

# **A12**

## **CONSTRUCTION DELIVERY AGREEMENT**

### **NEC ENGINEERING AND CONSTRUCTION CONTRACT - OPTION A**

## Construction Delivery Agreement

**THIS AGREEMENT** is made on 13 March 2023

BETWEEN:

(1) **Secretary of State for Health and Social Care** of 39 Victoria Street, London, SW1H 0EU (the ‘Employer’)

AND

(2) **Willmott Dixon Construction Limited** (registration number 00768173) whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire, SG6 4ET (the ‘Contractor’)

for the Services of the minor demolition and alterations and new finishes to existing WC facilities over all floors at Wellington House, 133 – 155 Waterloo Road, Waterloo, SE1 8UG.

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated 4<sup>th</sup> April 2022 made between **PLACES FOR PEOPLE GROUP LIMITED** and the Contractor (the ‘Framework Agreement’) and incorporates those provisions of the Model Delivery Agreement set out in Appendix A12 of the Framework Agreement.

**IT IS AGREED** as follows:-

**1. The Contractor’s obligations**

The *Contractor* provides the services and complies with his obligations in accordance with the conditions of contract set out in the Contract Data herein.

**2. The Employer’s obligations**

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

**3. Document Incorporation**

The documents forming part of this Delivery Agreement are contained within the file entitled WH Building Contract.

## Contract Data: Part One – Data provided by the *Employer*

### Part one - Data to be provided by the *Employer*

#### 1. General

The *conditions of contract* are the core clauses and the clauses for main option **A**, dispute resolution Option W2, and secondary Options X2, X5, X7, X15, X18, X21, Y(UK)2 AND Y(UK)3, of the NEC3 Engineering and Construction Contract April 2013.

- The works are **the design and refurbishment of 9 floors of WCs at Wellington House, 133 – 155 Waterloo Road, Waterloo, SE1 8UG**
- The Employer is: **Secretary of State for Health and Social Care**

Name	██████████
Address	Quarry House, Quarry Hill, Leeds LS2 7UB
Telephone	██████████
E-mail address	██
- The *Project Manager* is **Faithful+Gould Limited**

Name	██████████
Address	3100 Century Way, Thorpe Park, Leeds LS2 7UB
Telephone	██████████
E-mail address	██
- The *Supervisor* is **Department of Health and Social Care**

Name	██████████
Address	Quarry House, Quarry Hill, Leeds LS2 7UB
Telephone	██████████
E-mail address	██
- The *Adjudicator* is

Name	As nominated by the Adjudicator nominating body. The Adjudicator nominating body is the Royal Institution of Chartered Surveyors.
------	---

- The Works Information is in the document entitled **Wellington House WC Refurbishment Works, Works Information** (refer to Contract Documentation)
- The Site Information is in the document entitled **Wellington House WC Refurbishment Works Site Information** (refer to Contract Documentation)
- The *boundaries of the site* are identified in **Appendix SI 1.1 of the Wellington House WC Refurbishment Works Site Information** (refer to Contract Documentation) with the areas identified, within the red lines of the drawings contained in this appendix, forming the contractors working boundaries. The contractors working boundaries will also include the site office and meeting room identified on the Welfare Logistics Plan LG Floor identified in **Appendix C of the Wellington House WC Refurbishment Works, Works Information** (refer to Contract Documentation)
- The *language of this contract* is **English**;
- The *law of the contract* is the law of **England and Wales**;
- The *period for reply* is **2 weeks**;
- The *Adjudicator nominating body* is **the Royal Institution of Chartered Surveyors**.
- The *tribunal* is the **Courts of England and Wales**;
- The following matters will be included in the risk register – refer to the **Wellington House – Risk Register** included within **Appendix F of the Wellington House WC Refurbishment Works, Works Information** (refer to Contract Documentation)

2. Number not used

3. Time

- The *starting date* is 10 March 2023
- The *access dates* are

Part of the Site	Date
Site Access	10 March 2023
Section 1 (Phase 1) Possession	27 March 2023
Section 2 (Phase 2) Possession	19 May 2023
Section 3 (Phase 3) Possession	6 July 2023

The possession of Section 2 (Phase 2) and Section 3 (Phase 3) on the above dates requires the preceding Section (Phase) to be completed by the date required in this Construction Delivery Agreement.

The *Contractor* submits revised programmes at intervals no longer than **5 weeks**.

