other media without the written consent of the *Project Manager* and
- does not use the Site for advertising purposes except with the written consent of the *Employer* and subject to such conditions as are prescribed.

**Partnering Z6**

Z6.1

No partnering agreement which the parties may enter into (with or without other parties) in connection with the *services* is intended to create legally enforceable rights or obligations between the

parties or to affect the terms of this contract.

- Quality submission Z7**
- Z7.1 The *technical submission* sets out the *Consultant's* proposals for the management and resourcing of the *services*.
- Z7.2 The *Consultant* warrants:
- that the representations contained in the *technical submission* are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer* and
  - that the *technical submission* does not constitute a qualification to his tender. Insofar as the *technical submission* may conflict or be inconsistent with other contract documents, the Scope of Services shall always prevail.

**Responsibility for Z8**  
**Statutory Bodies Z8.1**

- Z8.1 The *Consultant* on behalf of the *Employer*:
- identifies those measures which need to be taken as a consequence of or in order to facilitate the *services* with any *Statutory Body*,
  - settles a specification for the measures which need to be taken and determines by whom those measures are to be taken with the *Statutory Body*,
  - co-ordinates the taking of those measures and the carrying out of the *services* with the *Statutory Body* and the *Employer* as the *Consultant's* principal pays the *Statutory Body's* allowable costs in respect of these measures.
- Z8.2 The *Consultant*:
- is responsible for ensuring the *Statutory Body's* compliance with any agreement or arrangement entered into under Clause Z8.1 and
  - indemnifies and keeps indemnified the *Employer* against:
    - claims, demands, actions and proceedings
    - costs, charges and expenses arising there from
    - loss of or damage to any property
    - increased cost of working or
    - business interruption

which may be brought or made by any *Statutory Body* in connection with such an agreement or arrangement including but not limited to the negligence or default of the *Consultant*.

- Z8.3 The *Consultant* allows in his Accepted Programme any notice

period required by a *Statutory Body* in relation to any matters and measures under Clause Z8.1.

**Named key persons Z9**

Z9.1 Acceptance by the *Employer* of key persons stated in the Contract Data does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Consultant* of his duties or obligations under the contract.

**Subconsultants Z10**

Z10.1 The *Consultant* is not relieved from any liability or obligation under this contract if:

- the *Employer* objects to or fails to object to a proposed *Subconsultant* or
- the *Project Manager* issues an instruction to remove a *Subconsultant*. Reasons for removal of a *Subconsultant* include:
  - inadequate or poor quality of workmanship,
  - incompetent or negligent performance,
  - uncooperative or disruptive working practices,
  - failure to operate a quality management system.

The *Consultant* then arranges the removal of the *Subconsultant* and the appointment of a replacement in accordance with this contract. An instruction to remove a *Subconsultant* is not a compensation event.

**Recovery of sums due from the Consultant Z11**

Z11.1 All or part of any sum or sums of money which become recoverable from or payable by the *Consultant* under this contract may be withheld by the *Employer* from payments due or which become due to be made under this contract or any other contract with the *Employer*. This provision does not prejudice or affect the rights of the *Employer* to recover the sum or sums by any other means.

Z11.2 All or part of any sum or sums of money which become recoverable from or payable by the *Consultant* to the *Employer* or to any other Government Department may be deducted from any payment due to the *Consultant* under this contract.

**The Construction Contracts (Northern Ireland) Order 1997 Z12**

Z12.1 Definitions.

(1) The Order is the Construction Contracts (Northern Ireland) Order 1997.

(2) A period of time stated in days is a period calculated in accordance with Section 39 of the Interpretation Act (Northern Ireland) 1954.

Z12.2 Dates for payment.

The date on which a payment becomes due is the date on which a VAT invoice for an amount certified by the *Project Manager* is submitted.

The final date for payment is seven days after the date on which payment becomes due.

The *Project Manager's* certificate is the notice of payment specifying the amount of the payment made or proposed to be made and stating how the amount was calculated.

**Value engineering Z13**

Z13.1 The *Consultant* may submit to the *Project Manager* for acceptance written proposals to change the Scope of Services which if implemented will in the *Consultant's* opinion:

- enhance the quality or durability of the *services* or
- improve the efficiency of carrying out the *services* or
- reduce the cost to the *Employer* of maintaining the *services*,

Z13.2 The *Consultant* includes with his proposals:

- the value of any savings that will arise
- the effect if any on the Accepted Programme
- proposed changes to the Prices.

**Prompt payment to Z14**

**Subconsultants Z14.1**

Where the *Consultant* enters a sub-contract with a supplier or Subconsultant for the purpose of executing the *services* he causes a term to be included in such sub-contract which requires payment to be made to the supplier or Subconsultant within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

**Key performance Z15**

**indicators Z15.1**

The *Consultant* provides all information requested by the *Employer* or the *Project Manager* to facilitate the implementation of key performance indicators throughout the duration of the contract.

**Contract monitoring Z16**

Z16.1 Appointment of the CCM

(1) The *Employer* may appoint a Construction Contract Monitor (“CCM”) from a list of persons or organisations held by the *Employer*. The objectives of the appointment of the CCM are:

- to limit opportunities for criminals, or criminal or paramilitary organisations to target any work being carried out under this contract,
- to encourage fair competition and equal opportunities for all,
- to promote sustainability through monitoring compliance with appropriate legislation and tax regimes, including those concerning aggregate exploitation, waste disposal and landfill, and
- any other objectives set out elsewhere in this contract.

(2) The CCM shall act as stated in this contract and in a spirit of mutual trust and cooperation with the *Project Manager*, the *Employer* and the *Consultant*.

(3) The *Employer* does not appoint as the CCM any person or organisation that provides or has provided within 5 years of the *starting date* any accountancy, audit or legal services to the *Consultant* or to the *Consultant's* ultimate parent company or to a company with the same ultimate parent company as the *Consultant*.

(4) The *Employer* may replace the CCM at any time after he has notified the *Consultant* of the name of the replacement.

(5) For the purposes of this Clause these terms have the following meanings

The *Project Manager* means the *Project Manager*, Service Manager, or *Employer's Agent*, as appropriate appointed under this contract.

The *Consultant* means the *Consultant* or the Consultant named in this contract.

A Supplier means any person or organisation with a contract with the *Consultant* in relation to any of the *services* or services carried out under this contract, including, but not limited to those

- supplying Plant and Materials,
- supplying or hiring Equipment,
- designing any parts of the *services*,
- carrying out any other professional services,
- supplying labour,
- who are Subconsultants, or

- supplying any other *services* or services in relation to this contract

## Z16.2 Role of the CCM

(1) The CCM monitors and audits the *Consultant's* activities and those of his Suppliers with respect to

- payments to criminal or paramilitary organisations,
- payment of aggregate taxes,
- payment of landfill taxes,
- compliance with waste disposal legislation, and
- employment of labour-only subconsultants.

The CCM advises the *Employer* of his findings with respect to these matters.

(2) As soon as he is appointed the CCM provides the *Consultant* with a schedule of all of the persons he intends to employ in carrying out his duties. The CCM provides the *Consultant* with the CVs of all such persons if requested to by the *Consultant*.

After notification to the *Consultant* the CCM may remove people from, or add people to this schedule.

(3) Within 30 days of his appointment the CCM will examine the existing procedures and systems used by the *Consultant* and present a report to *Employer, Project Manager* and *Consultant*. This report will include recommendations as to any changes the CCM requires to the *Consultant's* procedures in order to meet the objectives of the appointment of the CCM set out in this contract.

(4) The CCM may, without prior notice to or permission from the *Consultant*, conduct reviews and surveillance of the *Consultant* and his employees, officials and Suppliers at any place where they are carrying out work or services in connection with this contract.

(5) The CCM issues a monthly report to the *Employer, the Project Manager* and the *Consultant*, which includes details of

- the areas he has targeted for investigation and any appropriate findings or observations,
- recommendations he has made to the *Consultant*, and the *Consultant's* response or action,
- the number of events and reports submitted to each appropriate authority in accordance with the Notification Table, and

such other information as the CCM considers appropriate to the objectives of his appointment.

