

DATED 31st March 2020

(1) EIFFAGE GÉNIE CIVIL

(2) KIER INFRASTRUCTURE AND OVERSEAS LIMITED

(3) BAM NUTTALL LIMITED

(4) FERROVIAL AGROMAN (UK) LIMITED

JOINT VENTURE AGREEMENT
IN CONNECTION WITH THE
HIGH SPEED TWO (HS2) PROJECT

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THIS AGREEMENT is made on 31st March 2020

BETWEEN:

- (1) **EIFFAGE GÉNIE CIVIL** (company registration number RCS Versailles 352 745 749), a company incorporated in France and whose registered office is at 3-7 Place de l'Europe, 78140 Vélizy-Villacoublay, France ("**Eiffage**");
- (2) **KIER INFRASTRUCTURE AND OVERSEAS LIMITED** (company registration number 01157281), a company incorporated in England and Wales and whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD ("**Kier**");
- (3) **BAM NUTTALL LIMITED** (company registration number 00305189), a company incorporated in England and Wales and whose registered office is at St. James' House, Knoll Road, Camberley, Surrey, GU15 3XW ("**BAM**"); and
- (4) **FERROVIAL AGROMAN (UK) LIMITED** (company registration number 05779755), a company incorporated in England and Wales and whose registered office is at 10th Floor, BSI Building, 389 Chiswick High Road, London, W4 4AL ("**Ferrovial**"),

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) On 31 July 2017, Carillion (in liquidation), Eiffage and Kier entered into the Original JVA and formed the Original Joint Venture (on an unincorporated basis) and simultaneously entered into the Original Main Works Contracts.
- (B) Following the liquidation of Carillion on 15 January 2018, Carillion has been excluded from the Original JVA pursuant to and in accordance with its terms and Eiffage and Kier continue to be engaged by HS2 (and have themselves engaged third parties) in connection with the Project.
- (C) Eiffage and Kier have agreed with HS2 to:
 - (i) amend and restate the Original Main Works Contracts into a single contract (defined and referred to herein as the New Main Works Contract); and
 - (ii) as part of this amendment and restatement exercise, to substitute Carillion as a party comprising the "Contractor" under the Original Works Contracts (jointly with Eiffage and Kier) with each of BAM and Ferrovial for the purposes of the New Main Works Contract.
- (D) In advance of Eiffage and Kier being formally instructed by HS2 to commence the construction stage of the Project under the New Main Works Contract, the Parties have agreed to form the Joint Venture for the purpose of carrying out the Business (as defined below) in the manner set out in this Agreement.
- (E) The Parties are entering into this Agreement to regulate the operation and management of the Joint Venture and the relationship between them as the parties in the Joint Venture.
- (F) In consideration of the mutual agreements and covenants contained in this Agreement, the Parties have granted the rights and accepted the obligations contained in this Agreement.

IT IS AGREED as follows:

1. **INTERPRETATION**

1.1 In this Agreement:

"Accounting Policies"	means the accounting policies and principles of the Joint Venture as in force on the Effective Date, as may be amended and/or supplemented by the agreement of the Parties from time to time;
"Actual Loss"	has the meaning given to such term in Clause 15.9;
"Actual Profit"	has the meaning given to such term in Clause 15.8;
"Adjourned Meeting"	has the meaning given to such term in Clause 8.18.1;
"ADR Notice"	has the meaning given to such term in Clause 35.3.2(b);
"AL Shortfall"	has the meaning given to such term in Clause 15.9.3;
"AL Surplus"	has the meaning given to such term in Clause 15.9.1(a);
"Applicable Law"	means: <ul style="list-style-type: none"> (a) any statute, statutory instrument, regulation, rule, proclamations, orders, directives, notices, rules of court, delegated and/or subordinated legislation and building regulations made under any statute or directive having the force of law; (b) any bye-law, official consent, request and/or requirements of any local authority, statutory undertaker and/or statutory authority (or any other body of competent jurisdiction) which has any jurisdiction (or in respect of which HS2 and/or the Joint Venture has a legal obligation to comply) in connection with the Project; (c) any rule of equity or common law or the ruling, judgment or order of any court; and (d) all current notices, guidance, schemes, warrants, licences, circulars, codes of practice and national agreements issued or raised under or in connection with any of the foregoing (including by any body of competent jurisdiction), <p>in each case in force in the United Kingdom from time to time;</p>
"Artificial Deadlock"	Management a Management Deadlock caused by a Board Representative voting against, or withholding approval from, an issue or proposal in circumstances where the approval of the same is required to enable the Joint Venture to carry on the Business properly and in accordance with the then current approved Business Plan and Budget;
"BAM Board Representative"	means the senior representatives of the Board from time to time appointed by BAM pursuant to Clause 8.8;
"BAM Group"	means BAM, any holding company of BAM and their respective Subsidiaries from time to time;

"Board Procedures"	means the procedures relating to the operation and decisions of the Board as in force on the Effective Date or, if no such procedures exist, the one to be agreed by the Parties, and as may be amended and/or supplemented by the agreement of the Parties from time to time;
"Board Representative"	means: <ul style="list-style-type: none"> (a) any Eiffage Board Representative; (b) any Kier Board Representative; (c) the BAM Board Representative; and/or (d) the Ferrovia Board Representative, with "Board Representatives" being construed accordingly;
"Board"	means the board of senior representatives of the Joint Venture;
"Budget"	means a budget for the Joint Venture for a particular Financial Year in the form agreed from time to time by the Parties;
"Business"	means the undertaking (and management of the consultants and the supply chain undertaking) design and construction works in relation to the Project and the associated infrastructure and ancillary works and services involved in its design, construction and commissioning in relation to each Contract for that purpose;
"Business Completion"	has the meaning given to such term at Clause 12.3;
"Business Day"	means 09.00 to 17:00 on any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are open for the transaction of normal sterling banking business;
"Business Plan"	means the business plan for the Joint Venture relating to the Financial Year current as at the Effective Date and as updated as agreed by the Parties on an annual basis (or at such other frequency as the Parties may otherwise agree) in a format to be agreed between the Parties from time to time;
"Carillion"	means Carillion Construction Limited (in liquidation) (company registration number 594581 and whose registered office is c/o PricewaterhouseCoopers LLP, 8th Floor Central Square, 29 Wellington Street, Leeds, LS1 4DL);
"Carillion Liquidator"	means the Official Receiver of 2nd Floor, 4 Abbey Orchard Street, Westminster, London, SW1P 2HT (or

such other party that may replace it as the liquidator for Carillion from time to time);

"CDM Regulations"

means the Construction (Design and Management) Regulations 2015;

