

THE INSOLVENCY SERVICE
(EMPLOYER)
DEVELOPMENT AT PICCADILLY PLACE, MANCHESTER
JCT DESIGN AND BUILD CONTRACT 2016¹

SPECIAL CONDITIONS

Part 1
Amendments

The Recitals, Articles, Contract Particulars, Conditions and Schedules are amended as follows and shall be construed accordingly:

Recitals

3 [Delete and insert:

“The Contractor has examined the Employer’s Requirements and confirms that they show and describe the Works in sufficient detail for him to prepare the Contractor’s Proposals and carry out and complete the design and construction of the Works. The Contractor accepts responsibility for the design of the Works contained in the Employer’s Requirements.”²

Articles

Contractor’s obligations

1 [In line 1, after ‘The Contractor’ insert ‘is responsible for entire design of the Works, including any design which has already been carried out as at the date of this Contract (and whether such design is contained in the Employer’s Requirements or the Contractor’s Proposals and whether the design is or has been carried out by the Contractor or some other person), and the Contractor’]³

Incorporation of Special Conditions

10 Add as Article 10:

‘The Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Special Conditions (Part 1 and Part 2) annexed hereto.’

[Note: Article 10 to be endorsed on page 5 of the printed JCT form.]

Conditions Definitions

1.1 Add the following definitions:

¹ Based on printed version, published 2016. Line references may vary in copies produced by the publisher’s digital service.

Force Majeure

means (or force majeure) means any unpredictable occurrence which is beyond the responsibility and control of either Party, attributable either to the forces of nature or to other circumstances not confined in their effects wholly or principally to the Parties, any Employer's Persons or Contractor's Persons, the Site or the Works;

Group Company

means any subsidiary company or holding company of an assignor or another subsidiary company or holding company of such company, as 'subsidiary' and 'holding company' are defined in s 1159, Companies Act 2006, as amended, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in s 1159(1)(a);

Effect of Final Account and Final Statement

- 1.8.1.1 Delete.
- 1.9 In line 1, delete 'Save as stated in clause 1.8 no'. Substitute 'No'.
- 1.10 In line 3 delete 'either Party'. Substitute 'Employer'.
- In line 3 delete '7.1'. Substitute '7.2'.
- Delete 'Party from whom it is sought'. Substitute 'Employer'.

Materials, goods and workmanship

- 2.2.1 After the first sentence of clause 2.2.1, insert:
- 'Subject to the foregoing, all materials and goods shall be new and appropriate for their use and of a satisfactory quality.'
- Add at the end:
- 'The Employer may refuse to give such consent where the substituted materials or goods are of a lesser kind or standard or of a substantially different appearance than the types or standards described in the Employer's Requirements, the Contractor's Proposals or the Contractor's Design Documents referred to in Schedule 1.'
- 2.2.2 Add at the end:
- 'Subject to the foregoing, all workmanship shall be of a satisfactory quality.'

Prohibited materials

- 2.2A Add as clause 2.2A:
- 'Save as required under or pursuant to any other provision of this Contract the Contractor shall not use or permit to be used in the Works any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent;
- (b) which contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* (2011); or
- (c) which are considered to be deleterious within the building design professions or pose a threat to the health and safety or durability of the Works;
- (d) without prejudice to the foregoing, aluminum composite materials or (unless approved in advance by the [Employer's Agent] in writing) polyurethane or polyisocyanates..

Preparation of Employer's Requirements

2.11 Delete.

Contractor's design warranty

2.17 Delete and substitute:

2.17.1 'The Contractor warrants that there has been exercised and will be exercised in the design of the Works and each and every part of the Works all the skill and care and diligence reasonably to be expected of duly qualified and experienced designers undertaking the design of works similar in scope and character to the Works or such part of the Works.'

2.17.2 The Contractor shall be fully responsible in all respects for the design of the Works and shall adopt and take responsibility for any design work in relation thereto (including any design work contained in the Employer's Requirements) which may be carried out or which may have been carried out by professional consultants or specialist sub-contractors or by any other person engaged by the Employer. Any reference to the design that the Contractor has prepared or shall prepare or issue for the Works shall include a reference to any design that the Contractor has adopted or shall adopt or has caused or shall cause to be prepared or issued by others.

2.17.3 The Contractor shall exercise the same degree of skill, care and diligence referred to in clause 2.17.1 to ensure that the Works take into account such measures as are necessary to satisfy any performance requirement or specification and when completed comply with the Employer's Requirements, the Contractor's Proposals and the Statutory Requirements and that the various elements of the design for the Works are properly co-ordinated and integrated with each other.

Relevant Events – Employer's instructions

2.26.2.1 Delete.

2.26.2.2 Delete and substitute:

'under any of clauses:

- 3.10 (Instructions to postpone any work);
- 3.11 (Instructions to expend any Provisional Sums) to the extent that the Employer's Requirements provided insufficient information to enable the Contractor to make a sufficient allowance prior to the issue of such instructions for the effects on programme of those instructions); or'.

Relevant Events – Instructions to Open Up Works

- 2.26.2.3 Delete and substitute:

'for the opening up for inspection or testing of any work, materials or goods (including making good) under clause 3.12, unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract; or under clause 3.13, if it is agreed by the Parties or determined by an Adjudicator appointed pursuant to clause 3.13.3 that an extension of time should be awarded in respect of such instruction given under clause 3.13;'

Relevant Events – suspension by Contractor

- 2.26.5 In line 1, after 'under clause 4.11' insert 'or clause 8.10.3'.

