

**Form of Agreement
incorporating the NEC4
Engineering and
Construction Contract
Option A: Priced Contract with activity schedule**

For works comprising

**Roofing Repairs including associated M&E
Works at Motherwell Johnstone House**

Contract Reference **1006245**

Between

(1) **The Secretary of State for Work and
Pensions**

and

(2) **MITIE Property Services (UK) Limited**

Dated

June 2022

Contents

In this contract the core clauses are the ECC core clauses and the clauses set out in the ECC as main Option clauses; Option A.

Form of Agreement

	Date			2
	Parties			2
	Recitals	1 – 5	Background	2
	Operative clauses	1	Contract for the <i>works</i>	3
2	Priority of documents	3		
3	Entire Agreement	3		
	Execution page			
	Schedule A		Contract Data Part One – Data provided by	5
	the <i>Client</i>			
	Schedule B		Option Z: Additional Conditions of Contract	16
	Schedule C		Contract Data Part Two – Data provided by	73
	the Contractor			
	Schedule D		Scope	76
	Schedule E		Activity Schedule	
	Schedule F		Site Information	
	Schedule G		Collateral Warranties	
	Schedule H		Security Schedule	
	Schedule I		Management Information	
	Schedule J		Key Performance Indicators	
	Schedule K		TUPE	
	Schedule L		Governance	
	Schedule M		Equality	
	Schedule N		Forms of Ultimate Holding Company	
	Guarantee and Performance Bond			
	Schedule O		Third Party Agreements	
	Schedule P		Data Protection	
	Schedule Q		Financial Distress	

This agreement is made the day of June 2022

Between:

- (1) **The Secretary of State for Work and Pensions** of Caxton House, Tothill Street, London, SW1H 9NA acting as part of the Crown (the **Client**); and
- (2) **MITIE Property Services (UK) Limited** a company registered in England and Wales with company registration number 2935593 and whose registered office is at Level 12, The Shard, 32 London Bridge Street, London SE1 9SG (the **Contractor**).

Background

- 1 The Parties have agreed to contract by adopting this call-off form of contract which is used for the purposes of Lots 2 and 3 of the *Client's* Estates Job Centre Plus & Office Fit Out Contractor Framework ("the Framework Agreement").
- 2 The parties acknowledge and agree that this contract does not constitute a call-off under the Framework Agreement. Instead, this contract is a standalone contract which, for convenience only, in terms of being a contracting vehicle already known and agreeable to both parties, substantively mirrors the terms applicable to a call-off under that Framework Agreement and incorporates the terms and conditions of the Framework Agreement by reference where relevant.
- 3 The *Client* instructs the Contractor for the Roof Repairs including associated M&E works at Motherwell Johnstone House

and has completed the Contract Data Part 1.
- 4 The *Contractor* has *provided* the data for the Contract Data Part 2.
- 5 The *Contractor* has agreed to Provide the Works in accordance with this contract and the Framework Agreement.
 - 1.1.1 It is agreed as follows:

1 Contract for the works

- 1.1 The contract for the *works* comprises the terms and conditions of the NEC4 Engineering and Construction Contract Option A: Priced contract with activity schedule June 2017 which is supplemented and amended in accordance with such information and supplementary provisions as are provided in the Schedules.
- 1.2 The **Schedules** means any one or all of the schedules appended to this contract.
- 1.3 The *Contractor* Provides the Works in accordance with this contract and the Framework Agreement. The Framework Agreement shall apply to the performance of this contract as if this contract were a Call-Off Contract (as defined in the Framework Agreement), save that clause 5 (except clauses 5.10.3 and 5.10.4) of the Framework Agreement shall not apply to this contract. Clauses 5.10.3 and 5.10.4 of the Framework Agreement shall apply to the performance of this contract.

2 Priority of documents

- 2.1 If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:

- 2.1.1 this Agreement;
- 2.1.2 the completed Contract Data;
- 2.1.3 the *additional conditions of contract*;
- 2.1.4 the other *conditions of contract*;
- 2.1.5 the Scope; and
- 2.1.6 any other document forming part of the contract.

3 Entire Agreement

3.1 This contract is the entire agreement between the parties in relation to the *works* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

3.2 Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.

Signature:.....

Name: **REDACTED**

Title: Authorised signatory

Date: 27/06/2022

Executed under hand by MITIE Property Services (UK) Limited acting by:)
)
)
)

3.3 Nothing in this clause 3 shall exclude any liability in respect of misrepresentations made fraudulently.

1.1.2 **In witness whereof** the parties have caused this contract to be

executed as a deed by their duly authorised representatives and delivered on the date first above written

Signature page to the Agreement between the *Client* and the *Contractor*

Executed under hand for and on behalf of)
The Secretary of State for Work and)
Pensions :)
)

Signature: **REDACTED**

Name:

Title:

Date:

Signature:.....

Name: **REDACTED**
.....

Title: Director

Date: ...27/6/22.....

Schedule A Contract Data Part One – Data provided by the *Client*

1 General

The *conditions of contract* are the core clauses of the NEC4 Engineering and Construction Contract June 2017 Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017:

Option for resolving and avoiding disputes: W2

Secondary Options:

- X2 Changes in the Law
- X4 Ultimate holding company guarantee
- X5 Sectional Completion
- X7 Delay Damages
- X8 Undertakings to the *Client* or *Others*
- X10 Information Modelling
- X11 Termination by the Client
- X13 Performance Bond
- X15 Limitation of the *Contractor's* liability for his design to reasonable skill and care
- X16 Retention
- X18 Limitation of liability
- X20 Key Performance Indicators
- X21 Whole Life Cost
- Y(UK)2 The Housing, Grants, Construction and Regeneration Act 1996

Option Z: *Additional conditions of contract*

- Z1 – Z55
- The *works* are Roof Repairs at Motherwell
Johnstone House
- The *Client* is As defined in the form of
agreement to which this
Schedule is annexed

Name: **Kirsty Madden**

Address for communications:

Department for Work and Pensions

**Caxton House Tothill Street
London SW1H 9NA**

Address for electronic communications:

REDACTED

- The *Project Manager* is

Name: **REDACTED Gleeds**

Address for communications:

Gleeds Advisory Limited

**Level 4,
163 West George Street,
Glasgow, G2 2JJ**

Address for electronic communications:

REDACTED

- The *Supervisor* is

Name: **REDACTED - DWP**

Address for communications:

Department for Work and Pensions

**Peel Park,
Brunel Way,
Blackpool FY4 5ES**

Address for electronic communications:

REDACTED

- The *Scope* is in

Schedule D

- The *Site Information* is in

Schedule F as may be amended from time to time

- The *boundaries of the site* are

Sites identified in Activity Schedule

- The *language of the contract* is

English

- The *law of the contract* is the law of The law of England and Wales, and includes all statute, primary and secondary legislation, and other regulations, orders and by-laws having the force of law.
- The *period for reply* is One Week
- The following matters will be included in the Early Warning Register
- Early warning meetings are to be held at intervals no longer than: Two Weeks

2 The Contractor's main responsibilities

The *key dates* and *conditions* to be met are:

<i>condition</i> to be met	<i>key date</i>
1. Completion	TBC
2.	
3.	

3 Time

- The *starting date* is
- The access dates are: As above

Part of the Site	Date
1. Not applicable	
2. Not applicable	
3. Not applicable	

- The *Contractor* submits revised programmes at intervals no longer than Two Weeks
- The completion date for the whole of the *works* is
- The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is: One Week

4 Quality Management

- The period after the Contract Date

within which the *Contractor* is to submit a quality policy statement and quality plan is: One Week

- The period between Completion of the whole of the *works* and the *defects date* is: One Year
- The place where weather is to be recorded is The closest meteorological office recording station to individual site
- The *weather measurements* to be recorded for each calendar month are:
 - The *defect correction* period is 2 weeks except that
 - the cumulative rainfall
 - ~~The~~ *defect correction*
 - ~~the~~ period for Urgent Repairs/Replacement
 - the number of days with minimum air temperature less than 0 degrees Celsius
 - The *defect correction* period for Routine Repairs/Replacements
 - the number of days with snow lying at The closest meteorological office recording station to

5 Payment

- The *currency of this contract* is the GB pounds sterling
- The *assessment interval* is 4 weeks
- The *interest rate* is three per cent (3%) per annum (not less than 2%)
- The *weather measurements* are supplied by MME Property Services (UK) Limited above the base rate of the Bank of England
- The period within which payments are to be made is: 10 Working Days

6 Compensation events

- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at The closest meteorological office recording station to individual site and which are available from The Meteorological Office

Where no recorded data are available

- Assumed values for the ten year return weather data for each *weather measurement* for each calendar month are Not applicable

- The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is:
 - 60. 1 (21) These are additional compensation events:
 - Any change to the minimum hourly rate of pay set by Government which applies to workers.
 - Any change to the rate of *Client's* National Insurance contribution.
 - Any introduction of a compulsory Living Wage or London Living Wage or any change thereto which applies to workers.
 - A change to the pension *Client* contribution rate for Transferring Former Contractor Employees or Transferring Client Employees.
 - A change to the pension autoenrolment costs for Transferring Former Contractor Employees or Transferring Client Employees
- Not applicable
0% and not incentivised

8 Liabilities and Insurance

These are additional *Client's* liabilities:

- (1) Loss or damage to any existing structure (other than property owned or occupied by the *Client* and the *works*) within which the *works* or part of the *works* are to be executed or to which they are to form an extension, unless the loss or damage arises from or in connection with the *Contractor* Providing the Works, in which case the *Client* is only liable for such loss or damage in excess of ten million pounds (£10,000,000) in respect of any one claim.
- (2) Not used
- (3) Not used

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is:
ten million pounds (£10,000,000) any one occurrence and in the annual aggregate together with ten million pounds (£10,000,000) any one occurrence and in the annual aggregate in respect of products liability and pollution/contamination liability (to the extent insured by the policy)

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is
the amount required by law

If the *Client* is to provide Plant and Materials

- The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of: £[]

If the *Client* is to provide any of the insurances stated in the Insurance Table

- The *Client* provides these insurances from the Insurance Table

1. Insurance against

Cover / indemnity is The deductibles are

2. Insurance against

Cover / indemnity is The deductibles are

3. Insurance against

Cover / indemnity is

The deductibles are

If additional insurances are to be provided

- The *Client* provides these additional insurances

1. Insurance against

Professional Indemnity Insurance

Cover / indemnity is

£10,000,000 in the aggregate.

The deductibles are

Deductibles to be in line with market at the time of a liability issue being raised

2. Insurance against

Cover / indemnity is

The deductibles are

- The *Contractor* provides these additional insurances

1. Insurance against

Cover / indemnity is The deductibles are

2. Insurance against

Cover / indemnity is

The deductibles are

Resolving and avoiding disputes

- The *tribunal* is The Courts of England and Wales
- The place where the arbitration is to be held is TBC

- The person or organisation 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 Client

If Option W1 or W2 is used

- The *Senior Representatives* of the Client are

Name (1):

REDACTED
 Department for Work and Pensions
 Caxton House
 Tothill Street
 London SW1H 9NA

Address for Communications:

REDACTED

Address for electronic communications:

REDACTED

Name (2):

REDACTED

Address for Communications:

Department for Work and Pensions
 Caxton House
 Tothill Street
 London SW1H 9NA

Address for electronic communications:

REDACTED

- The *Adjudicator* is:

TBC

Address for Communications:

TBC

Address for electronic communications:

- The Adjudicator nominating body is: The Royal Institution of Chartered Surveyors

Option X5 is not used

- The *completion date* for each *section* of the *works* is *ate*

<i>section</i>	Description	<i>completic</i>
1		
2		
3		
4		

Option X7 Is not used

- Delay damages for Completion of the whole of the *works* are

£0 per day

Clause X8	is not used
Clause X10	is not used
Clause X13	is not used

- The amount of the performance bond is Nil

Clause X14	is not used
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- The amount of the advanced payment is Nil
- The *Contractor* repays the instalments in assessments starting not less than weeks after the Contract Date Not applicable
- The instalments are Not applicable

(either an amount or a percentage of the payment otherwise due)

- An advanced payment bond is not required

Clause X15	is used
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- The *period for retention* following Completion of the whole of the *works* or earlier termination is: 12 months and release of Defects Liability Certificate
- The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim:
 - Not less than ~~two million pounds (£2,000,000)~~ any one claim the number of claims being unlimited in any annual period of insurance but two million pounds (£2,000,00) any one claim and in the annual aggregate in respect of pollution and contamination and one million pounds (£1,000,000) any one claim and in the annual aggregate in respect of asbestos.
- The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is: 12 years

Clause X16	is used
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- The *retention free amount* is 100 %
- The *retention percentage* is 0 %

Clause X18	is used
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- | | |
|---|---|
| <ul style="list-style-type: none"> The <i>Contractor's</i> liability to the <i>Client</i> for indirect or consequential loss is limited to | Five Hundred and seventy two , four hundred and fifteen pounds and ten pence
(£572,415.10) |
| <ul style="list-style-type: none"> For any one event, the <i>Contractor's</i> liability to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to | ten million pounds (£10,000,000) per one event and in the aggregate |
| <ul style="list-style-type: none"> The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to | two million pounds (£2,000,000) |
| <ul style="list-style-type: none"> The <i>Contractor's</i> total liability to the <i>Client</i> for all matters arising under or in connection with this contract, other than the excluded matters is limited to | ten million pounds (£10,000,000) in the aggregate |
| <ul style="list-style-type: none"> The <i>end of liability date</i> is | 6 years after the end of the whole of the <i>works</i> |

Option X20	is used
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- | | |
|--|-------------------------------|
| <ul style="list-style-type: none"> A report of performance against each Key Performance Indicator is provided at intervals of | 1 month |
| <ul style="list-style-type: none"> The value of a single Service Credit is | |
| <ul style="list-style-type: none"> The <i>Service Credit Cap</i> is | 1% of the total of the Prices |

Option Y(UK)2

- | |
|---|
| <ul style="list-style-type: none"> The period for payment is five (5) days after the date on which payment becomes due |
|---|

Option Z is used

The <i>additional conditions of contract</i> are:	Identified above and in Schedule B
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Option Z17 CDM Regulations

- | | |
|---|--------|
| <ul style="list-style-type: none"> The Principal Designer is | Gleeds |
|---|--------|

Option Z26 SMEs

- the SME Percentage is

20%

Option Z27 Apprenticeships

- the Apprenticeship Percentage is 5%

Option Z29 Collateral Warranties

The following parties are to be beneficiaries of collateral warranties:

- Parties for whom collateral warranties are provided:
- The *Client* (save in respect of collateral warranties from the
 - Subcontractors from whom collateral warranties are required:

Contractor)

- (where not the *Client*) each owner of the Site or any property on the site or any part of it
- (where not the *Client*) each landlord of the Site or any property on the Site or any part of it
- any person who

purchases a freehold or long leasehold interest in the Site or any part of it

- any person who has

entered into a lease or an agreement for the grant of a leasehold interest in the Site or any part of it

- Any Subcontractor with design responsibility

Schedule B Option Z: Additional Conditions of Contract

The following provisions supplement, modify or replace the published provisions of the NEC4 Engineering and Construction Contract Option A: Priced contract with activity schedule (June 2017)

Actions

Option Z1	Governance
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Additional 10.3	10.3 clause	<p>Insert new clause:</p> <p>The parties comply with the provisions of Schedule L in relation to the management and governance of this contract.</p>
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Option Z2	Identified and defined terms
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Supplement to clause 11	11.1	<p>At the end of clause 11.1 add:</p> <p>Terms defined in the form of agreement to which this Schedule is annexed apply to this contract. Terms with capital initials not defined in this contract (excluding the Framework Agreement) have the meaning given to them in the Framework Agreement. Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.</p>
Amend clause 11.2 (5)	11.2 (5)	<p>Replace existing clause 11.2 (5) with the following:</p> <p>"A Corrupt Act means:</p> <p>.1 to directly or indirectly offer, promise or give any person working for or engaged by the <i>Client</i> or other Contracting Body or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity; or • reward that person for improper performance of a relevant function or activity; <p>.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;</p> <p>.3 committing any offence:</p> <ul style="list-style-type: none"> • under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) • under legislation or common law concerning fraudulent acts; or • defrauding, attempting to defraud or conspiring to defraud the <i>Client</i>, or <p>.4 any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK";</p>
Amend clause 11.2 (6)	11.2(6)	<p>In the first bullet point, before "Scope", insert "contract and/or the";</p> <p>In the second bullet point, delete "which the <i>Project Manager</i> has accepted" and replace with "or the other requirements of this contract and/or the Scope";</p>
Amend clause 11.2 (12)	11.2(12)	<p>At the end of the clause, insert ", and include any parties identified in the Scope as related to, contracting with or as providing a service to or receiving a service from the <i>Client</i> or ";</p>

Amend clause 11.2 (18)	11.2(18)	In the first bullet point, after the words "describes the Site", insert: "including the physical and other conditions (including the sub-surface conditions) of or affecting the Site";
Additional clause 11.2(33)	11.2(33)	Insert new clauses: Affiliate is in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time;
Additional clause 11.2(34)	11.2(34)	Authority Supply Chain is the <i>Contractor</i> and the principal suppliers to the <i>Client</i> of the following services: <ul style="list-style-type: none"> • landlord and lease management; • furniture fittings & equipment; • security; and • project works each an Authority Supply Chain Member ;
Additional clause 11.2(35)	11.2(35)	Baseline Security Requirements means the relevant <i>Client's</i> Policy as the <i>Client</i> may notify to the <i>Contractor</i> from time to time;
Additional clause 11.2(36)	11.2(36)	CDM Regulations is the Construction (Design and Management) Regulations 2015 and any modification or replacement of the same, together with the guidance set out in the most recently published approved code of practice thereto;
Additional clause 11.2(37)	11.2(37)	Client Confidential Information means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the <i>Client</i> , including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Additional clause 11.2(38)	11.2(38)	Client Data means <ul style="list-style-type: none"> • the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> a. supplied to the <i>Contractor</i> by or on behalf of the <i>Client</i>, or b. which the <i>Contractor</i> is required to generate, process, store or transmit pursuant to this Contract; or • any Personal Data for which the <i>Client</i> is the Data Controller;
Additional clause 11.2(39)	11.2(39)	Client's Policies are the policies of the <i>Client</i> as published from time to time at the <i>Client's</i> tendering website https://dwp.bravosolution.co.uk current at the date of this contract and as may be amended from time to time;