"Change of Ownership"

means, in respect of a Party (or the party providing a Parent Company Cross-Guarantee in respect of that Party as required under this Agreement):

- (a) a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010);
- (b) a sale, transfer or disposal of any legal, beneficial or equitable interest in twenty-five (25%) or more of its shares (including control over the right to appoint or remove directors or the rights to dividends); or
- (c) any other analogous arrangements that have or may have or which result in the same effect as paragraphs (a) or (b) above,

other than a change in the legal or beneficial ownership of shares in a Party (or relevant party providing a Parent Company Cross-Guarantee) that:

- (i) are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or
- (ii) arises out of or in connection with any such listing on a recognised investment exchange provided that the relevant shares continue to be admitted to that or another recognised investment exchange;

"Companies Act"

means the Companies Act 2006;

"Confidential Information"

means any information which a Party may have or acquire, whether before or after the Effective Date:

- (a) in relation to the customers, business, assets or affairs of the Joint Venture; and/or
- (b) in consequence of the negotiations relating to this Agreement or being a part of the Joint Venture or having appointees on the Board or the exercise of its rights or performance of its obligations under this Agreement, in relation to the customers, business, assets or affairs of any member of the Eiffage Group, Kier Group, BAM Group and/or Ferrovial Group (as the context requires and where such Party is not a member of such group);

"Conflicted Party"

has the meaning given to such term at Clause 19.1;

"Connected Persons" means, in each case, to the extent that they are involved on behalf of a Party, a Party's:

- (a) officers, employees, group undertakings, agents and advisers;
- (b) officers, employees, agents and advisers of that Party's group undertakings; and/or
- (c) officers, employees and partners of any such agent or adviser or of any group undertaking of such an agent or adviser;

"Contract(s)" means any contract:

- (a) entered into before the Effective Date, with a list of the main ones being identified at Schedule 4; and/or
- (b) entered into by the Joint Venture on or after the Effective Date (including the New Main Works Contract and any varied, consolidated, amended and/or restated version of any contract(s) identified at Schedule 4),

in connection with the design and construction of the sections of the Project covering:

- (i) North Portal Chiltern Tunnels to Brackley; and
- (ii) Brackley to Long Itchington Wood Green Tunnel South Portal,

as more particularly described in the New Main Works Contract, as well as any construction contracts with HS2 and any sub-contracts, appointments and supply agreements with any third parties in respect of the same entered into after the Effective Date (and, in each case, as such contract may be amended, supplemented and/or replaced from time to time);

"Deed of Adherence" means a deed of adherence in substantially the same form as set out in Schedule 2 to this Agreement;

"Default Event" means, in relation to a Party, where:

- (a) an order is made by a court of competent jurisdiction, or a resolution is passed, for the winding up, dissolution, administration or receivership of that Party and/or of the party that provided its Parent Company Cross-Guarantee (otherwise than in the course of a reorganisation or restructuring previously approved in writing by the other Parties);
- (b) any step is taken to appoint a manager, receiver, administrator, trustee or other similar officer in respect of any assets which include the shares in that Party and/or of the party that

provided its Parent Company Cross-Guarantee;

- (c) that Party and/or the party that provided its Parent Company Cross-Guarantee convenes a meeting of its creditors or makes or proposes any arrangement or composition with, or any assignment for the benefit of, its creditors;
- (d) a situation occurs which is analogous to paragraphs (a) to (c) (inclusive) under the laws of any other jurisdiction;
- (e) that Party or its guarantor under the Parent Company Cross-Guarantee commits an act of fraud, wilful deceit or a breach of the Bribery Act 2010 (or any equivalent legislation under the laws of any other jurisdiction);
- (f) that Party is in breach of Clause 4, fails to provide any further finance which it has agreed to provide in accordance with Clause 6 or commits a material breach of any other provision of this Agreement and any such failure or breach is not remedied to the reasonable satisfaction of the other Parties within thirty (30) days of notice to do so being given by any of the other Parties;
- (g) a Change of Ownership of that Party occurs that HS2 has not approved in writing under any Contract (whether in advance or retrospectively);
- (h) that Party is in breach of the warranties set out at Clause 4.2.2;
- (i) that Party or any member of its Group fails to put in place or maintain any parent company guarantee or collateral warranty as required (including as to the terms of such guarantee or warranty) by any Contract;
- (j) the parent company of that Party that has entered into the Parent Company Cross-Guarantee in respect of that Party fails to maintain that Parent Company Cross-Guarantee and/or to satisfy a call under the Parent Company Cross-Guarantee; and/or
- (k) that Party receives a "Default Notice" pursuant to and in relation to Clause 5.4 of the Parent Company Cross-Guarantee;

"Default Exclusion Notice" has the meaning given to such term in Clause 15.3;

"Default Notice" has the meaning given to such term in Clause 15.1;

"Defaulting JV Party"	has the meaning given to such term in Clause 15.1;
"Defaulting Payment Party"	has the meaning given to such term in Clause 2.8;
"Effective Date"	means the date of this Agreement;
"Eiffage Account"	means the bank account notified by Eiffage to BAM and Ferrovia in writing for the purposes of Clause 2.7;
"Eiffage Board Representatives"	means the two (2) senior representatives of the Board from time to time appointed by Eiffage pursuant to Clause 8.4;
"Eiffage Group"	means Eiffage, any holding company of Eiffage and their respective Subsidiaries from time to time;
"Enabling Works Contract"	means an NEC3 Engineering & Construction Contract: Option F (as amended) between (1) HS2; and (2) Morgan Sindall Construction & Infrastructure Ltd, BAM and Ferrovia (as the unincorporated joint venture known as "Fusion JV") dated 17 November 2016 in respect of certain enabling works in connection with the Project;
"Executive"	<p>means:</p> <ul style="list-style-type: none"> (a) in respect of Eiffage, Guillaume Sauvé; (b) in respect of Kier, Hugh Raven; (c) in respect of BAM, Steve Fox; and (d) in respect of Ferrovia, Karl Goose, <p>(and including, in each case, their closest equivalent or delegate if such person is not available) or such replacement for any above-named party as may be notified by a Party to the other Parties from time to time in writing and "Executives" shall be construed accordingly;</p>
"Executive Chairman"	means the chairman from time to time of the Board;
[REDACTED]	[REDACTED]
"Executive Chairman Assessment Date"	<p>Fee means, where a person:</p> <ul style="list-style-type: none"> (a) has been (or will be) appointed as the Executive Chairman for a period equal to or exceeding twelve (12) months, as soon as reasonably practicable following the passage of a previous twelve (12) month period; or