(6) The CCM immediately notifies any of the events in the Notification Table to the named appropriate authority. The CCM issues a copy of any notification to the *Consultant*

**Notification Table**

<b><i>Event</i></b>	<b><i>Appropriate authority</i></b>
Suspected or actual criminal activity	Police Service of Northern Ireland
Suspected or actual unethical or irregular business activity, or breach of this contract by the <i>Consultant</i> , or his Suppliers, or any government employee	The <i>Employer</i> and the <i>Project Manager</i>
An ongoing investigation by any law enforcement officer, official of any government agency or other civil authority of the activities of the <i>Consultant</i> , or his Suppliers.	The <i>Employer</i>

(7) The CCM does not disclose any commercially confidential information except as required by the Notification Table.

(8) If the CCM decides that the *Consultant* has failed to comply with the requirements of this clause he notifies the *Consultant* of that failure. The CCM sends a copy of his notification to the *Employer* and *Project Manager*. Following such a notification the *Employer* makes no further payments to the *Consultant* under this contract until the CCM notifies the *Employer*, *Project Manager* and *Consultant* that the failure has been corrected.

A notification issued by the CCM's under this sub clause is treated as a notice from the *Project Manager* or *Employer*, as appropriate, that the *Consultant* has substantially failed to comply with his obligations under this contract.

**Z16.3 Responsibilities of the *Consultant***

(1) The *Consultant* cooperates with the CCM in the carrying out of his duties and complies with any request issued by him. The

*Consultant* ensures that all of his employees, officials and Suppliers also cooperate with the CCM and comply with his requests.

(2) The *Consultant* implements such procedures as are recommended or required by the CCM in order to meet the objectives of the appointment of the CCM set out in this contract.

(3) The *Consultant* immediately notifies the CCM if, in connection with the *Consultant's* business

- any of its employees, officials, or Suppliers involved with the contract are
  - interviewed, questioned, or otherwise contacted by any law enforcement officer or official of any government department or civil authority in connection with any criminal, civil, or administrative investigation, or
  - notified that they are the subject of any criminal, civil or administrative investigation, or
- the *Consultant* becomes aware of or suspects any unethical or criminal conduct or other impropriety in connection with this contract.

(4) The *Consultant* allows the CCM to examine all of his records, including those held electronically, that relate directly or indirectly to this contract, and that are in the possession or control of

- the *Consultant*
- any subsidiary of the *Consultant*,
- the *Consultant's* ultimate parent company,
- any company with the same ultimate parent company as the *Consultant*, or
- any other company directly or indirectly controlled by the *Consultant* or its owners or shareholders.

(5) The *Consultant* issues to Others any necessary instructions to enable the CCM to have access to any records that are partly or wholly under the *Consultant's* control but not in the *Consultant's* possession.

(6) The *Consultant* provides any authorisations, permissions and/or waivers requested by the CCM to obtain records from Others relating to the *Consultant* and this contract that are not maintained by the *Consultant*, including, but not limited to bank records, credit reports and the like.

(7) The *Consultant* provides the CCM with access to and use of an appropriate private and secure service space, photocopying facilities and communications equipment.



(8) The *Consultant* maintains such records as the CCM shall require relating to its own workforce, and that of its Suppliers.

(9) If, and to the extent, required by the CCM, the *Consultant* ensures that his Suppliers provides to the CCM facilities to inspect their records, including those held electronically.

(10) If the *Consultant*, or an employee or official of the *Consultant*, becomes aware of any improper or illegal conduct by any of its employees, officials or Suppliers, he immediately notifies the CCM.

(11) The *Consultant* includes in any contract he has with a Supplier appropriate provisions that

- allow the CCM to have the rights with regards to the Supplier set out in this contract, and
- give the *Consultant* the right to withhold payment to the Supplier if the Supplier
  - fails to cooperate with the CCM, or
  - fails to comply with any action required or requested by the CCM, or
  - fails to supply complete, accurate and truthful information in compliance with a request from the CCM.

(12) The *Consultant* withholds payment to a Supplier who

- fails to cooperate with the CCM, or
- fails to comply with any action required or requested by the CCM, or
- fails to supply complete, accurate and truthful information in compliance with a request from the CCM.

(13) The *Consultant* does not disclose to Others any dealings or communications with, or actions by, the CCM in relation to the CCM's duties or actions under this contract.

#### Z16.4 Other matters

(1) The following are additional compensation events.

- a) If the *Consultant* is required to pay fees to external accountants, auditors or solicitors in relation to any requests from or requirements of the CCM, but excluding any fees incurred in challenging or disputing a decision of the CCM.
- b) Complying with any specific requirements of the CCM as to security, to the extent that such requirements are greater than

an experienced Consultant would have deemed reasonable to have allowed for in his tender taking into account

- his knowledge of the area in which the *services* or services are being carried out,
- any information provided by the *Employer* in this contract,
- any information available from a visual inspection of the area in which the *services* or services are being carried out, and
- any other information which an experienced *Consultant* could reasonably be expected to have or to obtain.

Only the difference between the security required by the CCM and that which it would have been reasonable to have allowed for is taken into account when assessing this compensation event.

(2) With the exception of the compensation events set out in the preceding sub-clause, the *Consultant* is required to include the costs of complying with all the requirements of this clause in the Prices.

(3) Any information provided in accordance with this clause to the *Employer*, *Project Manager* or CCM may be used by any Governmental Department or Agency for statistical or information publications. Where such information is used it will not identify any individuals or organisations, except to the extent set out in the Notification Table.

**Project Share  
Mechanism**

**Z17  
Z17.1**

The Project Target Cost is determined by the *Employer* during Phase 1.

The Project Target Cost comprises the *Employer's* assessment of:

- the total of the Prices for the entire A5WTC (all sections)
- all parties' risk allowance
- all statutory authorities' costs
- all *Employer's Agent / Project Manager's* fees and reimbursable expenses
- all Phase 1 ground investigation costs
- all Phase 1 topographical survey costs
- all *Consultant's* Phase 1 fees for the entire A5WTC (all sections).

**Progression to Phase  
2**

**Z18**

Z18.1

At the completion of Phase 1, the *Consultant* will become the *Contractor* for Phase 2, subject to the following conditions precedent being met:

1. Successful completion of the statutory procedures.
2. Approval of Roads Service funding.
3. Agreement of the target cost for Phase 2.
4. Agreement of the conditions of contract for Phase 2 and the execution of a Form of Agreement.
5. Acceptance of the specimen design to be taken forward by the *Contractor* to detailed design.
6. Acceptance and ownership by the *Contractor* of all information supplied by the Employer including documents, drawings, data and reports.
7. Acceptance and ownership by the *Contractor* of the Geotechnical Interpretative Report.

If all of the above conditions precedent are not met, the *Consultant* will not progress to Phase 2

Z18.2

If the *Consultant* does not progress to Phase 2, the *Employer* is not liable for any costs or loss of profit incurred as a result of the *Consultant* failing to meet the conditions precedent set out in Z18.1.

