



## PART 1 – FORM OF NOTICE TO PROCEED TO STAGE 2

THIS FORM OF NOTICE TO PROCEED TO STAGE 2 is made on the [ ] 20[25]

### BETWEEN

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ (the "**Client**", with such term including its successors in title and permitted assigns); and
- (2) **KIER CONSTRUCTION LIMITED** (company number 02099533) and whose registered office is at 2<sup>nd</sup> Floor, Optimum House, Clippers Quay, Salford, England, M503XP (the "**Contractor**").

### BACKGROUND

- (A) This Notice to Proceed to Stage 2 has been issued pursuant to and in accordance with the contract between (1) the *Client* and (2) the *Contractor* (and others) dated [INSERT DATE] (in their capacity as the "Client" and an "Alliance Member" respectively) (the "FAC-1 Contract").
- (B) In accordance with the FAC-1 Contract and following the completion of a Works Package Procedure, the *Client* wishes to appoint the *Contractor* in relation to [INSERT DESCRIPTION OF PROJECT] at [INSERT ADDRESS], as more particularly described in Contract Data: Part One and the Main Works Terms as the "works".

### IT IS AGREED:

- 1 The *Client* will pay to the *Contractor* the amount due and carry out its duties in accordance with the Main Works Terms.
- 2 The Contractor will Provide the Works and comply with its other obligations in connection with the Works Package in accordance with the Main Works Terms (and for an amount to be determined in accordance with the Main Works Terms).
- 3 The Main Works Terms comprise<sup>1</sup>:
  - 3.1 this Notice to Proceed to Stage 2;
  - 3.2 [(in the context of all matters relating to the security of and/or access to the Site only) the 4.20 Meeting Minutes;]<sup>2</sup>
  - 3.3 the "conditions of contract" of (and as such term is defined in) the standard form of NEC4 Engineering and Construction Contract (June 2017 Edition, amended January 2019 and October 2020) incorporating [Option A – Priced Contract with Activity Schedule]<sup>3</sup> (with such "conditions of contract" deemed to be incorporated into the Main Works Terms by reference);
  - 3.4 the Main Works Amendments (which shall be deemed to be incorporated into the Main Works Terms by reference and shall be subject to any agreed modifications to the same as expressly stated in Contract Data: Part One only);

<sup>1</sup> **DRAFTING NOTE:** This list will be updated on a case-by-case basis as appropriate.

<sup>2</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment.

<sup>3</sup> **DRAFTING NOTE:** Individual Notices to Proceed to Stage 2 (or individual elements) may be instructed by exception on the basis of Option E at the Client's discretion.



- 3.5 the Contract Terms (incorporating the Special Terms and subject always to clause 12.1);
- 3.6 Schedule 1: Contract Data (and the Main Works Amendments referred to therein);
- 3.7 Schedule 1 – Appendix 1: Scope;
- 3.8 Schedule 1 – Appendix 2: Site Information;
- 3.9 Schedule 1 – Appendix 3: Trust Deed and Joining Deed;
- 3.10 Schedule 1 – Appendix 4: Free Issue Schedule;
- 3.11 the Collateral Warranties & Third Party Rights Schedule;
- 3.12 the Parent Company Guarantee;
- 3.13 the Vesting Agreement;
- 3.14 the Data Protection Schedule; and
- 3.15 any and all other documents annexed to and/or referred to in the Contract Data,  
  
which, together with the [Schedule of Cost Components], form the Main Works Terms and all references to the "contract" in the conditions of contract (as amended by the Main Works Amendments) shall be construed in accordance with clause 12.1.
- 4 If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the Main Works Terms (or that are referred to herein and/or are incorporated into the Main Works Terms by reference), the priority of such documents is in accordance with the following sequence
  - 4.1 this Notice to Proceed to Stage 2;
  - 4.2 [(in the context of all matters relating to the security of and/or access to the Site only) the 4.20 Meeting Minutes;]
  - 4.3 the "conditions of contract" (as modified by the Main Works Amendments and any further modifications to the same as expressly stated in Contract Data: Part One);
  - 4.4 the Special Terms;
  - 4.5 the Contract Terms (excluding the Special Terms);
  - 4.6 Contract Data: Part One (forming part of the Contract Data referred to above);
  - 4.7 Contract Data: Part Two (forming part of the Contract Data referred to above); and
  - 4.8 all other documents annexed to or referred to in the above in the sequence stated.  
  
If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between:
    - 4.8.1 the "conditions of contract" and the Main Works Amendments, the Main Works Amendments shall take precedence; and



- 4.8.2 the content of Contract Data: Part One (including any annexures to and/or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the relevant part(s) of Contract Data: Part Two.
- 4.8.3 the content of the Scope other than the section of the Scope entitled "Scope Derogations" (the "**Scope Derogations Schedule**") and the content of the Scope Derogations Schedule, the Scope Derogations Schedule takes priority over the relevant part(s) of the Scope in respect of which the error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict relates.
- 5 The Parties acknowledge and agree that this Notice to Proceed to Stage 2 may be executed:
- 5.1 in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument; and
- 5.2 by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature provided by a Party to the other Party).
- 6 Where the *Contractor* has performed any Pre-Construction Services and/or Pre-Construction Activities to and in accordance with the FAC-1 Contract for the *Client* in connection with the *works* before the Effective Date, such works and/or services shall be deemed to have been performed under the Main Works Terms [and any payments made to the *Contractor* in respect of the same shall be deemed to have been paid on account in respect of the relevant works of which they form a part], provided that the *Contractor* shall have no entitlement to notify the *Client* of and/or submit a claim in respect of a compensation event under the contract arising out of or in connection with any such Pre-Construction Services and/or Pre-Construction Activities that it has so completed (or is yet to complete) prior to, on or after the Effective Date.
- 7 Pursuant to and in accordance with the FAC-1 Contract, this Notice to Proceed to Stage 2 and the Main Works Terms shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 7 and for the enforcement of any judgment, order or award given under English jurisdiction.