Relevant Events – Force Majeure

- 2.26.14 Delete and substitute:

'any other occurrence or circumstances amounting to Force Majeure.'

Delay caused by Contractor's default

- 2.26A Add as clause 2.26A:

'Notwithstanding any other provision, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier, or of any of his or their employees or agents.'

Copyright and use

- 2.38 Delete.

Retention – no fiduciary duty or trust fund

- 4.16 Delete and substitute:

'The Employer shall be under no fiduciary obligation with regard to any Retention; and any right of the Employer to deduct or to set off any amount (whether arising under any express term or under any rule of law or of equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies consist of or include any Retention.'

Loss and expense caused by Contractor's default

4.21A Add as clause 4.21A:

'Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under clause 4.20 in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents.'

Professional indemnity insurance

6.15 Delete.

6.16 Delete.

Assignment, Performance Bonds and Guarantees, Third Party rights and Collateral Warranties

7 Delete the whole of Section 7 and substitute:

'Assignment

'7.1 The Contractor is not entitled to assign, charge or transfer any right or obligation under this Contract without first obtaining the Employer's written consent.

7.2.1 The Employer may assign by way of absolute legal assignment the benefit of this Contract:

(a) on two occasions to any person with an interest in the Development without the Contractor's consent; and

(b) without counting as an assignment under Clause 7.2.1(a):

(i) by way of security and/or charge to any Funder (and such rights may be reassigned on redemption); and

(ii) by way of assignment to any Group Company.

7.2.2 Any further assignment shall be subject to the Contractor's prior written consent, such consent not to be unreasonably withheld or delayed.

7.2.3 Within 28 days after any assignment under clause 7.2.1, notice of the assignment shall be given to the Contractor. Failure to give this notice shall not affect the validity of any assignment.

7.2.4 The Contractor undertakes with the Employer not to contend that any person to whom this Contract shall be assigned to shall be precluded from recovering under this Contract any loss resulting from any breach of this Contract by reason that such person is an assignee and not the original party named herein or by reason that us or any intermediate owner of the Employer's interest in the Works escaped loss resulting from such breach by reason of the disposal of its interest in the same.

Part 2

Additional Conditions

The following additional conditions shall have effect:

A1. Professional indemnity insurance

A1.1 The Contractor warrants that there is in force a policy of professional indemnity insurance covering his liabilities hereunder for negligent design and specification, with a limit of indemnity of not less than £10,000,000.00 for any occurrence or series of occurrences arising out of each and every event [(or, in the case of claims for pollution or contamination, with not less than such limit of indemnity in the aggregate for any and all claims notified in any one year of insurance)]. The Contractor agrees to maintain such insurance at all times until 12 years after the practical completion of the Works (or if sooner until 12 years after the termination of his employment hereunder), provided such insurance is available on commercially reasonable rates and terms having regard (inter alia) to premiums required and policy terms obtainable (which shall exclude rates and terms that are not commercially reasonable and/or any increase in premiums which are attributable to the Contractor's claims record).

A1.2 If for any period such insurance is not available on commercially reasonable rates and terms, the Contractor shall forthwith inform the Employer, and the Contractor and the Employer shall meet and the Contractor shall outline steps it intends to take to manage both parties' risks. The Contractor and the Employer shall use reasonable endeavours to agree a method of managing such risk.

A1.3 Whenever reasonably required to do so by the Employer, the Contractor shall provide documentary evidence that the insurance required hereunder is being maintained.

A2. Public Liability Insurance

A2.1 The Parties acknowledge that it has been confirmed in writing by Towergate Insurance Brokers (acting on behalf of 3 Piccadilly Place S.a.r.l. (the "Landlord") as the registered long leasehold proprietor of the 2nd Floor, 3 Piccadilly Place, Manchester, M1 3BN (the "Building")) that the Works and the existing policy of public liability insurance covering the Contractor's liabilities comply with and do not invalidate the Landlord's existing insurance cover for the Building without the requirement for additional policy terms and that such has been noted in the records of the Landlord's insurer.

A2.2 The Parties further acknowledge that it has been confirmed [in writing by Towergate Insurance Brokers (acting on behalf of the Landlord)] OR [in a letter dated [DATE] between [PARTY] and [PARTY]] that any liability in excess of the £10 million limit of indemnity within the Contractor's public liability insurance covering the Contractor's liabilities will be covered by the Landlord's existing insurance policy for the Building."

A3. Contractor's warranty

A3.1 The Contractor shall whenever required to do so by the Employer promptly execute and deliver a deed or deeds of warranty in favour of any Purchaser and/or Tenant in the terms of the draft Contractor's warranty contained in Appendix 3.

A3.2 If the Contractor fails to execute and deliver any such deed or deeds of warranty pursuant

to clause A2.1 above, within 7 days of the Employer's request, then no further payment shall be due to the Contractor hereunder until such time as any such deed or deeds of warranty have been executed and delivered to any Purchaser and/or Tenant.