Z18.3

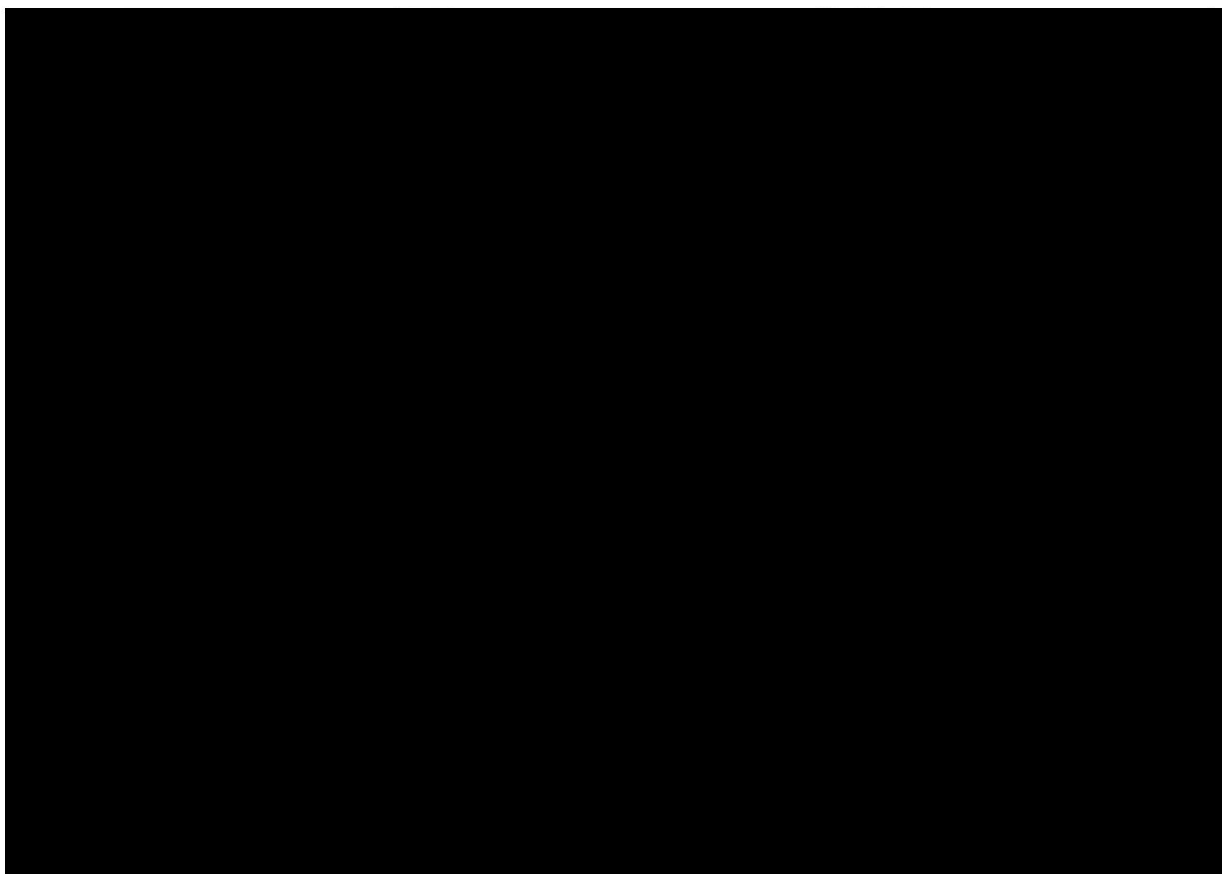
The *Contractor* shall not undertake any work that is the responsibility of the *Contractor* for Phase 2 until the contract for Phase 2 is executed.

**Form 3      Prompt Payment Certificate**

The following form must be signed by all JV companies tendering for the Contract.

**PROMPT PAYMENT CERTIFICATE**

1. Having examined the provisions of the Conditions of Contract designed to ensure the prompt payment of sub-contractors we certify that any sub-contract for works entered into by the Contractor shall provide for timely payment of the sub-contractor in accordance with the provisions of the Construction Contracts (Northern Ireland) Order 1997.
2. For any other sub-contract for goods and/or services the Contractor shall pay his suppliers within 30 days of the receipt of a valid demand for payment, or within any other period as may be normal practice within the industry for the supply of such goods and services.
3. We understand that failure by us to comply with Sections (1) and (2) above and/or failure to act in accordance with the provisions for prompt payment of sub-Contractors/suppliers found within the Conditions of Contract will be taken into account as provided for by the EC Directives when considering future tendering opportunities for our Company or any future Company which may be formed by us.

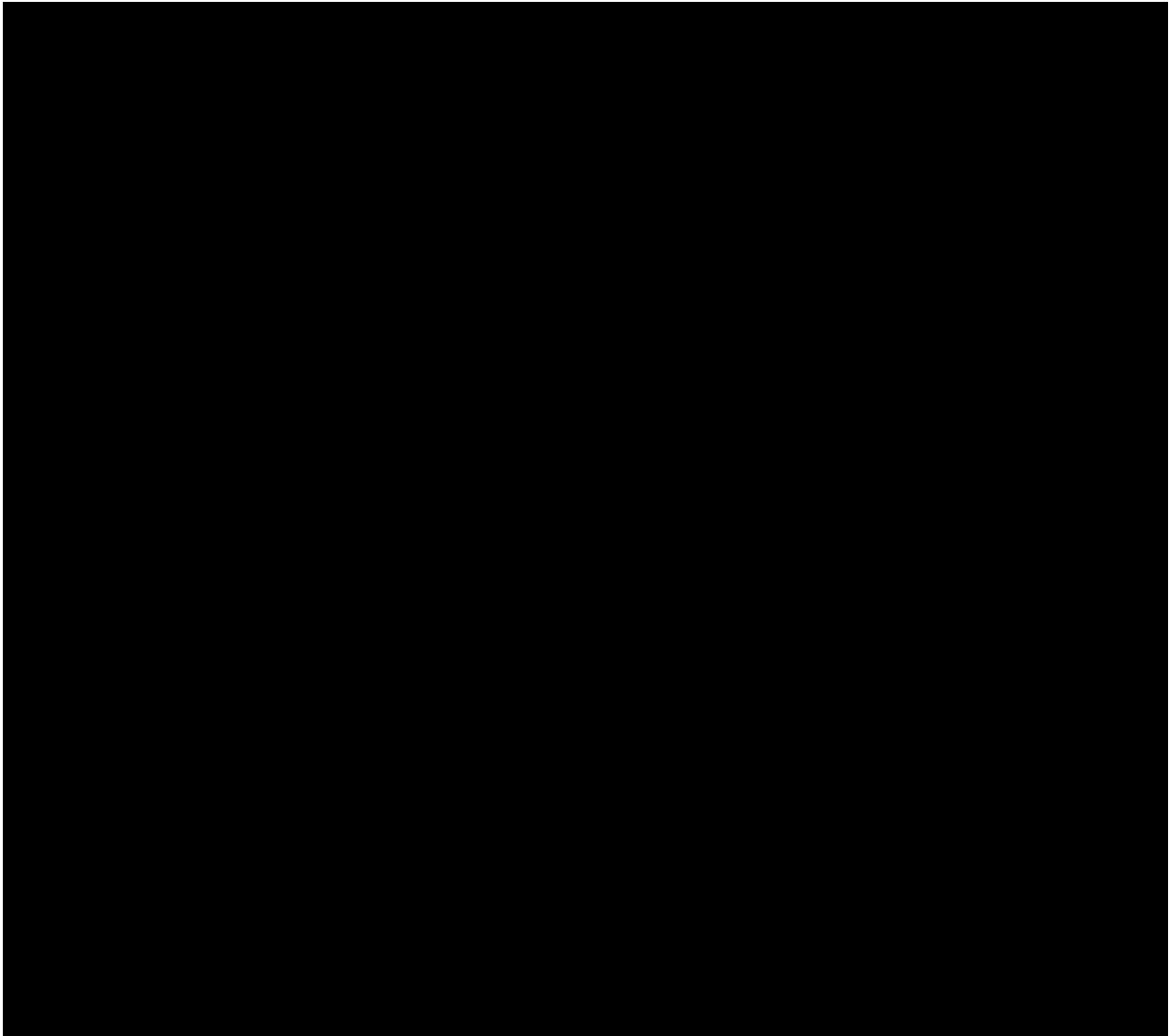


**Form 4      VAT Registration Certificate**

The following certificate must be completed and signed by all JV companies tendering for the Contract.

**VAT REGISTRATION**

Tender for: **A5WTC SECTION ONE.**



**Form 5      Aggregate Tax Undertaking**

The following undertaking must be signed by all JV companies tendering for the Contract.