(b) has been appointed as Executive Chairman for a period of less than twelve (12) months as at the date that they cease to be the Executive Chairman, as soon as reasonably practicable following the date on which that person ceases to be appointed;

"Executive Chairman Role"	means the duties and obligations to be performed by the Executive Chairman in connection with this Agreement, as more particularly described at Schedule 6 (which may be adjusted on the agreement of the Board from time to time by Majority Vote);
"Exit Account Response Notice"	has the meaning given to such term in Clause 15.11;
"Exit Date"	means the date on which a Party serves a Default Exclusion Notice pursuant to Clause 15.3;
"Exit Date Relative Proportion"	means the Relative Proportions applicable to each Party as at the date of the relevant Default Exclusion Notice (and "Exit Date Relative Proportions" shall be construed accordingly);
"Expert"	means a qualified individual with at least ten (10) years of experience from an independent firm of chartered accountants of international repute;
"Expert's Determination"	has the meaning given to such term in Clause 15.17.3;
"External Legal Adviser(s)"	means any external legal adviser(s) appointed by the Joint Venture from time to time in connection with the Project pursuant to Clause 38.4;
"Fee"	has the meaning given to such term in clause 11.2 of the New Main Works Contract;
"Fee Account"	has the meaning given to such term in paragraph 1.5 of Part 1 of Schedule 5;
"Fee Adjustment"	means any adjustment of the Fee by or on behalf of HS2 pursuant to and in accordance with the New Main Works Contract (including under Option X20 of the same);
"Ferrovial Board Representative"	means the senior representatives of the Board from time to time appointed by Ferrovial pursuant to Clause 8.10;
"Ferrovial Group"	means Ferrovial, any holding company of Ferrovial and their respective Subsidiaries from time to time;
"Final Account"	has the meaning given to such term in Clause 12.4.6;
"Final Exit Assessment"	has the meaning given to such term in Clause 15.7;
"Final Exit Notice"	has the meaning given to such term in Clause 15.10;
"Financial Year"	means each financial period commencing on 1 January of a year (save in respect of the first financial period,

which commences on the Effective Date) and ending on 31 December of the same year;

"Forecasted Loss"	has the meaning given to such term in Clause 15.6.2;
"Forecasted Loss Notice"	has the meaning given to such term in Clause 15.6.2(a);
"Forecasted Loss Response Notice"	has the meaning given to such term in Clause 15.6.2(c);
"Forecasted Loss Share"	has the meaning given to such term in Clause 15.6.2(a);
"Forecasted Profit"	has the meaning given to such term in Clause 15.6.1;
"Group"	means, in relation to a Party, that company, its holding company, its Subsidiaries and the Subsidiaries of its holding company for the time being and from time to time;
"HS2"	means High Speed Two (HS2) Limited (company registration number 06791686 and whose registered office is at 2 Snowhill, Queensway, Birmingham, England, B4 6GA);
"Initial Meeting"	has the meaning given to such term in Clause 8.18.1;
"Intellectual Property Rights"	means any and all patents, trade marks, rights in designs, get-up, trade, business or domain names, websites, copyrights, and topography rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, know-how, trade secrets and other confidential information, rights in computer software, including source code, operating systems and specifications, databases and all other intellectual property rights of a similar or corresponding character which subsist in any part of the world;
"Interim Exit Assessment"	has the meaning given to such term in Clause 15.5;
"Joint Ethics and Business Integrity Policy"	means the document of the same name as in force on the Effective Date or, if such policy does not exist, the policy to be agreed by the Parties and as may be updated, amended and/or replaced on the agreement of the Parties from time to time;
"Joint Health and Safety Policy"	means the document of the same name as in force on the Effective Date or, if such policy does not exist, the policy to be agreed by the Parties and as may be updated, amended and/or replaced on the agreement of the Parties from time to time (and which includes any prior or subsequent policies or procedures made under it);
"Joint Venture"	means the contractual joint venture created by this Agreement between the Parties pursuant to which the Parties have agreed to carry out the Business;
"Joint Venture Office"	means the offices of the Joint Venture located at:

- (a) 1 Victoria Square, Birmingham, B1 1BD, England;
- (b) Brackley Office Campus, Buckingham Road, Brackley, NN13 7DN, England; and
- (c) 5th Floor, Exchange House, Central Business Exchange, Midsummer Boulevard, MK9 2RG, Milton Keynes,

and such other alternative office(s) and/or location(s) as the Board may agree from time to time are intended to fall under this definition of "Joint Venture Office";

"JV Regulatory Claim"

means any matter reasonably likely to give rise to or resulting in any regulatory claim, demand, legal action, proceedings, referral or any analogous step in any jurisdiction commenced or threatened by any third party against the Joint Venture and/or the Parties jointly and/or severally, or any investigation or analogous procedure commenced or threatened by any local authority, statutory undertaker or public company or agent or representative thereof who has jurisdiction in relation to the Project or activities carried out in connection with the Project and/or the subject matter of this Agreement;

"Kier Account"

means the bank account notified by Kier to BAM and Ferrovial in writing for the purposes of Clause 2.7;

"Kier Board Representatives"

means the senior representatives of the Board from time to time appointed by Kier pursuant to Clause 8.6;

"Kier Group"

means Kier, any holding company of Kier and their respective Subsidiaries from time to time;

"Legal Dispute"

has the meaning given to such term in Clause 35.1;

"Majority Vote"

means:

- (a) a decision of not less than five (5) votes out of six (6) votes in favour in respect of a matter referred to or being considered by the Board Representatives (or their alternates, as applicable); or
- (b) where a Board Representative is precluded from representing a Defaulting JV Party pursuant to and in accordance with Clause 15, a unanimous decision of the Board Representatives of the Non-Defaulting JV Parties in favour in respect of a matter referred to or being considered by the Board Representatives of the Non-Defaulting JV Parties (or their alternates, as applicable);

"Management Deadlock"

has the meaning given to such term in Clause 36.2.3(b) or Clause 37.2.3 (as the context requires);