Additional clause 11.2(40)	11.2(40)	Client's System means the <i>Client's</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Client</i> or the <i>Contractor</i> in connection with this contract which is owned by the <i>Client</i> or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the <i>Client</i> to receive the <i>works</i> ;
Additional clause 11.2(41)	11.2(41)	Commercially Sensitive Information is the information agreed between the parties to be commercially sensitive (if any);
Additional clause 11.2(42)	11.2(42)	Confidential Information means the Client Confidential Information and/or the Contractor Confidential Information;
Additional clause 11.2(43)	11.2 (43)	Contracting Body means any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the <i>Client</i> ;
Additional clause 11.2(44)	11.2(44)	Contractor Confidential Information means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the <i>Contractor</i> , including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
Additional clause 11.2(45)	11.2(45)	Contractor Personnel are persons employed or engaged by the <i>Contractor</i> together with the <i>Contractor's</i> servants, agents, suppliers, consultants and Subcontractor's (and all persons employed by any Subcontractor together with the Subcontractor's servants, consultants, agents, suppliers and sub-subcontractors);
Additional clause 11.2(46)	11.2(46)	Contractor System means the information and communications technology system used by the <i>Contractor</i> in implementing and performing the <i>works</i> including software, the equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client's System);
Additional clause	11.2(47)	Control means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
Additional clause 11.2(48)	11.2(48)	Critical Performance Failure is more than four (4) Serious or Severe KPI Failures in a three month period;
Additional clause 11.2(49)	11.2(49)	Crown Body means any department, office or agency of the Crown;
Additional clause 11.2(50)	11.2(50)	Defects Protocol is the protocol set out in the Scope setting out timeframes within which the <i>Contractor</i> is to respond to specific categories of Defect;
Additional clause 11.2(51)	11.2(51)	Data Controller has the meaning given in the Data Protection Legislation;
Additional clause 11.2(52)	11.2(52)	Data Processor has the meaning given in the Data Protection Legislation;

Additional clause 11.2(53)	11.2(53)	Data Protection Legislation means the Data Protection Act 1998 and any replacement legislation coming into effect from time to time including (without limitation) the GDPR together with any codes of practice or other guidance issued by any competent Regulatory Body;
Additional clause 11.2(54)	11.2(54)	Data Subject has the meaning given in the Data Protection Legislation;
Additional clause 11.2(55)	11.2(55)	DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
Additional clause 11.2(56)	11.2(56)	DWP Enterprise Security Risk Management Strategy means the relevant <i>Client's</i> Policy;
Additional clause 11.2(57)	11.2(57)	DWP Information Security Policy means the relevant <i>Client's</i> Policy;
Additional clause 11.2(58)	11.2(58)	DWP Offshoring Policy means the relevant <i>Client's</i> Policy;
Additional clause 11.2(59)	11.2(59)	Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
Additional clause 11.2(60)	11.2(60)	FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
Additional clause 11.2(61)	11.2(61)	Former Contractor is the contractor supplying works to the <i>Client</i> before the Relevant Transfer Date that are the same as or substantially similar to the <i>works</i> (or any part of the <i>works</i>) and shall include any subcontractor of such supplier (or any sub-contractor of any such subcontractor);
Additional clause 11.2(62)	11.2(62)	GDPR means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
Additional clause 11.2(63)	11.2(63)	General Anti-Abuse Rule is: <ul style="list-style-type: none"> • the legislation in Part 5 of the Finance Act 2013; and • any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;
Additional clause 11.2(64)	11.2(64)	Good Industry Practice means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
Additional clause 11.2(65)	11.2(65)	Government Digital Service Open Standards means the relevant <i>Client's</i> Policy;

Additional clause 11.2(66)	11.2(66)	Halifax Abuse Principle is the principle explained in the CJEU Case C255/02 Halifax and others;
Additional clause 11.2(67)	11.2(67)	HMG Cyber Essentials Scheme means the relevant <i>Client's</i> Policy;
Additional clause 11.2(68)	11.2(68)	HMG Security Policy Framework means the relevant <i>Client's</i> Policy;
Additional clause 11.2(69)	11.2(69)	ICT Environment has the meaning given it in Schedule H;
Additional clause 11.2(70)	11.2(70)	Improvement Notice has the meaning given in clause 67.2;
Additional clause 11.2(71)	11.2(71)	Improvement Plan the plan to address the impact of and prevent the reoccurrence of a Notifiable Event;
Additional clause 11.2(72)	11.2(72)	Improvement Plan Failure has the meaning given in clause 67.9;
Additional clause 11.2(73)	11.2(73)	Information has the meaning given under section 84 of FOIA;
Additional clause 11.2(74)	11.2(74)	Integrator means the Supplier named in the Integrator Agreement;
Additional clause 11.2(75)	11.2(75)	Integrator Agreement means the agreement entered into by the <i>Client</i> and the Integrator dated 13 June 2017;
Additional clause 11.2(76)	11.2(76)	Intellectual Property Rights or "IPRs" are: <ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
Additional clause 11.2(77)	11.2(77)	Intervention Period has the meaning given to it at clause 68.5;
Additional clause 11.2(78)	11.2(78)	Intervention Trigger Event is more than three (3) Serious KPI Failures or Severe KPI Failures in a three month period;
Additional clause 11.2(79)	11.2(79)	Key Performance Indicator is a Performance Indicator stated to be "Key" in column [6] of Schedule J;
Additional clause 11.2(80)	11.2(80)	KPI Failure is a failure to meet the Target Performance Level stated in Schedule J in respect of a Key Performance Indicator;
Additional clause 11.2(81)	11.2(81)	Law means the law of the Contract and any revision, re-enactment of such law from time to time;
Additional clause 11.2(82)	11.2(82)	Licence is any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver or licence which must be obtained from any person (including both private persons and public sector entities) in order to lawfully Provide the Works and for any goods to be transported, imported or exported;
Additional clause 11.2(83)	11.2(83)	Malicious Software has the meaning given it in Schedule H;

Additional clause 11.2(84)
11.2(84)

Material KPI Failure

- a Serious KPI Failure; or
- a Severe KPI Failure;

Additional clause 11.2(85)
11.2(85)

Material SPI Failure

- a Serious SPI Failure; or
- a Severe SPI Failure;

Additional clause 11.2(86)
11.2(86)

Notifiable Event means:

- a default by the *Contractor* which is material and is capable of remedy; or
- any KPI Failure which relates to the same Key Performance Indicator and which occurs more than three (3) times in a three month period;
- more than two (2) KPI Failures in any month
- more than one (1) Material SPI Failure in successive months;

Additional clause 11.2(87)
11.2(87)

Occasion of Tax Non-Compliance is:

- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 June 2017 to be incorrect as a result of:
- A Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- The failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or
- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 June 2017, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion;

Additional clause 11.2(88)
11.2(88)

Performance Failure a KPI Failure or a SPI Failure;

Additional clause 11.2(89)
11.2(89)

Performance Indicators the Key Performance Indicators and the Subsidiary Performance Indicators;

Additional clause 11.2(90)	11.2(90)	<p>Personal Data (as defined in the Data Protection Legislation) is data which is:</p> <ul style="list-style-type: none"> • processed by the Contractor or any Subcontractor on behalf of the Client; or • for which one or both of the parties is Data Controller; pursuant to or in connection with this contract;
Additional clause 11.2(91)	11.2(91)	<p>Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, damage, unauthorised disclosure of, or access to, Personal Data;</p>
Additional clause 11.2(92)	11.2(92)	<p>Process has the meaning given to it under the Data Protection Legislation and "Processed" and "Processing" shall be construed accordingly;</p>
Additional clause 11.2(93)	11.2(93)	<p>Regulatory Bodies are those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the <i>Client</i> and "Regulatory Body" shall be construed accordingly;</p>
Additional clause 11.2(94)	11.2(94)	<p>Proscribed Conduct is:</p> <ul style="list-style-type: none"> • agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by this contract to carry out the <i>works</i> provided to the <i>Client</i> under the Integrator Agreement, either as Integrator or as any part of the Integrator's supply chain; • receiving or being entitled to receive any benefit, financial, commercial or otherwise which is derived expressly or impliedly from the Integrator save as expressly permitted by this contract; • being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this contract), joint venture or otherwise) in the Integrator or its Affiliates or its Subcontractors; • allowing the Integrator, its Affiliates or Subcontractors to exercise any control or influence over the <i>Contractor</i> or a Subcontractor save as required in the performance of the Integrator's duties under the Integrator Agreement; • exercising any control or influence over or permitting any Subcontractor to exercise and control or influence over the Integrator or its supply chain; or • appointing the Integrator or any Affiliate of the Integrator as a Subcontractor;
Additional clause 11.2(95)	11.2(95)	<p>Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;</p>

Additional clause 11.2(96) 11.2(96)		Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the <i>Contractor</i> is established;
Additional clause 11.2(97) 11.2(97)		Relevant Transfer is a transfer of employment to which the Employment Regulations (as defined in Schedule K) applies;
Additional clause 11.2(98) 11.2(98)		Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
Additional clause 11.2(99) 11.2(99)		Remedial Adviser the person appointed pursuant to clause 68;
Additional clause 11.2(100) 11.2(100)		Remedial Adviser Failure has the meaning given to it in clause 68.9;
Additional clause 11.2(101) 11.2(101)		Request for Information is a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
Additional clause 11.2(102) 11.2(102)		Required Action has the meaning given to it at clause 69.1;
Additional clause 11.2(103) 11.2(103)		Serious KPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Schedule J;
Additional clause 11.2(104) 11.2(104)		Serious SPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Schedule J;
Additional clause 11.2(105) 11.2(105)		Service Credit means the amounts that may be payable by the <i>Contractor</i> as a consequence of the occurrence of one or more KPI Failures, and calculated by reference to the value of a single Service Credit stated in the Contract Data multiplied by the number of Service Failure Points accrued for such KPI Failure stated in Schedule J;
Additional clause 11.2(106) 11.2(106)		Service Credit Cap is the <i>service credit cap</i> stated in the Contract Data part one;
Additional clause 11.2(107) 11.2(107)		Service Failure Points means in relation to a: <ul style="list-style-type: none"> • KPI Failure; or • SPI Failure, the number of points that are set out against the relevant Key Performance Indicator and/or Subsidiary Performance Indicator (as the case may be) in Schedule J;
Additional clause 11.2(108) 11.2(108)		Severe KPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Schedule J;
Additional clause 11.2(109) 11.2(109)		Severe SPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Schedule J;
Additional clause 11.2(110) 11.2(110)		Software has the meaning given to it in Schedule H;

Additional clause 11.2(111)	11.2(111)	SPI Failure means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
Additional clause 11.2(112)	11.2(112)	Specific Change in Law means a change in Law relating specifically to the business of the <i>Client</i> and which would not affect a supply of works or services to another customer of the <i>Contractor</i> that is the same or similar to the <i>works</i> ;
	11.2(113)	Step-In Notice has the meaning given to in clause 69.1;
Additional clause 11.2(113) Additional clause 11.2(114)	11.2(114)	Step-In Trigger Event is <ul style="list-style-type: none"> 1. any event giving rise to a right to terminate this Contract; 2. a default by the <i>Contractor</i> which is materially preventing or delaying the performance of the <i>works</i> or a material part of them; 3. circumstances which the <i>Client</i> consider to amount to an emergency notwithstanding there is no breach of the contract by the <i>Contractor</i>; 4. the <i>Client</i> being advised by a Regulatory Body that the exercise of its step-in rights is necessary; 5. the need for the <i>Client</i> to exercise its step-in rights to discharge a statutory duty; 6. fire, leaks, act of god, storm damage, floods or similar events of force majeure;
Additional clause 11.2(115)	11.2(115)	Step-Out Date has the meaning given to it in clause 69.5;
Additional clause 11.2(116)	11.2(116)	Step-Out Notice has the meaning given to it in clause 69.5;
Additional clause 11.2(117)	11.2(117)	Step-Out Plan has the meaning given to it in clause 69.6;
Additional clause 11.2(118)	11.2(118)	Subsidiary Performance Indicator is a Performance Indicators which is identified as a Subsidiary Performance Indicator in Schedule J;
Additional clause 11.2(119)	11.2(119)	Target Performance Level the minimum level of performance for a Performance Indicator which is required as set out against the relevant Performance Indicator in the column headed 'Target Performance' in the tables in Schedule J);
Additional clause 11.2(120)	11.2(120)	Third Party Agreements are the third party agreements entered into by the <i>Client</i> , copies or relevant extracts of which are annexed at Schedule O;
Additional clause 11.2(121)	11.2(121)	Third Party Software has the meaning given it in Schedule H;

Additional clause 11.2(122)	11.2(122)	Transferring Client Employees are those employees of the <i>Client</i> to whom the Employment Regulations (as defined in Schedule K) will apply on the Relevant Transfer Date;
Additional clause 11.2(123)	11.2(123)	Transferring Former Contractor Employees are, in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations (as defined in Schedule K) will apply on the Relevant Transfer Date;
Additional clause 11.2(124)	11.2(124)	TUPE Surcharge has the meaning given in Schedule K;
Additional clause 11.2(125)	11.2(125)	Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales;
11.2(125) Additional clause 11.2(126)	11.2(126)	Works Exclusion Notice has the meaning given to it in clause 94.1;
Additional clause 11.2(127)	11.2(127)	Works Exclusion Cause has the meaning given to it in clause 94.1.

Option Z3	Communications
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		Insert new clauses:
Additional clause 13.9	13.9	The <i>Contractor</i> does not: <ul style="list-style-type: none"> • make any press announcements or publicise this Contract or its contents in any way; or • use the <i>Client's</i> name or brand in any promotion or marketing or announcement of orders; <p>without the prior written consent of the <i>Client</i>.</p>
Additional clause 13.10	13.10	Each party acknowledges to the other that nothing in this contract either expressly or by implication constitutes an endorsement of any products or works of the other party (including the <i>works</i>) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
Additional clause 13.11	13.11	Each party takes reasonable steps to ensure that its employees, agents, subcontractor's, suppliers, professional advisers and consultants comply with clauses 13.9 and 13.10.

Option Z4	Integrator
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Insert new clauses:

Additional clause 14.6
14.6

The *Contractor* provides to the Integrator copies of all documents and/or information required by this Contract to be provided:

- to the *Client*, instead of the *Client*; and
- to the *Service Manager*, as well as the *Service Manager*,

unless in either case instructed otherwise by the *Client*.

Option Z5

Early warning

Additional clause 15.5
15.5

Insert new clause:

The *Contractor* complies, and procures compliance by its Subcontractors and other suppliers, with the risk management process described in the Scope as updated from time to time by the *Client* or (with the *Client's* approval) the *Contractor*. Reasons for updating the risk management process include reflecting the requirements of insurers. Any update of the risk management process by the *Client* shall be deemed to be an instruction from the *Project Manager* changing the Scope. Any update to the risk management process by the *Contractor* shall not be treated as a compensation event under this Contract.

Option Z6

Ambiguities and Inconsistencies

Supplement to clause 17
17.1

At the beginning of the second sentence, replace "The" with: "Subject to clause 2.1 of the Form of Agreement, the".

Insert new clauses:

Additional clause 17.3
17.3

Where an ambiguity or inconsistency in the *Contractor's* design accepted by the *Project Manager* or between the *Contractor's* design and the Scope, the *Contractor* provides the *Project Manager* with proposals to remove the same which are acceptable to the *Project Manager* acting reasonably. Such acceptance shall not be treated as an instruction changing the Scope.

Where this clause 17.3 applies, in the event of any discrepancies being discovered in the documents, the *Contractor* shall at once notify the *Project Manager* in writing. If amendments to the design or methods of work are required as a result of discrepancies in the documents, such amendments shall not be regarded as a compensation event. The *Contractor* shall pay all fees and costs in connection therewith.

The *Contractor* accepts entire responsibility for the design contained within the Scope for the *Contractor's* design and for any mistake, inaccuracy, discrepancy or omission contained in the same. Nothing contained in the Scope for the *Contractor's* design shall affect in any way the obligations of the *Contractor* under the Contract.

Additional clause 17.4
17.4

If any term, condition or provision contained in this Contract is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will not affect the validity, legality or enforceability of the remaining parts of this Contract.

Option Z7**Corrupt Acts**

Additional clause 18.4 18.4	<p>Insert new clauses:</p> <p>The <i>Contractor</i> represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:</p> <ul style="list-style-type: none">• committed a Corrupt Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt Act; and/or• been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or Contracts on the grounds of a Corrupt Act.
Additional clause 18.5 18.5	<p>During the carrying out of the <i>works</i> the <i>Contractor</i> does not do or suffer anything to be done which would cause the <i>Client</i> or any of the <i>Client's</i> employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.</p>
Additional clause 18.6 18.6	<p>During the carrying out of the <i>works</i> the <i>Contractor</i>:</p> <ul style="list-style-type: none">• establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Corrupt Act;• keeps appropriate records of its compliance with this contract and make such records available to the <i>Client</i> on request;• provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the <i>Client</i> on request) to prevent it and any <i>Contractor's</i> employees or any person acting on the <i>Contractor's</i> behalf from committing a Corrupt Act.
Additional clause 18.7 18.7	<p>The <i>Contractor</i> immediately notifies the <i>Client</i> in writing if it becomes aware of any breach of clause 18.1 or 18.5, or has reason to believe that it has or any of the its employees or Subcontractors have:</p> <ul style="list-style-type: none">• been subject to an investigation or prosecution which relates to an alleged Corrupt Act;• been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Corrupt Act; and/or• received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contractor otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Corrupt Act.