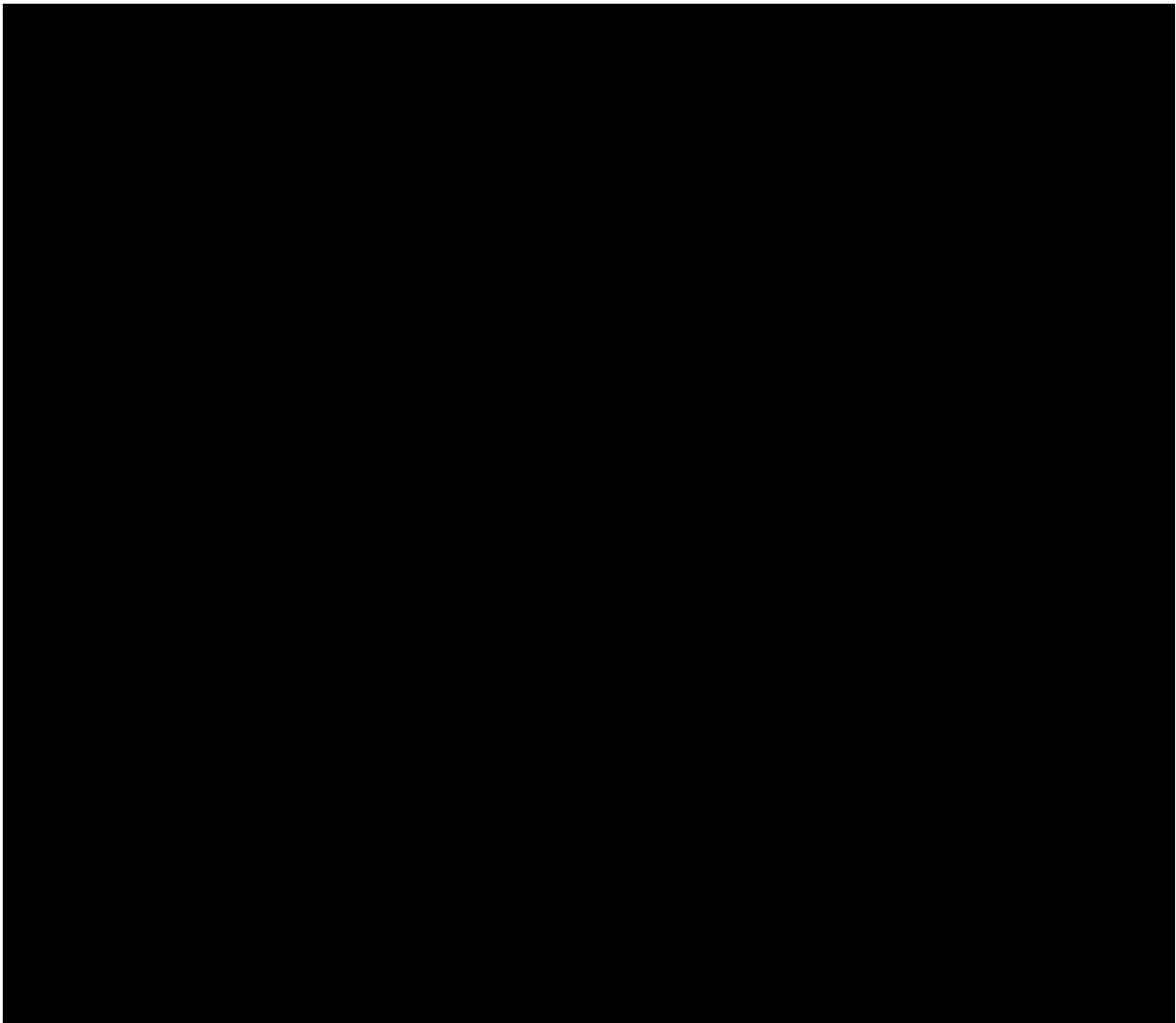
**AGGREGATE TAX UNDERTAKING**

Tender for: **A5WTC SECTION ONE.**

Aggregate Tax – Clauses 16 to 49 and Schedule 4-10 of the Finance Act 2001.

**DECLARATION AND UNDERTAKING**

I/We undertake to ensure that, in accordance with Clauses 16 to 49 and Schedule 4-10 of the Finance Act 2001, aggregate tax is paid on aggregate that has been sources locally or imported from another country and used in connection with this contract.



**Form 6 Fair Employment and Treatment (Northern Ireland) Order 1998**

The following declaration and undertaking must be signed by all JV companies tendering for the Contract.

**FAIR EMPLOYMENT AND TREATMENT (NORTHERN IRELAND) ORDER 1998**

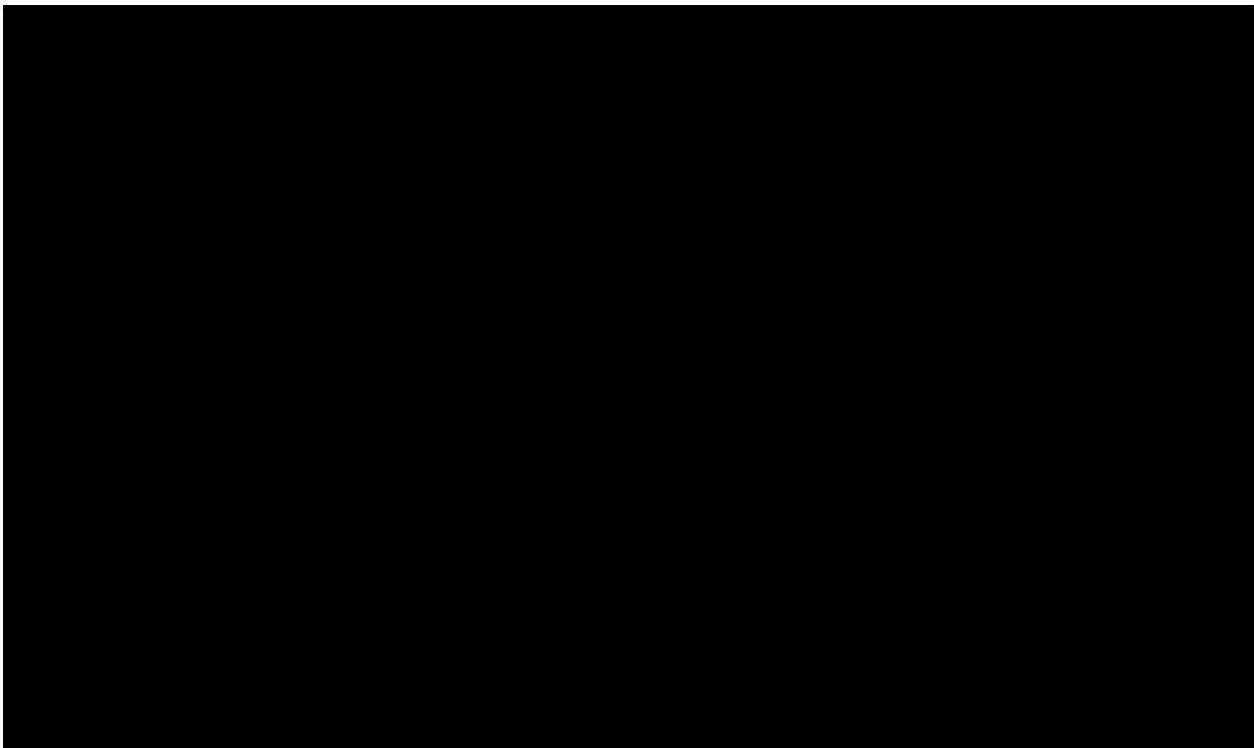
Tender for: **A5WTC SECTION ONE.**

1. Under Article 64 of the Fair Employment and Treatment (Northern Ireland) 1998 Order ("the Order") the Department shall not accept an offer to execute any work or supply any goods or services where the offer is made by an 'unqualified person' as defined in the order. Furthermore, the Department shall take all reasonable steps to ensure that, in relation to any contract, no work is executed or goods or services supplied by an 'unqualified person'.
2. An 'unqualified person' is any person (or body corporate) who has been served with a notice by the Fair Employment Commission (Equality Commission) stating that he is not qualified for the purpose of Articles 64 to 66 of the Order.
3. Accordingly tenderers are asked to complete the declaration and undertaking below to confirm that they are not an 'unqualified person' and to undertake that, in relation to the contract, no work shall be executed or goods or services supplied by an 'unqualified person'.