A4. Sub-contractors

- A4.1 In this clause A4 Specified Sub-Contractors means any sub-contractor or supplier of the Contractor for the following elements of the Works:

[Ground improvement works] / [Piling] / [Structural steel frame/roof structure] / [Pre-cast concrete floors/stairs] / [Profile metal cladding/roofing] / [Mechanical services] / [Electrical services] / [Fenestration] / [Curtain walling] / [Raised access floors] / [Lifts] / [any other sub-contract packages with design liability]

- A4.2 Each of the Specified Sub-Contractors shall be appointed by deed on terms to be approved by the Employer, and within 7 days after the appointment of a Specified Sub-Contractor the Contractor shall supply a complete certified copy of the sub-contract to the Employer.

- A4.3 The Contractor shall ensure that each Specified Sub-Contractor, upon his appointment, executes and delivers a deed of warranty in favour of the Employer in the form of the draft contained in Appendix 3, mutatis mutandis, with such modifications (if any) as the Contractor or sub-contractor shall propose and the Employer shall approve.

- A4.4 Whenever the Employer from time to time requires, the Contractor shall ensure that each Specified Sub-Contractor executes and delivers a deed or deeds of warranty in favour of any Purchaser and/or Tenant in the form of the draft contained in Appendix 3, mutatis mutandis, with such modifications (if any) as the Contractor or sub-contractor shall propose and the Employer shall approve.

- A4.5 If the Contractor breaches clause A4.2 or clause A4.3 or clause A4.4 the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice then the Employer shall not be liable to pay any amount in respect of the elements of the Works to which the default relates while such breach remains to be rectified.

A5. Documents

- A5.1 The Contractor grants to the Employer an irrevocable, non-exclusive, royalty-free, assignable licence to use and reproduce any of the drawings, details, specifications and calculations which have been or are prepared by or on behalf of the Contractor relating to the Works and the designs contained in them (**Documents**) for any purpose connected with the Works (other than by the reproduction of such designs in any extension to the Works) and to grant sub-licences in the terms of this licence but the copyright in the Documents shall remain vested in the Contractor. The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Employer shall on written request be entitled to be supplied by the Contractor with copies of the Documents.

- A5.2 The Contractor warrants that the use of the Documents for the purposes of Works will not infringe the rights of any third person.

A5.3 The Contractor agrees to indemnify and keep indemnified the Employer from and against any and all loss damage cost fees expense liability or claim in respect of breach of the copyright or the other intellectual property rights or design rights of any third person caused or arising out of the carrying out of the Works or the use of a licence under clause A5.1.

APPENDIX 3
Form of Sub-Contractor's Collateral Warranty
(referred to in clause 7)

Annexed

DATED XXXXXXXXXXXX

THE INSOLVENCY SERVICE (1)
and

[sub-contractor]
and (2)

[main contractor]

(3)

DEED OF WARRANTY

3 PICCADILLY PLACE, MANCHESTER

THIS WARRANTY is made on

BETWEEN:

- (1) THE INSOLVENCY SERVICE (company number N/A) whose registered office is at 16th Floor, 1 Westfield Ave, London, E20 1HZ ("**Beneficiary**" which expression shall include its successors in title and assigns);
- (2) [sub-contractor] (company number xxxxxxxxxx) whose registered office is at xxxxxxxxxxxxxxxx ("**Sub-Contractor**"); and
- (3) [main contractor] (company number xxxxxxxxxxxxxx) whose registered office is at ("**Contractor**").

BACKGROUND:

- (A) The Beneficiary is the Employer.
- (B) The Employer has entered into a contract with the Contractor dated [XXX] ("**Contract**") for the carrying out of the work described in the Contract ("**Works**").
- (C) The Contractor has entered into a sub-contract with the Sub-Contractor dated [XXX] ("**Sub-Contract**") for the carrying out of the sub-contract work described in the Sub-Contract ("**Sub-Contract Works**") being part of the Works.
- (D) It is a condition of the Sub-Contract and of the Contract that the Sub-Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **IT IS AGREED:**

1 Sub-Contract Works

1.1 The Sub-Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor's obligations under and in connection with the Sub-Contract in accordance with it; and
- 1.1.2 the Sub-Contractor has used and shall use, in the design and construction of the Sub-Contract Works, all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent designer and sub-contractor experienced in designing and constructing sub-contract works for projects of a similar size, scope, nature, complexity and timescale to the Project.

2 Materials and building practices

2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that (unless otherwise instructed or authorised by or on behalf of the Beneficiary):

- 2.1.1 the Sub-Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 not to specify, select and/or approve for use; and
- 2.1.2 the Sub-Contractor has used and shall use the level of skill, care and diligence referred to in clause 1.1.2 to ensure that there shall not be used in the Project: any material, substance, building practice or technique which is:
 - (a) prohibited by the Sub-Contract;
 - (b) not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;

- (c) not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- (d) generally known within the construction industry at the time of specification, selection, approval or use (as the case may be) to:
 - (i) be deleterious;
 - (ii) be harmful to the health or safety of any person;
 - (iii) threaten the structural stability, physical integrity or performance of the Project or any part or component of the Project; or
 - (iv) reduce the normal life-expectancy of the Project or any part or component of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Sub-Contractor (whether in existence or to be created) in connection with the Sub-Contract Works and/or the Project.
- 3.2 The Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them for:
 - 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and
 - 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Sub-Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Sub-Contract Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall give to the

Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Sub-Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Sub-Contractor's reasonable copying costs. The Sub-Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Contractor gives to the Beneficiary.