Additional clause 18.8	18.8	If the <i>Contractor</i> makes a notification to the <i>Client</i> pursuant to clause 18.7, the <i>Contractor</i> responds promptly to the <i>Client's</i> enquiries, cooperates with any investigation, and allows the <i>Client</i> to audit any books, records and/or any other relevant documentation in accordance with this Contract.
Additional clause 18.9	18.9	If the <i>Contractor</i> breaches clause 18.1 or 18.5, the <i>Client</i> may by notice require the <i>Contractor</i> to remove from Providing the Works any <i>Contractor</i> employee whose acts or omissions have caused the <i>Contractor's</i> breach.
Additional clause 18.10	18.10	<p>The <i>Contractor</i> shall, as soon as reasonably practicable after becoming aware of the same, notify the <i>Client</i> in writing if:</p> <ul style="list-style-type: none"> • any investigations are instituted into the affairs of the <i>Contractor</i> or any Subcontractors, other approved subcontractors or suppliers of any of its or their directors or key managers, under the Companies, Financial Services or Banking Acts; • any police or Serious Fraud Office enquiries into possible fraud, or any involvement in Department of Trade and Industry investigations, and enquiries into the affairs of others which might result in public criticism of, or action against the <i>Contractor</i> or any Subcontractors or any other subcontractors or suppliers.
Additional clause 18.11	18.11	The <i>Contractor</i> shall supply the <i>Client</i> with a copy of any notice, order or proposal for a notice or order affecting the Site served on the <i>Contractor</i> by any competent authority (or received by the <i>Contractor</i> from any of its Subcontractors or suppliers or other person) as soon as reasonably practicable after it is received by the <i>Contractor</i> and shall without delay take all steps necessary to comply with any such notice or order.

Option Z8

Providing the Works

Replace clause 20.1	20.1	<p>Delete and replace with:</p> <p>"The <i>Contractor</i> provides the <i>works</i> in a proper and workmanlike manner and in accordance with this Contract, the Scope, the Licences, and all applicable Law."</p> <p>Insert new clauses:</p>
Additional clause 20.2	20.2	<p>The <i>Contractor</i> undertakes to the <i>Client</i> that:</p> <ul style="list-style-type: none"> .1 in the carrying out of the works the <i>Contractor</i> shall procure that only materials and goods of sound and satisfactory quality and which have been manufactured or prepared in compliance with the specifications and quality plans; .2 the <i>Contractor</i> shall (and shall procure that it Subcontractors and suppliers shall) at all times comply with the lawful requirements of the Relevant Authorities and comply with any Statutory Requirement either in carrying out the <i>works</i> or where design, development, workmanship, methods of construction, materials, plant, commissioning, testing or maintenance are to be reviewed by the <i>Project Manager</i> or any Relevant Authorities;

- .3 it shall use its reasonable endeavours to ensure that all subcontracts, equipment rental or lease agreements and all other (non-employment) contracts which are necessary to the performance of the *works*, are assignable to the *Client* or its nominee (without any transfer or charge);
- .4 the *Client* shall acquire such title as the encumbrances created by or against the *Contractor* and the *Client* shall have the right of quiet possession thereof.

Additional clause 20.3

20.3

The *Contractor* performs its obligations under this Contract (including those in relation to the *works*) in accordance with:

- all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- the *Client's* Policies;
- any other requirements and instructions which the *Client* reasonably imposes in connection with any equality obligations imposed on the *Client* at any time under applicable equality Law; and
- the provisions of Schedule M.

Additional clause 20.4

20.4

The Official Secrets Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract from the starting date until Completion of the *works* or until a termination certificate has been issued. The *Contractor* notifies his employees and his Subcontractors of their duties under these Acts.

Additional clause 20.5

20.5

The *Contractor*:

- carries out and completes the works in conformity with the *Client's* obligations under the Third Party Agreements, and without infringing any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site and which is notified by the *Client* to the *Contractor*.
- undertakes to the *Client* that he has performed and will perform his obligations under this contracting such a manner and at such times that no act, omission or default by the *Contractor* or any of the Subcontractors or their respective employees or agents causes or contributes to any breach by the *Client* of any of his obligations under the Third Party Agreements and, to the extent that the *Contractor* causes or contributes to any breach by the *Client* of any of his obligations under the Third Party Agreements, the *Contractor* indemnifies the *Client* against any liability, claims, damages, costs, and losses that the *Client* may incur as a result of or arising out of a breach by the *Contractor* of his obligations under this clause 20.7.

Option Z9

Tax Compliance

Insert new clauses:

Additional clause 20.6	20.6	The <i>Contractor</i> represents and warrants that as at the Contract Date, it has notified the <i>Client</i> in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
Additional clause 20.7	20.7	If, at any point during the Provision of the Works, an Occasion of Tax Non-Compliance occurs, the <i>Contractor</i> shall: <ul style="list-style-type: none"> • notify the <i>Client</i> in writing of such fact within 5 days of its occurrence; and • promptly provide to the <i>Client</i>: • details of the steps which the <i>Contractor</i> is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and • such other information in relation to the Occasion of Tax Non-Compliance as the <i>Client</i> may reasonably require.

Option Z10

Change of Control and conflicts

Insert a new clause:

Additional clause 20.8	20.8	The <i>Contractor</i> promptly notifies the Project Manager in writing on each occasion of the occurrence of any change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a "Change of Control"). The <i>Client</i> is permitted to exercise its rights pursuant to this clause for only six months after service of each and any notice by the <i>Contractor</i> pursuant to this clause and is not permitted to exercise such rights where the <i>Client</i> has agreed in advance in writing to the particular Change of Control provided such Change of Control takes place as agreed.
Additional clause 20.9	20.9	The <i>Contractor</i> discloses to the <i>Project Manager</i> any actual or potential conflict of interest arising from the <i>Contractor's</i> provision of the <i>works</i> as soon as practicable after becoming aware of such actual or potential conflict.
Additional clause 20.10	20.10	The <i>Contractor</i> immediately notifies the <i>Project Manager</i> of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the <i>Contractor</i> and/or the <i>Client</i> (including without limitation its reputation and standing) of which it is aware or anticipates may justify the <i>Client</i> taking action to protect its interests.
Additional clause 20.11	20.11	The <i>Contractor</i> carries out (and procures that the <i>Contractor</i> Personnel carry out) the <i>works</i> in the <i>Client's</i> best interests.
Additional clause 20.12	20.12	Without prejudice to the <i>Contractor's</i> obligations under clauses 20.8 to 20.11 (inclusive), the <i>Contractor</i> does not and procures that Subcontractors and any <i>Contractor</i> Personnel do not engage in Proscribed Conduct and notifies the <i>Client</i> immediately on any breach of this requirement.

Additional
clause 24.3 –
24.6

Insert new clauses 24.3 to 24.6:

24.3 The *Contractor* ensures that the *key persons* named in the Contract Data fulfil the relevant jobs specified in the Contract Data at all times during the *Provision of the Works*. The *Contractor* appoints the key people to fill those jobs at the *starting date*.

24.4 The *Client* identifies any further jobs and, following agreement to the same by the *Contractor* the list of key people in the Contract Data includes the relevant person selected to fill those jobs.

24.5 (b) The *Contractor* does not remove or replace any key person unless:

- the *Client* requests that the *Contractor* does so;
- the key person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- the key person's employment or Contractual arrangement with the *Contractor* or a Subcontractor is terminated for material breach of contract by the employee; or
- the *Contractor* obtains the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).

24.6 (c) The *Contractor*:

- notify the *Client* promptly of the absence of any key person(s) (other than for short-term sickness or holidays of 2 weeks or less, in which case the *Contractor* shall ensure appropriate temporary cover for that *key person*);
- ensures that any *key person's* job is not vacant for any longer than ten (10) Working Days;
- gives as much notice as is reasonably practicable of its intention to remove or replace any key person and, except in the cases of death, unexpected ill health or a material breach of the key person's employment contract, this will mean at least sixty (60) Working Days' notice;
- ensures that all arrangements for planned change of a key person or key people provide adequate periods during which incoming and outgoing key people work together to transfer responsibilities and ensures that such change does not have an adverse impact on the performance of the Services; and
- ensures that any replacement for a *key person*:
- has a level of qualifications and experience appropriate to the relevant *key person*; and

- is fully competent to carry out the tasks assigned to the key person whom he or she has replaced.

Option Z13

Contractor Personnel

Additional clause 24.4 24.7

If the *Client* reasonably believes that any of the Contractor Personnel are unsuitable to undertake work in respect of this Contract, it may:

- refuse admission to the relevant person(s) to the Site; and/or
- direct the *Contractor* to end the involvement in the Provision of the Works of the relevant person(s).

Additional clause 24.8 24.8

Where:

- the commencement of the provision of the *works* or any part thereof results in one or more Relevant Transfers, Contract Schedule K, Part 1 shall apply as follows:
 - where the Relevant Transfer involves the transfer of Transferring Client Employees, Section A of Contract Schedule K, Part 1 shall apply;
 - where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Section B of the Contract Schedule K, Part 1 shall apply;
 - where the Relevant Transfer involves the transfer of Transferring Client Employees and Transferring Former Contractor Employees, Sections A and B of Contract Schedule K, Part 1 shall apply; and
 - Section C of Contract Schedule K, Part 1 shall not apply;
- commencement of the provision of the *works* or a part of thereof does not result in a Relevant Transfer, Section C of Contract Schedule K, Part 1 shall apply and Sections A and B of Contract Schedule K, Part 1 shall not apply; and
- expiry or termination of the *works* or any part of thereof occurs Section D of Contract Schedule K, Part 1 shall apply.

Option Z14

Working with the *Client* and Others

Additional clause 25.4 25.4

Insert new clauses:

- .1 Compliance by the *Contractor* with this clause 25.4 is without additional cost to the *Client*. The *Contractor* shall not be entitled to a Compensation Event or otherwise to additional time or cost as a consequence of failure by it to observe this clause nor by the failure of *Others* to observe similar provisions in their contracts with the *Client*.
- .2 The *Contractor*:
 - a. provides access and co-operation to *Others* as required by the *Project Manager*;
 - b. co-ordinates and integrates the execution of the *works* with works of *Others* including those engaged by the *Client* under any contract

which the *Client* may enter into in relation to the Site;

- c. complies with such instructions as issued by the *Project Manager* to co-ordinate the *Contractor's* execution of the *works* with the work of Others;
 - d. plans and coordinates the *works* in accordance with the requirements of the *Project Manager*, taking into account the presence of Others and acknowledging in particular the need to communicate and cooperate with Others so that the *works* and the works provided by Others are delivered in a coordinated and efficient manner without delay or disruption to the *works* and avoiding unnecessary disruption or inconvenience to the users of the Site through lack observance of the requirements of this clause;
 - e. affords reasonable facilities for Others who are properly authorised or who are statutory bodies employed in the execution on or near the Site of any *works* not in the contract or which is required under any contract which the *Client* may enter into in relation to the Site;
 - f. provides or assists in provision of all information, data, know-how and calculations necessary for the *Client* and/or any person appointed by the *Client* to carry out any works or services in a timely, economic and efficient manner without delay and disruption and keeps the *Client* informed at all times of all relevant matters pertaining to the Site;
 - g. is fully responsible for identifying and obtaining all information, data, know-how, calculations, drawings, documents, reports, investigations and surveys used for or in connection with the Site the provision of which is undertaken by Others in order that the *works* are executed in a timely, economic and efficient manner without delay and disruption to the business of the *Client*;
 - h. jointly and severally with Others engaged by the *Client* co-operates and manages the interface of the *works* with the works of such Others and provides all management services, labour, materials, goods, plants and works necessary for the *Contractor's* cooperation and management; and
 - i. updates the latest programme as appropriate to reflect any matter set out in this clause.
- Additional clause 25.5 25.5 It is agreed and declared that the *Contractor* could reasonably foresee the activities of Others engaged by the *Client* and statutory undertakers referred to in the Scope on or near the Site.

Additional clause 25.6	25.6	<p>The <i>Contractor</i> provides attendance for Others as may be directed by the <i>Client</i>. For this purpose attendance shall be deemed to cover all expenses incurred by the <i>Contractor</i> in:</p> <ul style="list-style-type: none"> • planning, programming and co-ordinating the <i>works</i> with that of Others; and • accepting delivery, unloading and storing material for Others as required.
Additional clause 25.7	25.7	<p>The <i>Contractor</i> shall ensure that the <i>Client's</i> business is not interrupted, hindered or prevented due to the act, neglect or omission of the <i>Contractor</i> or any person for whom it is responsible or as a result of any industrial action or interruption in utilities supplies, provided that this clause 25.7 shall not apply in relation to interruption in utilities supplies caused directly by the <i>Client</i>.</p>

Option Z15	Subcontracting
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Amendment to 26.2 Delete clauses 26.2 and 26.3 and replace with the following: clause 26

- | | |
|------|--|
| 26.2 | <p>The <i>Contractor</i> exercises due skill and care in the selection and appointment of any Subcontractor to ensure that the <i>Contractor</i> is able to:</p> <ul style="list-style-type: none"> • manage any Subcontractors in accordance with Good Industry Practice; • comply with its obligations under the contract in the delivery of the <i>works</i>; and • assign, novate or otherwise transfer to the <i>Client</i> any of its rights and/or obligations under each sub-contract that relates to this Contract. |
| 26.3 | <p>Prior to sub-contracting any of its obligations under this Contract, the <i>Contractor</i> notifies the <i>Client</i> in writing of:</p> <ul style="list-style-type: none"> • the proposed Subcontractor's name, registered office and company registration number; • the scope of any <i>works</i> to be provided by the proposed Subcontractor; and • where the proposed Subcontractor is an Affiliate of the <i>Contractor</i>, evidence that demonstrates to the reasonable satisfaction of the <i>Client</i> that the proposed Sub-contract has been agreed on an arms-length basis, <p>and provides the <i>Client</i> with a copy of the proposed sub-contract and any other information reasonably required by the <i>Client</i>.</p> |

Insert new clauses:

Additional clause 26.4	26.4	<p>The <i>Client</i> may within ten (10) days of receipt of the <i>Contractor's</i> notice issued pursuant to clause 26.3 (or if later receipt of any further information requested pursuant to clause 26.3) object to the appointment of the relevant proposed Subcontractor if it considers that:</p> <ul style="list-style-type: none"> • the appointment of a proposed Subcontractor may prejudice the provision of the <i>works</i> and/or may be contrary to the interests of the <i>Client</i>; • the proposed Subcontractor is unreliable and/or has not provided reasonable services to its other customers; • the proposed Subcontractor employs unfit persons; and/or • the proposed Subcontractor should be excluded in accordance with clause 26.5.
Additional clause 26.5	26.5	<p>Where the <i>Client</i> considers whether there are grounds for the exclusion of a Subcontractor under Regulation 57 of the Public Contracts Regulations 2015, then:</p> <ul style="list-style-type: none"> • if the <i>Client</i> finds there are compulsory grounds for exclusion, the <i>Contractor</i> replaces or does not appoint the proposed Subcontractor; • if the <i>Client</i> finds there are non-compulsory grounds for exclusion, the <i>Client</i> may require the <i>Contractor</i> to replace or not to appoint the Subcontractor and the <i>Contractor</i> complies with such a requirement.
Additional clause 26.6	26.6	<p>The <i>Contractor</i> shall not and shall procure that any Subcontractor, other approved sub-contractors and suppliers shall not place or cause to be placed any orders with suppliers, or otherwise incur liabilities in the name of the <i>Client</i> or any representative of the <i>Client</i>.</p>

Option Z16	Other responsibilities
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Supplement to	27.1	<p>Re-number 27.1 as 27.1.1 and insert, at the end of this clause: clause 27</p> <ul style="list-style-type: none"> .2 The <i>Client</i> obtains the Licences required to Provide the Works which the Scope states are to be provided by the <i>Client</i>. The <i>Contractor</i> obtains all other Licences required to Provide the Works. .3 The <i>Contractor</i> obtains the Licences required for use of the completed <i>works</i> which the Scope states are to be obtained by the <i>Contractor</i>. The <i>Client</i> obtains any other Licences required for use of the completed <i>works</i>.
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- .4 In relation to Licences which it is the *Client's* responsibility to obtain, the *Contractor* (without taking the risk that such Licences are not obtained, save to the extent that this is caused by the *Contractor's* failure to provide the support required by this Contract):
- provides such support as the Scope states the *Contractor* is to provide to the *Client* in applying for and obtaining such Licences; and
 - provides such other support as the *Client* reasonably requires, not entailing excessive cost to the *Contractor* (or if entailing such cost, provided the same is reimbursed by the *Client*).
- .5 The *Contractor* ensures that the *works* comply with all Licences and Laws. The *Contractor's* duty to Provide the Works includes providing all work necessary to satisfy the requirements of any agreement entered into by the *Client* and/or the *Contractor* with Others pursuant to the requirements of a Licence, unless (in relation only to work which is not situated on or adjacent to the Site) the *Client*, acting reasonably, agrees otherwise in writing.

Option Z17 CDM Regulations

		Insert new clauses:
Additional clause 27.5	27.5	Where stated in the Contract Data, the <i>Contractor</i> is the Principal Designer, Principal Contractor, and a designer for the <i>works</i> for the purposes of the CDM Regulations.
Additional clause 27.6	27.6	The <i>Contractor</i> takes full responsibility for the adequacy, stability and safety of all site operations (so far as the Site is under his control) and methods of construction in relation to the <i>works</i> and obeys the requirements of the CDM Regulations.

Option Z18 Freedom of Information and Transparency

		Insert new clauses:
Additional clause 27.7		27.7 The <i>Contractor</i> acknowledges that unless the <i>Project Manager</i> has notified the <i>Contractor</i> that the <i>Client</i> is exempt from the provisions of the FOIA, the <i>Client</i> is subject to the requirements of the FOIA and the Environmental Information Regulations. The <i>Contractor</i> cooperates with and assists the <i>Client</i> so as to enable the <i>Client</i> to comply with its information disclosure obligations.
Additional		

clause 27.8 27.8

The Contractor:

- transfers to the *Project Manager* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provides the *Project Manager* with a copy of all Information in its possession, or power in the form that the Project Manager requires within five (5) Working Days (or such other period as the *Project Manager* may specify) of the *Project Manager's* request;
- provides all necessary assistance as reasonably requested by the Project Manager to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subcontractors do likewise.

Additional clause 27.9
27.9

The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

Additional clause 27.10
27.10

The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Project Manager*.

Additional clause 27.11
27.11

The *Contractor* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged to disclose Information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.

Additional clause 27.12
27.12

The *Contractor* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Project Manager* to inspect such records as and when reasonably requested from time to time.

Additional clause 27.13
27.13

The parties acknowledge that:

- reports generated by the *Contractor* pursuant to the terms of this contract; and
- the content of this contract, including any changes to this contract agreed from time to time,

except for:

- any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the *Client*; and
- commercially sensitive information;

(together the **Transparency Information**) are not Confidential Information.