"Management Dispute"	has the meaning given to such term in Clause 36.1;
"Minimum Funded Amount"	has the meaning given to such term in Clause 6.2;
"New Main Works Contract"	means the NEC3 Engineering & Construction Contract: Option C (as amended) between (1) HS2; and (2) the Joint Venture dated on or about the date of this Agreement in connection with the design and construction of the North Portal Chiltern Tunnels to Brackley (known as "Phase C2") and Brackley to South Portal of Long Itchington Wood Green Tunnel (known as "Phase C3") (as more particularly described in the New Main Works Contract) as part of the Project;
"NMWC Effective Date"	has the meaning given to such term in Clause 2.3;
"Non-Contributing JV Party"	has the meaning given to such term in Clause 6.9;
"Non-Defaulting JV Party"	has the meaning given to such term in Clause 15.1;
"Non-Defaulting Payment Party"	has the meaning given to such term in Clause 2.8;
"Notice to Proceed to Stage Two"	has the meaning given to such term in article 1.1 of the "Form of Agreement" forming part of the New Main Works Contract.
"Operational Protocol"	means the operational protocol for the Joint Venture as established by the Parties and as amended and/or supplemented by their agreement from time to time (the content of which shall include, but not be limited to, the arrangements and procedures to be followed by the Joint Venture in the discharging of its obligations under and pursuant to the CDM Regulations);
"Original Joint Venture"	means the unincorporated original joint venture formed by Carillion (in liquidation), Eiffage and Kier pursuant to the Original JVA for the purpose of carrying out certain business in connection with the Project, which included entering into the Original Main Works Contracts);
"Original JVA"	means a joint venture agreement between Carillion (in liquidation), Eiffage and Kier dated 31 July 2017;
"Original JVA Business"	has the meaning given to the term "Business" in the Original JVA;
"Original Main Works Contract"	means each of: <ul style="list-style-type: none"> (a) an NEC3 Engineering & Construction Contract: Option C (as amended) between (1) HS2; and (2) the Original Joint Venture dated 31 July 2017 in connection with the design and construction of the North Portal Chiltern Tunnels to Brackley (known as "Phase C2") (contract reference: MWCC2554/C2); and (b) an NEC3 Engineering & Construction Contract: Option C (as amended) between (1) HS2; and (2) the Original Joint Venture dated

31 July 2017 in connection with the design and construction of the Brackley to South Portal of Long Itchington Wood Green Tunnel (known as "Phase C3") (contract reference: MWCC2555/C3);

"Original Main Works Contract Date"	means, in respect of each Original Main Works Contract, 31 July 2017 (this date being the date on which each Original Main Works Contract was originally entered into between (1) HS2; and (2) the Original Joint Venture);
"Parent Company Cross-Guarantee"	means the guarantee to be entered into between the Parties and the parent companies of each of the Parties (as determined pursuant to Clause 5.3) in the form set out in Schedule 3;
"Payment Schedule"	means Schedule 7;
"Principal Contractor"	means the duty holder referred to as the "principal contractor" under regulation 2(1) of the CDM Regulations;
"Principal Designer"	means the duty holder referred to as the "principal designer" under regulation 2(1) of the CDM Regulations;
"Prohibited Act"	means any: <ul style="list-style-type: none">(a) act or omission of a Party in its relationship with a Public Administration or any act or omission of a director, officer or agent of such party in its relationship with a Public Administration, which act or omission is directed to achieve or illicit advantage to the same party or to any of the Parties and is an offence or a crime under Applicable Law, the law of any Contracts or any sub-contracts (if different) or of the country where the works under a Contract or any sub-contracts are carried out, or under the Parties' respective national laws; or(b) offer, promise give or agree to give to or receive or agree to receive from any person any gift, consideration or advantage as an intentional inducement or reward for any improper act or failure to act in connection with this Agreement, the award of a Contract, sub-contract or otherwise in connection with the Business or the performance of the works under a Contract;
"Project"	means the design, procurement, construction, commissioning, operation and maintenance of the proposed high speed rail line from London to the West Midlands (also known as "HS2 Phase One") and any spurs and extensions thereof, including extension of the high speed line from the West Midlands to Manchester

and Leeds (also known as "HS2 Phase Two"), with connections on to the west and east coast main lines, to serve the rest of the north and north west of England and Scotland, with intermediate stations proposed at Manchester Airport, South Yorkshire and in the East Midlands which would be integrated with the existing network;

"Project Director" means a project director appointed in accordance with Clause 10;

"Public Administration" means any public body or public officer, in either case, as so considered and treated under the law of this Agreement and/or the Contracts;

"Records" means all books, accounts and records of all financial transactions and affairs of the Joint Venture in connection with the Business;

"Regulatory Action Response Protocol" means any policies or protocols contained in the "Joint Health and Safety Policy" which are applicable to the management of health, safety and environmental incidents, as agreed from time to time by the Parties (and as may be updated, amended and/or replaced on the agreement of the Parties from time to time);

"Related JV Party Contract" a contract or arrangement entered into between a Party (or member of their Group) and the Joint Venture (but excluding this Agreement);

"Related JV Party Contractor" a Party (or member of their Group) who enters into a Related JV Party Contract;

"Relative Proportion" means:
(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

as the same may be altered in accordance with Clause 15.23 or any other provision of this Agreement, with **"Relative Proportions"** being construed accordingly;

"Retained Contract" has the meaning given to such term in Clause 15.4.2(c)(i);

"Secondees" has the meaning given to such term in Clause 13.1;

"Senior Executive" means:
(a) in respect of Eiffage, Benoît de Ruffray;
(b) in respect of Kier, Andrew Davies;

- (c) in respect of BAM, Ruth Dunphy; and
- (d) in respect of Ferrovia, Dariusz Blocher,

(and including, in each case, their closest equivalent or delegate if such person is not available) or such replacement for any above-named party as may be notified by a Party to the other Parties from time to time in writing and "Senior Executives" shall be construed accordingly;

"Sterling Account" has the meaning given to such term in paragraph 1.1 of Part 1 of Schedule 5;

"Subsidiary" means in relation to an undertaking (the "**holding undertaking**"), any other undertaking in which the holding undertaking (or persons acting on its or their behalf) for the time being directly or indirectly holds or controls either:

- (a) a majority of the voting rights exercisable at general meetings of the members of that undertaking on all, or substantially all, matters; or
- (b) the right to appoint or remove directors having a majority of the voting rights exercisable at meetings of the board of directors of that undertaking on all, or substantially all, matters,

provided that, for the purposes of this Agreement, neither a Party nor any Subsidiary of a Party which may in future be established shall be regarded as a Subsidiary of Eiffage and/or Kier and/or BAM and/or Ferrovia or any other member of the Eiffage Group, Kier Group, the BAM Group and/or the Ferrovia Group (and "**Subsidiary**" shall be construed accordingly);

"Trademarks" has the meaning given to such term in Clause 17.1;

"Tranche" means a tranche identified as such in the table set out at Clause 2.7;

"Transferring Party" has the meaning given to such term in Clause 18.4.1;

"Urgent Management Dispute" has the meaning given to such term in Clause 37.1;

"Urgent Matter" means an event that:

- (a) is likely to result in a material breach of a Contract or a sub-contract by the Joint Venture;
- (b) involves the obtaining or maintaining of insurances that is required by any Contract;
- (c) is likely to result in a violation of any Applicable Law; and/or

(d) is likely to create a health and safety risk;

"VAT" means the value added tax payable pursuant to the Value Added Tax Act 1994 (together with any replacement or equivalent tax);

"Working Capital Account" means the bank account (or accounts) to be set up by the Joint Venture to fund the Business and its associated activities and operations; and

"Working Week" means a calendar week commencing on a Monday and ending on a Friday, but excluding any days during such period that are not Business Days, are authorised vacation days, sick days and/or any other day on which a leave of absence is authorised.