#### 4. Testing and Defects

- The *defects date* is **52** weeks after Completion of the whole of the *works*.
- The *defect correction period* is **4 weeks for 'Routine Defects'** except that
  - The *defect correction period* for **'Serious Defects'** is **7 days**
  - The *defect correction period* for **'Emergency Defects'** is **24 hours**

as defined by the Project Manager in accordance with Clause 42.3

**Emergency Defects are defined as defects seriously impacting on the day to day operation of the building and/ or the Employer's business.**

**Serious Defects are defined as defects causing inconvenience to the running of the building or reducing the efficiency or operation of the building**

**Routine Defects are defined as aesthetic defects not impacting on the operation/ running of the building**

#### 5. Payment

- The *currency of this contract* is the pound sterling (£).
- The *assessment interval* is **monthly; the assessment date will be the 27<sup>th</sup> of the month or the closest working Friday should the 27<sup>th</sup> fall on a weekend**
- The *interest rate* is **3%** per annum above the base rate in force from time to time of the Bank of England

#### 6. Compensation events

- The place where weather is to be recorded is St James Park, London, SW1A 2BJ
- The *weather measurements* to be recorded for each calendar month are:-
  - the cumulative rainfall (mm);
  - the number of days with rainfall more than 5 mm;
  - the number of days with minimum air temperature less than 0 degrees Celsius;
  - the number of days with snow lying at 0900 hours GMT;
  - and these measurements: Not Applicable
- The *weather measurements* are supplied by the Meteorological Office.

- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **St James Park, London, SW1A 2BJ** 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: does not apply

**7. Number not used**

**8. Risks and Insurance**

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury or to death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is £10 million on an each and every basis.
- The amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is £10 million on an each and every basis.

**Additional clause**

- The minimum level of indemnity for insurance for claims made against him arising out of the *Contractor's* failure to use the skill and care normally used by professionals providing services similar to the Services in respect of each claim is £5 million in the aggregate plus two automatic reinstatements of the limit. Other than in respect of seepage, pollution and contamination which shall be aggregated during the period of insurance and shall apply without reinstatement, but limited to £5,000,000 in the aggregate in respect of claims arising directly, indirectly or in any way connected with fire safety and/or the use of any façade material (including but not limited to cladding, insulation, wall panelling, cavity barriers and fire stopping) that does not comply with the relevant regulatory regime.
- Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the execution of the Works shall be an Employer's risk.

**Optional statements**

**If the *Employer* has decided the completion date for the whole of the *works***

- The Completion Date for the whole of the *works* is **23 August 2023**

**~~If the *Employer* is not willing to take over the works before the Completion Date~~**

- ~~The *Employer* is not willing to take over the works before the Completion Date.~~

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

- The *Contractor* is to submit a first programme for acceptance within **2 weeks** of the Contract Date.

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

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

<i>condition</i> to be met	<i>key date</i>
1 Section 1 (Phase 1) Completion	19 May 2023
2 Section 2 (Phase 2) Completion	6 July 2023
3 Section 3 (Phase 3) Completion	23 August 2023

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

- The period for payment is **14 days**.

**If there are additional *Employer's* risks**

- These are additional *Employer's* risks
  - The Employer restricting times when noisy activities (where the level of noise is compliant with the statutory regulations) can take place.
  - Dilapidations/defects uncovered in the existing building that need repair (except those identified in the validation reports undertaken by Willmott Dixon Interiors (WDI)).
  - Latent defects in existing M&E installations except those identified in the validation reports undertaken by WDI.
  - Defects in the existing installation caused by latent defects or damage caused by latent defects. Whilst WDI have confirmed that, from initial validations and visual inspections no defects have been identified WDI cannot accept responsibility for any latent defects subsequently identified. Should the rectification of any latent defects identified be required, the scope and cost of any rectification works would need to be agreed.
  - WDI have confirmed the visual installation of existing installations look suitable but WDI cannot guarantee the existing backgrounds or substrate they fix to will remain stable following their work. WDI can only establish if existing installation are suitable following the commencement of their works.
  - Whilst WDI's surveys have not identified the presence of asbestos, these surveys are not fully intrusive. Therefore, the identification of any asbestos subsequently exposed when demolition or strip out works are undertaken would be a recoverable extra, along with any required removal cost.