- 3.6 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance

- 4.1 Subject to clause 4.2, and provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain professional indemnity insurance from the date of the Sub-Contractor's engagement under the Sub-Contract until the date that is 12 years after the date of practical completion of the Project:

4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom;

4.1.2 with a limit of indemnity of not less than £10,000,000 (ten million pounds) for each claim or series of claims arising from the same originating or underlying cause; and

4.1.3 on terms that:

(i) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and

(ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights against Insurers) Act 2010.

- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Sub-Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms.

- 4.3 Without the Beneficiary's prior written consent, the Sub-Contractor shall not:

4.3.1 settle or compromise any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor; or

4.3.2 by any act or omission lose or affect the Sub-Contractor's right to make, or to proceed with, any claim against the insurers that relates to a claim by the Beneficiary against the Sub-Contractor.

- 4.4 As and when it is reasonably required to do so by the Beneficiary, the Sub-Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.

- 4.5 Subject to clause 4.2, the Sub-Contractor shall inform the Beneficiary immediately if this insurance ceases to be available to the Sub-Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:

4.5.1 the Beneficiary and the Sub-Contractor shall discuss and agree on the best means of protecting themselves; and

4.5.2 the Beneficiary may require the Sub-Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall

reimburse to the Sub-Contractor the difference between the premium paid and the premium that would have been reasonable.

- 4.6 If required by the terms of its insurance policy, the Sub-Contractor undertakes and warrants that:

4.6.1 prior to the execution of this Warranty, it has:

- (i) disclosed the contents of this Warranty to its insurers and brokers; and
- (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and

4.6.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.

5 Termination and suspension by Sub-Contractor

- 5.1 For the purposes of this Warranty, “**Another Person**” means the Beneficiary’s nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.

- 5.2 The Sub-Contractor shall not exercise any right which the Sub-Contractor has to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works, unless the Sub-Contractor has given at least 31 days’ prior written notice to the Contractor and the Beneficiary specifying:

5.2.1 the breach of the Sub-Contract which the Sub-Contractor considers entitles it to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works; and

5.2.2 full details of any amounts owed by and due from the Contractor to the Sub-Contractor under the Sub-Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.

- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Sub-Contractor that it or Another Person wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as the Sub-Contract to complete the Sub-Contractor’s obligations under the Sub-Contract in accordance with it:

5.3.1 the Sub-Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Contract and, if this happens, the Sub-Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;

5.3.2 if the Sub-Contract is terminated in accordance with clause 5.3.1, the Sub-Contractor shall not have a claim against the Contractor arising solely out of the termination; and

5.3.3 subject to clause 5.2, if the Sub-Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Sub-Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor all sums owed and due to it for the Sub-Contract Works it has performed, designed and constructed pursuant to those instructions.

- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Contractor for the Sub-Contract Works it performs, designs and constructs from the date of the new agreement, but it shall have no other liability in respect of

the Sub-Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor:

- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owned by and due from the Contractor to the Sub-Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Sub-Contract referred to in clause 5.2.1 has been remedied and the Sub-Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Sub-Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Contractor has given rights relating to the Sub-Contractor similar to those in clause 5 to more than one person, and more than one person notifies the Sub-Contractor that it wishes to enter into a new agreement with the Sub-Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 ~~a notice served by a funder;~~
 - 5.6.2 a notice served by the Beneficiary;
 - 5.6.3 a notice served by the Employer;
 - 5.6.4 a notice served by any other beneficiary; and
- all notices that the Sub-Contractor receives shall take effect in accordance with this order of priority.

6 Termination of the Sub-Contractor

- 6.1 If the Beneficiary gives written notice to the Contractor and the Sub-Contractor that the Sub-Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:
- 6.1.1 comply with the obligations of the Contractor under the Sub-Contract and, if this happens, the Sub-Contractor shall comply with its obligations and perform, design and construct the Sub-Contract Works under the Sub-Contract, and the Beneficiary shall comply with the obligations of the Contractor under the Sub-Contract, as though the Beneficiary was and always had been the employer under the Sub-Contract in the place of the Contractor; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Sub-Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Sub-Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Sub-Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.
- 6.3 The Sub-Contractor may treat the Beneficiary's notice under clause 6.1 that the Sub-Contract has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Contractor shall not have a claim against the Sub-Contractor arising solely out of the Sub-Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Sub-Contractor by the Beneficiary, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Contractor.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Contractor to:

9.1.1 a mortgagee of the Beneficiary; or

9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of section 1159 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Contractor on two occasions only. The consent of the Sub-Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Employer, any of the Employer's or the Contractor's consultants, the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under the Sub-Contract or this Warranty.

- 11.2 Any delay, forbearance, indulgence or relaxation ("**Indulgence**") of a party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that party or any other person.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty shall be governed by, and construed and interpreted in accordance with, English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution as a deed

- 16.1 This Warranty is executed as a deed and it was delivered when it was dated.

Signature page to the Deed of Warranty between THE INSOLVENCY SERVICE, [sub-contractor] and [main contractor].

**Executed as a deed for and on behalf)
of The Insolvency Service** by a single
signature of a relevant person with the
necessary authority:

signature name

address

Title:

Executed as a deed by
acting by a director,)
in the presence of)

Witness signature

Witness name

Witness address

Witness occupation

Executed as a deed by
acting by a director,)
in the presence of)

Witness signature

Witness name

Witness address

Witness occupation

CROWN COMMERCIAL SERVICE STANDARD BOILERPLATE AMENDMENTS

JCT (DESIGN AND BUILD CONTRACT 2016 EDITION)

JANUARY 31, 2019

CABINET OFFICE

CROWN COMMERCIAL SERVICE

The standardised 'boilerplate' amendments project addresses a need to simplify the inclusion of government-specific clauses to the NEC, JCT and PPC2000 contracts. Centrally mandated government policies and some legislative requirements were being applied by a range of government departments, but as separate operations and with differing approaches. Scope was identified for a simple and standard set of terms which provide a unified front to implement policy and reduce the need for excessive additional drafting, creating a more efficient standardised approach. These terms would be applied across government construction contracts.