1.2 In this Agreement, reference to:

1.2.1 a **"Clause"** or **"Schedule"** is a reference to a clause of or schedule to this Agreement;

1.2.2 a document **"in the agreed form"** is a reference to a document in the form approved and, for the purposes of identification only, signed by or on behalf of the Parties;

1.2.3 a statutory provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time before or after the Effective Date and any prior or subsequent subordinate legislation made under it;

1.2.4 **"costs"** includes a reference to costs, charges and expenses of every description;

1.2.5 a **"person"** includes a reference to an individual, partnership, unincorporated association or body corporate wherever incorporated or situate and includes a reference to that person's legal personal representatives and successors;

1.2.6 a **"holding company"** and **"body corporate"** has the respective meaning set out in sections 1159 and 1173 of the Companies Act;

1.2.7 a **"company"** means any body corporate;

1.2.8 an **"undertaking"** includes a reference to a body corporate or partnership or an unincorporated association carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, expressions in this Agreement appropriate to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to undertakings of that description);

1.2.9 something being **"in writing"** or **"written"** shall include a reference to that thing being produced by any legible and non-transitory substitute for writing (excluding in electronic form as defined in section 1168 of the Companies Act);

1.2.10 a time of day is to London, UK time prevailing on the relevant day;

1.2.11 a **"day"** (including within the phrase **"Business Day"**) shall mean a period of twenty-four (24) hours running from midnight to midnight;

1.2.12 any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of this Agreement) at any time;

- 1.2.13 any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as a reference to any analogous term in that jurisdiction;
- 1.2.14 where this agreement describes an obligation and/or responsibility as being an obligation and/or responsibility of the Joint Venture:
- (a) references to the "**Joint Venture**" shall mean each of the Parties in their capacity as members of the Joint Venture;
 - (b) if the obligation and/or responsibility is for the benefit of an entity that is not a Party to this Agreement or is for the benefit of all the Parties, the Parties agree to jointly ensure that the obligation and/or responsibility is fully discharged; and
 - (c) if the obligation and/or responsibility is to a Party to this Agreement, the Parties to this Agreement who are not owed the obligation and/or responsibility agree to ensure that the obligation and/or responsibility is fully discharged for the benefit of the party to whom the obligation and/or responsibility is owed; and
- 1.2.15 "**includes**" and "**including**" shall be construed without limitation.
- 1.3 Any term or phrase used in this Agreement which is defined or otherwise given a meaning in the Companies Act shall, unless expressly stated otherwise, have the same meaning in this Agreement.
- 1.4 Where any obligation pursuant to this Agreement is expressed to be undertaken or assumed by any Party, such obligation shall be construed as requiring the party concerned to exercise all rights and powers of control over the affairs of any other person which that Party is able to exercise (whether directly or indirectly) in order to secure performance of such obligation.
- 1.5 The headings in this Agreement shall not affect its interpretation.
- 2. NATURE OF THIS AGREEMENT AND ITS EFFECTIVENESS**
- 2.1 The Parties acknowledge and agree that:
- 2.1.1 Eiffage and Kier are parties to the Original JVA;
 - 2.1.2 this Agreement has been entered into between the Parties in connection with the Project following discussions with HS2 and commercial discussions as between the Parties; and
 - 2.1.3 notwithstanding the fact that the Business of the Joint Venture (as defined herein) is substantially the same as the Original JVA Business of the Original Joint Venture under the Original JVA, the duties, obligations and/or liabilities of BAM and Ferrovial to one another and to Eiffage and/or Kier in respect of the Business and the subject matter of this Agreement are governed solely by the terms of this Agreement and not the Original JVA (and the Parent Company Cross-Guarantee shall be construed accordingly).
- 2.2 Without prejudice to the generality of Clause 2.1 (and notwithstanding the Effective Date), each of the Parties acknowledges and agrees that, subject to Clause 2.3, Clause 2.3A and Clause 2.4, its duties, obligations and liabilities to one another under or in connection with this Agreement (including in relation to any acts and/or omissions of the Original Joint Venture in connection with the Business prior to the Effective Date) shall be construed as applying from the Original Main Works Contract Date.

2.3 Notwithstanding any other provision of this Agreement, until the date on which the New Main Works Contract is entered into (if at all) with HS2 by the Parties (this being the "**NMWC Effective Date**"), each of BAM and Ferrovial shall have:

- 2.3.1 no duties, obligations and/or liabilities to one another and/or each of Eiffage and Kier under or in connection with this Agreement in relation to acts and/or omissions of Eiffage and Kier under any Contract(s) that predate the NMWC Effective Date;
- 2.3.2 no entitlement to any share of (or rights over) any benefits and/or profits of the Business (in each case, of any type and nature and whether arising out of, or in any way connected with, the Business, the Contract(s) and/or this Agreement); and
- 2.3.3 no rights to partake in (or make any representations in respect of) any decision-making of the Joint Venture under or in connection with this Agreement (whether by the Board, Executives, Senior Executives or otherwise) in relation to, without limitation, the Business and any Contract(s), with any such decisions under this Agreement to be made by Eiffage and Kier by unanimous approval of those two (2) Parties only,

provided that:

- (a) the terms and conditions of this Agreement may not be amended before the NMWC Effective Date without the prior written approval of all of the Parties (not to be unreasonably withheld or delayed); and
- (b) as from the NMWC Effective Date, all exclusions, limitations and/or restrictions set out in this Clause 2.3 shall cease to be effective and the entirety of the terms and conditions of this Agreement shall apply to the Parties in full force and effect.

2.3A Notwithstanding any other provision of this Agreement:

- (a) neither BAM or Ferrovial shall be entitled to any financial profits of the Original Joint Venture or the Joint Venture or be liable for any financial losses incurred by the Original Joint Venture or the Joint Venture as identified in any of the Original Joint Venture's accounts or the Joint Venture's accounts for any events related to Stage One (as defined in the New Main Works Contract); and
- (b) neither BAM or Ferrovial shall be entitled to refuse taking on their Relative Proportion of any duties, obligations and liabilities of the Joint Venture arising out of part or all of the Gateway 6 proposal made by the Original Joint Venture for the Works and its transcription into the New Main Works Contract.