- It is assumed the existing mechanical and electrical installations to be retained are compliant with current regulations.
- WDI will have uninterrupted use of one lift between the hours of 6am to 8am Monday to Friday.
- Where WDI are reusing existing cubicles the 12 months defects period will cover installation but WDI cannot guarantee the product itself as this is not new.
- It is assumed the existing mechanical and electrical installations to be retained are compliant with current regulations.
- Failure by Emcor (Employers Facilities Manager) to undertake services isolations or subsequent reinstatements at the required date provided they have been given two weeks' notice by WDI. Cost risks to Employer also for the omission of the isolation works and/or reinstatements being undertaken by WDI's Sub-Contractor and the addition for such work being undertaken by Emcor or Emcor's required Sub-Contractor.
- Alarm installations - Should the Employer require Emcor or Emcor's Sub-Contractor to undertake any alarm installation works for the toilet refurbishments, they would need to comply with WDI's programme requirements. The cost implications associated with WDI omitting their Sub-Contractors works and adding back the cost of the Employers required Sub-Contractor would also be part of the Employers risk.
- Where connections to existing services are required, beyond the work boundaries e.g connections to existing distribution boards serving the refurbished toilets, the Contractor will require access to undertake such works during normal working hours provided the Contractor has provided two weeks' notice.
- Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the execution of the Works shall be an Employer's risk.

**If the *Employer* is to provide Plant and Materials**

- The insurance against loss or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of - Not applicable

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

- The *Employer* provides these insurances from the Insurance Table
  1. Insurance against - Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to 'self-insure' such existing buildings and property and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such 'self-insurance'. In accordance with an *Employer's* decision to 'self-insure' they do not accept any additional insurance premium/cost from the *Contractor*.

Cover/indemnity is                      Not Applicable. No insurance in place for Crown property

The deductibles are                      Not applicable

2. Insurance against                      Loss or damage to equipment

Cover/indemnity is                      To be advised

The deductibles are                      Nil



3. Insurance against .....

..... Cover/indemnity is .....

..... The deductibles are .....

**If additional insurances are to be provided**

• The *Employer* provides these additional insurances

• Insurance against .....

..... Cover/indemnity is .....

..... The deductibles are .....

• Insurance against .....

..... Cover/indemnity is .....

..... The deductibles are .....

• Insurance against .....

..... Cover/indemnity is .....

..... The deductibles are .....

• The *Contractor* provides these additional insurances

1. Insurance against .....

..... Cover/indemnity is .....

2. Insurance against .....

..... Cover/indemnity is .....

3. Insurance against .....

..... Cover/indemnity is .....

**If Option C is used**

• The *Contractor's share percentages* and the *share ranges* are:

<i>Share range</i> .....	<i>Contractor's share percentage</i>
Less than 95% .....	10%
95% to 100% .....	40%

100% to 102.5% ..... 40%

Above 102.5% ..... 100%

- ~~• The Contractor prepares forecasts of Defined Cost for the works at intervals no longer than 5 weeks.~~

**If Option X5 is used**

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

section	description	completion date
1	Section 1 (Phase 1) Works	19 May 2023
2	Section 2 (Phase 2) Works	6 July 2023
3	Section 3 (Phase 3) Works	23 August 2023

**If Options X5 and X7 are used together**

- Delay damages for each *section* of the *works* are

section	description	amount per day
1	Section 1 (Phase 1) Work	£0 per day
2	Section 2 (Phase 2) Works	£0 per day
3	Section 3 (Phase 3) Works	£0 per day

Remainder of the works £0 per day.

**~~If Option X7 is used (but not if Option X5 is also used)~~**

- ~~• Delay damages for Completion of the whole of the *works* are £0 per day.~~

**~~If Option X12 is used~~**

- ~~• The *Client* is~~

~~Name .....~~

~~Address .....~~

- ~~• The *Client's objective* is .....~~

- The Partnering Information is in .....

**If Option X13 is used**

- The amount of the performance bond is a sum equal to ~~10%~~ of the Defined Cost.