[IN WITNESS WHEREOF THIS NOTICE TO PROCEED HAS BEEN SIGNED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE]

**SIGNED** by an authorised signatory for and on behalf of **THE SECRETARY OF STATE FOR JUSTICE:**

Authorised Signatory

**SIGNED by KIER CONSTRUCTION LIMITED** (company number **02099533** and whose registered office is at **2<sup>nd</sup> Floor, Optimum House, Clippers Quay, Salford, England, M503XP** acting by two directors or a director and a company secretary:

**Director (signature):**

**Director / Company Secretary  
(signature):**



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SCHEDULE 1 - CONTRACT DATA

[TO BE INSERTED IN THE FINAL VERSION OF EACH NOTICE TO PROCEED TO STAGE 2, BASED UPON PART 2 OF THIS SCHEDULE IN THE FAC-1 CONTRACT, ALONG WITH ALL APPENDICES INCLUDED AS PART OF THE CONTRACT DATA DOCUMENT.]



## PART 2 – TEMPLATE MAIN WORKS CONTRACT DATA

### CONTRACT DATA

#### PART ONE – DATA PROVIDED BY THE CLIENT

##### 1 General

- The conditions of contract are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract (June 2017, amended January 2019 and October 2020).
- The **main Option** is [Option A]<sup>4</sup>.
- The **Option for resolving and avoiding disputes** is Option W2.
- The **Secondary Options** are Options X2 (Changes in the law), X4 (Ultimate holding company guarantee), X5 (Sectional Completion), X7 (Delay damages), X8 (Undertakings to the Client or Others), X10 (Information modelling), X11 (Termination by the Client), X15 (The Contractor's design), X16 (Retention), X18 (Limitation of liability), X20 (Key performance indicators), Y(UK)1 (Project Bank Account), Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996), Y(UK)3 (The Contract's (Rights of Third Parties) Act 1999) and Z (Main Works Amendments).
- The **works** are [INSERT DESCRIPTION OF THE WORKS] (as more particularly described in the Scope).
- The **Client** is:  
**Name:** The Secretary of State for Justice, of the Ministry of Justice.  
**Address for communications:** FAO [INSERT NAME OR POSITION], The Secretary of State for Justice, of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ.  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The **Project Manager** is:  
**Name:** [INSERT NAME].  
**Address for communications:** [INSERT ADDRESS].  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The **Supervisor** is:  
**Name:** [INSERT NAME].  
**Address for communications:** [INSERT ADDRESS].  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The **Scope** is in Appendix 1 of the Contract Data.
- The Scope Derogations Schedule is set out in [ ]

<sup>4</sup> **DRAFTING NOTE:** Individual Notices to Proceed to Stage 2 (or individual elements) may be instructed by exception on the basis of Option E at the Client's discretion.



- The **Site** (or "site") is [INSERT DETAILS].
- The **Site Information** is in Appendix 2 of the Contract Data.
- The Site Surveys are set out at [INSERT LOCATION] of the Site Information.
- The **boundaries of the site** are [INSERT DETAILS].
- [The *Contractor* has provided (or is in the process of providing) **Pre-Construction Services** in connection with the *works* pursuant to an Order dated [INSERT DATE] in accordance with the FAC-1 Contract.]
- [The *Contractor* has provided (or is in the process of providing) **Pre-Construction Activities** in connection with the *works* pursuant to an Order dated [INSERT DATE] in accordance with the FAC-1 Contract]
- The **Consents Schedule** is set out at [INSERT LOCATION] of the Scope.
- The **Third Party Agreements** as at the Effective Date are set out at [INSERT LOCATION] of the Scope.
- The **Client's Policies** are set out at [INSERT LOCATION] of the Scope.
- The **language of the contract** is English.
- The *law of the contract* is the law of England and Wales.
- The **period for reply** is ten (10) Working Days.
- The following matters will be included in the Early Warning Register:
  - [None OR INSERT DETAILS].

#### 1A General – supplemental

- The **Principal Contractor** is the Contractor.
- The **Principal Designer** is [the Contractor].
- Without prejudice to the generality of clause 12.1, the **BIM Requirements** are the requirements identified as such in the FAC-1 Agreement (unless otherwise specified in the Scope, in which case all references to "**BIM Requirements**" in this contract shall be construed by reference to such requirements).
- Without prejudice to the generality of clause 12.1, the **Data Protection Schedule** is the document identified as such in the FAC-1 Agreement (subject to the Project Manager providing an alternative form of such document to the Contractor for use exclusively in connection with the works).
- The **Required Apprenticeship Number** is [five]
- For the purposes of **clause 101.5**, the **reporting interval** is monthly as from the Effective Date.

#### 1B General – supplemental provisions: existing premises



- [The Operational Parties (which do not include any Programme Consultants) are [INSERT NAMES] (or such other party or parties as the Project Manager notifies to the Contractor in writing from time to time).]
- A Decant Protocol [applies / does not apply] to this contract [.][]; and
- The Decant Protocol is set out at [INSERT LOCATION].]
- The 4.20 Meetings Minutes [apply / do not apply] to this contract[.][]; and

## 2 The Contractor's main responsibilities

- The **key dates** and **conditions** to be met are:
  - the minutes of the meeting attended by (a) the governor of the Site at which the works and/or services comprising the works are to be undertaken and (b) the Contractor (and, as required, other interested parties), the purpose of which is to discuss and agree security and access issues and requirements in relation to the Site and the works; and
- set out at [INSERT LOCATION],

provided always that the 4.20 Meeting Minutes may be updated and/or replaced by the Client from time to time by way of a written notice from the Project Manager.

<b>condition to be met</b>	<b>key date</b>
[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]

## 3 Time

- The **starting date** is [INSERT DETAILS].
- The **access dates** are:

<b>Part of the Site</b>	<b>Date</b>
[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]

- The **approved form of programme** is set out at [INSERT LOCATION].
- The **Contractor submits revised programmes** at intervals no longer than [twenty-eight] ([28]) days.
- The **completion date** for the whole of the works is [INSERT DATE] [(subject to the application of Option X5)].
- The **Client is not willing to take over the works** before the Completion Date.