Additional clause 27.14	27.14	Notwithstanding any other provision of this contract, the <i>Contractor</i> hereby gives its consent for the <i>Client</i> to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The <i>Client</i> shall, prior to publication, consult with the <i>Contractor</i> on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
Additional clause 27.15	27.15	The <i>Contractor</i> shall assist and co-operate with the <i>Client</i> to enable the <i>Client</i> to publish the Transparency Information.
Additional clause 27.16	27.16	If the <i>Client</i> believes that publication of any element of the Transparency Information would be contrary to the public interest, the <i>Client</i> shall be entitled to exclude such information from publication. The <i>Client</i> acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the <i>Client</i> acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the <i>Contractor</i> .
Additional clause 27.17	27.17	The <i>Client</i> shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this contract is being performed, having regard to the context of the wider commercial relationship with the <i>Contractor</i> .

Option Z19

Records and reports

		Insert new clauses:
Additional clause 27.18	27.18	All records created pursuant to this contract including without limitation financial records, sub-contract agreements, supply agreements, progress reports, quality monitoring and health and safety documents shall be retained and maintained for a period of 6 years by the <i>Contractor</i> in sufficient detail, an organised manner and generally in such manner to enable the <i>Contractor</i> to comply with its obligations under the contract and shall be made available for inspection to the <i>Client</i> upon request.
Additional clause 27.19	27.19	Where records are maintained as provided in clause 27.18 and the period for their retention has expired, the <i>Contractor</i> shall notify the <i>Client</i> with regards to its retention in relation to such records and if it intends to dispose of them or subsequently decides to dispose of them it shall notify the <i>Client</i> and if the <i>Client</i> , within sixty (60) business days of such notice elects to receive certain of those records, the <i>Contractor</i> shall deliver such records to the <i>Client</i> in the manner and at the location as the <i>Client</i> shall reasonably specify.

Additional clause 27.20	27.20	The <i>Contractor</i> shall on request afford the <i>Client</i> all such rights of access to those records required to be kept by the <i>Contractor</i> under clause 27.18 as may be required for the purpose of examination and certification of the <i>Client's</i> accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the <i>Client</i> has used its resources. The Comptroller and Auditor General (both as defined by the National Audit Act 1983) may examine documents evidencing expenditure and income by the <i>Client</i> which are owned, held or otherwise within the control of the <i>Contractor</i> and may require the <i>Contractor</i> to produce such oral or written explanations as the <i>Client</i> considers necessary.
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Option Z20	Malicious Software
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Insert new clauses:		
Additional clause 27.21	27.21	The <i>Contractor</i> shall, as an enduring obligation throughout the Provision of the Works, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
Additional clause 27.22	27.22	Notwithstanding the above clause, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the service to their desired operating efficiency.
Additional clause 27.23	27.23	Any cost arising out of the actions of the parties taken in compliance with the provisions of the above clause shall be borne by the parties as follows: <ul style="list-style-type: none"> • by the <i>Contractor</i> where the Malicious Software originates from the <i>Contractor's</i> own software, the Third Party Software supplied by the <i>Contractor</i> (except where the <i>Client</i> has waived the obligation) or the Client Data (whilst the Client Data was under the control of the <i>Contractor</i>) unless the <i>Contractor</i> can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the <i>Client</i> when provided to the <i>Contractor</i>; and • by the <i>Client</i> if the Malicious Software originates from the <i>Client's</i> Software (in respect of which the <i>Client</i> has waived its obligation) or the Client Data (whilst the Client Data was under the control of the <i>Client</i>).

Option Z21	Public and private nuisance
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Additional	Insert new clause:
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clause 27.24	27.24	The <i>Contractor</i> , at all times, prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of Providing the Works or the performance of any obligation pursuant to clause 44 and assists the <i>Client</i> in defending any action or proceedings which may be instituted in relation thereto.
Additional clause 27.25	27.25	The <i>Contractor</i> ensures that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of Providing the Works or the performance of any obligation pursuant to clause 44. If Providing the Works or the performance of any obligation pursuant to clause 44 is likely to necessitate any interference (including, without limitation, the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the <i>Contractor</i> , at no cost to the <i>Client</i> , is to obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement is subject to the approval of the <i>Client</i> before execution. The <i>Contractor</i> is to comply in every respect with any conditions contained in any such agreement.

Option Z22

Client Data

Insert new clauses:

Additional clause 27.26	27.26	The <i>Contractor</i> shall not delete or remove any proprietary notices contained within or relating to the Client Data.
Additional clause 27.27	27.27	The <i>Contractor</i> shall not store, copy, disclose, or use the Client Data except as necessary to Provide the Works or as otherwise expressly authorised in writing by the <i>Client</i> .
Additional clause 27.28	27.28	To the extent that Client Data is held and/or processed by the <i>Contractor</i> , the <i>Contractor</i> shall supply that Client Data to the <i>Client</i> as requested by the <i>Client</i> and in the format specified in this contract (if any) and in any event as specified by the <i>Client</i> from time to time in writing.
Additional clause 27.29	27.29	The <i>Contractor</i> shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
Additional clause 27.30	27.30	The <i>Contractor</i> shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with: <ul style="list-style-type: none"> • any business continuity and/or disaster recovery plan created as part of the contract (if any); • the <i>Client</i>'s requirements set out in this contract (if any); • Good Industry Practice; and • such reasonable instructions in relation to business continuity and disaster recovery as the <i>Client</i> may notify to the <i>Contractor</i> from time to time. <p>(together the "BCDR Requirements")</p>

Additional clause 27.31 27.31	The <i>Contractor</i> ensures that such back-ups are available to the <i>Client</i> at all times upon request and delivers to the <i>Client</i> at regular intervals prescribed by the <i>Client</i> from time to time acting reasonably. The <i>Contractor</i> delivers all existing Client Data not previously provided to the <i>Client</i> within 10 days of termination of this Contract.
Additional clause 27.32 27.32	<p>The <i>Contractor</i> shall ensure that any system on which the <i>Contractor</i> holds any Client Data, including back-up data, is a secure system that:</p> <ul style="list-style-type: none"> • complies with the DWP Information Security Policy; • complies with the Baseline Security Requirements; • is capable of implementing and enforcing appropriate security standards as specified by DWP from time to time including but not limited to the result of any information risk assessment undertaken pursuant to the DWP Enterprise Security Risk Management Strategy; • as part of HMG Security Policy Framework, complies with and shall have certificated the HMG Cyber Essentials Scheme or approved equivalent as defined under the HMG Cyber Essentials Scheme (further details available at: www.cyberessentials-scheme.co.uk); • complies with all relevant aspects of the Government Digital Service Open Standards.
Additional clause 27.33 27.33	<p>If the Client Data is corrupted, lost or sufficiently degraded as a result of an action, error, breach or default of the <i>Contractor</i> so as to be unusable, the <i>Client</i> may:</p> <ul style="list-style-type: none"> • require the <i>Contractor</i> (at the <i>Contractor's</i> expense) to restore or procure the restoration of Client Data to the extent and in accordance with the BCDR Requirements and the <i>Contractor</i> shall do so as soon as practicable but in any event not later than such date as is notified to the <i>Contractor</i> by the <i>Client</i> acting reasonably; and/or • itself restore or procure the restoration of Client Data, and shall be repaid by the <i>Contractor</i> any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified the by BCDR Requirements.
Additional clause 27.34 27.34	If at any time the <i>Contractor</i> suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the <i>Contractor</i> shall notify the <i>Client</i> immediately and inform the <i>Client</i> of the remedial action the <i>Contractor</i> proposes to take.
Additional clause 27.35 27.35	The <i>Contractor</i> complies with the requirements of Schedule H.
Additional clause 27.36 27.36	The <i>Contractor</i> and its Subcontractors comply with the DWP Offshoring Policy.

Additional clause 27.37	27.37	In accordance with the DWP Offshoring Policy and without limiting any other provision of this contract, the <i>Contractor</i> and any of its Subcontractors, do not offshore Client Data outside the United Kingdom without the prior written consent of the <i>Client</i> . Where the <i>Client</i> gives consent, the <i>Contractor</i> complies with any reasonable instructions notified to it by the <i>Client</i> in relation to the Client Data in question.
Additional clause 27.38	27.38	Where the <i>Client</i> has given its prior written consent to the <i>Contractor</i> to process, host or access Client Data from premises outside the United Kingdom (in accordance with clause 27.37): <ul style="list-style-type: none"> • the <i>Contractor</i> notifies the <i>Client</i> (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or have gained access to such Client Data; and • the <i>Contractor</i> takes all necessary steps in order to prevent any access to, or disclosure of, any Client Data to any regulatory bodies outside the United Kingdom unless required by Law without any applicable exception or exemption
Additional clause 27.39	27.39	The <i>Client</i> notifies the <i>Contractor</i> of any changes or proposed changes to the Baseline Security Requirements. The <i>Contractor</i> complies with any such changes required by the <i>Client</i> .
Additional clause 27.40	27.40	The <i>Contractor</i> retains throughout the period for retention: <ul style="list-style-type: none"> • copies of drawings, specifications, reports, calculations and other documents which record the <i>works</i>; • documents and information obtained or prepared by the <i>Contractor</i> or any Subcontractor in connection with this Contract.
Additional clause 27.41	27.41	The copies are retained in the form stated in the Scope and <ul style="list-style-type: none"> • in accordance with the requirements of the National Archives and Good Industry Practice; • in chronological order; • in a form capable of audit; and • at its own expense.
Additional clause 27.42	27.42	The <i>Contractor</i> permits the <i>Project Manager</i> and/or the <i>Client</i> to examine documents held or controlled by the <i>Contractor</i> or any Subcontractor.
Additional clause 27.43	27.43	The <i>Contractor</i> provides such oral or written explanations as the <i>Project Manager</i> and/or the <i>Client</i> considers necessary.
Additional clause 27.44	27.44	This clause does not constitute a requirement or agreement for the purposes of section 6(3) (d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the <i>Contractor</i> .

Additional clause 27.45	27.45	The <i>Contractor</i> acknowledges that all Client Data is owned by the <i>Client</i> . The <i>Project Manager</i> and/or the <i>Client</i> may request the <i>Contractor</i> to deliver up to the <i>Client</i> and/or <i>Project Manager</i> (in a format notified by the <i>Client</i> and/or <i>Project Manager</i> and at no cost) any and all Client Data and the <i>Contractor</i> delivers up such Client Data within 7 days following a request.
Additional clause 27.46	27.46	The <i>Contractor</i> ensures that (at no additional cost to the <i>Client</i>) the Contractor System on which the <i>Contractor</i> holds any Client Data fully integrates and interoperates with any system of the <i>Client</i> and <i>Project Manager</i> (including but not limited to the <i>Client's</i> System) such that the Client Data is available to the <i>Client</i> , the Integrator and the <i>Project Manager</i> via the systems of the <i>Client</i> and the Integrator (including but not limited to the <i>Client's</i> System). The <i>Contractor</i> does not store or process any Client Data on its own systems alone without such Client Data being also available to the <i>Client</i> and the <i>Project Manager</i> through the interface with the system of the <i>Client</i> and <i>Project Manager</i> (including but not limited to the <i>Client's</i> System). The <i>Contractor</i> and the <i>Project Manager</i> work together to ensure that their respective systems on which Client Data is stored and processed interface and interoperate appropriately.

Option Z23

Protection of Personal Data

Insert new clauses:

Additional clause 27.42		27.47 The parties acknowledge that during the Provision of the Works the <i>Contractor</i> will Process Personal Data on behalf of the <i>Client</i> in connection with the Provision of the Works and may also, from time to time, Process Personal Data for its own purposes as a Data Controller in connection the Provision of the Works.
Additional clause 27.48	27.48	<p>In all cases when the <i>Contractor</i> is Processing Personal Data in connection with this contract as a Data Controller the <i>Contractor</i> shall (and shall procure that all Subcontractors shall):</p> <ul style="list-style-type: none"> • take such steps identified by the <i>Client</i> to assist the <i>Client</i> to comply with the Data Protection Legislation; • comply with the Data Protection Legislation; • not: <ul style="list-style-type: none"> (a) do anything to cause the <i>Client</i> to contravene any provisions of the Data Protection Legislation; (b) carry out any Processing of <i>Client's</i> Data, or any Personal Data obtained in the course of this contract at or from a location outside of the United Kingdom without the <i>Client's</i> prior consent; or (c) allow Authority Data to be accessed from outside of the United Kingdom without the <i>Client's</i> prior consent;

- ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in clause 27.26-27.46 and Schedules H and P);
- provide all reasonable co-operation and assistance as may be requested by the *Client* from time to time to enable the *Client* to comply with the Data Protection Legislation, including providing input into and carrying out data protection impact assessments and assisting with consultations with the Information Commissioner's Office;
- notify the *Client* promptly if a data security breach occurs, if any complaints are made or if a regulatory investigation is commenced (in each case in connection with the Personal Data) and provide all such information as may be requested by the *Client* in relation to such breach, complaint or notification (as applicable); and
- provide the *Client* with such information as the *Client* may from time to time require to satisfy itself that the *Contractor* and its Subcontractors have complied with the obligations of clauses 27.47-27.50 (inclusive).

Additional clause 27.49

27.49

Without limiting clause 27.48 or any applicable standards, policies, procedures and regulations specified in the Client's Policies, the parties shall comply with their respective obligations as set out in Schedule P.

27.50

The *Contractor*, via the Contractor System or otherwise, has systems and processes in place to receive and process requests from the helpdesk operated by the Integrator in accordance with and within the timescales stipulated in the Scope.

Option Z24

Income Tax and National Insurance Contributions

Insert new clause

27.51

- (d) Where the *Contractor* or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this contract, the *Contractor*:

(e)

.1

at all times complies with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(f)

.2

indemnifies the *Client* against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the Provision of the Works by the *Contractor* or any Contractor Personnel.

Option Z25**Assignment**

Delete clause 28.1 and replace with the following new clauses 28.1 – 28.5:

Amendment clause 28.1 to 28.1

The *Client* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:

- any Contracting Body;
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*; or
- to a devolved government or assembly (or agency thereof) which performs any of the functions that previously had been performed by the *Client*.

Additional clause 28.2

The *Contractor* does not, without the written consent of the *Project Manager*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Project Manager's* written consent no sum of money becoming due under this contract is payable to any person other than the *Contractor*.

Additional clause 28.3

The *Client* is entitled to, and the *Contractor* gives consent and agrees to give effect to, the novation of this contract or any part thereof to:

- any Contracting Body; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*,

upon such terms as the *Client* proposes, provided that where such novation increases the burden on the *Contractor* pursuant to this contract, the novation shall be a compensation event. The *Contractor* shall do all things required to give effect to such novation including executing a deed of novation at the request of the *Client*.

Additional clause 28.4

Any change in the legal status of the *Client* such that it ceases to be a Contracting Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Client*.

Additional clause 28.5

If this contract is novated to a body which is not a Contracting Body or if a successor body which is not a Contracting Body becomes the *Client* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Contractor*.

Option Z26**Small and Medium Sized Enterprises (SMEs)**

Insert new clauses:

Additional clause 29.3	29.3	The <i>Contractor</i> is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no fewer than the percentage of the Subcontractors stated in the Contract Data (the “SME Percentage”) are SMEs or that a similar proportion of the Defined Cost of the <i>works</i> is undertaken by SMEs.
Additional clause 29.4	29.4	The <i>Contractor</i> is required to report to the <i>Client</i> in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the <i>works</i> that has been undertaken by SMEs.
Additional clause 29.5	29.5	Where available and if required by the <i>Client</i> , the <i>Contractor</i> is required to tender its sub-contracts using the same online electronic portal as was provided by the <i>Client</i> for the purposes of tendering this Contract.
Additional clause 29.6	29.6	The <i>Contractor</i> is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the <i>Project Manager</i> not accepting Sub-Contract conditions proposed by the <i>Contractor</i> is that they are unduly disadvantageous to the Subcontractor.

Option Z27	Apprenticeships
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		Insert new clauses:
Additional clause 29.7	29.7	The <i>Contractor</i> is required to take all reasonable steps to employ apprentices, and report to the <i>Client</i> the numbers of apprentices employed and the wider skills training provided, during the delivery of the <i>works</i> .
Additional clause 29.8	29.8	The <i>Contractor</i> is required to take all reasonable steps to ensure that no fewer than the percentage of its employees stated in the Contract Data (the “Apprenticeship Percentage”) are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the <i>works</i> , (which may include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.
Additional clause 29.9	29.9	The <i>Contractor</i> is required to make available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.
Additional clause 29.10	29.10	The <i>Contractor</i> is to provide any further skills training opportunities that are appropriate for its employees engaged in Providing the Works.

The

Additional 29.11 *Contractor* is to provide a written report detailing the following clause 29.11 measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the *Project Manager*.

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors;
- the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
- the percentage of all employees taking part in an apprenticeship programme;
- if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;
- actions being taken to improve the take up of apprenticeships;
- other training/skills development being undertaken by employees in relation to this contract, including:
 - a. work experience placements for 14 to 16 year olds;
 - b. work experience /work trial placements for other ages;
 - c. student sandwich/gap year placements;
 - d. graduate placements;
 - e. vocational training;
 - f. basic skills training; and
 - g. on site training provision/ facilities.

Option Z28

IPR and Confidentiality

Insert new clauses:

Additional 29.12 In clause 29.13 – 29.19 only: clause 29.12

“Document” means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this Contract.