**DECLARATION AND UNDERTAKING**

\* I/We hereby declare that \* I am/we are not an unqualified person for the purposes of Articles 64 to 66 of the Fair Employment and Treatment (Northern Ireland) Order 1998.

\* I/We undertake that no works shall be executed or goods or services supplies by an unqualified person for the purposes of any contract with the Department for Regional Development to which Article 64 of the Order applies.



**Form 7 Principal Contractor – CDM Regulations (Northern Ireland) 2007**

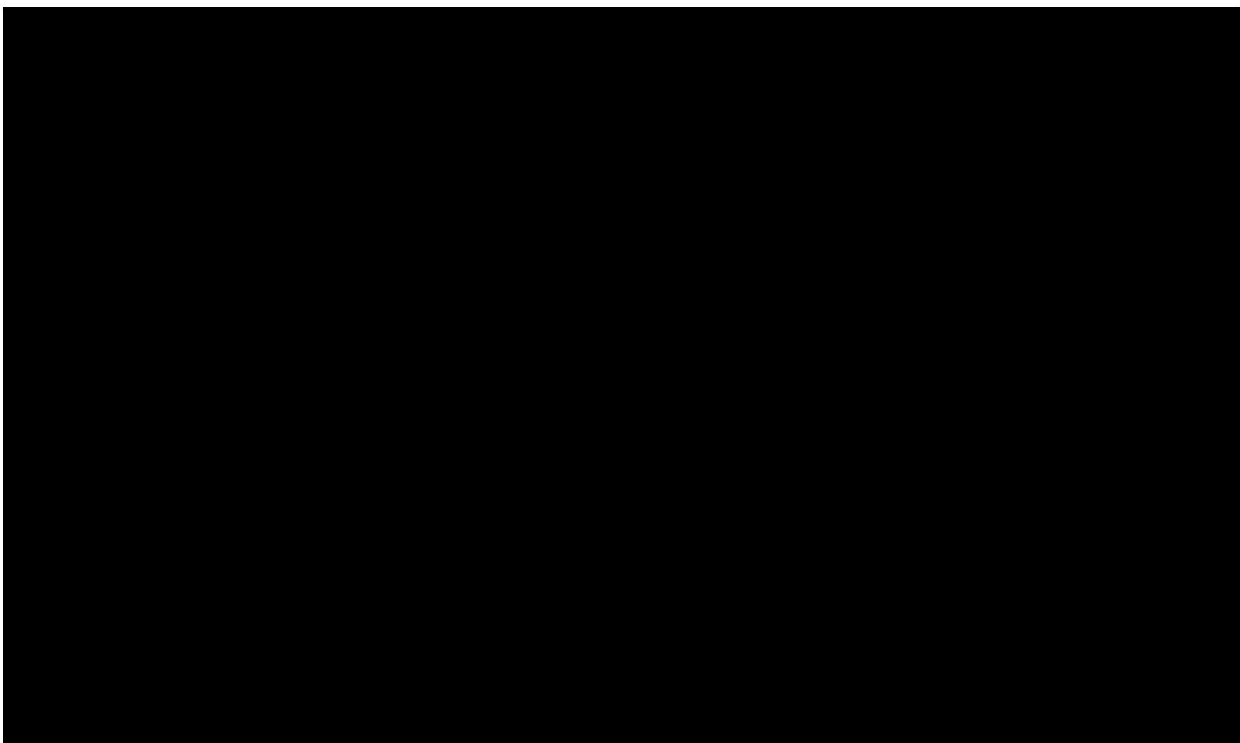
The following form must be signed by all JV companies tendering for the Contract.

**PRINCIPAL CONTRACTOR – CDM REGULATIONS (NI) 2007**

Tender for: **A5WTC SECTION ONE.**

**Construction (Design and Management) Regulations (NI) 2007, Regulations 22, 23 and 24.**

\*I / We confirm ~~\*my~~ / our willingness to be appointed *principal contractor* and to accept the duties thereof in accordance with the Construction (Design and Management) Regulations (NI) 2007, Regulations 22, 23 and 24.



\* Delete as appropriate



**Form 8 Insurance Undertaking**

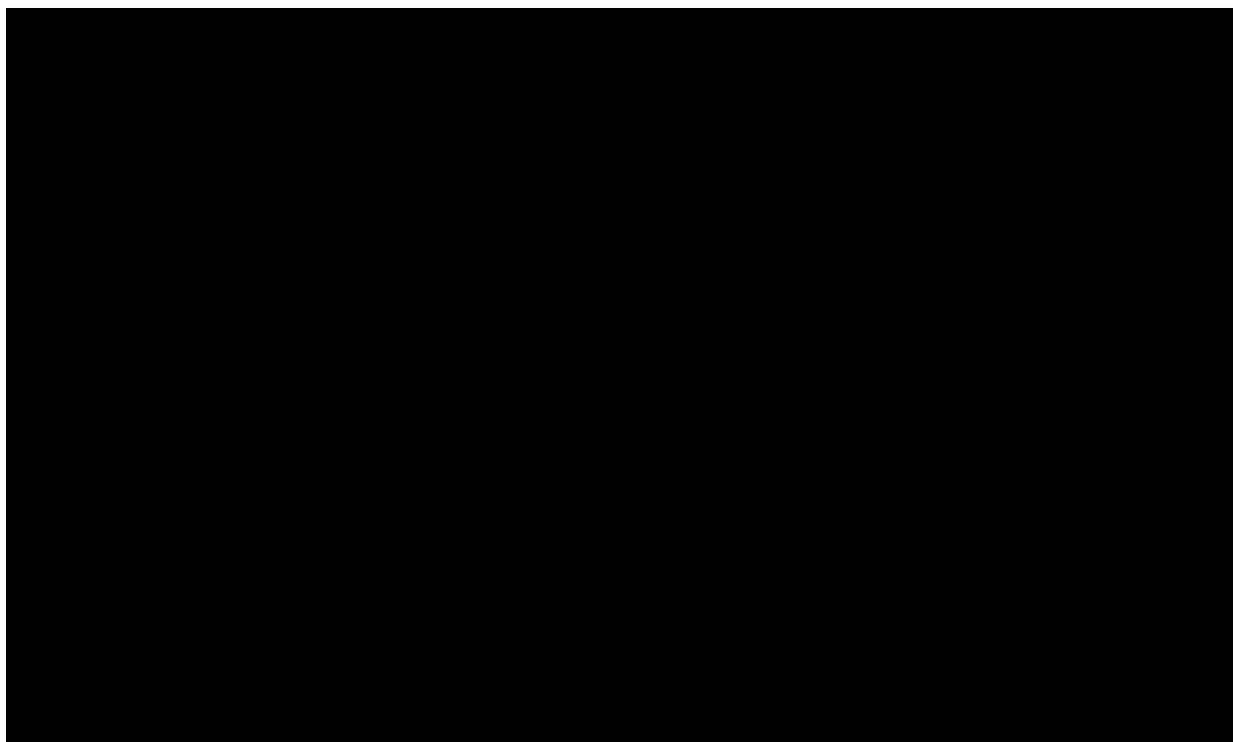
The following declaration and undertaking must be signed by all JV companies tendering for the Contract.