## 4 Quality management





- The *Contractor* provides a **quality policy statement and quality plan** for acceptance within [INSERT PERIOD] ([INSERT PERIOD]) days of the Effective Date.
- The **requirements in respect of the quality management system** are set out at [INSERT LOCATION] of the Scope.
- The **defects date** is REDACTED after the earlier of the following dates to occur:
  - the Completion of the whole of the works;
  - the last date on which the *Contractor* completed an activity forming part of the works; or
  - the termination of the engagement of the *Contractor* under the contract.
- The **defect correction period** is:
  - twenty-eight (28) days for "Routine Defects"; and
  - forty-eight (48) hours for "Emergency Defects", with each such defect correction period commencing:
    - where the *Contractor* has notified the *Project Manager* of the Defect, on the date of the *Project Manager's* response to the *Contractor's* notification specifying whether the Defect is a Routine Defect or an Emergency Defect; and
    - where the *Project Manager* has notified the *Contractor* of the Defect, the date of the *Project Manager's* notice,

in each case, subject to clause 13.2 and as notified in accordance with clause 42.3.

## 5 Payment

- The **currency of the contract** is pound sterling (£).
- The **assessment interval** is monthly on the final Working Day of the month.
- The **interest rate** is as specified in the FAC-1 Agreement (as the "rate of interest").
- For the purpose of Option Y(UK)2, the **final date for payment** is fourteen (14) days after the later of the following dates to occur:
  - the date on which payment becomes due; and
  - the date of receipt by the *Client* of a Valid Invoice for the sums due.
- For the purposes of clause 53 (Final assessment) and Option Y(UK)2 in respect of the final assessment, the **date on which the final payment** becomes due is:
  - if the *Project Manager* makes an assessment after the issue of the Defects Certificate, [five (5) weeks] after the issue of the Defects Certificate;
  - if the *Project Manager* does not make an assessment after the issue of a Defects Certificate, [one (1) week] after the *Contractor* issues its assessment; or



- if the *Project Manager* has issued a termination certificate, [thirteen (13) weeks] after the issue of the termination certificate.
- The **Purchase Order Number** is [INSERT DETAILS]
- Without prejudice to the generality of clause 12.2, the template form of **Valid Invoice** is as specified in the FAC-1 Agreement (including a reference to the Purchase Order Number), provided that the *Project Manager* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Contractor*, with any such amendments applying as from the next assessment date after the *Project Manager* notification.

## 6 Compensation events

Weather: The place where weather is to be recorded is [INSERT LOCATION].

- The **weather measurements** to be recorded for each calendar month are:
  - the cumulative rainfall (millimetres);
  - the number of days with rainfall more than five (5) millimetres;
  - the number of days with minimum air temperature less than zero (0) degrees Celsius;
  - the number of days with snow lying at 09.00 hours (Greenwich Mean Time).
- The **weather measurements** are supplied by [INSERT DETAILS].
- The **weather data** are the records of past weather measurements for each calendar month which were recorded at [INSERT LOCATION WHERE WEATHER IS TO BE RECORDED] and which are available from the Meteorological Office.
- Where no recorded data is available, the assumed values for the ten (10) year return weather data for each weather measurement for each calendar month are [INSERT DETAILS].

Value engineering

The **value engineering percentage** is REDACTED

## 7 Title

- The *Client* [will / will not] provide the Free Issue Materials to the *Contractor* in connection with the works.
- [The **Free Issue Materials** are set out in the Free Issue Schedule.
- The Free Issue Inspection Period is [INSERT PERIOD] ([INSERT PERIOD] days.)]

## 8 Liabilities and insurance

- *Client's* liabilities: There are no additional *Client's* liabilities.
- Insurance: In respect of the insurances that the *Contractor* is required to take out and maintain pursuant to and in accordance with the Main Works Terms, the minimum amount of cover / indemnity for these insurances is as follows:



Insurance against	Minimum amount of cover or minimum level of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials (with such insurance being referred to in this contract as the " <b>All Risks Policy</b> ")	The reinstatement cost of the <i>works</i> , Plant and Materials, from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to the <i>works</i> , Plant and Materials [(including any Free Issue Materials)].	The reinstatement cost of the <i>works</i> , Plant and Materials and Free Issue Materials from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to Equipment.	The replacement cost of the relevant Equipment from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (that is not an employee of the Contractor) caused by activity in connection with the contract.	<b>REDACTED</b> in respect of any one (1) occurrence, the number of occurrences being unlimited in any one (1) policy period, but in the aggregate in respect of product liability or pollution liability (to the extent insured under the policy) from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with the contract.	The greater of the amount required by applicable law or <b>REDACTED</b> in respect of any one (1) occurrence inclusive of costs, the number of occurrences being unlimited in any annual policy period from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
New pollution and new contamination caused by the Contractor's activity under the contract, including exacerbation of existing pollution and contamination at the Site.	<b>REDACTED</b> in respect of any one (1) occurrence and <b>REDACTED</b> in the aggregate during any one (1) policy period (policy period not to exceed three (3) years), from the Effective Date and up to and for insurance on a claims made basis including the End of Liability Date.
[Negligent acts, errors and/or omissions in the performance of the Contractor's professional obligations under the contract (with such insurance being referred to in the contract as "professional indemnity insurance").	<b>REDACTED</b> for each and every claim against the Contractor in relation to the <i>works</i> from the Effective Date for the duration of the contract renewable on an annual basis unless agreed otherwise by the



	<i>Client</i> and up to and including the End of Liability Date.]
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### Resolving and avoiding disputes

- The **tribunal** is litigation in the courts of England.
- The **Senior Representatives** of the **Client** are:

Name	[INSERT NAME]
Address for communications	[INSERT ADDRESS]
Address for electronic communications	[INSERT EMAIL ADDRESS]

Name	[INSERT NAME]
Address for communications	[INSERT ADDRESS]
Address for electronic communications	[INSERT EMAIL ADDRESS]

- The **Adjudicator** is as nominated by the *Adjudicator nominating body*.
- The **Adjudicator nominating body** is The Technology and Construction Solicitors Association (TeCSA).