2.4 Notwithstanding that Carillion is not a party to this Agreement and without prejudice to the generality of Clause 38, in the event that:

- 2.4.1 the Carillion Liquidator commences a JV Contractual Claim against the Joint Venture on or after the Effective Date arising out of or in connection with any sums that are contended as being payable by Eiffage and Kier, as parties to the Original Joint Venture, in connection with Original Main Works Contracts and/or the New Main Works Contract (whether pursuant to the Original JVA or otherwise); and
- 2.4.2 the JV Contractual Claim of the Carillion Liquidator is successful or is settled by the Joint Venture following the unanimous agreement of Eiffage and Kier only and at their sole and exclusive discretion,

Eiffage and Kier shall jointly indemnify BAM and/or Ferrovial (as the context requires) in respect of any sums that BAM and/or Ferrovial are required to pay or contribute towards any payment (as members of the Joint Venture) to the Carillion Liquidator in respect of the same that would otherwise have been distributable as between the Parties by reference to their Relative Proportions under this Agreement.

2.5 To the extent that, as at the Effective Date, BAM and Ferrovia are not a party to one (1) or more of the Contracts listed at Schedule 4 due to the fact that they predate the Effective Date and the formation of the Joint Venture:

2.5.1 the Parties shall work together to:

- (a) (in conjunction with the counterparty or counterparties of such Contract) agree to vary any such Contract as soon as reasonably practicable on or after the Effective Date so that:
 - (i) (as applicable) Carillion are removed as a party to the Contract;
 - (ii) each of BAM and Ferrovia, as from the date of the variation, are treated as a party to the Contract with the same standing as and with the same duties, obligations and liabilities (on a joint and several basis) of Eiffage and Kier thereunder; and
 - (iii) each of BAM and Ferrovia are treated under the Contract as having always been a party to it as from the original date of its execution,

provided that each such variation shall not be entered into or become effective any earlier than the NMWC Effective Date (or at all, if the New Main Works Contract is not entered into);

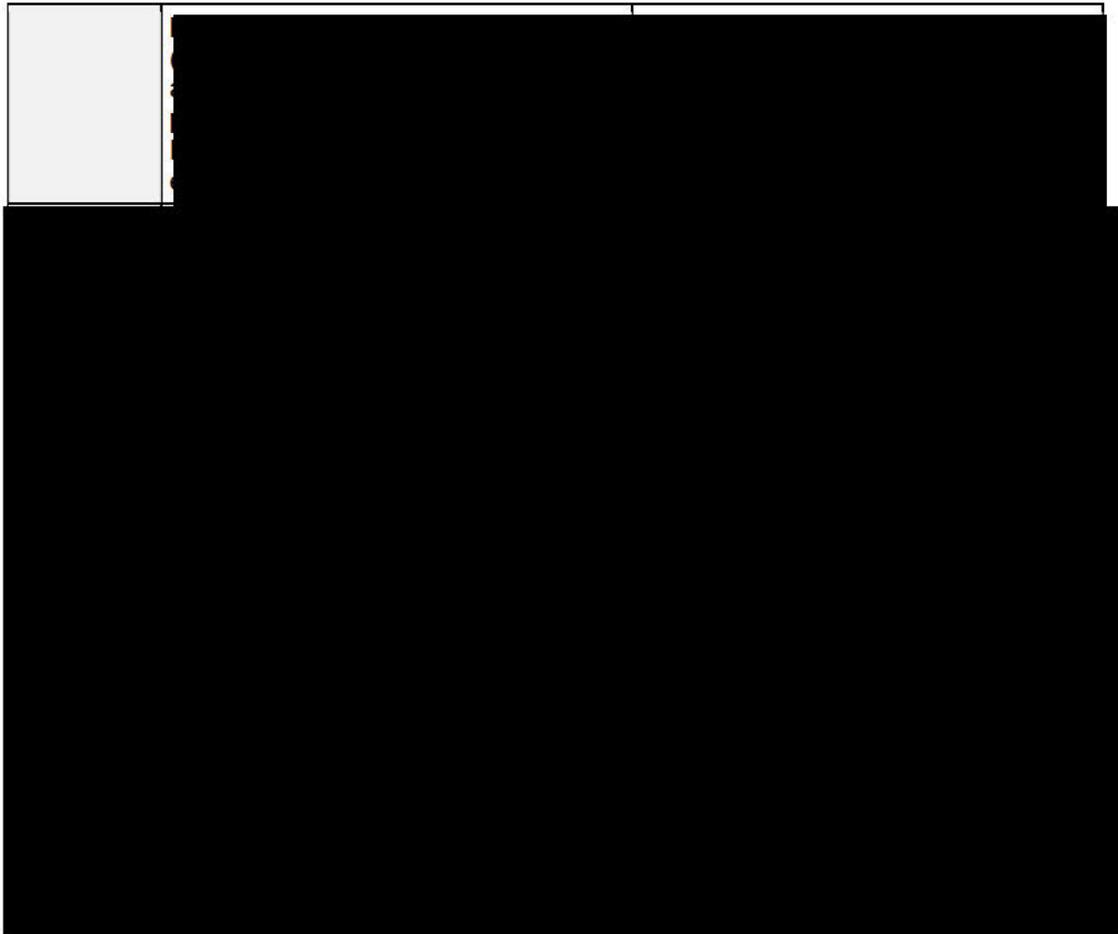
- (b) (following the effective date of any such variation) secure the restatement or replacement (as appropriate) of any performance security provided to the Original Joint Venture in relation to the original Contract (prior to such variation) so that BAM and Ferrovia are named as beneficiaries under the same on the same basis as Eiffage and Kier; and
- (c) (following the effective date of any such variation) provide performance security in favour of the counterparty (or counterparties) to the original Contract that are required to be provided in accordance with its terms and need to be replaced and/or supplemented to reflect the addition of BAM and Ferrovia as parties to the Contract on the same basis as Eiffage and Kier; and

2.5.2 BAM and Ferrovia undertake to Eiffage and Kier that, other than facilitating the joining of BAM and Ferrovia to any such Contract on this basis, it will not pursue any further material amendments to the underlying terms and conditions of the Contract (save where proposed by Eiffage and Kier in the first instance).