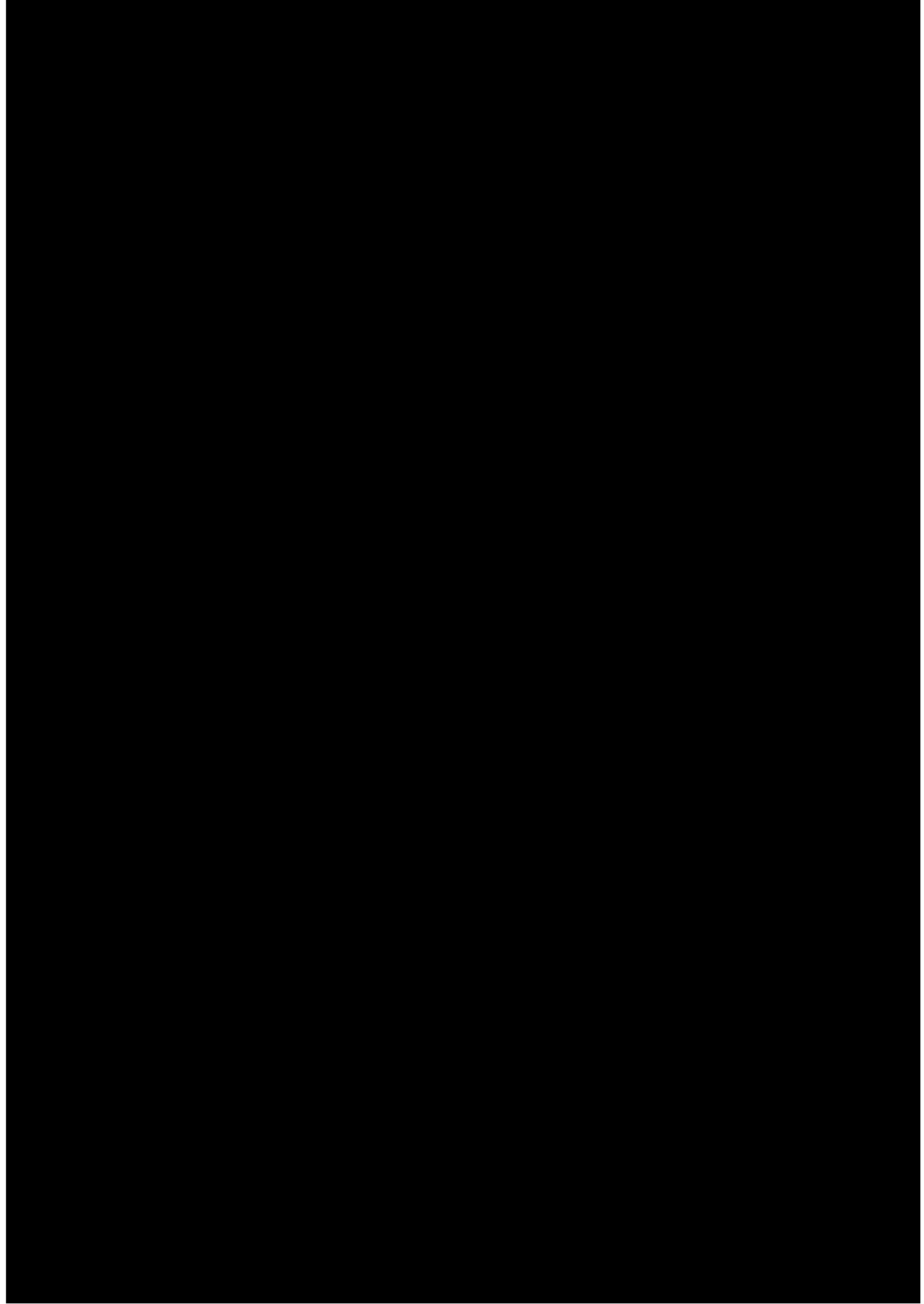
**UNDERTAKING TO PROVIDE ALL NECESSARY INSURANCES AND TO DEAL WITH ALL CLAIMS WITHIN THE PERMITTED EXCESS AMOUNTS**