### X2: Changes in law

- The **Change in Law Base Date** is [INSERT DATE].

### X4: Ultimate parent company guarantee

- The form of Parent Company Guarantee is the document identified as such in the FAC-1 Agreement.
- The **Contractor's Parent Company** is the *Contractor's* ultimate holding company, being [INSERT NAME] (company number [INSERT NUMBER], whose registered office is at [INSERT ADDRESS]).

### X5: Sections

- The *works* are divided into the following sections:

Section 1:	[TO BE CONFIRMED]
Section 2:	[TO BE CONFIRMED]

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

Section 1:	[TO BE CONFIRMED]
Section 2:	[TO BE CONFIRMED]

### X7: Delay damages (where used with Option X5 only)



- The **delay damages** for each section of the *works* are:

<b>Section 1:</b>	[TO BE CONFIRMED]
<b>Section 2:</b>	[TO BE CONFIRMED]

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

<b>Section 1:</b>	[TO BE CONFIRMED]
<b>Section 2:</b>	[TO BE CONFIRMED]

#### X7: Delay damages (where Option X5 is not used)

Delay damages for Completion of the whole of the *works* are **REDACTED** pounds per week or part thereof.

#### X16: Retention

- The *retention free amount* is nil (£0).
- The *retention percentage* is **REDACTED**

#### X18: Limitation on liability

- For the purposes of the Option X18, the Parties have agreed the following:
  - The *Contractor's* total aggregate liability to the Client for indirect or consequential loss is limited to the sum of **REDACTED** (**Option X18.1**).
  - For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to a sum equal to **REDACTED** of the tendered total of the Prices (as adjusted in accordance with the Main Works Terms) (**Option X18.2**).
  - The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to a sum equal to **REDACTED** of the tendered total of the Prices (as adjusted in accordance with the Main Works Terms) (**Option X18.3**).
  - The *Contractor's* total aggregate liability to the *Client* and any Beneficiary (or Beneficiaries) for all matters arising under or in connection with the contract (whether in contract, tort (including negligence) or any other basis of law) other than in respect of the excluded matters, is limited to a sum equal to **REDACTED** of the tendered total of the Prices (as adjusted in accordance with the Main Works Terms) (**Option X18.4**).
- The **End of Liability Date** is the date identified as such in the FAC-1 Agreement.

#### X20: Key performance indicators

- The KPI Schedule is set out at **[INSERT LOCATION]**.
- The KPI Reporting Interval is every **[INSERT PERIOD]** (**[INSERT PERIOD]** days).

#### Y(UK)1: Project Bank Account

- The **project bank** is **[INSERT DETAILS]**.



- The **named suppliers** are [INSERT DETAILS].
- The **Trust Deed** is set out at Part 1 of Appendix 3 of this Notice to Proceed to Stage 2.
- The **Joining Deed** is set out at Part 2 of Appendix 3 of this Notice to Proceed to Stage 2.

## Z: Main Works Amendments

- The *additional conditions* of contract are set out in Part 3 of this contract.

## PART TWO – DATA PROVIDED BY THE CONTRACTOR

### 9 General

- The *Contractor* is:

**Name:** [INSERT DETAILS].

**Address:** [INSERT DETAILS].

**Address for communications:** FAO [INSERT NAME OR POSITION], [INSERT ADDRESS].

**Address for electronic communications:** [INSERT EMAIL ADDRESS].

- The **fee percentage** is [INSERT PERCENTAGE] per cent ([INSERT PERCENTAGE]) %.
- The **Working Areas** (and "working areas") are the Site and [INSERT DETAILS].
- The **key people** (each being a **key person**) are [as set out in the Key People Schedule and]:

<b>Name</b>	[INSERT DETAILS]
<b>Job</b>	[INSERT DETAILS]
<b>Responsibilities</b>	[INSERT DETAILS]
<b>Experience</b>	[INSERT DETAILS]

<b>Name</b>	[INSERT DETAILS]
<b>Job</b>	[INSERT DETAILS]
<b>Responsibilities</b>	[INSERT DETAILS]
<b>Experience</b>	[INSERT DETAILS]

- The following matters will be included in the Early Warning Register:
  - [None OR INSERT DETAILS].

## Resolving and avoiding disputes

- The *Senior Representatives* of the *Contractor* are:

<b>Name</b>	[INSERT NAME]
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Address for communications	[INSERT ADDRESS]
Address for electronic communications	[INSERT EMAIL ADDRESS]
Name	[INSERT NAME]
Address for communications	[INSERT ADDRESS]
Address for electronic communications	[INSERT EMAIL ADDRESS]

[Data for the Short Schedule of Cost Components<sup>56</sup>

- The people rates are:

Category of person	Unit	Rate

- The **published list of Equipment** is the edition current at the Effective Date of the list published by [INSERT DETAILS].
- The percentage for adjustment for Equipment in the published list is [ ]% (state plus or minus)
- The **rates for other Equipment** are:

Equipment	Rate
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]

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

Category of person	Rate
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]

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

<sup>5</sup> The Short Schedule of Cost Components will apply where the Notice to Proceed to Stage 2 applies Option A. In the event that the Client exercises its discretion to instruct a Notice to Proceed to Stage 2 or individual elements by exception on the basis of Option E the Schedule of Cost Components will apply.

<sup>6</sup> Note – drafting to be updated to provide for separate cost schedules for the relevant elements in the event that a Works Package includes elements instructed under Option A and elements instructed under Option E.



Category of person	Rate
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]

- The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the works and Equipment done outside the Working Areas are [INSERT DETAILS].]





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APPENDIX 1

SCOPE

[TO BE INSERTED]



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**APPENDIX 2**

**SITE INFORMATION**

**[TO BE INSERTED]**



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**APPENDIX 3**

**TRUST DEED AND JOINING DEED**



### PART 3 – TRUST DEED

This deed is made between the *Client*, the *Contractor* and [INSERT NAME(S)] (the **Named Supplier(s)**).