Additional clause 29.13	29.13	The Intellectual Property Rights in all Documents prepared by or on behalf of the <i>Contractor</i> in relation to this Contract and the <i>works</i> executed from them remains the property of the <i>Contractor</i> . The <i>Contractor</i> hereby grants to the <i>Client</i> an irrevocable, royalty free, nonexclusive licence to use and reproduce the Documents for any and all purposes connected with the Site. Such licence entitles the <i>Client</i> to grant sub-licences to third parties in the same terms as this licence provided always that the <i>Contractor</i> shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the <i>Contractor</i> .
Additional clause 29.14	29.14	In the event that the <i>Contractor</i> does not own the copyright or any Intellectual Property Rights in any Document the <i>Contractor</i> uses all reasonable endeavours to procure the right to grant such rights to the <i>Client</i> to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the <i>Contractor</i> is unable to procure the right to grant to the <i>Client</i> in accordance with the foregoing the <i>Contractor</i> procures that the third party grants a direct licence to the <i>Client</i> on industry acceptable terms.
Additional clause 29.15	29.15	The <i>Contractor</i> waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the <i>Client</i> or any licensee or assignee of the <i>Client</i> .
Additional clause 29.16	29.16	In the event that any act unauthorised by the <i>Client</i> infringes a moral right of the <i>Contractor</i> in relation to the Documents the <i>Contractor</i> undertakes, if the <i>Client</i> so requests and at the <i>Client's</i> expense, to institute proceedings for infringement of the moral rights.
Additional clause 29.17	29.17	The <i>Contractor</i> warrants to the <i>Client</i> that he has not granted and shall not (unless authorised by the <i>Client</i>) grant any rights to any third party to use or otherwise exploit the Documents.
Additional clause 29.18	29.18	The <i>Contractor</i> supplies copies of the Documents to the <i>Project Manager</i> and to the <i>Client's</i> other Contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or the <i>works</i> .
Additional clause 29.19	29.19	After the termination or conclusion of the <i>Contractor's</i> employment hereunder, the <i>Contractor</i> supplies the <i>Project Manager</i> with copies and/or computer discs of such of the Documents as the <i>Project Manager</i> may from time to time request and the <i>Client</i> pays the <i>Contractor's</i> reasonable costs for producing such copies or discs.
Additional clause 29.20	29.20	In Providing the Works the <i>Contractor</i> does not infringe any Intellectual Property Rights of any third party. The <i>Contractor</i> indemnifies the <i>Client</i> against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

The

Additional clause 29.21
29.21

Client grants to the *Contractor* a limited, non-exclusive, nontransferable, non-sub licensable licence during the Provision of the Works to use the *Client's* systems, and software solely for the purpose of providing the *works* to the *Client* under this contract and for no other use. The licence granted by the *Client* terminates on termination of this contract howsoever arising. The *Contractor* indemnifies and keeps indemnified the *Client* on demand from and against all and any losses, cost or expenses (including management costs and professional fees) whatsoever arising out of or in connection with any liability arising in respect of the *Contractor's* use of the *Project Manager's* systems and software licenced to the *Contractor* by the *Client* under this clause 29.21.

Additional clause 29.22
29.22

The *Contractor* grants to the *Client*, the Integrator, and the *Project Manager* a perpetual, royalty free, sub-licensable and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) the Contractor System for the purpose of receiving the benefit of the *works* or otherwise in connection with this contract. The *Contractor* provides all support and maintenance services in respect of the use of the Contractor System by the *Client* and the *Project Manager*.

Additional clause 29.23
29.23

Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

Additional clause 29.24
29.24

The clause above shall not apply to the extent that:

- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- it is independently developed without access to the other party's Confidential Information.

Additional clause 29.25	29.25	The <i>Contractor</i> may only disclose the Client Confidential Information to the Contractor Personnel who are directly involved in the provision of the <i>works</i> and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality. The <i>Contractor</i> shall not, and shall procure that the Contractor Personnel do not, use any of the <i>Client</i> Confidential Information received otherwise than for the purposes of this Contract.
Additional clause 29.26	29.26	In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the <i>Contractor</i> breaching its obligations as to confidentiality under or in connection with this contract, the <i>Contractor</i> shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the <i>Contractor</i> shall provide such evidence to the <i>Client</i> as the <i>Client</i> may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the <i>Contractor</i> is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
Additional clause 29.27	29.27	At the written request of the <i>Client</i> , the <i>Contractor</i> shall procure that those members of the Contractor Personnel identified in the <i>Client's</i> notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
Additional clause 29.28	29.28	Nothing in this Contract shall prevent the <i>Client</i> from disclosing and the <i>Client</i> may disclose the Contractor Confidential Information: <ul style="list-style-type: none"> • on a confidential basis to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body; • to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement; • to any consultant, contractor or other person engaged by the <i>Client</i>; • for the purpose of the exercise of its rights under this Contract; • for the purpose of the examination and certification of the <i>Client's</i> accounts; or • on a confidential basis to a proposed successor body of the <i>Client</i> in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract;

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- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.

and for the purposes of the foregoing, disclosure of the Contractor Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 29.28.

Additional
clause 29.29

29.29

Client shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Subcontractor to whom the Contractor Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

Additional
clause 29.30

29.30

Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR

Additional
clause 29.31

29.31

The *Contractor* warrants to the *Client* that:

- to the best of the *Contractor's* knowledge, all information, representation and other matters of fact communicated in writing to the *Client* or its agents or employees in connection with the *Contractor's* response to the invitation to tender in respect of the *works* or in the course of the subsequent negotiations in respect of this contract are true, complete and accurate in all material respects at the time communicated to the *Client* or its agents or employees;
- it is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- it has full power and authority to enter into this contract and to carry out the *works* and this contract is executed by duly authorised representatives;
- the entry into and performance by it of this contract does not and will not:
 - a. conflict with its constitutional documents; and
 - b. conflict with any document which is binding upon it, or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the *Contractor* to perform its obligations under this Contract.

Option Z29

Collateral warranty agreements

Insert new clauses:

Additional clause 29.32	29.32	The <i>Contractor</i> enters into the collateral warranty agreements in the relevant formats appended in Schedule G in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the <i>Project Manager</i> no later than ten (10) Working Days after the <i>Project Manager</i> has provided the <i>Contractor</i> with appropriate collateral warranty agreements suitable for execution.
Additional clause 29.33	29.33	The <i>Contractor</i> procures from the Subcontractors identified in the Contract Data collateral warranty agreements in the relevant formats appended in Schedule G in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the <i>Project Manager</i> no later than fifteen (15) Working Days after the <i>Project Manager</i> has provided the <i>Contractor</i> with appropriate collateral warranty agreements suitable for execution.
Additional clause 29.34	29.34	If the <i>Contractor</i> fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Works Provided to Date is retained in assessments of the amount due until the <i>Contractor</i> has remedied the failure.

Option Z30	Starting, Completion and Key Dates
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Additional clause 30.4.	30.4	<p>Insert new clause:</p> <p>Before Completion, the <i>Contractor</i> supplies to the <i>Client</i>, without additional charge, such documents, deliverables and other related information as may be specified in the Scope or as the <i>Client</i> may request, showing or describing the <i>works</i> as constructed and concerning the maintenance and operation of the <i>works</i> including any Plant. Notwithstanding any provision to the contrary in this contract, the <i>Contractor</i> is not entitled to any payment of any amount retained pursuant to clause X16 that would (but for this provision) become due and payable until the provisions of this clause 30.4 have been complied with. If, prior to the issue of the Defects Certificate, errors are discovered in the documents, drawings and information supplied by the <i>Contractor</i> in accordance with this clause 30.4 or, if as a result of any revision or remedial work carried out prior to the issue of the Defects Certificate, the said documents, drawings and information no longer show or describe the <i>works</i> as required by this clause 30.4, then the <i>Contractor</i> is to amend the said documents, drawings and information so that they comply with the requirements of this clause 30.4.</p>
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Option Z31	Revising the programme
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Additional	32.3.	<p>"The <i>Contractor</i>. clause 32.3</p> <p>.1 provides at least seven (7) days' in advance of any admission to the Site a list of the names of all Contractor Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the <i>Client</i> reasonably requires;</p> <p>.2 ensures that all Contractor Personnel:</p> <p style="margin-left: 40px;">a. are appropriately qualified, trained and experienced to Provide the Works with all reasonable skill, care and diligence;</p>
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- b. are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in the Scope and Schedule H; and
- c. comply with such rules, regulations and requirements (including those relating to security arrangements) as are in force from time to time for the conduct of personnel and all reasonable requirements of the Site conduct at or outside of the Site, including the security requirements as set out in Schedule H;

- .3 subject to Schedule I, retains overall control of the Contractor Personnel at all times so that the Contractor Personnel are not deemed to be employees, agents or Contractors of the *Client*;
- .4 is liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of a member of any Contractor Personnel which results in a default under this contract is a default by the *Contractor*;
- .5 uses all reasonable endeavours to minimise the number of changes in Contractor Personnel;
- .6 replaces (temporarily or permanently, as appropriate) any Contractor Personnel as soon as practicable if any Contractor Personnel have been removed or are unavailable for any reason whatsoever;
- .7 bears the programme familiarisation and other costs associated with any replacement of any Contractor Personnel; and
- .8 procures that the Contractor Personnel vacate the Site immediately upon the termination or expiry of this Contract."

Option Z32	Access to and use of the Site
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Supplement to 33	33.1 clause	After the words "each part of the Site to the <i>Contractor</i> ", insert "in accordance with the Scope". Before the words "Access and use", insert: "The <i>Contractor</i> acknowledges that access to and use of the Site may be shared with Others in accordance with the Scope." Insert new clauses:
Additional clause 33.2	33.2	The <i>Contractor</i> submits to the <i>Project Manager</i> details of people who are to be employed by him and his Subcontractors in connection with the <i>works</i> . The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the <i>Project Manager</i> .
Additional clause 33.3	33.3	The <i>Project Manager</i> may instruct the <i>Contractor</i> to take measures to prevent unauthorised persons being admitted to the Site. The instruction is a compensation event if the measures are additional to those required by the Scope.
Additional clause 33.4	33.4	Employees of the <i>Contractor</i> and his Subcontractors are to carry a <i>Client's</i> pass whilst they are on the parts of the Site identified in the Scope.
Additional 33.5	33.5 clause	The <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance a list of the names of the people for whom passes are required. The <i>Project Manager</i> issues the passes to the <i>Contractor</i> . Each pass is returned to the <i>Project Manager</i> when the employee no longer requires access to that part of the Site or after the <i>Project Manager</i> has given notice that the employee is not to be admitted to the Site.

Option Z33	Acceleration
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Supplement to clause 36	36.1	After the words "A quotation for an acceleration comprises proposed changes to the Prices" insert "(unless the acceleration is required to recover delay beyond the Completion Date not resulting from a compensation event, in which case the Prices are not adjusted)."
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Option Z34	Correcting Defects
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Supplement to clause 43	43.2	After the words "the <i>Contractor</i> corrects a notified Defect" insert "in accordance with any applicable timeframes set out in the Defects Protocol, and in any event".
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Option Z35	Uncorrected Defects
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Amendment to clause 46	to 46.1	<p>Delete clauses 46.1 and 46.2 and replace with the following:</p> <p>"If the <i>Contractor</i> fails to correct any Defect within the <i>defect correction period</i>, the <i>Client</i> may employ or pay others to correct such Defect and the <i>Contractor</i> pays to the <i>Client</i> the following:</p> <ul style="list-style-type: none"> • the reasonable and proper costs incurred by the <i>Client</i> in employing and paying others to correct such Defect; and • any other losses incurred by the <i>Client</i> as a consequence of the <i>Contractor's</i> failure to correct such Defect within the <i>defect correction period</i>."
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Option Z36	Assessing the amount due
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Supplement to clause 50	50.1	Change the first word from "The" to "the" and insert at the beginning: "Provided the <i>Project Manager</i> has received all substantiation necessary or reasonably required by the <i>Project Manager</i> and the <i>Contractor</i> has complied with its obligations under clause 26, clause X4 and clause X13".
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Option Z37	Payment certificates
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		Insert new clauses:
Additional clause 56.1	56.1	The issue of any payment certificate or the payment of any amount by the <i>Client</i> to the <i>Contractor</i> does not constitute or imply or be evidence of the <i>Project Manager's</i> , the Supervisor's, or the <i>Client's</i> approval or acceptance of any design, work, Plant and Materials forming part of the <i>works</i> or relieve the <i>Contractor</i> of any of his obligations under this Contract.
Additional clause 56.2	56.2	The <i>Contractor</i> assesses the amount due to a Subcontractor without taking into account the amount certified by the <i>Project Manager</i> .
Additional		

- clause 56.3 56.3 The *Contractor* includes in the contract with each Subcontractor
- a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this Contract,
 - a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
 - a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

- Additional clause 56.4 56.4 The *Client* may set off any liability of the *Contractor* to:
- the *Client*;
 - any Contracting Body; or
 - any Crown Body

against any liability of the *Client*, any Contracting Body or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this Contract.

Option Z38		Compensation Events
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|-------------------------|----------|--|
| Supplement to clause 60 | 60.1(2) | In the first line, after "Site", insert "within the time periods stated in the Scope as being the time periods during which access to the Site will be available to the <i>Contractor</i> ." |
| | 60.1(10) | At the end of the sentence, insert "or where, although the search fails to disclose non-compliance with this contract and/or the Scope, such search was instigated as a result of problems or failures having been discovered in similar items of Plant, Materials or the <i>works</i> , and the <i>Project Manager</i> or the <i>Supervisor</i> had reasonable grounds to believe that such a problem or fault existed in the items of Plant, Materials or the <i>works</i> on which the search was carried out." |

Additional clause 63.17 Insert new clause:

- 63.17 A compensation event which
- arises from a difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Client Employees and the equivalent rates of pay used by the *Contractor* and/or Notified Sub-contractor to calculate the Prices under the Framework Agreement, the change to the Prices is the TUPE Surcharge assessed in accordance with Schedule K, Part 2
 - arises where a Transferring Former Contractor Employee and/or any Transferring Client Employee is made redundant by the *Contractor* and/or any Notified Sub-Contractor as a result of an economic technical organisational reason entailing

changes to the workforce and the *Contractor* and/or the Notified Sub-Contractor has followed a fair dismissal procedure and complied with all contractual and legislative requirements, the change to the Prices is the Redundancy Surcharge assessed in accordance with Schedule K, Part 2.

Option Z39		Improvement Plan Process
		Insert new clauses:
Additional clause 67.1	67.1	The <i>Contractor</i> notifies the <i>Client</i> of a Notifiable Event within 3 days of becoming aware of the same and in such notice sets out details of the actual or anticipated effect of the Notifiable Event.
Additional clause 67.2	67.2	If the <i>Client</i> considers that a Notifiable Event has occurred or the <i>Client</i> receives a notice from the <i>Contractor</i> under clause 67.1, the <i>Client</i> may serve notice (an Improvement Notice) on the <i>Contractor</i> setting out sufficient detail to make it clear what the <i>Contractor</i> has to rectify.
Additional clause 67.3	67.3	Where an Improvement Notice is served under clause 67.2 the <i>Contractor</i> submits to the <i>Client</i> a draft Improvement Plan and the <i>Client</i> reviews it as soon as possible and in any event within 10 days (or such other period as the parties agree) of the original notification under clause 67.1 or 67.2. The <i>Contractor</i> submits a draft Improvement Plan even if it disputes that it is responsible for the Notifiable Event.
Additional clause 67.4	67.4	The draft Improvement Plan sets out: <ul style="list-style-type: none"> • full details of the Notifiable Event; • the steps the <i>Contractor</i> proposes to take to rectify the Notifiable Event (if applicable) and to prevent such Notifiable Event from recurring, including timescales for such steps.
Additional clause 67.5	67.5	The <i>Contractor</i> provides the <i>Client</i> with such additional information or documentation as the <i>Client</i> reasonably requires.
Additional clause 67.6	67.6	The <i>Client</i> notifies the <i>Contractor</i> that: <ul style="list-style-type: none"> • it agrees the draft Improvement Plan; or • it rejects the draft Improvement Plan because it is inadequate for example because it is not detailed enough to evaluate, will take too long to complete, will not prevent reoccurrence of the Notifiable Event or is otherwise unacceptable to the <i>Client</i>. Where the <i>Client</i> does so it shall set out its reasons for doing so.
Additional clause 67.7	67.7	Where the <i>Client</i> accepts the Improvement Plan the <i>Contractor</i> immediately implements the actions in the Improvement Plan.
Additional clause 67.8	67.8	Where the <i>Client</i> rejects the Improvement Plan the <i>Contractor</i> resubmits its draft Improvement Plan taking into account the <i>Client</i> 's comments within 5 day of notice that the <i>Client</i> rejects the preceding Improvement Plan.

Additional clause 67.9

67.9

In relation to a KPI Failure, the *Client* may terminate this contract because the *Contractor* fails:

- to submit a draft Improvement Plan to the *Client* in accordance with clause 67.4 or 67.8;
- to submit a draft Improvement Plan which the *Client* acting reasonably does not approve;
- to rectify a Notifiable Event capable of remedy within the later of:
 - a. 30 day of notification pursuant to clause 67.1; or
 - b. Where the parties agree an Improvement Plan and the *Contractor* is implementing the same, the date for rectification stipulated in the Improvement Plan.
- Following successful implementation of a Improvement Plan the same event occurs within a period of 6 months for the same (or substantially the same) root cause as that original Notifiable Event,

(each an **Improvement Plan Failure**).

Additional Clause 66.10

67.10

Where the *Client* accepts the Improvement Plan, the *Contractor* immediately implements the actions in the Improvement Plan.

Option Z40

Increased Monitoring

Insert new clauses:

Additional clause 68.1 68.1 At any time the *Client* may notify the *Contractor* that it is increasing its ^{clause} level of monitoring of the *Contractor* and/or (at the *Client's* option) of the *Contractor's* monitoring of its own performance under this Contract until such time as the *Contractor* demonstrates to the reasonable satisfaction of the *Client* that is performing its obligations under this Contract.

Additional clause 68.2

68.2

Where the *Client* issues a notice under clause 68.1 as a result of any failure by the *Contractor* to perform its obligations under this contract, the *Contractor* bears its own costs and indemnifies and keeps indemnified the *Client* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Client* (including management costs and professional fees) in relation to such increased monitoring.

Additional clause 68.3

68.3

Where the *Client* issues a notice under 68.1 other than as a result of any failure by the *Contractor* to perform its obligations under this contract, the *Client* bears its own costs and indemnifies and keeps indemnified the *Contractor* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Contractor* in relation to such increased monitoring.