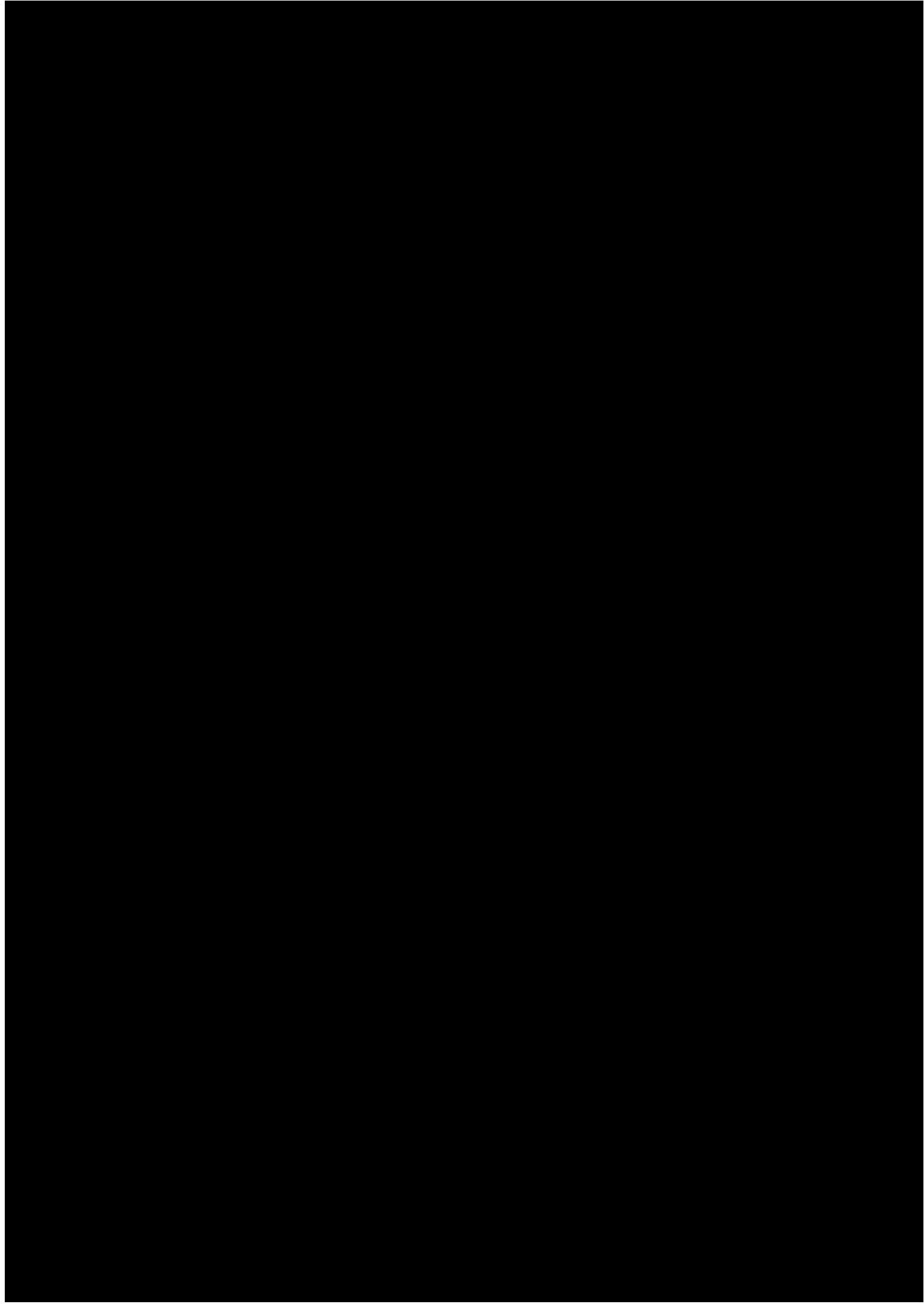
Tender for: **A5WTC SECTION ONE.**

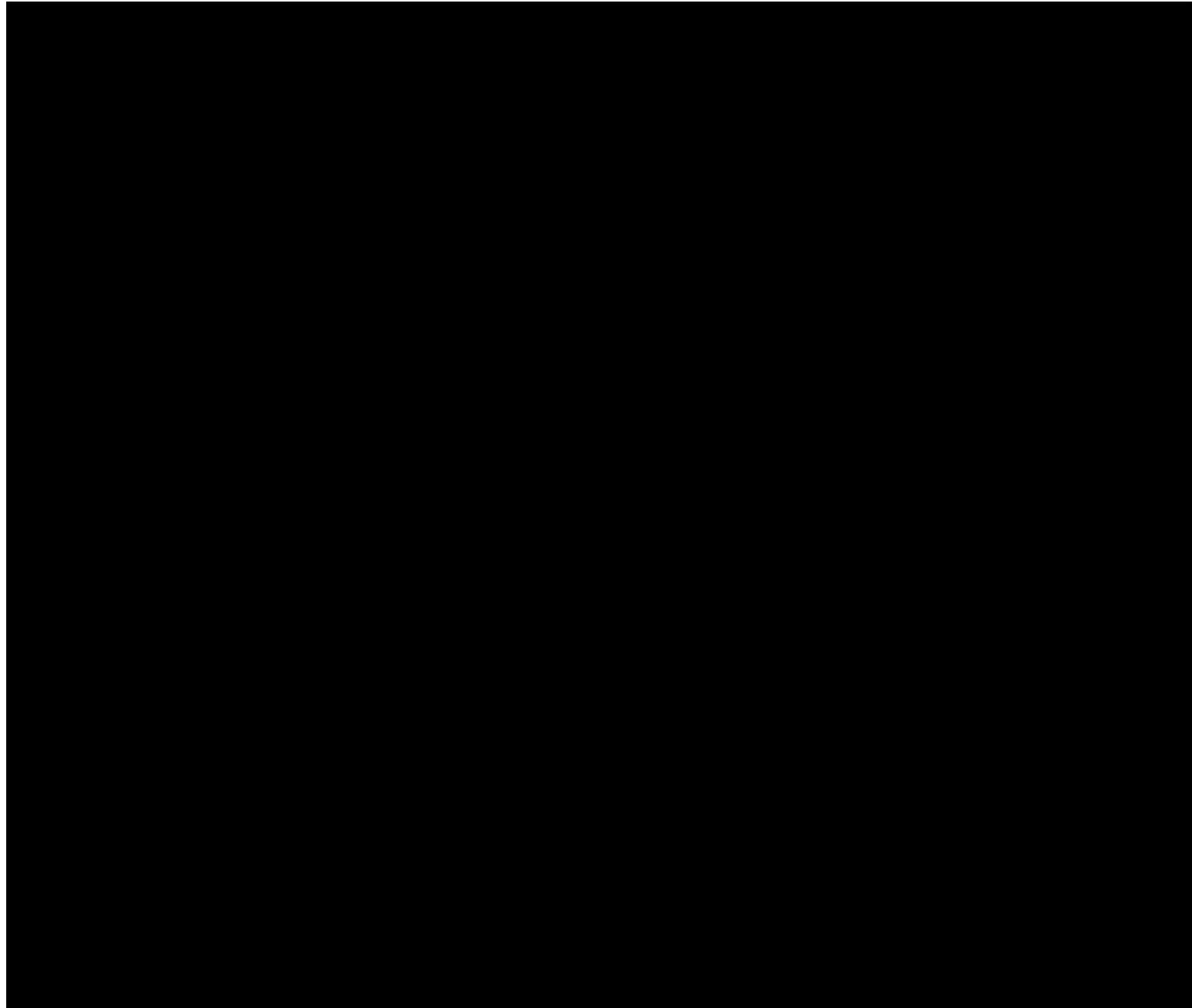
\* ~~W~~ We confirm \* ~~my~~ / our willingness to provide the necessary insurances in accordance with the Conditions of Contract.

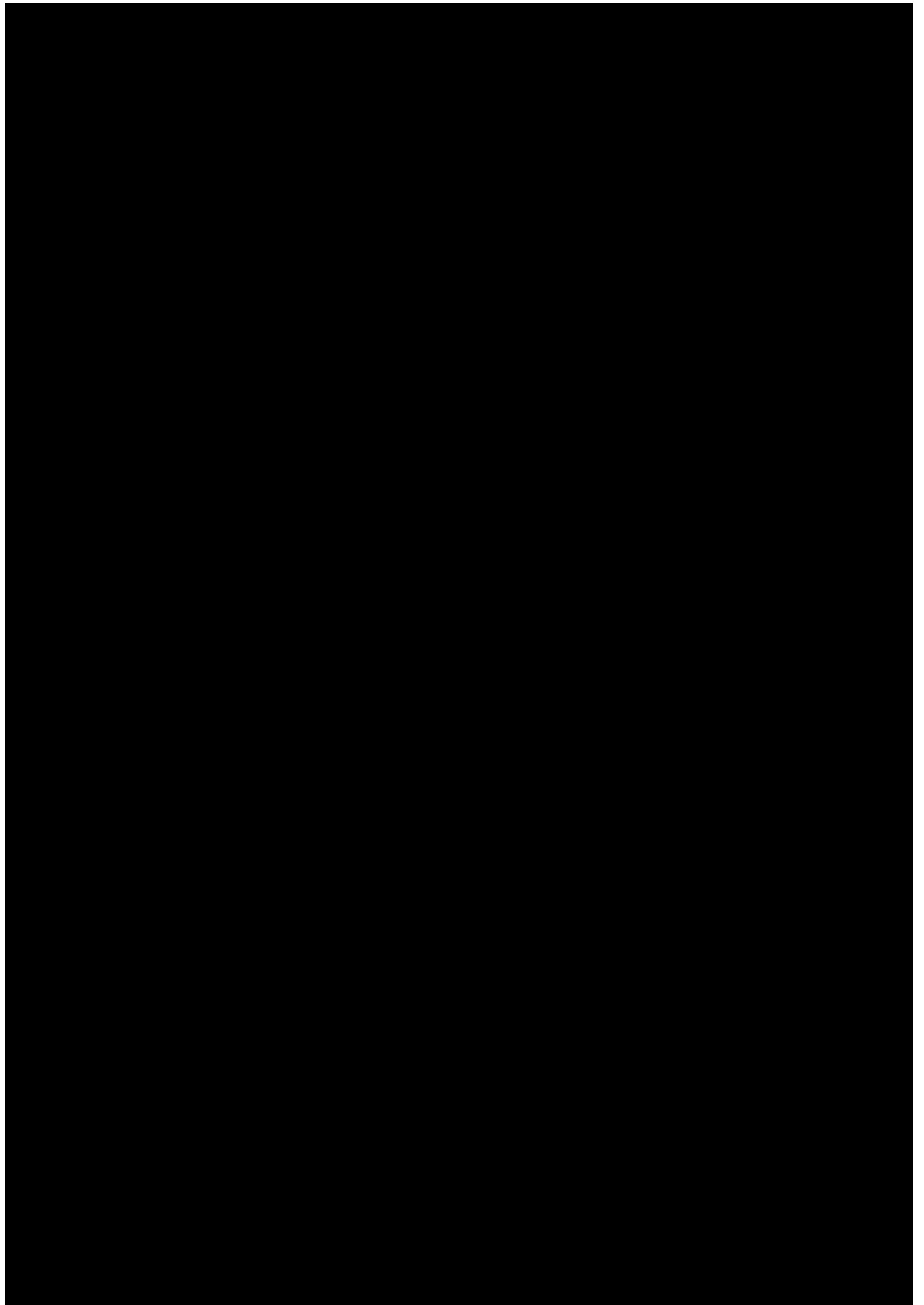
\* ~~W~~ We confirm \* ~~my~~ / our willingness to assume responsibility for dealing with claims or parts of such claims within the excess amount.