In order to bring about this situation, a cross-governmental review of construction contract amendments was undertaken by the Crown Commercial Service (CCS) and the Infrastructure and Projects Authority (IPA). Eighteen clauses were identified as those which would benefit most from the standardisation described above. These clauses were reviewed and redrafted to enhance their ease of comprehension, with the core wording translated to NEC, JCT and PPC2000 terminology.

These eighteen clauses are replicated four times within the NEC, JCT and PPC2000 boilerplate documents. This is one of the **JCT versions**, and applies to the following contracts:

JCT (design and build contract 2016 edition) (standard building contract with/without quantities edition) (intermediate building contract with contractor's design 2016 design, intermediate building contract 2016 edition).

The clauses should be **unamended** save for those instances with an additional guidance note. Not all will be relevant to each project, and additional clauses may be required where not covered by this document. Those 'boilerplate' clauses not required can be removed, and additional, project specific clauses may be added.

Process

The clauses are amended to the contract by way of an additional Schedule of Amendments. This must be referred to in the base contract. The following segment indicates the modification which must be made to the base contract, as well as the steps needed to incorporate the Boilerplate Amendments.

JCT DESIGN AND BUILD CONTRACT 2016 EDITION

Insert a new article into the standard contract document:

Article 10: Schedule of Amendments

The Contract is modified by the Schedule of Amendments (which has been initialled on behalf of both parties) and is to be read and construed accordingly.

- Append these Standard 'Boilerplate' Amendments document to the standard contract document as this Schedule of Amendments.
- Remove or strikethrough those clauses which do not apply to the current project.
- Add additional, project specific amendments in the normal way.

SUMMARY OF CLAUSES

The following descriptions are of all the clauses addressed by the Standard 'Boilerplate' Amendments project. It should be noted that some of the clauses differ from document to document.

1. DEFINITIONS

A list of additional definitions must be included as an amendment to help explain the meaning of subsequent Boilerplate clauses.

2. ADMITTANCE TO SITE

This clause specifies additional provisions around how individual people may be admitted to the site, and the considerations which must be taken. This includes (but is not limited to) the provision of a list of employee names, obligations as to security passes, and the prevention of unauthorised access or taking of photographs.

3. PREVENTION OF FRAUD AND BRIBERY

The Boilerplate clause expands the coverage of the standard contract Fraud and Bribery provisions. It introduces a 'Prohibited Act', also defined in the Boilerplate document, which must not be committed, and which must be subject to suitable caution and management. The Contractor must hold subcontractors to the same standards, keep appropriate records of compliance, and immediately notify the Client of potential breaches and work with them to rectify the situation.

4. OFFICIAL SECRETS ACT

Contractors are often required to abide by this Act due to the sensitive nature of some public sector projects. The Boilerplate clause saves Clients from drafting this themselves if required, creating an obligation to comply with this Act and, where appropriate, section 11 of the Atomic Energy Act 1946.

5. FREEDOM OF INFORMATION

As government departments are usually required to comply with Freedom of Information Act requests, extra clauses detailing how this obligation is to be respected must be included. The Boilerplate clause obliges the Contractor to work with the Client in satisfying these requests in certain ways. Among other considerations, this involves the retention and transferral of relevant information, communicating requests for

information to the Client in a timely manner, and generally helping the Client in responding to the request.

6. CONFIDENTIALITY AND INFORMATION SHARING

Some public sector information is sensitive and cannot be shared, while at other times organisation must share details about its processes in the interest of transparency. As such, this clause provides obligations for both parties to safeguard confidential information,

exceptions where that obligation does not apply, and additional restrictions on the Contractor and further rights for the Client.

7. SECURITY REQUIREMENTS

NOT USED.

8. TAX COMPLIANCE

With the inclusion of this clause, the Contractor is under an obligation to notify the Client of relevant Tax Non-Compliance. The Contractor must provide more information if the Occasion of Tax Non-Compliance occurs prior to defects date (NEC) / Rectification Period (JCT and PPC).

9. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Excluding third party rights is a common clause in all manner of contracts. The Boilerplate clause removes that exclusion in the case of collateral warranties – a common and often necessary provision in public sector construction. It should be noted that this does not apply to the NEC4 Boilerplate document as the contract directly deals with this under Option X8.

10. FAIR PAYMENT

This is a clause also aimed at improving how subcontractors are paid, similarly endorsed in the Government Construction Strategy 2016. Obligations are placed on the Contractor to assess and promptly pay subcontractors, and to ensure that these obligations are also included in their contracts with subcontractors. It should be noted that Fair Payment is a separate clause with the NEC Boilerplate document, whereas within JCT and PPC it is combined with the SME provisions to form 'Conditions of Sub-Contracting' (JCT) or 'Supply Chain' (PPC).