Terms in this deed have the meanings given to them in the Notice to Proceed to Stage 2 between (1) The Secretary of State for Justice (of the Ministry for Justice) (the *Client*) and (2) [INSERT NAME OF THE CONTRACTOR] (the *Contractor*) dated [INSERT DATE] (the contract) in connection with the design and construction of a [INSERT DESCRIPTION] at [INSERT NAME OF THE SITE] (the *works*).

#### **Background**

The *Client* and the *Contractor* have entered into the contract for the works.

The Named Suppliers have entered into contracts with the Contractor or a Subcontractor in connection with the works.

The *Contractor*, on the instruction of the *Client*, has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

#### **Agreement**

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Client* (and the agreement of the *Client* is treated as agreement by the Named Suppliers who are parties to this deed),
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.



**IN WITNESS** of which this deed has been executed as a deed and has been delivered on the date stated at the beginning of this deed.

**THE COMMON SEAL** of

**THE SECRETARY OF STATE FOR JUSTICE** hereunto affixed is authenticated by:

**Authenticated by (signature):**

\_\_\_\_\_

**Authenticated by (printed name):**

\_\_\_\_\_

**EXECUTED** as a **DEED** by **KIER CONSTRUCTION LIMITED** (company number **02099533** and whose registered office is at **2<sup>nd</sup> Floor, Optimum House, Clippers Quay, Salford, England, M503XP** acting by two directors or a director and a company secretary:

**Director (signature):**

\_\_\_\_\_

**Director / Company Secretary  
(signature):**

\_\_\_\_\_



#### PART 4 – JOINING DEED

This deed is made between the *Client*, the *Contractor* and [INSERT NAME(S)] (the **Additional Named Supplier(s)**).

Terms in this deed have the meanings given to them in the Notice to Proceed to Stage 2 between (1) The Secretary of State for Justice (of the Ministry for Justice) (the *Client*) and (2) [INSERT NAME OF THE CONTRACTOR] (the *Contractor*) dated [INSERT DATE] (the contract) in connection with the design and construction of [INSERT DESCRIPTION] at [INSERT NAME OF THE SITE] (the *works*).

#### **Background**

The *Client* and the *Contractor* have entered into the contract for the *works*.

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Contractor*, on the instruction of the *Client*, has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

The *Client*, the *Contractor* and the Named Suppliers have entered into a deed as set out at [INSERT LOCATION] (the Trust Deed) and have agreed that the Additional Named Supplier may join that deed.

#### **Agreement**

The parties to this deed agree that

- the Additional Named Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works* and
- the benefits under this deed may not be assigned.

**IN WITNESS** of which this deed has been executed as a deed and has been delivered on the date stated at the beginning of this deed.

**THE COMMON SEAL** of

**THE SECRETARY OF STATE FOR JUSTICE** hereunto affixed is authenticated by:

**Authenticated by (signature):**

\_\_\_\_\_

**Authenticated by (printed name):**

\_\_\_\_\_



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**EXECUTED** as a **DEED** by **KIER CONSTRUCTION LIMITED** (company number **02099533** and whose registered office is at **2<sup>nd</sup> Floor, Optimum House, Clippers Quay, Salford, England, M503XP** acting by two directors or a director and a company secretary:

Director (signature):

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Director / Company Secretary  
(signature):

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APPENDIX 4

FREE ISSUE SCHEDULE

[TO BE INSERTED OR OTHERWISE MARK "NOT USED"]



## PART 5 – MAIN WORKS AMENDMENTS

### 1 AMENDMENTS TO CLAUSE 1 – GENERAL

- 1.1 At the end of clause 10.2, delete the full stop and insert the following:

*", but without prejudice to the respective rights and obligations of the Parties".*

- 1.2 Replace the definition of "**Completion**" at clause 11.2(2) in its entirety with the following: "**Completion** is when the *Contractor* has:

- 1.2.1 done all the work (and provided any documentation) which the Scope states it is to do by the Completion Date,
- 1.2.2 delivered to the *Client* all of the Contractor Collateral Warranties, Subcontractor Collateral Warranties, Subsubcontractor Collateral Warranties and Subconsultant Collateral Warranties which the Contractor is obliged under the contract to provide and/or procure as at that date (provided that the *Client* has first notified the *Contractor* of the requirement for it to provide (or procure) the same within a period no shorter than the relevant period stated in Option X8; and
- 1.2.3 corrected notified Defects save for any minor items of incomplete work or minor defects, the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the works by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Completion within which such "snagging" items are to be rectified by the *Contractor*."

If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the Contractor has done all the work necessary for the *Client* to use the works and for Others to do their work and there are no minor items of incomplete work or minor defects (whether notified to the *Contractor* or otherwise), the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the works by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Completion within which such "snagging" items are to be rectified by the *Contractor*."

- 1.3 Replace the definition of "**Contract Date**" at clause 11.2(4) with the following: "The **Effective Date** is the date of the Notice to Proceed to Stage 2."
- 1.4 Replace the definition of "**Corrupt Act**" at clause 11.2(5) with "Not used."
- 1.5 Replace the definition of "**Defect**" at clause 11.2(6) with the following:

"A **Defect** is a part of the works (whether designed or treated as having been designed by the Contractor under the contract) which is not in accordance with

- the Scope,
- applicable law,
- the Consents or
- any other part of or requirement in the contract."