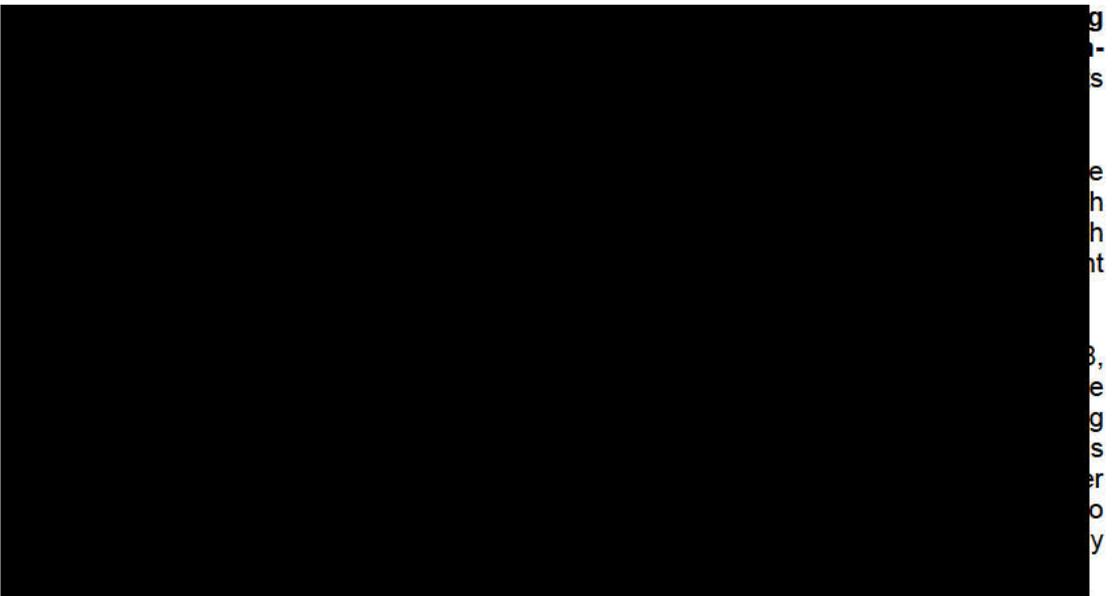
2.6 Each of Eiffage and Kier warrants to BAM and Ferrovia that, as at the Effective Date and to the best of its knowledge, it has not made any claim under any policy of insurance that it has in place, whether specifically in relation to the Project or otherwise, in connection with any Contract and/or the Project (save that the warranty provided under this Clause 2.6 does not extend or relate to the knowledge of facts that could give rise to a potential or actual claim under any such policy of insurance).

2.7 [Redacted]

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2.8



3. BUSINESS OF THE JOINT VENTURE

- 3.1 The Business shall be conducted in the best interests of the Parties on sound commercial profit-making principles with the aim of generating the maximum achievable maintainable profits available for distribution and otherwise in accordance with the general principles of the then current Business Plan.
- 3.2 The Parties agree that the Joint Venture shall have autonomy to carry out the Business in accordance with and subject to the terms of this Agreement.

- 3.3 Subject to the approval of the Board in accordance with the provisions of Clause 19 (where applicable), certain packages of work (or parts thereof) in relation to the Project may be subject to Contracts entered into with entities who may be Related JV Party Contractors.
- 3.4 The Parties may from time to time by agreement supplement the Contracts listed in Schedule 4 as at the Effective Date.
- 3.5 Except as otherwise agreed in writing or as otherwise specifically set out in this Agreement, the Parties shall share the obligations, risks, costs, losses, rights, benefits and profits of the Business (in each case, of any type and nature and whether arising out of, or in any way connected with, the Business, the Contracts and/or this Agreement) in their Relative Proportions.
- 3.6 In addition to any other obligation arising out of this Agreement, the Parties undertake to:
- 3.6.1 perform the Contracts by fulfilling all of their terms and conditions;
 - 3.6.2 perform this Agreement in accordance with its terms and subject to its conditions;
 - 3.6.3 perform any other agreement to which the Joint Venture becomes a party; and
 - 3.6.4 abide by any resolution of the Board made in accordance with this Agreement.
- 3.7 Each Party:
- 3.7.1 warrants and represents to the other that it has (or will ensure it has) knowledge of and understands all terms, conditions and requirements of the Contracts; and
 - 3.7.2 undertakes to the other to carry out its obligations under this Agreement in accordance with the terms, conditions and requirements of the Contracts and to perform its obligations under this Agreement so as to enable proper performance by the Joint Venture of its obligations under the Contracts.
- 3.8 Each Party shall use all reasonable endeavours to ensure that the Joint Venture obtains and maintains and complies with all necessary approvals, consents and licences required to conduct the business of the Joint Venture and complies with all relevant Applicable Law applicable to the Joint Venture.
- 3.9 The Parties shall respectively co-operate with each other to ensure that all information necessary or desirable for the making of (or responding to any requests for further information consequent upon) any notifications or filings made in respect of this Agreement, or the transactions contemplated hereunder, is supplied to the party dealing with such notifications and filings and that they are properly, accurately and promptly made.
- 3.10 The Parties acknowledge and agree that: EKFB JV
- 3.10.1 as at the Effective Date, the working name of the Joint Venture is "EKFB JV"; and
 - 3.10.2 the Parties shall, as soon as reasonably practicable after the Effective Date, use reasonable endeavours to agree the final name to be adopted and branding to be used by the Joint Venture for the purposes of and in connection with undertaking the Business in accordance with this Joint Venture, as well as any costs associated with implementing the same, with such agreement being subject to the approval of the Board on a unanimous decision basis.
- 3.11 Each Party acknowledges and agrees that the final name of the Joint Venture, once agreed between the Parties pursuant to Clause 3.10, shall only be used by the Joint Venture (acting as agent and trustee on behalf of the Parties) solely for the purposes of the performance of the Contracts.