11. BUILDING INFORMATION MODELLING (BIM)

Promoting and spreading the use of BIM techniques is a major government construction objective, as identified in the three main policy documents – the Government Construction

Strategy 2016, Construction 2025, and the Construction Sector Deal. It has been mandated for all central government departments and is aimed at enhancing efficiency and reducing costs across the industry. This clause provides a mechanism for BIM Protocols to be applied as indicated in the Employer's Information Requirements, as well as an option to incorporate a specific type of Protocol, namely the CIC (Construction Industry Council) BIM Protocol. This clause is not replicated in NEC4, which has overlapping mechanisms with the Boilerplate BIM Provision.

12. THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 (‘CONSTRUCTION ACT 2011’)

NOT USED.

13. INTELLECTUAL PROPERTY RIGHTS

NOT USED.

14. MOD DEFCONS

NOT USED.

15. SMALL AND MEDIUM ENTERPRISES (SMEs)

Government policy dictates that SMEs should be encouraged and brought into public sector projects, as reinforced in the Government Construction Strategy 2016, Construction Sector Deal and Construction 2025. There is a general target for 33% of central government procurement spend going to SMEs by 2022. This Boilerplate clause requires Contractors to employ a certain number of SMEs as subcontractors, and to respect a number of other obligations regarding reporting and how they manage these SMEs.

16. APPRENTICESHIPS

NOT USED.

17. GDPR

With the recent advent of the General Data Protection Regulation, every construction project is required to include provisions within their contracts to ensure compliance. The Boilerplate document includes a Schedule so these regulations can be complied with, with areas for the parties to fill in to reflect project specific data protection requirements.

18. CYBER ESSENTIALS

NOT USED.

19. PROJECT BANK ACCOUNTS

NOT USED.

SCHEDULE OF AMENDMENTS TO JCT DESIGN AND BUILD CONTRACT 2016 EDITION

INTERPRETATION TABLE

Due to the different clause numbering in the different versions of the JCT, the terms of the interpretation table below shall apply with clause references and clause cross referencing to be read according to the table.

SCHEDULE OF AMENDMENTS REFERENCE BELOW	DESIGN AND BUILD 2016 EDITION
1.13 to 1.20	1.12 to 1.19
2.1A to 2.1C	2.1.5 to 2.1.7
2.41	2.38
3.9	3.4
3.9A and 3.9B	3.4A and 3.4B

In addition, for the JCT Design and Build Contract 2016 Edition, all references to “Architect or Contract Administrator” below shall be read as “Employer’s Agent” and all references to “Variation” shall be read as “Change”.

Unless specified, all clauses below apply to all forms of contract.

Clause 1.1. Definitions

Insert the following new definitions:

Commercially Sensitive Information: the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the Contractor, the charges for the Works, its IPR or its business or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss;

Confidential Information: the Employer's Confidential Information and/or the Contractor's Confidential Information;

Contracting Body: any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Employer.

Contractor's Confidential Information: any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Contractor, 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;

Crown Body: any department, office or agency of the Crown

Data Controller: has the meaning given to it in the Data Protection Act 2018

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.

Employer Confidential Information: 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 Employer, 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

Employer Data: 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:

- supplied to the Contractor by or on behalf of the Employer; or
- which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
- any Personal Data for which the Employer is the Data Controller to the extent that such Personal Data is held or processed by the Contractor.

Environmental Information Regulations: the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations

FOIA: 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;

General Anti-Abuse Rule: 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.

Halifax Abuse Principle: the principle explained in the CJEU Case C-255/02 Halifax and others Intellectual Property Rights or "IPRs":

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, 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;
- (c) all other rights having equivalent or similar effect in any country or jurisdiction; and
- (d) all or any goodwill relating or attached thereto.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;

Occasion of Tax Non-Compliance:

- 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 April 2013 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 April 2013, 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.

Personal Data: the meaning given to it in the Data Protection Act 2018 Prohibited Act:

to directly or indirectly offer, promise or give any person working for or engaged by the Employer or other Contracting Body or any other public body a financial or other advantage to:

- induce that person to perform improperly a relevant function or activity; or
- reward that person for improper performance of a relevant function or activity;
- 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;
- committing any offence:
- 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 Employer; or

- 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.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations

Relevant Requirements: 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

Relevant Tax Authority: HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

Security Policy: the Employer's security policy shall apply and is available on demand as may be updated from time to time

Clause 1.6 Contracts (Rights of Third Parties) Act 1999

1.6 In clause 1.6 After "clauses 7A and/or 7B" insert "and the express rights of any person under any collateral warranty granted under the provisions of this Contract,"

Clause 1.14 Freedom of information

1.14.1 The Contractor acknowledges that unless the Architect/Contract Administrator has notified the Contractor that the Employer is exempt from the provisions of the FOIA, the Employer is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The Contractor shall co-operate with and assist the Employer so as to enable the Employer to comply with its information disclosure obligations.

1.14.2 The Contractor shall:

1.14.2.1 transfer to the Architect/Contract Administrator 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;

1.14.2.2 provide the Architect/Contract Administrator with a copy of all Information in its possession, or power in the form that the Architect/Contract Administrator shall require within five Working Days (or such other period as the Architect/Contract Administrator may specify) of the Architect/Contract Administrator's request;

1.14.2.3 provide all necessary assistance as reasonably requested by the Architect/Contract Administrator to enable the Employer 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

1.14.2.4 procures that its sub-contractors do likewise.

1.14.3 The Employer is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

1.14.4 The Contractor shall not respond directly to a Request for Information unless authorised to do so by the Architect/Contract Administrator.