\_\_\_\_\_

**If Option X14 is used**

- The amount of the advanced payment is .....
- The Contractor repays the instalments in assessments starting not less than ..... weeks after the Contract Date.
- The instalments are ..... (either an amount or a percentage of the payment otherwise due)
- An advanced payment bond is/is not required [deleted as applicable]

**If Option X17 is used**

- The amount for low performance damages are

<i>amount</i>	<i>performance level</i>
---	for ---
---	for ---
---	for ---
---	for ---

**If Option X18 is used**

- The Contractor's liability to the Employer for indirect or consequential loss is limited to:
  - £1,000,000

provided that notwithstanding the above or any other provision of this contract, in the event of any claim arising as result of any failure to comply with building regulations and/or any other statutory requirements relating to the works and method, system, design products and materials detailed in the Fire Safety Strategy then (provided the Contractor has delivered the works in compliance with the Fire Safety Strategy) the Contractor shall have no liability to the Employer for any indirect or consequential loss arising as a result of any breach and any other liability of the Contractor shall be limited to £1,000,000.00 million pounds in aggregate.

- For any one event, the Contractor's liability to the Employer for loss or damage to the Employer's property is limited to the higher of:
  - £1,171,278.71 or

- 120% of the tendered total of the Prices subject to a maximum of £1,171,278.71
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to the higher of
  - £1,171,278.71 or
  - 120% of the tendered total of the Prices subject to a maximum of £1,171,278.71
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the higher of:
  - £1,171,278.21 or
  - 120% of the tendered total of the Prices subject to a maximum of £ 1,171,278.21
- The end of liability date is 12 years after Completion of the whole of the works (unless the Delivery Agreement is executed under hand in which case the end of liability will be 6 years after Completion of the whole of the works).

**~~If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the project bank~~**

- ~~• The Employer is to pay any charges made and is paid any interest paid by the project bank.~~

**~~If Options Y(UK)3 is used~~**

- Term \_\_\_\_\_ person or organisation  
.....

**~~If Options Y(UK)1 and Y(UK)3 are both used~~**

- Term \_\_\_\_\_ person or organisation
- \_\_\_\_\_ The provisions of Option Y(UK)1 \_\_\_\_\_ Named Suppliers

**Option Z**

**1.** The additional Conditions of Contract are

1.1.1 The following wording shall be inserted under the heading of “1. General” in the part of this schedule titled “Z: The additional conditions of contract are”:

1.1.1.1 Insert the following further definitions:

“11.2 (5) “Data Protection Legislation” means:

- (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then
- (ii) any successor legislation to the GDPR or the Data Protection Act 1998;”

“11.2 (6) “Data Subject” has the meaning given to it in the Data Protection Legislation.”; and

“11.2(14)”Personal Data” has the meaning given to it in the Data Protection Legislation,”

1.1.1.2 The existing provisions of clause 11.2 as amended by Schedule 11 of the Framework Agreement shall be renumbered accordingly.

1.1.2 Insert a new clause 19A (Data Protection Legislation):

11.2 (2) After states he is to do insert: ‘including the execution of any collateral warranties stated in the Works Information,’.

11.2 (22) insert at the end:

‘Unless the *Project Manager* otherwise agrees, all People Costs and ‘Preliminaries’ based Equipment and Plant & Material Costs within the Defined Cost shall not exceed the relevant rates within the Framework Commercial Model, applicable to the value and characteristics of the *works* or role, seniority and regional adjustment factors stated within the Framework Commercial Model. Defined Cost shall exclude those items, payments and activities included in Tables 1(a), 1(b), 2 or Table 3 of the Framework Agreement’s Schedule 7.’

11.2(27)Delete first line ‘The Price for Work Done to Date is the total of the Prices for’

Delete 1<sup>st</sup> bullet point ‘each group of completed activities and’

Delete 2<sup>nd</sup> bullet point ‘each completed activity which is not in a group’

Delete last paragraph ‘A completed activity is one which is without Defects which would either delay or be covered by immediately following work’

Insert new definition:

‘The Price for Work Done to Date is calculated as the percentage complete of each work activity, in lieu of an Activity Schedule being used’

11.2(31) Insert new definition:

““Fire Safety Strategy’ means the specifications and drawings setting out the detailed design for the works and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the works including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in.”

11.2 (34)Insert a new definition:

‘Framework Agreement’ is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* dated 9<sup>th</sup> May 2018

11.2 (36)Insert a new definition:

Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed in the ABI standard wording.

11.2(40)Insert a new definition:

“**Key Materials**” means the materials identified in Appendix [ ] annexed”

11.2(41) Insert a new definition:

**“Key Materials Delay Event”** means any delay in procuring Key Materials as identified in Appendix [ ] annexed”

11.2(42) Insert a new definition:

**“Key Materials Price Event”** means any increase in Key Materials as identified in Appendix [ ] annexed”

12.5 Insert a new clause 12.5:

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.