- 1.6 In the definition of "**Parties**" at clause 11.2(13):

- 1.6.1 after the word "*Client*" insert "(which expression includes its successors in title and assigns)"; and
- 1.6.2 insert "and the term "Party" means the *Client* or the *Contractor*, as the case may be" immediately before the full stop at the end of the clause.
- 1.7 In line 2 of the definition of "**To Provide the Works**" at clause 11.2(15):
  - 1.7.1 insert ", *applicable law and statutory requirements*" after the first instance of the word "contract" in the clause; and
  - 1.7.2 insert "*and the expression "Providing the Works" shall be construed accordingly*" immediately before the full stop at the end of the clause.
- 1.8 Replace the wording of clause 11.2(19) in its entirety with "Not used."
- 1.8A In the definition of "**Disallowed Cost**" at clause 11.2(26), insert the below as a new bullet point between the second and third bulleted items: "
  - was incurred in excess of the forecast total of the Prices except where the *Project Manager* approved (in writing) the occurrence of such expenditure in advance,"
- 1.9 Insert new a clause 11.2(A) after clause 11.2 with the heading "**Additional identified and defined terms**" and accompanying new clauses (and associated numbering) as follows:
  - 1.9.1 **4.20 Minutes** are the minutes (if any) identified as such in Contract Data: Part One.
  - 1.9.2 A **Class 1 Force Majeure Event** is an event identified as such in the definition of Force Majeure Event.
  - 1.9.3 A **Class 2 Force Majeure Event** is an event identified as such in the definition of Force Majeure Event.
  - 1.9.4 **All Risks Policy** means the insurance policy to be taken out and maintained by the *Contractor* pursuant to clause 83.3 and clause 85A and which is referred to in Contract Data: Part One.
  - 1.9.5 **Client Consent** means a Consent (if any) identified in the Consents Schedule as being a "Client Consent".
  - 1.9.6 **Client's Policies** are the policies detailed and identified as such in Contract Data: Part One (and as may be updated from time to time by written notice of the Project Manager to the Contractor).
  - 1.9.7 **Consents Schedule** means the schedule (if any) identified as such in Contract Data: Part One.
  - 1.9.8 **Contractor's Parent Company** means the entity identified as such in Contract Data: Part One.
  - 1.9.9 **Contract Data: Part One** means the document identified as such and forming part of the Contact Data.
  - 1.9.10 **Contract Data: Part Two** means the document identified as such and forming part of the Contact Data.

- 1.9.11 **COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.
- 1.9.12 **[Data Protection Schedule]** means the schedule identified as such in the Contract Data.]
- 1.9.13 **Decant Protocol** is the document (if any) identified as such in Contract Data: Part One.
- 1.9.14 **Emergency Defect** is a Defect which:
- (a) substantially adversely affects the performance and/or use of all or part of the works and/or the Site by the Client or any third party, including:
    - (i) any failure (whether intermittent or otherwise) of any central heating system and/or comfort cooling and/or air conditioning systems,
    - (ii) any impact on the constant availability of hot water at any time,
    - (iii) water leaks (if the water cannot or there is a danger that the water will not be contained) and/or if the water leak is causing or is likely to cause damage and/or penetration into any electrical fitting(s) and/or personal items,
    - (iv) any loss (whether intermittent or otherwise) of gas, electricity and/or the water supply,
    - (v) gas leaks,
    - (vi) any loss of roof and/or ridge coverings which may result in water penetration and
    - (vii) blocked foul water drains causing flooding and/or overflowing internally and/or externally,
  - (b) requires immediate rectification in order to ensure the continuous safe occupation and/or use of all or part of the works and/or any part(s) of the Site (including its immediate surroundings) and/or to protect the health and safety of those occupying, using or visiting the works and/or the Site (including its immediate surroundings) and/or
  - (c) presents a security risk at the Site or is such that a failure to rectify it immediately would be materially detrimental to the security of any part(s) of the Site (including in relation to any Security Measures).
- 1.9.15 **ES Specified Peril** means
- Fire,
  - Lightning,
  - Explosion,
  - Storm,
  - Flood,

- Escape of water from any water tank, apparatus or pipe,
- Earthquake and/or
- Aircraft and other aerial devices or articles dropped therefrom.

- 1.9.16 **Excepted Risk** means any matter, event or occurrence in respect of which the All Risks Policy does not provide insurance coverage expressly in relation to any loss and/or damage to the *works* and/or the Plant or Materials that is occasioned by such matter, event or occurrence (and excludes any ES Specified Peril in relation to the Existing Structures).
- 1.9.17 **Existing Services** means any gas, mechanical, electrical, communications or other services or utilities on the Site (including within or under Existing Structures).
- 1.9.18 **Existing Structures** means any and all existing buildings at the Site within which the *works* and/or part of them are to be executed or to which they are to form an extension, together within any *section* in respect of which Completion has been decided by the *Project Manager* pursuant to clause 30.2 or has been taken over by the *Client* pursuant to and in accordance with clause 35.
- 1.9.19 **FAC-1 Contract** has the meaning given to such term in the Notice to Proceed to Stage 2.
- 1.9.20 A **Force Majeure Event** means any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of a Client's liability

- (a) a "**Class 1 Force Majeure Event**", being any of the following events
- (i) war, civil war, rebellion, revolution, insurrection, military or usurped power,
  - (ii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assumption or nuclear component thereof (unless caused or contributed towards by the acts and/or omissions of the Contractor),
  - (iii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds and/or
  - (iv) any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government, other than COVID-19) and
- (b) a "**Class 2 Force Majeure Event**", being any of the following events
- (i) riot, civil commotion, public disorder, sabotage and/or acts of vandalism outside of the Working Areas (and not involving solely nor originating with the personnel or other employees of the Contractor or Subcontractors or lower tier subcontractors or the employees or subcontractors of any group company associated with the Contractor) and/or
  - (ii) strike, industrial action, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the Contractor or Subcontractors or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the Contractor.