1.14.5 The Contractor acknowledges that the Employer 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 the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Contractor or despite the Contractor having expressed negative views when consulted.

1.14.6 The Contractor shall ensure that all Information is retained for disclosure for twelve years where this Contract is executed as a deed or six years where this Contract is executed under hand and shall permit the Architect/Contract Administrator to inspect such records as and when reasonably requested from time to time."

Clause 1.15.Tax Compliance

1.15.1 The Contractor represents and warrants that as at the date of this Contract, it has notified the Employer 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.

1.15.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

1.15.2.1 notify the Employer in writing of such fact within 5 days of its occurrence; and

1.15.2.2 promptly provide to the Employer:

1.15.2.2.1 details of the steps which the Contractor 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

1.15.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Employer may reasonably require.

Clause 1.16 GDPR

- 1.16.1 The Employer and the Contractor shall comply with the provisions of Schedule 1 Processing, Personal Data and Data Subjects.

Clause 1.17 Confidentiality and Information Sharing

- 1.17.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 1.17.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 1.17.1.2 not disclose the other party's Confidential Information to any other person without prior written consent.
 - 1.17.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information
 - 1.17.1.4 notify the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010
- 1.17.2. The clause above shall not apply to the extent that:
- 1.17.2.1 such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 1.14 (Freedom of Information);
 - 1.17.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 1.17.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 1.17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 1.17.2.5 it is independently developed without access to the other party's Confidential Information.
- 1.17.3 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who are directly involved in the carrying out of the Works and who need to know

the information, and shall ensure that such Contractor's Persons are aware of and shall comply with these obligations as to confidentiality.

- 1.17.4 The Contractor shall not, and shall procure that the Contractor's Persons do not, use any of the Employer's Confidential Information received otherwise than for the purposes of this Contract.
- 1.17.5 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who need to know the information, and shall ensure that such Contractor's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor's Persons causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Contract, the Contractor 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 Contractor shall provide such evidence to the Employer as the Employer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor's Persons in connection with obligations as to confidentiality.
- 1.17.6 At the written request of the Employer, the Contractor shall procure that those members of the Contractor's Persons identified in the Employer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 1.17.7 Nothing in this Contract shall prevent the Employer from disclosing the Contractor's Confidential Information:
- 1.17.7.1 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 a professional adviser, contractor, consultant, supplier or other person engaged by the Employer or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract or any

person conducting an Office of Government Commerce Gateway Review;

- 1.17.7.3 for the purpose of the examination and certification of the Employer's accounts;
- 1.17.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used its resources;
- 1.17.7.5 for the purpose of the exercise of its rights under this Contract; or
- 1.17.7.6 to a proposed successor body of the Employer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract, and for the purposes of the foregoing, disclosure of the Contractor's 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 Employer under this clause 1.17.
- 1.17.8 The Employer shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to the above clause is made aware of the Employer's obligations of confidentiality.
- 1.17.9 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
- 1.17.10 The Employer may disclose the Confidential Information of the Contractor:
 - 1.17.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 1.17.10.2 to the extent that the Employer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

Clause 1.18 Prevention of Fraud and Bribery

- 1.18.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the date of this Contract:
 - 1.18.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 1.18.1.2 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 Prohibited Act.

1.18.2 During the carrying out of the Works the Contractor shall not:

1.18.2.1 commit a Prohibited Act; and/or

1.18.2.2 do or suffer anything to be done which would cause the Employer or any of the Employer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements

1.18.3 During the carrying out of the Works the Contractor shall:

1.18.3.1 establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

1.18.3.2 keep appropriate records of its compliance with this Contract and make such records available to the Employer on request;

1.18.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent it and any Contractor's employees or any person acting on the Contractor's behalf from committing a Prohibited Act.

1.18.4 The Contractor shall notify the Employer immediately in writing if it becomes aware of any breach of clause 1.18.1, or has reason to believe that it has or any of the its employees or sub-contractors have:

1.18.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

1.18.4.2 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 Prohibited Act; and/or

1.18.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects

that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

- 1.18.5 If the Contractor shall make a notification to the Employer pursuant to clause 1.18.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 1.18.6 If the Contractor breaches Clause 1.18.3, the Employer may by notice require the Contractor to remove from carrying out the Works any Contractor's Person whose acts or omissions have caused the Contractor's breach.

2.1 General Obligations

Insert new clauses 2.1A to 2.1C as follows:

"2.1A Admittance to the site

- 2.1.A.1 The Contractor shall submit details of people who are to be employed by it and its sub-contractors in connection with the Works to the Architect/Contract Administrator. The details shall include a list of names and addresses, the capabilities in which they are employed, and other information required by the Architect/Contract Administrator.
- 2.1.A.2 The Architect/Contract Administrator may instruct the Contractor to take measures to prevent unauthorised persons being admitted to site. The instruction shall be valued as a Variation if the measures are additional to those required by the Employer's Requirements.
- 2.1.A.3 Contractor's Persons are to carry an Employer's pass and comply with all conduct requirements from the Employer whilst they are on the parts of the site identified in the Employer's Requirements.
- 2.1.A.4 The Contractor shall submit to the Architect/Contract Administrator for acceptance a list of the names of the people for whom passes are required. On acceptance, the Architect/Contract Administrator shall issue the passes to the Contractor. Each pass shall be returned to the Architect/Contract Administrator when the employee no longer requires access to that part of the site or after the Architect/Contract Administrator has given notice that the employee is not to be admitted to the site.
- 2.1.A.5 The Contractor shall not take photographs of the site or of work carried out in connection with the Works unless it has obtained the acceptance of the Architect/Contract Administrator.
- 2.1.A.6 The Contractor shall take the measures needed to prevent any Contractor's Persons taking,



publishing or otherwise circulating such photographs.