**“19A (Data Protection)”**

19A.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party's obligations under the Data Protection Legislation. It is agreed that:

19A.2 Without prejudice to the generality of clause 19A.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

19A.3 Without prejudice to the generality of clause 19A.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

19A.3.1 process that Personal Data only on the written instructions of the Employer and only as required for the purpose of the performance of this agreement;

19A.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

19A.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

19A.3.4 not transfer any Personal Data outside of the European Economic Area;

19A.3.5 assist the Employer, at the Contractor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

19A.3.6 notify the Employer without undue delay on becoming aware of a Personal Data breach;

19A.3.7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the agreement; and

19A.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Employer or the Employer's designated auditor.

19A.4 The Employer does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement.”

20.6 Insert a new clause 20.6:

‘In executing this contract, the *Contractor* accepts that all obligations and duties owed by it, acting as:

- the ‘*Consultant*’ in the provision of the Services under a preceding design Delivery Agreement; and/or
- the ‘*Contractor*’ in the provision of the Works under a preceding enabling works Delivery Agreement,

are deemed to be obligations and duties owed by the *Contractor* under this contract.

All and any of the *Contractor's* duties and obligations under such previous Delivery Agreements shall determine and cease to have any effect.

Any payments made by an ‘*Employer*’ under such previous Delivery Agreements shall be treated as payments on account, pursuant to this contract.’

21.4 Insert new clause 21.4

‘Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract it is hereby expressly agreed and acknowledged that: -

- a) no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
- b) the Contractor in delivering the Works and complying with the requirements of the Contract and any documents forming part of the Contract shall exercise reasonable skill and care and shall have the like liability to the Employer, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.’

21.5 Insert a new clause 21.5

‘The *Contractor* checks the Works Information provided by the *Employer* and satisfies itself that its own design meets the *Employer's* Works Information with no discrepancy within and or between the Works Information and its own design or Works Information. Where there is ambiguity, inconsistency or conflict between these documents the *Employer's* Works Information will prevail.’

26.5 Insert a new clause 26.5:

‘The *Contractor*, in relation to any subletting of any portion of the *works* (or the design of them):

- a) procures that the relevant sub-contract shall contain such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract;
- b) warrants each sub-contractor's compliance with this Agreement's Modern Slavery Act requirements;
- c) warrants that all Subcontractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations;
- d) procures that all relevant sub-contracts shall be executed and delivered as a deed; and
- e) provides to the *Project Manager* a certified copy of any sub-contract (save for particulars of the cost of such sub-contract *works* unless other provisions of this contract or the Framework Agreement oblige the *Contractor* to disclose them)’.

The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

- 26.6 The *Contractor* includes in any subcontract awarded by him provisions requiring that:
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in a timely fashion,
  - undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed, and
  - any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
- 27.5 Insert a new clause 27.5
- ‘Where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Strategy Document and/or in any Specification, information or Drawings prepared by or on behalf of the Employer have been installed and fitted by the Contractor and building regulation approval has been issued then the issue of such building regulation approval on practical completion of the works shall be deemed conclusive evidence that such method, system, design products or materials comply with such requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Control Regulations.’
- 27.7 Insert a new clause 27.7:
- ‘The *Contractor* executes or procures the execution of Collateral Warranties (in the forms specified within the Works Information) from the warrantors specified in the Works Information in favour of the beneficiaries as are identified (whether by name or description) in the Works Information.’
- 40.3 Insert at the end of the second sentence:
- ‘and if the *Contractor* fails so to notify, the *Contractor* repeats (at its own cost) the test or inspection and gives notification as required in this clause’.
- 42.3 Insert a new clause 42.3:
- ‘The *Contractor*:
- (1) makes good any Defects which the *Project Manager* reasonably considers need making good as a matter of urgency within 24 hours of receiving the *Project Manager’s* instruction (‘Emergency Defects’); and
  - (2) makes good any Defects which the *Project Manager* reasonably considers to be serious defects or faults within seven days of receiving the *Project Manager’s* instruction (‘Serious Defects’); and
  - (3) makes good all other Defects notified to the *Contractor* within four weeks of receipt of the *Project Manager’s* instructions (‘Routine Defects’).
- Where due to the non-availability of parts or materials or other circumstances beyond the Contractor’s control it is not possible to correct any Defect within the required timescale the Contractor makes an appropriate temporary repair and corrects the Defect as soon as possible thereafter and the *Contractor* keeps the *Employer* informed about the position from time to time.
- 43.3 Delete ‘Supervisor’ in line 1 and replace with ‘Project Manager’.
- 50.7 Insert a new clause 50.7:
- ‘If the *Contractor* has not procured and submitted to the *Project Manager* for acceptance the collateral warranties together with a certified copy of the underlying sub contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due to the *Contractor* for services or work of subcontractors from whom the *Contractor* is obliged to procure warranties and has not done so.’
- 60.1 (10) Insert at the end of this clause
- ‘or unless it was reasonable for the *Project Manager* to instruct the *Contractor* to search, having regard to previous instances of non-compliant work’ in Providing the Works.
- 60.1.(18A) Insert a new clause 60.1.(18A)