- 1.9.21 **Free Issue Inspection Period** means the period identified as such in a Contract Data: Part One.
- 1.9.22 **Free Issue Materials** means any materials identified as such in the Contract Data: Part One.
- 1.9.23 **Key Performance Indicator** has the meaning given to such term in Option X20.1.
- 1.9.24 **KPI Reporting Interval** is the period identified as such in Contract Data: Part One.
- 1.9.25 **KPI Schedule** is the document identified as such in Contract Data: Part One.
- 1.9.26 **Notice to Proceed to Stage 2** means the document entitled "Notice to Proceed to Stage 2" as executed by the *Client* and the *Contractor* in connection with the *works* pursuant to and in accordance with the Contract Terms.
- 1.9.27 **Pre-Construction Activities** are (without prejudice to the generality of the same term as used in the FAC-1 Contract) the works and/or services identified as such in Contract Data: Part One.
- 1.9.28 **Pre-Construction Services** are (without prejudice to the generality of the same term as used in the FAC-1 Contract) the services identified as such in Contract Data: Part One.
- 1.9.29 **Principal Contractor** is the party identified as such in Contract Data: Part One to fulfil such statutory role under and as defined in the CDM Regulations **and the Building Regulations 2010 (as amended)**.
- 1.9.30 **Principal Designer** is the party identified as such in Contract Data: Part One to fulfil such statutory role under and as defined in the CDM Regulations **(and the Building Regulations 2010 as amended)**.
- 1.9.31 **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the Project which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the objective of achieving value for money, innovation and education, the exchange of information, and the integration, adaptation and standardisation of roles, expertise and responsibilities in connection with the works and/or the wider Project;
- 1.9.32 **Purchase Order Number** means the number identified as such in Contract Data: Part One.
- 1.9.33 **Routine Defect** is a Defect that is not determined by the *Project Manager* pursuant to clause 42.3 as being an Emergency Defect.
- 1.9.34 **Site (and "site")** means the site of the works as identified in Contract Data: Part One.
- 1.9.35 **Site Surveys** means, if any, the surveys (and other information concerning the Site) identified as such in Contract Data: Part One.
- 1.9.36 **Specified Peril** means other than in respect of an Existing Structure, any matter, event or occurrence in respect of which the All Risks Policy provides insurance coverage in relation to any loss and/or damage to the *works* and/or the Plant or Materials that is occasioned by such matter, event or occurrence and that is not an Excepted Risk (and excludes any ES Specified Perils).
- 1.9.37 **Third Party** has the meaning given to such term in clause 28C.1.
- 1.9.38 **Third Party Agreement** has the meaning given to such term in clause 28C.1.

1.9.39 **Third Party Rights Schedule** means the schedule identified as such in Contract Data: Part One.

1.10 Replace the wording of clause 12.1 in its entirety with the following:

"Subject to paragraph 4 of the Notice to Proceed to Stage 2, the Parties acknowledge and agree that

- this contract forms part of the FAC-1 Contract and is supplemental to and shall be read in conjunction with the Contract Terms wherever the context requires and, subject to Contract Term 1A to Contract Term 1C (inclusive) of the Contract Terms, the Contract Terms (including, for the avoidance of doubt, Special Term 35) shall be deemed to be incorporated into the contract mutandis mutatis as between the *Client* and the *Contractor* and
- save where defined in the Contract Terms, capitalised terms and/or italicised terms in the contract have the meaning given to them in clause 11.2 and clause 11.2(A) unless expressly defined elsewhere in the contract."

1.11 Insert the following after "governed by" in clause 12.2:

*"and shall be construed in accordance with".*

1.12 Replace the wording of clause 12.4 in its entirety with the following:

"Subject to paragraph 4 of the Notice to Proceed to Stage 2, the *Client* and the *Contractor* acknowledge and agree that

- the Main Works Terms, together with the remainder of the FAC-1 Contract, represent the entire understanding and agreement between the *Client* and the *Contractor* in relation to the obligation for the *Contractor* to Provide the Works and
- without prejudice to either Party's liability for fraudulent misrepresentation under or connection with the FAC-1 Contract, each Party hereby acknowledges and agrees that, in executing the Notice to Proceed to Stage 2, it has placed no reliance upon any statement, representation or warranty made or given by the other Party during the course of negotiations which is not reflected in the Main Works Terms or any documents referred to herein."

1.13 Insert a new clause 13.9 as follows:

"Any communication required under the contract from the *Contractor* to Others is copied simultaneously to the *Client* and the *Project Manager*."

1.14 Insert the following after "the work" on the second line of clause 14.1:

"or any review or approval of or comment on such work".

1.15 Insert a new clause 14.5 with the following wording:

"Without prejudice to the generality of clause 14.3, the *Contractor* acknowledges and agrees that the *Project Manager* may give an instruction to the *Contractor* which changes the Scope to remove or omit all or part of the *works* at any time and for any reason and the *Client* may instruct Others to carry out such omitted work, in which case

- the total of the Prices shall be reduced to reflect such removal or omission, calculated by reference to the *Client's* reasonable determination of the value attributable to such omitted part(s) or by such other sum as otherwise agreed between the Parties,



- the *Client* shall have no liability whatsoever to the *Contractor* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), and such reduction or omission shall not give rise to any entitlement for the *Contractor* to claim for abortive costs, actual or expected loss of payment or profit, loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses of any type or for any other amount under the contract and
- the *Contractor* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Project Manager* pursuant to this clause 14.5,

provided always that nothing in this clause 14.5 shall affect, in respect of any works and/or services forming part of an activity that is subject to such an omission instruction, the *Contractor's* entitlement to payment (or reimbursement) in respect of

- any works and/or services forming part of that activity that have been properly performed by the *Contractor* as at the effective date of the relevant omission instruction but which cannot, by reason of the omission, be completed, the value of which shall be determined by the *Project Manager*, acting reasonably, on a pro rata basis by reference to the value of the relevant works and/or services as against the total of the Prices for the relevant activity,
- the *Contractor's* reasonably and properly incurred direct demobilisation costs (as disclosed to the *Project Manager* for review and approval on an open book basis) in relation to the omitted works and/or services only,
- the cost of any Plant and Materials that the *Contractor* has itself manufactured in connection with the works and that are stored, as at the date of the omission, at a location other than at the site and provided that the *Contractor* has used reasonable endeavours to mitigate such costs, either whole or in part (including by using such Plant and Materials as part of the wider delivery of the works) and
- any direct costs that the *Contractor* is contractually committed to pay to any third party (including its Subcontractors) that relate to such omitted works and/or services only (such as cancellation costs and the cost of Plant and Materials that have been manufactured by a third party in connection with the works and that are stored, as at the date of the omission, at a location other than at the site) and to the extent that which the *Contractor* is unable, using reasonable endeavours and exercising the terms of the relevant contract with such third party (but without having to incur further costs to such third party in doing so) to mitigate such costs, either whole or in part (including by using any Plant and Materials, Equipment and/or other physical items that the *Contractor* is contractually committed to purchase as part of the wider delivery of the works).