Option Z41

Remedial Adviser

		Insert new clauses:
Additional clause 68.4	68.4	<p>Without prejudice to any right to terminate this contract the <i>Client</i> may have, if an Intervention Trigger Event occurs or, in the <i>Client's</i> reasonable opinion, is likely to occur the <i>Client</i> gives notice to the <i>Contractor</i> with reasonable details in the Intervention Trigger Event and requiring:</p> <ul style="list-style-type: none"> • a meeting between the <i>Client</i> and the <i>Contractor</i> to discuss the Intervention Trigger Event; and/or • the appointment as soon as practicable of a Remedial Adviser.
Additional clause 68.5	68.5	<p>If the <i>Client</i> notifies the <i>Contractor</i> that it requires a Remedial Adviser to the appointed:</p> <ul style="list-style-type: none"> • the <i>Contractor</i> shall select and the <i>Client</i> shall approve within 10 day a person to be appointed as Remedial Adviser or if no such person is approved the <i>Client</i> shall identify the person to be appointed as Remedial Adviser; • the terms of engagement and start date agreed with the Remedial Adviser are approved by the <i>Client</i>; • any right of the <i>Client</i> to terminate this contract in respect of the relevant Intervention Trigger Event is suspended for 60 days from the date of the notice issued pursuant to this clause 68.5 (the Intervention Period).
Additional clause 68.6	68.6	<p>The Remedial Adviser's overall objective is to mitigate the effects of, and (to the extent possible) remedy the relevant Intervention Trigger Event and avoid the recurrence of the same. In order to achieve that objective the parties agree that the Remedial Adviser may:</p> <ul style="list-style-type: none"> • observe the conduct of and work alongside the Contractor Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the relevant Intervention Trigger Event; • gather any information the Remedial Adviser considers relevant in the furtherance of its objective; • write reports and provide information to the <i>Client</i> in connection with the steps being taken by the <i>Contractor</i> to remedy the relevant Intervention Trigger Event; • make recommendations to the <i>Client</i> and/or the <i>Contractor</i> as to how the relevant Intervention Trigger Event might be mitigated or avoided in the future; and/or • take any other steps that the <i>Client</i> and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the relevant Intervention Trigger Event.

Additional clause 68.7	68.7	<p>The <i>Contractor</i>:</p> <ul style="list-style-type: none"> • works alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the <i>works</i> recommended by the Remedial Adviser. • ensures that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Site; • submits to such monitoring as the <i>Client</i> and/or the Remedial Adviser considers reasonable and proportionate in respect of the relevant Intervention Trigger Event; • implements all reasonable recommendations made by the Remedial Adviser and approved by the <i>Client</i> within the timescales stipulated; and • shall not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the <i>Client's</i> consent, not to be unreasonably withheld.
Additional clause 68.8	68.8	<p>The <i>Contractor</i> is responsible for the costs of appointing, and the fees charged by, the Remedial Adviser. The <i>Contractor</i> bears its own costs in connection with any action required by the <i>Client</i> and/or Remedial Adviser pursuant to this clause 68.</p>
Additional clause 68.9	68.9	<p>If the <i>Contractor</i> fails to comply with the instructions given in any notice issued pursuant to clause 68.4 or defaults on its obligations under clause 68.7 or if the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period (each a Remedial Adviser Failure) the <i>Client</i> is entitled to terminate this Contract.</p>

Option Z42

Step in rights

		Insert new clauses:
Additional clause 69.1	69.1	<p>On the occurrence of a Step-In Trigger Event the <i>Client</i> serves notice on the <i>Contractor</i> (a Step-In Notice) that it will take action under this clause 69 either itself or via a third party specifying:</p> <ul style="list-style-type: none"> • the action that the <i>Client</i> wishes to take and in particular the <i>works</i> that it wishes to control (the Required Action); • the Step-In Trigger Event that has occurred and whether the <i>Client</i> believes that the Required Action is due to a default by the <i>Contractor</i>; • the date on which it wishes to commence the Required Action; • the time period which it believes will be necessary for the Required Action; and • to the extent practicable, the impact that the <i>Client</i> anticipates the Required Action will have on the <i>Contractor's</i> obligations to Provide the Works during the period that the Required Action is being taken

Additional clause 69.2	69.2	<p>Following service of a Step-In Notice the <i>Client</i>:</p> <ul style="list-style-type: none"> • takes the Required Action(s) and any consequential additional actions as it reasonably believes is necessary to achieve the Required Action; • keeps records of the Required Action(s) taken and provide information about the same to the <i>Contractor</i>; • co-operates wherever reasonable with the <i>Contractor</i> in order to enable the <i>Contractor</i> to continue to Provide the Works in relation to which the <i>Client</i> is not assuming control; • acts reasonably in mitigating the cost that the <i>Contractor</i> will incur as a result of the exercise of the <i>Client's</i> rights under this clause 69.
Additional clause 69.3	69.3	<p>For so long as and to the extent that the Required Action is continuing, then:</p> <ul style="list-style-type: none"> • the <i>Contractor</i> shall not be obliged to Provide the Works to the extent that they are the subject of the Required Action; • no deductions shall be applicable in relation to amounts due under this contract in respect of <i>works</i> that are the subject of the Required Action; and • the <i>Client</i> shall deduct its additional costs of providing the Required Action(s) from amounts otherwise due under this contract.
Additional clause 69.4	69.4	<p>If the <i>Contractor</i> demonstrates to the reasonable satisfaction of the <i>Client</i> that the Required Action is resulting in the degradation of any <i>works</i> not subject to the Required Action beyond that which would be the case if the <i>Client</i> was not taking the Required Action, then the <i>Contractor</i> shall be entitled to an agreed adjustment of the Price.</p>
Additional clause 69.5	69.5	<p>Before ceasing to exercise its right to step-in, the <i>Client</i> delivers a written notice to the <i>Contractor</i> (a Step-Out Notice), specifying:</p> <ul style="list-style-type: none"> • the Required Action it has actually taken; and • the date on which the <i>Client</i> plans to end the Required Action (the Step-Out Date) subject to the <i>Client</i> being satisfied with the <i>Contractor's</i> ability to resume the provision of the <i>works</i> and the <i>Contractor</i> providing a satisfactory Step-Out Plan.
Additional clause 69.6	69.6	<p>The <i>Contractor</i>, following receipt of a Step-Out Notice and not less than twenty (20) day prior to the Step-Out Date, develops for approval a draft plan (a Step-Out Plan) relating to the resumption by the <i>Contractor</i> of the <i>works</i>, including any action the <i>Contractor</i> proposes to take to ensure that the affected <i>works</i> satisfy the requirements of this Contract.</p>
Additional clause 69.7	69.7	<p>If the <i>Client</i> does not approve the draft Step-Out Plan, the <i>Client</i> informs the <i>Contractor</i> of its reasons for not doing so. The <i>Contractor</i> shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the <i>Client</i> for approval. The <i>Client</i> shall not withhold or delay approval of the draft Step-Out Plan unnecessarily.</p>

Additional clause 69.8	69.8	The <i>Contractor</i> shall bear its own costs in connection with any step-in by the <i>Client</i> under this clause 69, provided that the <i>Client</i> shall reimburse the <i>Contractor's</i> reasonable additional expenses incurred directly as a result of any step-in action taken by the <i>Client</i> other than as a result of a default or threat of default by the <i>Contractor</i> .
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Option Z43	Liabilities and insurance
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		Insert new clauses:
Additional clause 83.4	83.4	The <i>Contractor</i> does not without the prior written approval of the <i>Project Manager</i> (which shall not be unreasonably reviewed or delayed) settle or compromise with the insurers any claim which the <i>Contractor</i> may have against the insurers and which relates to a claim by the <i>Client</i> against the <i>Contractor</i> , nor by any act or omission lose or prejudice the <i>Contractor's</i> right to make or proceed with such a claim against the insurers.
Additional clause 83.5	83.5	The <i>Contractor</i> shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Contract, including in circumstances where the <i>Contractor</i> is required to name the <i>Client</i> on any such insurance policies to protect the <i>Client's</i> separate interests.
Additional clause 83.6	83.6	<p>Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":</p> <ul style="list-style-type: none"> • if a claim or claims which do not relate to this contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the <i>Contractor</i> shall immediately submit to the <i>Client</i>: <ul style="list-style-type: none"> a) details of the policy concerned; and b) its proposed solution for maintaining the minimum limit of indemnity specified; and • if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this contract are paid by insurers, the <i>Contractor</i> shall: <ul style="list-style-type: none"> a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this contract; or b) if the <i>Contractor</i> is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the <i>Client</i> full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified..

Additional clause 83.7	83.7	Except where the <i>Client</i> is the claimant party, the <i>Contractor</i> gives the <i>Client</i> notice within twenty (20) working days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to this contract on any of the insurances required by this contract or which, but for the application of the applicable policy excess, would be made on any of the insurances required by this contract and (if required by the <i>Client</i>) provides full details of the incident giving rise to the claim. The <i>Contractor</i> co-operates with the <i>Client</i> and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
Additional clause 83.8	83.8	The public liability insurance required by this contract is in the joint names of the <i>Client</i> and such other person as the <i>Project Manager</i> may reasonably require including, without limitation, the <i>Client's</i> consultants and contractors, the <i>Contractor</i> and all Subcontractors.
Additional clause 83.9	83.9	All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the European insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers.
Additional clause 83.10	83.10	Nothing in this clause 83 relieves the <i>Contractor</i> from any of its obligations and liabilities under this Contract

Option Z44	Termination
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Supplement to clause 90 90.2 Delete the Termination Table and replace with:

TERMINATION TABLE

Terminating Party	Reason	Procedure
<i>The Client</i>	A reason other than R1-R32	P1, P2 and P4
	R1-R15, R18 or R22R38	P1, P2, P3 and P4
	R17 or R20	P1 and P4
	R21	P1, P3 and P4
<i>The Contractor</i>	R1-R10, R16 or R19	P1, P2 and P4
	R17 or R20	P1, P2 and P4
	R23	P1, P2, P3 and P4

Replace clause 91.8 with the following:

Additional 91.8 The *Client* may terminate if: clause 91.8

- .1 the *Contractor*
- (d) does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Contractor*:
- was not and should not have been aware of the Corrupt Act, or
 - informed the *Project Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it, or
- breaches clause 18.7, 18.8 or 18.9 (R22);
- .2 the Parties are unable to either remove a conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level (R23); or
- .3 the warranty given by the *Contractor* in relation to Occasions of Tax Non-Compliance is materially untrue (R24); or
- .4 the *Contractor* commits a material breach of its obligation to notify the *Client* of any Occasion of Tax Non-Compliance (R25); or
- .5 the *Contractor* fails to provide details of proposed mitigating factors in accordance with this contract in relation to any Occasion of Tax Non-Compliance which in the reasonable opinion of the *Client*, are acceptable (R26).
- .6 the *Contractor*:
- a. is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession (R27); or
 - b. commits or is found to have committed an act of grave misconduct in the course of its business or profession (R28); or
 - c. fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (R29); or
 - d. has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (R30); or
 - e. fails to obtain any necessary licences or to obtain or maintain membership of any relevant body (R31); or

- f. demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”) and, in any such Change of Control, there are reasonable grounds for the *Client* to withhold its consent relating to the financial standing of the new entity through which it is proposed that the *works* will be delivered or there are security concerns arising from the provision of the *works* by the new entity (R32); or
 - g. breaches clauses 20.11 or 20.12 (R33);
- .7 on the occurrence of a:
- a. Remedial Adviser Failure;
 - b. Improvement Plan Failure; or
 - c. Critical Performance Failure (R34).
- .8 the *Contractor* fails to notify the *Client* of an event of the kind contemplated by Paragraph 2.1 to Contract Schedule Q (R35);
- .9 the *Client* and the *Contractor* fail to agree a Financial Distress Recovery Plan (or any updated Financial Distress Recovery Plan) in accordance with Paragraphs 3.3.2 (a) and 3.5 to 3.9 of Contract Schedule Q (Financial Distress) (R36);
- .10 the *Contractor* fails to comply with the terms (in whole or in part) of the Financial Distress Recovery Plan (or any updated Financial Distress Recovery Plan) in accordance with Contract Schedule Q (Financial Distress) (R37); and/or
- .11 the *Contractor* fails to comply with or defaults on its obligations under Paragraph 3.9 to Contract Schedule Q (Financial Distress) (R38).

Option Z45

Termination of Subcontracts

Insert new clauses:

Additional 91A	92.3 clause	<p>The <i>Contractor</i> terminates a contract with a Subcontractor where the <i>Client</i> requires the <i>Contractor</i> to do so for a reason (1) to (4) below:</p> <ul style="list-style-type: none"> • the acts or omissions of the relevant Subcontractor have caused or materially contributed to the <i>Client's</i> right of termination pursuant to clause 90 (Termination); • the relevant Subcontractor or any of its Affiliates have embarrassed the <i>Client</i> or otherwise brought the <i>Client</i> into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the <i>Client</i>, regardless of whether or not such act or omission is related to the Subcontractor's obligations in relation to the <i>works</i> or otherwise; • the relevant Subcontractor has failed to comply in the performance of its sub-contract with legal obligations in the fields of environmental, social or labour Law; and/or • there is a breach of clauses 20.8 – 20.10 (inclusive) and/or 20.12 by the Subcontractor or by the <i>Contractor</i> as a result of the Subcontractors involvement in the delivery of the <i>works</i>.
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Option Z46

Works exclusion

Insert new clauses:

Additional	94.1	<p>Where the <i>Contractor</i>: clause 94.1</p> <ul style="list-style-type: none"> • breaches clauses 20.8 – 20.10 (inclusive) and/or 20.12 or the <i>Client</i> reasonably believes that a breach of clauses 20.8 – 20.10 (inclusive) and/or 20.12 has or is likely to occur; and/or • a material breach in relation to part of the <i>works</i>; <p>(each a Works Exclusion Cause) the <i>Client</i> may give notice to the <i>Contractor</i> (a Works Exclusion Notice) giving reasonable details of the Works Exclusion Cause.</p>
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Additional clause 94.2
94.2

Following service of a Works Exclusion Notice:

- the *Client* takes and/or procure that a third party takes the action set out in the Works Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the *works* (or relevant part thereof) are delivered to the standard required pursuant to the terms of this contract and so that the *Client* is not in breach of any applicable Law, the *Client's* Policies and/or its statutory duties;
- without double counting the *Contractor* is responsible for the *Client's* reasonable and properly incurred costs and expenses (including any internal management time and/or procurement cost associated with appointing a third party) relating to the exercise of the *Client's* rights under this clause 94; and
- the Price is adjusted to reflect the removal of the relevant part of the *works* identified in the Works Exclusion Notice.

Option Z47

Changes in Law

Supplement to
clause X2

X2.1

Delete X2.1 and replace with:

X2.1

The *Contractor* is not relieved of its obligations pursuant to this Contract and is not entitled to claim that a compensation event has occurred as the result of:

- a change in Law which is of a general legislative nature including taxation or duties of any sort affecting the *Contractor*; or
- any other change in Law which an experienced *Contractor* ought to have foreseen as at the Contract Date.

Insert new clause:

Additional clause X2.2
X2.2

Subject to clause X2.1 A change in the Law in the country in which the Site is located is a compensation event if it is a Specific Change in Law which:

- occurs after the Contract Date;
- impacts on the performance of the *works* in a material way; and
- it is not one of the other compensation events stated in this Contract,

Additional clause X2.3
X2.3

The *Project Manager* may notify the *Contractor* of a compensation event for a change in the Law and instruct him to submit quotations. If the effect of a compensation event which is a change in the Law is to reduce the total Defined Cost, the Prices are reduced.

Option Z48

Ultimate holding company guarantee

Supplement to clause X4	X4.1	<p>Delete the words "the Scope" and replace with "Schedule N".</p> <p>At the end of the clause, insert the following: "Until the <i>Contractor</i> discharges its obligations under this clause, the <i>Project Manager</i> when certifying payment deducts from the Price for Work Done to Date a sum being 10% of the Price for Work Done to Date."</p>
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Option Z49	Option X7: Delay damages
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Supplement to clause X7.1	X7.1	<p>After the second bullet point, add a new sentence as follows: "The <i>Contractor</i> hereby acknowledges that such delay damages are not the <i>Client's</i> sole remedy."</p>
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Option Z50	Performance bond
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Supplement to clause X13	X13.1	<p>Insert at the beginning of the clause the following sentence "The <i>Contractor</i> complies with this clause where an ultimate holding company does not own the <i>Contractor</i>."</p> <p>Replace the words "the Scope" with the words "Schedule N".</p> <p>At the end of the clause, insert the following: "Until the <i>Contractor</i> discharges its obligations under this clause, the <i>Project Manager</i> when certifying payment deducts from the Price for Work Done to Date a sum being 10% of the Price for Work Done to Date."</p>
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Option Z51	The <i>Contractor's</i> design
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Supplement to clause X15	X15.1	<p>Delete "reasonable skill and care" and replace with "all the reasonable skill care and diligence of a competent design consultant experienced in work of a similar size, scale and complexity as the <i>works</i>."</p>
Supplement to clause X15.5		<p>At the end of the clause, insert "The <i>Contractor</i> obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the <i>Contractor</i> must discharge any liability before being entitled to recover from the insurers."</p>

Option Z52	Retention
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Insert new clause:

Additional clause X16.3
X16.3

The *Client's* interest in the amount retained shall not be fiduciary, either as trustee for the *Contractor* or any other person. The relationship of the *Client* and the *Contractor* with regard to the amount retained shall be solely that of debtor and unsecured creditor and subject to the terms of this contract. The *Client* shall have no obligation to invest the amount retained or any part thereof. The *Client* shall have no obligation to place the amount retained or any part thereof in a separate banking account nor shall the *Client* be required to identify any amount retained as being held by the *Client* on trust and the *Client* shall be entitled to the full beneficial interest in any interest accruing on such amount retained and shall be under no duty to account for any such interest to the *Contractor*.

Option Z53		Limitation of liability
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Supplement to clause X18.4	X18.4	Delete the text of the third bullet point and replace with "any amounts payable by the contract pursuant to clause X20."
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Option Z54		Performance Indicators (not used with Option X12)
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Supplement to clause X20		Delete X20 and replace with:
	X20.1	From the starting date until the date of the issue of the Defects Certificate, the <i>Contractor</i> reports to the <i>Project Manager</i> : <ul style="list-style-type: none">.1 the management and performance information required by Schedule I and J respectively;.2 his performance against each of the Key Performance Indicators and the Subsidiary Performance Indicators. Reports are provided at monthly intervals.
	X20.2	Subject to clause X20.3, if: <ul style="list-style-type: none">.1 a KPI Failure occurs, Service Credits accrue in respect of such KPI Failure and may be deducted from an amount due to the <i>Contractor</i> or are paid by the <i>Contractor</i> in accordance with clause X20.4;.2 a Material KPI Failure occurs, the Contractor complies with the Improvement Plan process if the failure is a Notifiable Event and Service Credits accrue in accordance with clause X20.4;.3 a SPI Failure occurs, the <i>Contractor</i> notifies the <i>Project Manager</i> of the action (if any) it proposes to take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or

.4 a Material SPI Failure occurs:

- the *Contractor* complies with the Improvement Plan Process if the failure is a Notifiable Event; and
- the *Project Manager* withholds a proportionate sum (calculated on the same basis as Service Credits are calculated by reference to the Service Failure Points for the relevant SPI Failure) from the amount due until the relevant Material SPI Failure is rectified to the reasonable satisfaction of the *Project Manager*, at which point the *Project Manager* shall pay the amount withheld.