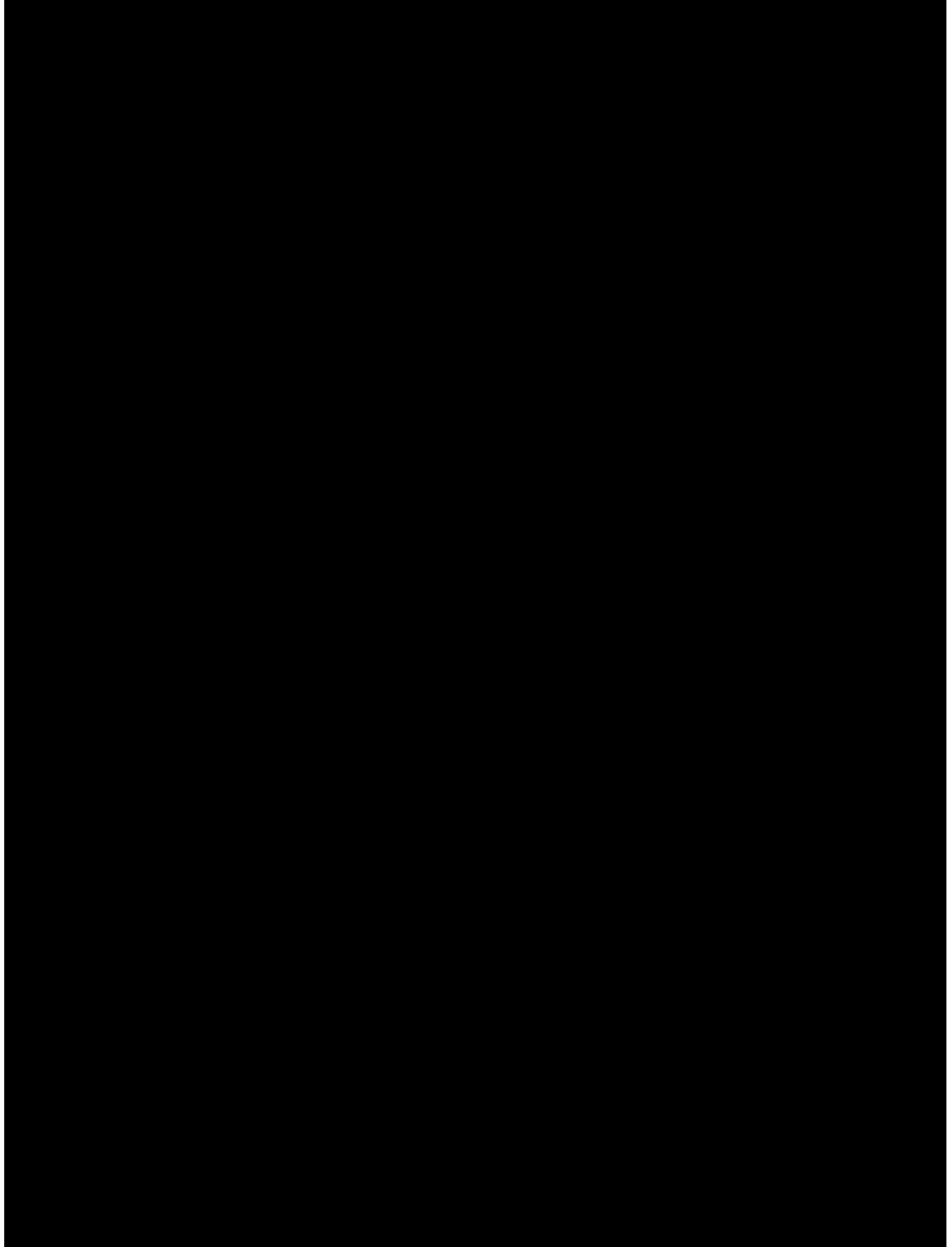


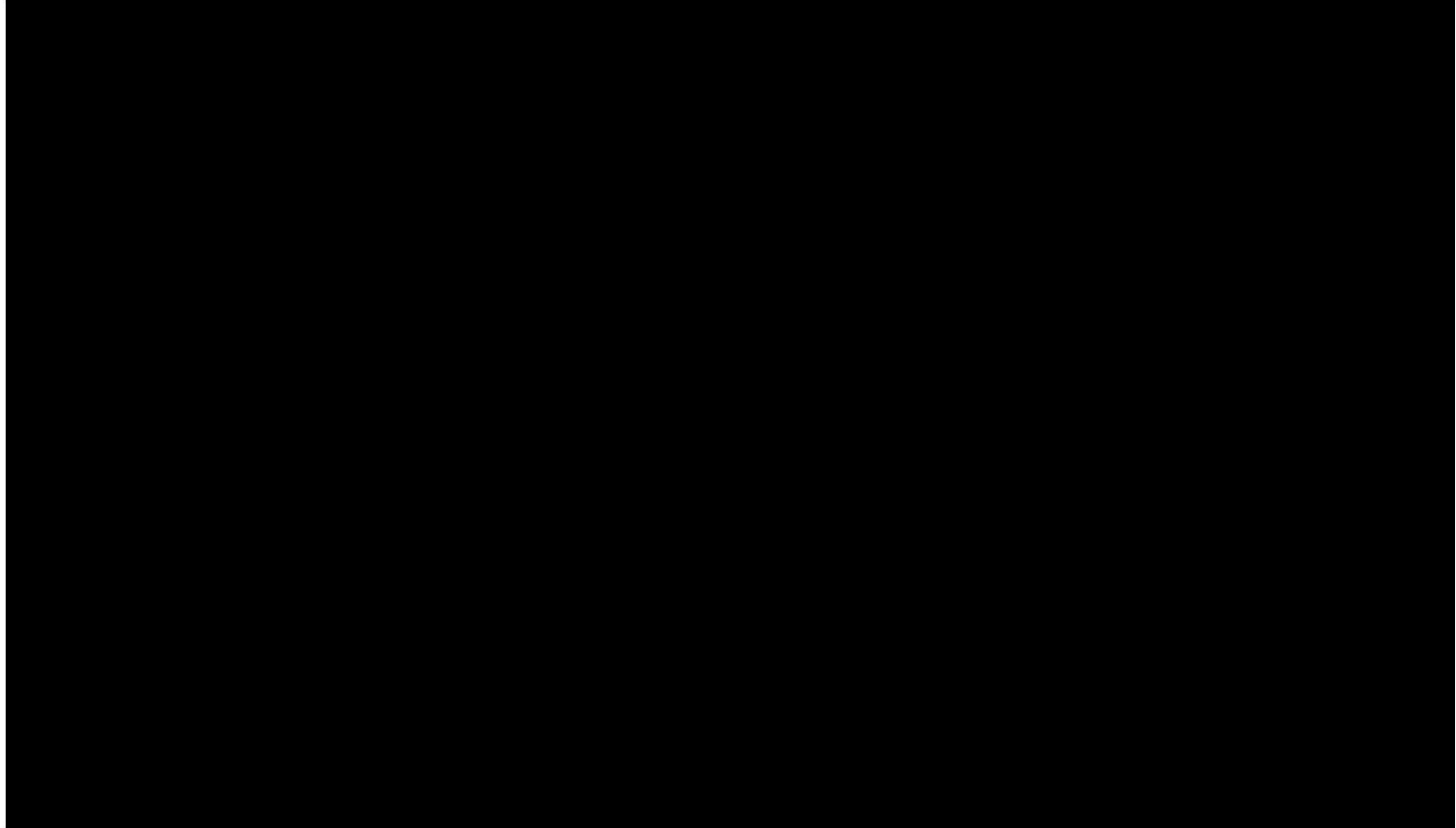












**Form 9      Environmental Protection (Duty of Care)**

The following declaration and undertaking must be signed by all JV companies tendering for the Contract.

**THE ENVIRONMENTAL PROTECTION (DUTY OF CARE) REGULATIONS (NORTHERN IRELAND) (2002 REGULATIONS) & WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997**

Tender for: **A5WTC SECTION ONE.**

\*I/We hereby declare that \*I-am/we undertake to fully comply with the above regulations in relation to all substances transferred to and from the Works.