“a delay in the procurement or transportation of any goods or materials which has a direct and adverse effect upon the whole of the Works or a programme critical element of the Works caused as a consequence of any limitation on the free movement of goods and materials to the United Kingdom from the European Union provided that the Contractor has used all practicable steps to minimise and mitigate any delay arising from the events contemplated in this clause 60.1.(18A) including placing orders for such goods or materials within a reasonable time based on any relevant lead in times that could be reasonably anticipated at the Contract Date and provided further that there shall be no increase to the Prices arising from a compensation event under this clause 60.1.(18A)”.

- 60.1 (19) Amend clause 60.1(19) by adding to the end of the third bullet point
- “and for the avoidance of doubt the impact of coronavirus shall remain within the scope of this definition”
- 60.1(20) Insert a new clause 60.1.(20)
- a **Key Materials Delay** Event and/or a **Key Materials Price** Event”
- 62.4 After ‘revised quotation’ in the second sentence insert ‘as soon as possible, and in any event’.
- 63.1 Add the following after the second paragraph:  
‘Unless the *Project Manager* otherwise agrees, all People, and ‘Preliminaries’ Equipment and Plant & Material costs used in assessing compensation events shall not exceed the relevant rates within the Framework Commercial Model, applicable to the value and characteristics of the *works* or role, seniority and regional adjustment factors stated with the Framework Commercial Model.’
- 63.14 Insert after ‘rates and lump sums’  
‘including those contained within the Framework Commercial Model,’
- 70.1 Add at the end of this clause:  
‘or when the *Employer* has paid for it, whichever is the earlier.
- 8 Risks and insurance**
- 80.1 Add at the end of this clause:
- *Terrorism to the extent not insured under the Pool Re Arrangement;*
  - *Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds’.*
- 84.3 insert a new clause 84.3
- 84.3 Professional Indemnity**  
‘The following provisions shall apply unless the *Contractor* has no design responsibilities under this contract.
- 84.3.1 The *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract for the given insurance policy year in the event that it breaches this contract upon market norm 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, to an Amount as stated in the insurance table, relevant to the lot, in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance (‘Reasonable Rates and Terms’).
- 84.3.2 Any increased or additional premium required by insurers by reason of the Contractor’s own claims record

or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within Reasonable Rates and Terms.

- 84.3.3 The Contractor shall immediately inform the Project Manager if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Contractor and the Project Manager can discuss means of best protecting their respective positions in respect of this contract and the service in the absence of such insurance.
- 84.3.4 The Contractor shall co-operate fully with any measures reasonably required by the Project Manager including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Project Manager undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above Reasonable Rates and Terms.
- 84.3.5 When reasonably requested to do so by the Project Manager the Contractor shall produce promptly for inspection and or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- 84.3.6 The Contractor shall notify the Project Manager in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of this contract and within seven days of the Project Manager's request at any time the Contractor will produce for inspection documentary evidence as to compliance with this Clause.
- 84.3.7 If the Contractor fails to comply with its obligations under this Clause the Employer may take out insurance to cover some or all of the loss or damage which could result from a breach of the Contractor's obligations under this contract and may recover the costs and expenses of taking out such insurance from the Contractor as a debt.

**Insert new OPTION X21: CIC BIM PROTOCOL** (*only applies when BIM is required*)

- X21.1 In this Option, the Protocol is the CIC Building Information Modelling Protocol, second edition 2018. Terms used in this clause are those defined in the Protocol.
- X21.2 Clauses 1, 2, 5, 6, 7 of the Protocol are *additional conditions of contract*. Clauses 3 and 4 and Appendices 1 and 2 of the Protocol are Works Information.
- X21.3 The following are compensation events.
- The Contractor encounters an event which is outside his reasonable control and which prevents him from carrying out the work specified in clause 4.1.2 of the Protocol.
  - The Employer revokes a licence granted under clause 6.6 of the Protocol.