X20.3

Without prejudice to the *Contractor's* obligation to report in accordance with clause X20.1, no Service Credits accrue, are paid or withheld and no right to terminate in respect of a KPI Failure or a SPI Failure to the extent that the same arises as a consequence of or is caused by:

- (a) a compensation event; or
- (b) any matter which is outside the reasonable control of the *Contractor*.

X20.4

Service Credits are calculated on the following basis:

- the amount of any applicable Service Credit is calculated by:
 - (a) multiplying the number of Service Failure Points stated in Schedule J in relation to the category of KPI Failure (Minor, Serious or Severe) for the relevant KPI Failure by the value of a single Service Credit stated in the Contract Data; and
 - (b) multiplying the product of the calculation in X20.4 (a) by the higher of one and number of consecutive months over which the KPI Failure has occurred (the **Ratchet**).
- The *Project Manager* sets off and/or withholds the value of Service Credits calculated under this clause X20.4 as a proportionate sum from the amount due under clause 50.2 or a sum equal to the value of the Service Credits may be recovered by the *Client* as a debt due from the *Contractor* provided always that the maximum sum in respect of Service Credits relating to any month that may be withheld or recovered by the *Client* shall not exceed the Service Credit Cap.

X20.5

Critical Performance Failure

Subject to clause 67.9, if, a Critical Performance Failure occurs, the *Client* may exercise its rights to terminate this contract in whole or in part.

Option Z55

Financial Distress

Insert new clause 10.4 as follows:

10.4 The *Client* and the *Contractor* comply with Contract Schedule Q.

Schedule C Contract Data Part Two – Data provided by the Contractor

1. Statements given in all Contracts

- The *Contractor* is **MITIE Property Services (UK) Limited**
- The *fee percentage* is 7.5 %
- The *subcontracted fee percentage* is 0 %
- The *working areas* are the Site and

- The *Framework Manager* is **REDACTED**
- The key people are
 - 1. Name **REDACTED**
 - Job Project Manager
 - Responsibilities TBC

 - Qualifications TBC
 - Experience 7 years experience as a Manager
 - 2. Name **REDACTED**
 - Job Quantity Surveyor
 - Responsibilities TBC
 - Qualifications TBC
 - Experience 11 years experience as a QS
- The following matters will be included in the Early Warning Register

2. The Contractor's main responsibilities

If the *Contractor* is to provide Scope for his design

- The Scope for the *Contractor's* design is in **SIKA Specification - As detailed within Schedule E**

3. Time

If a programme is identified in the Contract Data

- The programme identified in the Contract Data is **As detailed within Schedule E**

If the Contractor is to decide the completion date for the whole of the works

- The completion date for the whole of the works is The completion date for the whole of the works is TBC

5. Payment

- The activity schedule is As detailed within Schedule E
- The tendered total of the Prices is The tendered total of the Prices is **£572,415.10**

Resolving and avoiding disputes

If Option W1 or W1 is used

- The Senior Representatives of the Contractor are:

Name (1) REDACTED, Project Manager

Address for communications: Level 12, The Shard, 32 London Bridge Street, London SE1 9SG

Address for electronic communications: REDACTED

Name (2) REDACTED, Quantity Surveyor

Address for communications: Level 12, The Shard, 32 London Bridge Street, London SE1 9SG

Address for electronic communications: REDACTED

Data for the Shorter Schedule of Cost Components

- The people rates are:

category of person	unit	rate
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- 1.
- 2.
- 3.

- The published list of Equipment is the last edition of the list published by

- The percentage for adjustment for Equipment in the published list is **% (state plus or minus)**

- The rates for other Equipment are

Equipment	size or capacity	rate
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- 1.
- 2.
- 3.

- The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the Contractor are:

category of person	rate
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- 1.
- 2.
- 3.

Schedule D

Scope

[Insert or append here the Scope]

Schedule E

Activity Schedule

[Insert or append here the Activity Schedule]

Schedule F

Site Information

**Schedule
G**

Collateral Warranties

**Schedule
H**

Security Provisions

Schedule

I

Management Information

The *Contractor* MI Reports are to include the following information

1. Programme
 - Summary of *works* in progress
 - Key Dates completed in the month
 - Progress Reports
 - Programme Forecasts including critical path
 - Current or anticipated delays and mitigation measures
2. Risk & Compliance
 - Early Warning Register
 - Early Warning Register at a Programme level (where applicable)
 - Notices and Licences applied for and obtained in Providing the Works
 - Outstanding approvals
 - BIM reports
 - Proportion of SME's supporting delivery of projects
 - Apprenticeship schemes supporting delivery of projects
3. H&S / Incident reporting
 - Incidents including near misses
 - Tool box talks undertaken in the period
4. Commercial
 - Variations status report
 - Payment Applications status report
5. Quality
 - Snagging status report
 - Defects status reports

Schedule

6. Performance

- Performance reports via the Integrator Performance Management System
J

Key Performance Indicators

REDACTED

Schedule K

TUPE surcharge

Schedule L

Governance

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

Chairperson has the meaning given to it in Paragraph 2.1.1; and

Project Board has the meaning given to it in Paragraph 2.1.

2 Project Board

2.1 The *Project Manager*, the *Client* and the *Contractor* shall establish and maintain a project board (the **Project Board**), consisting of at least:

2.1.1 a member from the *Client*, who will be the chairperson (the **Chairperson**) of the Project Board;

2.1.2 the *Framework Manager* appointed by the *Contractor*; and

2.1.3 the *Project Manager*.

2.2 The *Project Manager* may fulfil the *Client's* obligations and exercise the rights of the *Client*, save as otherwise notified by the *Client*, for the purposes of this Contract Schedule L.

3 Function

3.1 The functions of the Project Board shall be:

3.1.1 to provide a means for the joint review of all aspects of the performance of this Contract;

3.1.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract including ensuring dissemination of information and consideration of the views of all the stakeholders connected with this Contract; and

3.1.3 consideration of issues relating to:

(a) the programme;

(b) health and safety performance;

(c) the Risk Register and risk management;

(d) financial performance of the *Contractor*;

(e) incidents (including, without limitation, security issues (both physical and relating to IT));

- (f) escalation of issues (including unresolved issues requiring escalation to the *Client*);
- (g) the quality management of delivery of the *works*;
- (h) innovation;
- (i) performance levels;(j) compensation events;
- (k) considering the outcome of performance contract review meetings attended by the *Project Manager* and the *Contractor*;
- (l) customer feedback; and
- (m) any other issues that may be determined from time to time by the parties.

4 **Role**

The role of the Project Board as regards this Contract is to make recommendations to the *Client* and to the *Contractor*, which the *Client* and the *Contractor* may accept or reject at their complete discretion. Neither the Project Board itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision binding on the parties. The *Client* and the *Contractor* shall not rely on any act or omission of the Project Board, or any members of the Project Board acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the *Client* or of the *Contractor* under this Contract. No discussion, review or recommendation by the Project Board shall relieve the *Client* or the *Contractor* of any liability or vary any such liability or any right or benefit.

5 **Representatives**

The *Client* and the *Contractor* may appoint their representatives on the Project Board and remove those representatives and appoint replacements, by written notice delivered to the other party at any time. A representative on the Project Board may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

6 **Practices and Procedures**

6.1 Place and time.

- 6.1.1 Subject to paragraph 6.1.2, Project Board meetings will take place at such places and times as the parties shall decide. Agendas will be circulated by the *Contractor* ten days in advance (with supporting papers) and any party wishing to raise other agenda items (including an item under "Any other Business") will notify all other parties (with supporting papers) no later three days in advance; and
- 6.1.2 In the event of an emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 6.1.3 The Project Board shall meet at least once every month from the *starting date* until such time as the Project Board shall agree otherwise. In the event that the parties agree that the Project Board shall meet less frequently than monthly, the Project Board shall meet not later than once each quarter.

7 Recommendations

- 7.1 Recommendations and other decisions of the Project Board must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the *Client* and not less than one (1) representative of the *Contractor*.
- 7.2 Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Board shall be recorded by the *Contractor* and copies circulated promptly to the *Client*, normally within ten days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the *Contractor* and shall be open to inspection by the *Client* at any time, upon request.
- 7.3 Each member of the Project Board shall have one (1) vote. In the event of deadlock on any issue before the Project Board, the Chairperson shall have the casting vote.
- 7.4 Each of the parties shall use all reasonable endeavours to ensure the regular attendance of their representatives at all meetings of the Project Board and will, unless unavoidable, ensure that their representatives are appropriately empowered to agree matters on its behalf.
- 7.5 Where the representatives of the Project Board consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative of the *Client* and one (1) representative of the *Contractor*) meetings may also be held by telephone call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Project Board is able to so participate.

Schedule M

Equality

1 Interpretation

In this Contract Schedule the following definitions shall apply:

Equalities Legislation

the Racial and Religious Hatred Act 2006, the Civil Partnership Act 2004, the Sex Discrimination (Gender Reassignment) Regulations 1999; the Gender Recognition Act 2004; the Employment Equality (Sex Discrimination) Regulations 2005; the Employment Equality (Age) Regulations 2006, the Equality Act 2006; and the Equality Act 2010;

Prohibited Employment Grounds

the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to the Equality Act 2010;
- (b) sex or marital status contrary to the Equality Act 2010;
- (c) disability contrary to the Equality Act 2010;
- (d) religion or belief contrary to the Equality Act 2010;
- (e) sexual orientation contrary to the Equality Act 2010; and/or
- (f) age contrary to the Equality Act 2010; and

Prohibited Grounds

the grounds of:

- (a) colour, race, nationality, or ethnic or national origins contrary to the Equality Act 2010;
- (b) sex or marital status contrary to the Equality Act 2010;
- (c) disability contrary to the Equality Act 2010;
- (d) religion or belief contrary to the Equality Act 2010;
- (e) sexual orientation contrary to the Equality Act 2010; and/or

- (f) age contrary to the Equality Act 2010.

2 Anti-Discrimination and the promotion of equality

2.1 The *Contractor* (including its agents and employees) shall not, and shall procure that any Subcontractor shall not:

2.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or

2.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or

2.1.3 contravene Sections 39, 108 – 109 and 111 – 112 of the Equality Act 2010 and Section 24A of the Equality Act 2006 (or any of them),

where appropriate.

2.2 The *Contractor* (including its agents and employees) shall, and shall procure that any Subcontractor shall, for purposes of ensuring compliance with paragraphs 2.1.1 to 2.1.3, in relation to staff engaged in the provision of the *works* observe as far as possible the provisions of:

2.2.1 the Commission for Racial Equality's Code of Practice in Employment;

2.2.2 the Disability Rights Commission's Statutory Code of Practice on Employment and Occupation and the Code of Practice on the Disability Equality Duty; and

2.2.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

2.3 The *Contractor* shall, and shall procure that any Subcontractor shall, in performing its/their obligations under this Contract, comply (to the extent permitted by law) with the provisions of Sections 149 and 150 of the Equality Act 2010 as if they were a body within the meaning of Schedule 19 to the Equality Act 2010.

2.4 Where in connection with this Contract the *Contractor* (including its agents and employees) or any Subcontractors are required to carry out work alongside the *Client's* employees on any other premises, they shall comply with the *Client's* own employment policy and codes of practice relating to discrimination and equal opportunities set out in the *Client's* Policies.

2.5 The *Contractor* shall, and shall procure that any Subcontractor shall, notify the *Project Manager* forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the *Contractor* or any Subcontractor under the Equalities Legislation.

2.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter

relating to the *Contractor's* performance of its obligations under this Contract being in contravention of the Equalities Legislation, the *Contractor* shall, and shall procure that any Subcontractor shall, free of charge:

- 2.6.1 provide any information requested in the timescale allotted;
- 2.6.2 attend any meetings as required and permit any of its staff to attend;
- 2.6.3 promptly allow access to and investigation of any documents or data deemed by the *Client* to be relevant;
- 2.6.4 allow itself and any of its staff to appear as witness in any ensuing proceedings;
and
- 2.6.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Schedule N

Form of Ultimate Holding Company Guarantee and Performance Bond

Contract Schedule N
Part 1 – Form of Ultimate Holding Company Guarantee



Department
for Work &
Pensions

Contract Schedule N
Part 2 – Form of Performance Bond



Crown
Commercial
Service



Department
for Work &
Pensions

Performance Bond

relating to Lot [2][3] – [●insert project details]

(1) [●Contractor] (2) [●Guarantor]
(3) The Secretary of State for Work and Pensions

Dated

22

Contents

Schedule O Third

Party Agreements

Schedule P
Data Protection

1 General

- 1.1 Any obligation in the Contract Schedule P includes a requirement to ensure that each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with the obligation and with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 1.2 Details of the Processing of Personal Data carried out by the *Contractor* under or in connection with this Contract are set out in this Contract Schedule P. Annex B is to be completed in response to each Task Order and shall include details of whether the *Contractor* is Processing Personal Data as a Data Controller (in which case the obligations set out in the Contract apply to such Processing) or as a Data Processor (in which case the obligations set out in this Contract Schedule P apply to such Processing).
- 1.3 The parties agree and acknowledge that where the *Contractor* is Processing Personal Data on behalf of the *Client*:
- 1.3.1 the *Client* alone shall determine the purposes for which, and the manner in which, Personal Data is, or is to be, Processed in the Provision of the Service or otherwise in connection with this Contract; and
- 1.3.2 the parties shall comply with their respective obligations set out in this Contract Schedule P.
- 1.4 The *Contractor* warrants that it has in place, and undertakes that it shall maintain, appropriate technical and organisational measures to ensure that the Processing of Personal Data by the *Contractor*, in connection with this Contract meets the requirements of the Data Protection Legislation and this Contract Schedule P, including ensuring the protection of the rights of Data Subjects in accordance with the Data Protection Legislation. Such technical and organisational measures shall include (without limitation) the measures set out in Annex A.
- 1.5 The *Contractor* shall indemnify and keep the *Client* indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the *Contractor* or any of its personnel of this Contract Schedule P.

2 Restrictions

- 2.1 The *Contractor* shall not publish, disclose or divulge Personal Data to any Data Subject or to a third party other than:
- 2.1.1 at the request of the *Client*; or
- 2.1.2 as provided for in this Contract; or
- 2.1.3 to the extent required under a court order by a court of competent jurisdiction (provided that the *Contractor* shall give notice to the *Client* of any disclosure of Personal Data that it, or any of the *Contractor's* Subcontractors, is required to make under such a court order as soon as practicable when it is made aware of such a requirement); or

- 2.1.4 at the request of the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract.
- 2.2 The *Contractor* shall:
 - 2.2.1 Process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including the Data Protection Legislation) in such cases the *Contractor* shall inform the *Client* of that legal requirement unless such disclosure is prevented on the grounds of public interest;
 - 2.2.2 Process the Personal Data only to the extent, and in such a manner, as is necessary for the Permitted Purposes and in accordance with the *Client's* written instructions from time to time and shall not Process the Personal Data for any other purposes; and
 - 2.2.3 notify the *Client* in writing immediately if, in its reasonable opinion, it considers that any instruction infringes the Data Protection Legislation.
- 2.3 For the avoidance of doubt, except as expressly set out in this Contract, the *Contractor* shall not be required to ensure that its Provision of the Service or its other obligations under this Contract comply with the provisions of the GDPR until 25 May 2018, although it may expressly elect or agree in writing to become compliant before that date.

3 Data Collection

- 3.1 The *Contractor* shall ensure that it only collects Personal Data on behalf of the *Client* in the form agreed with the *Client* which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose or purposes for which the Data Subject's Personal Data will be processed and any other information which is necessary to comply with the Data Protection Legislation. The *Contractor* shall not modify or alter the form in any way without the prior written consent of the *Client*.

4 Data Security and Breach Notification

4.1 The *Contractor* shall implement appropriate technical and organisational measures, which have been reviewed and approved by the *Client*, to ensure a level of security appropriate to the risks presented by the Processing of Personal Data pursuant to this Contract, including (without limitation) the risks presented by a Personal Data Breach. Such measures shall include (without limitation):

- 4.1.1 the pseudonymisation and encryption of Personal Data where appropriate in accordance with good industry practice;
- 4.1.2 measures to ensure the on-going confidentiality, integrity, availability and resilience of the systems used for Processing and the Provision of the Service;
- 4.1.3 measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- 4.1.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and
- 4.1.5 such other security measures as are set out in Annex C and Contract Schedule H.

review and approval of the appropriate technical and organisational measures (the **Protective Measures**) by the *Client* shall not relieve the *Contractor* of its obligations under Data Protection Legislation including, for the avoidance of doubt, putting sufficient Protective Measures in place.

- 4.2 The *Contractor* will ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Even having taken account of the following:
- 4.2.1 nature of the Personal Data to be protected;
 - 4.2.2 harm that might result from a Data Loss Event;
 - 4.2.3 state of technological development; and
 - 4.2.4 implement any Protective Measures at the Contractor's own expense and at no cost to the Authority;
- 4.3 The *Contractor* shall notify the *Client* in writing within 24 hours if it becomes aware of:
- 4.3.1 any Personal Data Breach (whether caused by the *Contractor* or otherwise); and/or
 - 4.3.2 any event that results, or may result, in unauthorised access to Personal Data held by the Contractor in relation to this Contract Schedule P and/or actual or potential loss and/or alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach (a **Data Loss Event**); and/or
 - 4.3.3 any advance in technology and methods of working or potential security threats which mean that the Parties should revise the security measures taken by the *Contractor* to comply with its obligations under this Paragraph 4 (including as set out in Annex C) or as set out in Contract Schedule H.
- 4.4 Where the *Contractor* notifies the *Client* of advances in technology or methods of working or potential security threats that mean the Parties should revise the security measures set out in Annex C, the Parties shall agree appropriate changes to Annex C.
- 4.5 Where a Personal Data Breach occurs the *Contractor* shall provide such information and assistance and take such steps as the *Client* may reasonably require to enable the *Client*.
- 4.5.1 to mitigate the impact of the Personal Data Breach;
 - 4.5.2 to ensure that Personal Data Breaches of the same nature do not occur again;
 - 4.5.3 to notify the competent regulatory body of the Personal Data Breach; and/or
 - 4.5.4 to notify Data Subjects of the Personal Data Breach.