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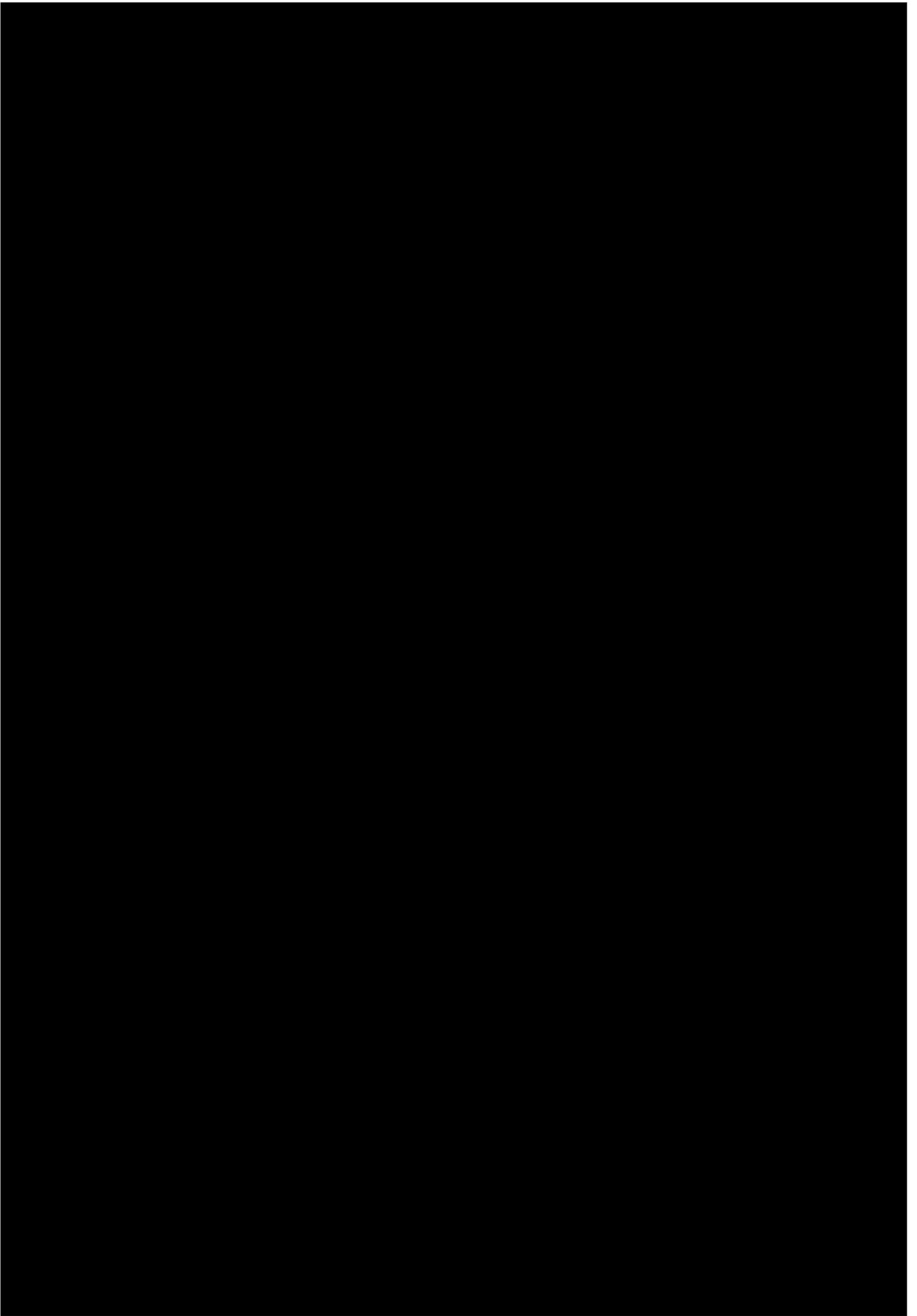
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[REDACTED] exceeding 9% (the "Tranche 3 Percentage Increase") and the Payment;

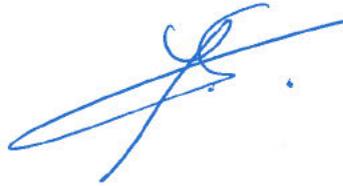
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EXECUTED AND DELIVERED AS A DEED by the Parties on the date which first appears in this Agreement

SIGNED as a Deed (but not delivered until the date hereof)

by Guillaume SAUVÉ by an authorised signatory for **EIFPAGE GÉNIE CIVIL** in the presence of:



Authorised signatory

Witness signature:

Witness name (print):

Address:

Occupation:

Oliver LOISSON de GUINASTON
5 rue des Erables 78150 Nogent-sur-Oise
FRANCE
DIRECTOR - EIFPAGE INFRASTRUCTURES

SIGNED as a Deed (but not delivered until the date hereof) by _____, as attorney for KIER INFRASTRUCTURE AND OVERSEAS LIMITED under a power of attorney dated _____ in the presence of:

Attorney

Witness signature:

Witness name (print):

Address:

Occupation:

OR

EXECUTED as a Deed (but not delivered until the date hereof) by KIER INFRASTRUCTURE AND OVERSEAS LIMITED acting by Mark Pengelly a director, in the presence of:



Director

Witness signature:



Witness name (print):

Ella Pengelly

Address:

4 Copes Close

Buckden, Cambs PE19 5SD

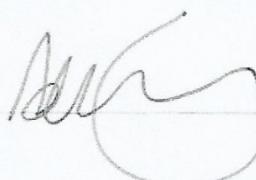
Occupation:

JOURNALIST.

SIGNED as a Deed (but not delivered until the date hereof) by

attorney for BAM NUTTALL LIMITED under a power of attorney dated

presence of:



P. SAVORY
Attorney

Witness signature:

Witness name (print):

Address:

Occupation:



PHILLIPPA SAVORY
MALLARDU, STATION ROAD
WARRENDALE BERKELEY REGION

WIFE

OR

EXECUTED as a Deed (but not delivered until the date hereof) by BAM NUTTALL LIMITED acting by

director, in the presence of:



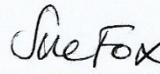
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Witness signature:

Witness name (print):

Address:

Occupation:



SUE FOX
83A EYTHAMPS ROAD
STONE, AYLESBURY
BUCKS
SPOUSE.

SIGNED as a Deed (but not delivered until the date hereof) _____ by _____ as attorney for **FERROVIAL AGROMAN (UK) LIMITED** under a power of attorney dated _____ in the presence of:

Attorney

Witness signature:

Witness name (print):

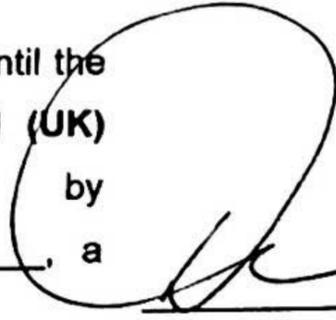
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Occupation:

OR

EXECUTED as a Deed (but not delivered until the date hereof) by **FERROVIAL AGROMAN (UK) LIMITED** acting

by _____ a

 K. Goose

director, in the presence of:

Director

Witness signature:

Witness name (print):

Address:

Occupation:


MIRANDA GOOSE
THE NEST, ELCOMBE,
ULEY, GLOUCESTERSHIRE
BUSINESS OWNER

GLI
SIB