**OPTION Y(UK) 3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Delete the existing wording for this Option and insert:

- Y3.1 A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.
- Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

**SCHEDULE OF COST COMPONENTS** (*applies to Option C Delivery Agreements only*)

- 13(j) Add at the end '(but excluding any sums necessary to top up a pension fund)'.
- 43(j) Add a new item:  
  
'the cost of the Performance Bond provided under Option X13'.
- 44 Delete from (a) onwards and replace with
- (a) catering. Includes tea, coffee, water, biscuits, sandwiches and other drinks for Employer/contractor meetings. Includes microwave, kettle, cutlery, refrigerator and other domestic appliances.
- (b) medical facilities and first aid. Includes for compliance with all H&S requirements, (for example medical first aid box and eye wash).
- (c) recreation.
- (d) sanitation. Includes for compliance with all H&S requirements, all cleaning equipment, materials and consumables (brushes, mops, disinfectant, toilet rolls, tea towels, soap, hand wash, refuse sacks, dusters, bleach), servicing chemical toilets if provided.
- (e) security. Includes the following to the site compound only: fencing/hoardings, gates, floodlights and cabin alarms.
- (f) copying.
- (g) telephone, telex, fax, radio and cabin/compound CCTV. Includes for telephone, fax and ISDN/broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the Contractor's discretion (no adjustment shall be made to the Contractor's Fee if CCTV is not provided).
- (h) surveying and setting out. Includes provision of appropriate survey and setting out equipment; charges for weather surveys to determine *weather measurements* in accordance with the NEC contract; provision of digital camera(s) for use on site.
- (i) computing. Includes for any contractor's computer hardware and software, laptops, printers and all computer infrastructure and networking costs.
- (j) hand tools not powered by compressed air. Includes any tools hired, bought or brought by the Contractor for the purposes of setting up the temporary site establishment.

**SHORTER SCHEDULE OF COST COMPONENTS**

- 11 Add at the end of clause 11 '(but excluding any sums necessary to top up a pension fund)'.
- 41 Delete Clause 41 from 'to cover the cost of' replace with:

Payments for the provision of

- catering. Includes tea, coffee, water, biscuits, sandwiches and other drinks for Employer/contractor meetings. Includes microwave, kettle, cutlery, refrigerator and other domestic appliances.
- medical facilities and first aid. Includes for compliance with all H&S requirements, (for example medical first aid box and eye wash).

- recreation.
- sanitation. Includes for compliance with all H&S requirements, all cleaning equipment, materials and consumables (brushes, mops, disinfectant, toilet rolls, tea towels, soap, hand wash, refuse sacks, dusters, bleach), servicing chemical toilets if provided.
- security. Includes the following to the site compound only: fencing/hoardings, gates, floodlights, cabin alarms.
- copying.
- telephone, telex, fax, radio and cabin/compound CCTV. Includes for telephone, fax and ISDN/broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the Contractor's discretion (no adjustment shall be made to the Contractor's Fee if CCTV is not provided).
- surveying and setting out. Includes for a site level and staff for cross check of setting out, weather surveys to determine *weather measurements* in accordance with the NEC contract, digital camera for use on site.
- computing. Includes for any contractors computer hardware and software, laptops, printers and all computer infrastructure and networking costs.
- hand tools not powered by compressed air. Includes any tools hired, bought or brought by the Contractor for the purposes of setting up the temporary site establishment.

**Add the following new Shorter Schedule of Cost Components items**

'46	'the cost of the Performance Bond provided under Option X13'
'47	Payments for the provision and use in the Working Areas of water, gas and electricity'
'48	Payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others'

## Contract Data: Part Two – Data provided by the *Contractor*

The following details the Contract Data which will be provided by the *Contractor* for each Delivery Agreement.

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.

### Part two - Data provided by the *Contractor*

#### Statements given in all contracts

- The *Contractor* is: **Willmott Dixon Construction Limited**

The Works are to be delivered by Local Construction Office

Address The Bailey, 16 Old Bailey, London, EC4M 7EG

Telephone [REDACTED]

E-mail address [REDACTED]

- The *direct fee percentage* is [REDACTED]
- The *subcontracted fee percentage* is [REDACTED]
- The working areas are the Site and areas defined in the Red Line Demise documents, also the offices / workshops of the Supply Chain and Consultants and other Willmott Dixon offices including WDI Staff working from home.