5 Co-Operation and Assistance

- 5.1 The *Contractor* shall provide the *Client* with all reasonable co-operation and assistance in relation to the Processing of Personal Data, at no cost to the *Client*, to ensure that the *Client* is able to comply with all of its obligations under the Data Protection Legislation, including (without limitation):
- 5.1.1 implementing appropriate technical and organisational measures to assist the *Client* to fulfil its obligations to respond to requests from Data Subjects made under the Data Protection Legislation (including Data Subject Access Requests);
 - 5.1.2 upon request putting in place measures to restrict the Processing of Personal Data;
 - 5.1.3 upon request providing a copy of Personal Data relating to specific Data Subjects in a structured, commonly used and machine readable format;
 - 5.1.4 upon request providing a copy of the record of any Processing of Personal Data it carries out on behalf of the *Client* including (without limitation) the records specified in Article 30(2) of the GDPR;
 - 5.1.5 upon request providing information about the *Contractor's* Processing of *Client* Data;
 - 5.1.6 assisting the *Client* with the preparation of data protection impact

assessments and preparing data protection impact assessments on behalf of the *Client* on request including but without limitation to;

- 5.1.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 5.1.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the services;
- 5.1.6.3 an assessment of the risks to the rights and freedoms of Data Subjects;
- 5.1.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- 5.1.7 upon request providing a written description of the technical and organisational methods referred to in Paragraph 4 (Data security and breach notification). Within 30 days of such a request, the *Contractor* shall provide written particulars of all such measures to a reasonable level of details such that the *Client* can determine whether, in connection with the Personal Data, the Data Protection Legislation is being complied with;
- 5.1.8 promptly complying with any request from the *Client* requiring the *Contractor* to amend, transfer or delete the Personal Data and/or *Client* Data; and
- 5.1.9 subject to the *Contractor* being required to maintain such copies by law, upon expiry or termination of this Contract (for any reason whatsoever), the *Contractor* shall at the request of the *Client* promptly return to the *Client* or destroy all Personal Data and/or *Client* Data securely (regardless of form, and whether computerised or physical) and shall certify the deletion or destruction (as applicable) to the *Client* in writing.
- 5.2 Wherever in this Contract Schedule P the *Contractor* is required to provide notice or information to the *Client* the *Contractor* will also promptly inform the *Client* of any further or additional information.
- 5.3 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this Contract Schedule P. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - 5.3.1 the Authority determines the processing is not occasional;
 - 5.3.2 the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 5.3.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

6 Individuals' Rights

- 6.1 The *Contractor* shall notify the *Client* immediately if it receives a request from a Data Subject wishing to exercise any of the Data Subject's rights under the Data Protection Legislation.
- 6.2 The *Contractor* shall notify the *Client* immediately and provide all reasonable co- operation and assistance if:
 - 6.2.1 it receives any complaint, notice or communication not covered under Paragraph 6.1 which relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Legislation; or
 - 6.2.2 the *Contractor* is subject to any regulatory investigation by the Information

Commissioner or any other data protection supervisory *Client*, or

6.2.3 It receives a request from third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.

6.3 The *Contractor* shall not without the prior written consent of the *Client* or as strictly necessary to Provide the Service, carry out Processing by automatic means of any Personal Data and/or *Client* Data for the purposes of evaluating matters about a Data Subject that constitutes the sole basis for any decision that significantly affects such Data Subjects.

6.4 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under this clause 6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-

- 6.4.1 the Authority with full details and copies of the complaint, communication or request;
- 6.4.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request promptly;
- 6.4.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- 6.4.4 assistance as requested by the Authority following any Data Loss Event and/or Data Protection Breach to enable the Authority to mitigate the impact of the Personal Data Breach, to ensure that Personal Data Breaches of the same nature do not occur again, to notify the competent regulatory body of the Personal Data Breach and/or to notify the Data Subjects of the Personal Data Breach;
- 6.4.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

7 Overseas Data Transfers

7.1 The *Contractor* shall not transfer the Personal Data to a country outside the United Kingdom without the prior written consent of the *Client* and subject to compliance with such reasonable conditions as the *Client* may specify, including but not limited to the following:

- 7.1.1 the *Client* or the *Contractor* has appropriate safeguards in relation to the transfer;
- 7.1.2 the Data Subject has enforceable rights and effective legal remedies;
- 7.1.3 the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 7.1.4 the *Contractor* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data.

8 Contractor Personnel

8.1 The *Contractor* shall ensure that access to the Personal Data and/or *Client* Data is limited to:

- 8.1.1 the Contractor Personnel who need access to the Personal Data and/or Client Data to enable the Provision of the Service (provided that such access is subject to written terms substantially the same as, and no less stringent than, the relevant terms contained in this Contract and this Contract Schedule P); and

- 8.1.2 in the case of any access by any Contractor Personnel, such part or parts of the Personal Data and/or Client Data as is strictly necessary for performance of that Contractor Personnel's duties.
- 8.2 The *Contractor* shall ensure that all Contractor Personnel involved in the Processing of the Personal Data and/or Client Data:
- 8.2.1 are informed of the confidential nature of the Personal Data and/or Client Data;
 - 8.2.2 are subject to legally binding obligations of confidentiality in relation to the Personal Data;
 - 8.2.3 have undertaken reasonably adequate training in the laws relating to the care and handling of Personal Data and/or Client Data; and
 - 8.2.4 are aware both of the *Contractor's* duties and their personal duties and obligations under such laws and this Contract; and
 - 8.2.5 do not process Personal Data except in accordance with this Contract and the Data Protection Legislation.
- 8.3 The *Contractor* shall take reasonable steps to ensure the reliability of any of the Contractor Personnel who have access to the Personal Data and/or Client Data.
- 8.4 The *Contractor* shall designate a data protection officer if required by Data Protection Legislation or by the *Client* in writing.

9 Subcontractors

- 9.1 The *Contractor* may only authorise a Subcontractor to Process the Personal Data:
- 9.1.1 subject to the *Client's* prior written consent where the *Contractor* has supplied the *Client* with full details of such Subcontractor;
 - 9.1.2 provided that such Subcontractor's contract is on terms which impose the same or equivalent data protection obligations on the Subcontractor as those imposed on the *Contractor* as set out in this Contract and this Contract Schedule P, including, but not limited to, the requirement to implement appropriate technical and organisational measures to ensure that the Processing will meet the requirements set out in the Data Protection Legislation;
 - 9.1.3 provided that such Subcontractor shall where requested enter into a confidentiality undertaking with the *Client* (in a form specified by the *Client*);
 - 9.1.4 provided that such *Contractor* Subcontractor's contract terminates automatically on termination of this Contract for any reason.
- 9.2 In accordance with Paragraph 9.1.1, the *Client* expressly consents to the Processing of Personal Data by the *Contractor's* Subcontractors listed in the Contract Data.
- 9.3 For the avoidance of doubt, the *Contractor* shall remain liable to the *Client* for the performance of the Subcontractor's obligations.

10 Records, Information and Audit Rights

- 10.1 The *Contractor* shall keep a record of any Processing of Personal Data it carries out on behalf of the *Client* including (without limitation) from and including 25 May 2018 the records specified in Article 30(2) of the GDPR.
- 10.2 The *Client* is entitled, on giving reasonable notice of no fewer than 5 Working Days to the *Contractor*, and the *Contractor* shall permit the *Client*, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the Processing of Personal Data by the *Contractor* for the purpose of verifying the *Contractor's* compliance with the Data protection provisions of this Contract and this Contract Schedule P.

- 10.3 The requirement under Paragraph 10.2 to give notice will not apply if the *Client* reasonably believes that the *Contractor* is in material breach of any of its obligations under this Contract or the Data Protection Legislation.
- 10.4 The *Client* may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under Article 43 of the GDPR (which shall apply when incorporated by an attachment to this Contract).
- 10.5 The *Contractor* shall comply with guidance issued by the Information Commissioner's Office. The *Client* may on not less than thirty (30) Working Days' notice to the *Contractor* amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.

Annex A

Technical and Organisational Measures to ensure compliance with Data Protection Legislation

[Drafting note: Details of the Contractor's policies, procedures and other measures to be inserted here.]

Annex B

Details of Contractor Processing Activities

Category of Personal Data	Categories of Data Subjects	Processing Operations	Location of Processing Operations	Identity of sub-contractors	Purposes	Duration
<p><i>[Specify the Personal Data that will be processed by the Contractor]</i></p>	<p><i>[Specify the categories of data subjects whose Personal Data will be processed by the Contractor]</i></p>	<p><i>[Specify all processing activities to be conducted by the Contractor and whether Contractor is acting as Data Processor or Data Controller]</i></p> <p><i>Contractor is acting as Data Processor / Data Controller</i> <i>[Delete as applicable]</i></p>	<p><i>[Specify all locations where the personal data will be processed by the Contractor]</i></p>	<p><i>[Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and processing operations]</i></p>	<p><i>[Specify all purposes for which the Personal Data will be processed by the Contractor]</i></p>	<p><i>[Specify the length of time for which data processing activities will be carried out]</i></p>

42079123.1

Annex C
Security Measures

Schedule Q

Financial Distress

1 DEFINITIONS

1.2 In this Schedule, the following definitions shall apply:

Additional Security either:

- (a) an on-demand payment and performance bond in favour of the *Client* in a form and substance and for a value and from a provider in each case satisfactory to the *Client*; and/or
- (b) an enforceable deed of guarantee from a New Guarantor to be approved by the *Client* in substantially the form of the Guarantee (if any) or in such other form as the *Client* may, in its absolute discretion, agree; and/or
- (c) any other alternative security as may be acceptable to the *Client* in its absolute discretion;

Contract Year the period of 12 calendar months ending at each anniversary of the Contract Date;

Financial Distress Events has the meaning given to it in Paragraph 3.1 and references to **Financial Distress Event** shall be construed accordingly;

Financial Distress Recovery Plan the plan to be submitted by the Contractor pursuant to Paragraph 3.3.2 (a);

Financial Statements the audited consolidated accounts for the relevant Major Contractor Party;

Major Contractor Party means each of the *Contractor*, the Guarantor, a New Guarantor (if an Affiliate of the *Contractor*) and references to **Major Contractor Parties** shall be construed accordingly;

Rating Agency a credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default; and

New Guarantor means in the event of a Financial Distress Event relating to the Guarantor, the provider of a new, additional or replacement enforceable deed of guarantee.

2 DUTY TO NOTIFY

2.1 The *Contractor* shall:

2.1.1 deliver to the *Client*:

- (a) when required all financial information (including covenant certificates) that it is required to deliver to its lenders within the time period allowed by those lenders for doing so; and
- (b) the annual accounts of each Major Contractor Party as soon as they are available and in any event within 10 working days from publication;

2.1.2 promptly and in any event within five (5) Working Days notify the *Client* (or procure that its auditors notify the *Client* within five (5) Working Days) in respect of a Major Contractor Party of any:

- (a) material adverse change to such party's financial standing, including but not limited to any:
 - (i) profit warning to a stock exchange or the making of any other public announcement concerning a material deterioration of its financial position or prospects;
 - (ii) public investigation into improper financial accounting or reporting, suspected fraud or any other impropriety;
 - (iii) material adverse change to the organisation that might impact on its on-going financial viability;
 - (iv) material breach of covenant to lenders;
 - (v) commencement of any dispute resolution procedure against with respect to such party's financial indebtedness of more than five million pounds (£5,000,000);
 - (vi) non-payment of any financial indebtedness;
 - (vii) any financial indebtedness becoming due as a result of an event of default;
 - (viii) the cancellation or suspension of any financial indebtedness;
 - (ix) downgrade or material adverse change in the credit rating issued by a Rating Agency
- (b) proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes which may impact on the relevant Major Contract Party's financial viability; and/or
- (c) adverse change in the assets, business or financial condition of a Major Contractor Party since the date of the most recent accounts,

provided that compliance with this paragraph 2.1 shall not require a Major Contractor Party to breach restrictions on its performance reporting prescribed by legislation.

2.1.3 promptly and in any event within five (5) Working Days of it becoming aware notify the *Client* of any material adverse change to the financial standing of a bond provider or of a New Guarantor who is not also a Major Contracting Party.

2.2 If there is any downgrade of a credit rating issued by any Rating Agency for any Major Contractor Party, the *Contractor* shall ensure that the relevant Major Contractor Party's auditors thereafter provide the *Client* within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the *Client* with written calculations of the quick ratio for the relevant Major Contractor Party as at the end of each Contract Year or such other date as may be requested by the *Client*. For these purposes the "quick ratio" on any date means:

A + B + C

D

where

- A** is the value at the relevant date of all cash in hand and at the bank of the relevant Major Contractor Party;
- B** is the value of all marketable securities held by the relevant Major Contractor Party determined using closing prices on the Working Day preceding the relevant date;
- C** is the value at the relevant date of all account receivables of the relevant Major Contractor Party; and
- D** is the value at the relevant date of the current liabilities of the relevant Major Contractor Party.

3 FINANCIAL DISTRESS EVENT

3.1 Upon:

- 3.1.1 notification of an event under Paragraph 2.1.2 or 2.1.3; and/or
- 3.1.2 notice from a Notified Sub-contractor to the *Client* that the *Contractor* has not satisfied any material sums properly due under a specified invoice which is not subject to a genuine dispute; or
- 3.1.3 the *Client* becoming aware of an event under Paragraph 2.1.2 or 2.1.3 without notification and brings the event to the attention of the *Contractor*,

(i) the *Client* may in its discretion inform the *Contractor* that it considers a Financial Distress Event has occurred in which case the *Contractor* shall have the obligations and the *Client* shall have the rights and remedies set out in Paragraphs 3.3 to 3.9.

3.2 In the event of a late or non-payment of a Notified Subcontractor pursuant to Paragraph 3.1.2, the *Client* shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the *Contractor* ten (10) Working Days to:

- 3.2.1 rectify such late or non-payment; or
- 3.2.2 demonstrate to the *Client's* reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The *Contractor* shall (and shall procure that other Major Contractor Parties shall):

- 3.3.1 at the request of the *Client*, meet the *Client* as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Contractor*) to review the effect of the Financial Distress Event on the continued performance and delivery of the *works* in accordance with this Contract; and
- 3.3.2 where the *Client* reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial

- Distress Event could impact on the continued performance and delivery of the *Services* in accordance with this Contract:
- (a) submit to the *Client* for its approval, a draft Financial Distress Recovery Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Contractor* in writing); and
 - (b) provide such financial information relating to the relevant Major Contractor Party as the *Client* may reasonably require including, without limitation, details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.
- 3.4 Where a Financial Distress Event relates to the Guarantor and the Guarantor's credit rating issued by a Rating Agency is lower than the credit rating issued by a Rating Agency as at the date of this Contract the Financial Distress Recovery Plan shall as a minimum set out details of the Additional Security.
- 3.5 Following receipt of the Financial Distress Recovery Plan pursuant to Paragraph 3.3.2 (a) the *Client* may, in addition to any other rights under this Contract Schedule Q notify the *Contractor* that it is increasing its monitoring pursuant to Clause 68.1 of the Contract and the *Client* and *Contractor* acknowledge and agree that the provisions of clause 68.2 shall apply accordingly.
- 3.6 The *Client* shall inform the *Contractor* whether or not the draft Financial Distress Recovery Plan is approved. The *Client* shall not withhold its approval of a draft Financial Distress Recovery Plan unreasonably. If the *Client* does not approve the draft Financial Distress Recovery Plan, it shall inform the *Contractor* of its reasons and the *Contractor* shall take those reasons into account in the preparation of a further draft Financial Distress Recovery Plan, which shall be resubmitted to the *Client* within five (5) Working Days of the rejection of the first draft.
- 3.7 If following resubmission of the draft Financial Distress Recovery Plan the *Client* considers that:
- 3.7.1 the draft Financial Distress Recovery Plan is insufficiently detailed to be properly evaluated;
 - 3.7.2 the draft Financial Distress Recovery Plan will take too long to complete or will not ensure the continued performance of the *Contractor*'s obligations in accordance with the Contract, or
 - 3.7.3 in relation to:
 - (a) the Additional Security, the *Client* does not believe that the proposed Additional Security meets the requirements set out in limbs (a) – (c) of the definition of Additional Security; or
 - (b) the New Guarantor, the *Client* does not believe that the proposed New Guarantor is of at least the same financial standing and has at least the same credit rating from a Rating Agency as the Guarantor had as at the date of this Contract,
- (i) then the *Client* may either agree a further time period for the development and agreement of the Financial Distress Recovery Plan or escalate any issues with the draft Financial Distress Recovery Plan by referring the draft Financial Distress

- Recovery Plan to the Governance Board for a recommendation under Contract Schedule L.
- 3.8 This process in Paragraphs 3.6 and 3.7 (excluding referral to the Governance Board) shall be repeated until;
- 3.8.1 the Financial Distress Recovery Plan is approved by the *Client*; or
- 3.8.2 the *Client* determines that its approval will not be given provided that the *Client* shall only so determine if it has escalated the matter to the Governance Board under Contract Schedule L and the Governance Board has given a recommendation or the Governance Board has failed to meet within ten working days of the referral.
- 3.9 Following approval of the Financial Distress Recovery Plan by the *Client*, the *Contractor* shall:
- 3.9.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Recovery Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the *Services* in accordance with this Contract;
- 3.9.2 where the Financial Distress Recovery Plan is not adequate or up to date in accordance with Paragraph 3.9.1, submit an updated Financial Distress Recovery Plan to the *Client* for its approval, and the provisions of Paragraphs 3.5 to 3.8 shall apply to the review and approval process for the updated Financial Distress Recovery Plan; and
- 3.9.3 comply with the Financial Distress Recovery Plan (including any updated Financial Distress Recovery Plan).
- 3.10 Where the *Contractor* reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the *Client* and the Parties may agree that the *Contractor* shall be relieved of its obligations under Paragraph 3.9.