2.1.B Legislation and Official secrets

2.1.B.1 The Contractor shall comply with the Law in the carrying out of the Works.

2.1.B.2 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this Contract.

2.1.B.3 The Contractor shall notify its employees and its sub-contractors of their duties under these Acts.

2.1.C Building Information Modelling (BIM)

2.1.C.1 A BIM Protocol applies.

2.1.C.2 When a BIM Protocol applies it is detailed in the Employer's Information Requirements. If it is not detailed therein, it shall be agreed during the Project.

2.1.C.3 When the CIC Building Information Modelling Protocol applies clauses 2.1.C.4 to 2.1.C.6.2 shall apply

2.1.C.4 In this clause, the Protocol is the CIC Building Information Modelling Protocol, second edition 2018. Terms used in this clause are those defined in the Protocol.

2.1.C.5 Clauses 1, 2, 5, 6, 7, 8, 10 of the Protocol shall form part of this Contract. Clauses 3 and 4 and Appendices 1, 2 and 3 of the Protocol are deemed to be part of the Client's Requirements.

2.1.C.6: The following shall be deemed to be a Change:

2.1.C.6.1 If the Constructor encounters an event which is outside his reasonable control and which prevents him from carrying out the work specified in clauses 4.1.2 to 4.1.4 of the Protocol.

2.1.C.6.2 If the Client revokes a licence granted under clause 6.5 of the Protocol.

3.9 Conditions of sub-contracting

3.9.2.6 to 3.9.2.9 Insert new subclauses 3.9.2.6 to 3.9.2.9 as follows:

3.9.2.7 a period for payment of the amount due to the sub-contractor not greater than 5 days after the final date for payment in this Contract. The amount due shall, but shall not be limited to, payment for work which the sub-contractor has completed from the previous application date up to the current application date in this Contract;

3.9.2.8 a provision requiring the sub-contractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment

is to be not greater than 9 days after the final date for payment in this Contract; and

3.9.2.9 a provision requiring the sub-contractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor.

3.9.2.10 terms and conditions that are no less favourable than those of this Contract. The Employer shall be entitled to reject sub-contract conditions proposed by the Contractor that are unduly disadvantageous to the sub-contractor

3.9A **Insert** new clause 3.9A

3.9A.1 The Contractor shall take all reasonable steps to engage SMEs as sub-contractors and to seek to ensure that no less than the percentage of the sub-contractors stated in the Employer's Requirements (the "SME Percentage") are SMEs or that a similar proportion of the Contract Sum is undertaken by SMEs.

3.9A.2 The Contractor shall report to the Employer on a monthly basis the numbers of SMEs engaged as sub-contractors and the value of the Contract Sum that has been undertaken by SMEs.

3.9A.3 Where available, the Contractor shall tender its sub-contracts using the same online electronic portal as was provided by the Employer for the purposes of tendering this Contract.

3.9B **Insert** new clause 3.9B as follows:

SCHEDULE 1 PROCESSING, PERSONAL DATA AND DATA SUBJECTS GDPR

The following definitions shall apply to this Schedule:

Agreement: this contract;

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing.

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

Sub-processor: any third party appointed to process Personal Data on behalf of that Processor

related to this Agreement.

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller, and the Contractor is the Processor unless otherwise specified in Schedule. The only processing that the Processor is authorised to do is listed in Schedule 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (e) process that Personal Data only in accordance with Schedule 1, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (f) ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and

- (iv) cost of implementing any measures;
- (b) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

- 1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

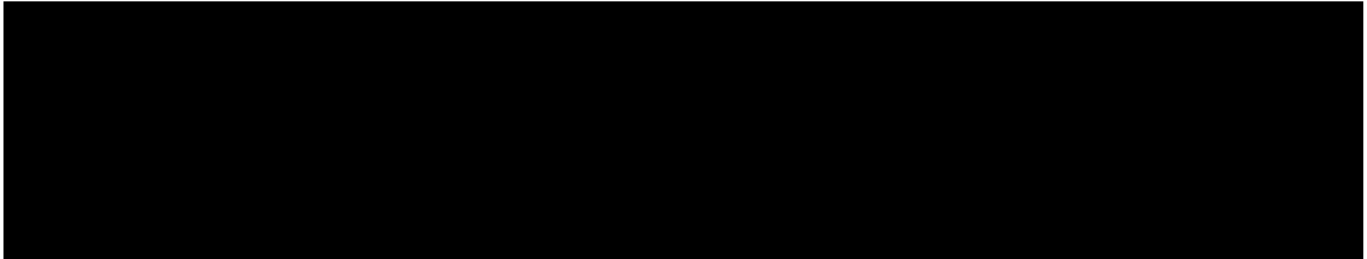

1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

1.13 The Controller may, at any time on not less than 30 Working Days' 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 (which shall apply when incorporated by attachment to this Agreement).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 1 Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. 
2. 
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.
5. The Processor is not authorised to process any personal information on the Controller's behalf. Each party will be a data controller for their respective purposes and data processing activities.