The key people are:

(1) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

Experience [REDACTED]

(2) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

(3) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

Experience [REDACTED]

- The following matters will be included in the Risk Register

*Refer to 'Employer Risk' folder within works information*

(1) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

Experience [REDACTED]

(2) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

(3) Name [REDACTED]

Job [REDACTED]

Responsibilities [REDACTED]

Qualifications [REDACTED]

Experience [REDACTED]

- The following matters will be included in the Risk Register

Refer to 'Employer Risk' folder within works information

#### Optional statements

##### If the *Contractor* is to provide Works Information for his design

- The Works Information for the *Contractor's* design is in **Wellington House WC Refurbishment Works, Works Information** (refer to Contract Documentation)

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

- The programme identified in the Contract Data is in **Wellington House WC Refurbishment Works, Works Information, Appendix D. Programme** (refer to Contract Documentation)

**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 **23 August 2023**

**If Option A is used**

- The Activity Schedule is to be agreed within **WH Building Contract**

**If Option A is used**

- The tendered total of the Prices is **£976,065.59 (Nine Hundred and Seventy Six Thousand and Sixty Five Pounds and Fifty-Nine Pence)**.

~~If Option Y(UK)1 is used~~

- The project bank is .....
- named suppliers are .....

### Data for the Shorter Schedule of Cost Components (Option A)

- The percentage for people overheads is [REDACTED]
- The published list of Equipment is the ~~last edition of the~~ list published by the Civil Engineering Contractors Association (CECA) Schedules of Dayworks carried out Incidental to Contract Work 2011
- The percentage for adjustment for Equipment in the published list is [REDACTED]
- The rates for other Equipment are [REDACTED]

Equipment                  size or capacity                  rate

---

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
----------------------	-------------

All as set out in the Commercial Model (as uplifted by Procurement Hub agreed annual inflationary increment)

- The percentage for design overheads is XXXX
- The categories of design employees whose travelling expenses to and from the Working Areas included in Defined Cost are

**All as set out in the Commercial Model (as uplifted by Procurement Hub agreed annual inflationary increment)**

**~~Data for Schedule of Cost Components (only applies to Option C Delivery Agreements)~~**

- ~~• The listed items of Equipment purchased for work on this contract, with an on cost charge are~~

~~Equipment \_\_\_\_\_ time related charge \_\_\_\_\_ per time period~~

~~.....~~

~~.....~~

~~.....~~

~~.....~~

- ~~• The rates for special Equipment are~~

~~Equipment \_\_\_\_\_ size or capacity \_\_\_\_\_ rate~~

~~.....~~

~~.....~~

~~.....~~

~~.....~~

~~The percentage for Working Area overheads is %~~

- ~~• The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are~~

~~category of employee \_\_\_\_\_ hourly rate~~

~~.....~~

~~.....~~

~~.....~~

~~.....~~

- ~~• The percentage for manufacture and fabrication overheads is %~~

**~~Data for both schedules of cost components~~**

- ~~• The hourly rates for Defined Cost of design outside the Working Areas are~~

~~category of employee \_\_\_\_\_ hourly rate~~

~~[as set out in the Commercial Model]~~



The percentage for design overheads is ~~10%~~

- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the works and Equipment done outside of the Working Areas are

~~[as set out in the Commercial Model]~~

**Data for the Shorter Schedule of Cost Components**\_\_\_\_\_

- The percentage for people overheads is ~~100%~~

The published list of Equipment is the last edition of the list published by list published by the Civil Engineering Contractors Association (CECA) Schedules of Dayworks carried out Incidental to Contract Work 2011

The percentage for adjustment for Equipment in the published list is ~~70%~~

- The rates for other Equipment are

Equipment \_\_\_\_\_ size or capacity \_\_\_\_\_ rate

.....

Executed as a deed for and on behalf of **Secretary of State for Health and Social Care by a Director or Deputy Director in the presence of a witness**

Executed as a deed for and on behalf of **Secretary of State for Health and Social Care by - Witness**

Executed as a deed for and on behalf of **Willmott Dixon (Construction) Limited by a Director in the presence of a witness**

Executed as a deed for and on behalf of **Willmott Dixon (Construction) Limited by – Witness**