Where any sums are to be paid to the *Contractor* under the third and fourth bulleted items above in respect of Plant and Materials, Equipment and/or other physical items referred to in such bulleted items, it shall be a precondition to the *Contractor's* entitlement to payment in respect of the same under this clause 14.5 that

- (save in relation to Plant and Materials and/or Equipment that is hired by the *Contractor* and/or its Subcontractors) ownership and title in such Plant and Materials, Equipment and/or other physical items transfers to the *Client* and
- the *Contractor* delivers the same to a location to be agreed between the Parties in advance,

no later than the date on which the *Contractor* receives payment from the *Client* in connection with the relevant Plant and Materials, Equipment and/or other physical items under this clause 14.5. "

1.16 Insert a new clause 14.6 as follows:

"No communication from the *Client*, the *Project Manager* or the *Supervisor* given in accordance with the provisions of the contract, including but not limited to comments on the *Contractor's* design,

drawings, specifications and method statements, instructions, notices or approvals removes, amends or varies any of the *Contractor's* obligations, responsibilities or liabilities under the contract, including (without limitation) its responsibility to Provide the Works and its liability for Defects and defective design."

1.17 In clause 15.1:

- in the third bulleted item, replace "or" with ",";
- in the fourth bulleted item, replace the full stop with "," and insert the following new bulleted items:
  - "affect the procuring and/or discharge of any Consents,
  - change the Accepted Programme,
  - affect the work of the *Client*, a *Client's* contractor, any Operational Party or another consultant or adversely affect the *Client* (including, without limitation, by increasing the monies payable by the Client to Others),
  - constitute a Defect,
  - constitute a compensation event which has not been previously notified,
  - result in a breach of the contract or
  - cause a breach of any applicable law or statutory requirements."; and
  - at the end of the final paragraph of clause 15.1 insert the following:
 

"In such notification, the *Project Manager* or the *Contractor* states whether the early warning must be dealt with immediately or can wait until the next scheduled early warning meeting."

1.18 In clause 15.2:

- 1.18.1 Insert "(1)" after "one" and "(2)" after "two"
- 1.18.2 delete "either" and replace "or *Contractor* instructs the other" in the first bulleted item of clause 15.2 with "instructs the Contractor";
- 1.18.3 replace "or *Contractor* may instruct" in the penultimate paragraph of clause 15.2 with "may instruct"; and
- 1.18.4 replace "other" on the final line in the penultimate paragraph with "*Contractor*".

1.19 In clause 15.4, insert "(1)" after "one".

1.20 Insert a new clause 15.5 as follows:

"The Parties acknowledge and agree that the issuing and/or revision of any Early Warning Register is not to be treated as an instruction changing the Scope and any failure of the Project Manager to issue an Early Warning Register (or any revisions thereto) does not constitute a compensation event. If the *Contractor* believes that the issue of any Early Warning Register or any other instruction from the *Project Manager* (not expressed to be a change to the Scope) should be treated as an instruction changing the Scope (or otherwise gives rise to a compensation event), the *Contractor* (save in circumstances of emergency), before acting on the revised Early Warning Register or instruction, notifies the *Project Manager* of the *Contractor's* belief that the Early Warning Register or instruction gives rise to a change in the Scope or other compensation event and allows the *Project Manager* time



to consider the impact of the revised Early Warning Register or instruction in relation to the Contractor's notice."

1.21 Insert a new clause 15.6 as follows:

"The risks identified in the Early Warning Register from time to time shall not affect the risk allocation between the Parties as set out in the conditions of contract. Unless otherwise stated in the conditions of contract, the Prices, the Completion Date and the Key Dates are not to be changed for any risks entered into the Early Warning Register or for any matter notified as an early warning. The *Client* has no liability to the *Contractor* for any risks entered into the Early Warning Register or for any matter notified as an early warning unless the risks are carried by the *Client* as stated in the conditions of contract."

1.22 In clause 16.2:

1.22.1 insert "(4)" after "four"; and

1.22.2 insert "(or such other longer period as may be agreed between the *Contractor* and the *Project Manager*, acting reasonably)," after "proposal" on the first line of clause 16.2.

1.23 Replace the wording of clause 17.1 in its entirety with the following:

"The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the contract. Subject to paragraph 4 of the Notice to Proceed to Stage 2, the *Project Manager* gives an instruction resolving the error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict. Notwithstanding any other provision of the contract, any such error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict, or any instruction issued under this clause 17.1 in respect of the same, does not give rise to nor constitute a compensation event."

1.24 Replace the wording of clause 17.2 in its entirety with the following:

"The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the *Project Manager* gives an instruction to change the Scope appropriately. Notwithstanding any other provision of the contract (but subject to Option X2, where selected in Contract Data: Part One), any such illegality, impossibility and/or instruction is not a compensation event."

1.25 Insert a new clause 17.3 as follows:

"Without prejudice to clause 21.1, the *Contractor*

- is deemed to have examined, reviewed and verified the accuracy, adequacy and sufficiency of the Scope (including any designs contained in and/or referred to in the Scope) and the accuracy, adequacy and sufficiency of any design which has not been prepared by or on behalf of the *Contractor*,
- accepts that the *Client* makes no representations and does not give any warranty, whether express or implied, as to the accuracy, adequacy, sufficiency, suitability or completeness of the Scope or any designs prepared by or on behalf of the *Client* (including any designs contained in and/or referred to in the Scope),
- accepts responsibility for any error, mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency, conflict or omission in the Scope and any design of the works (whether the same has been prepared by or on behalf of the *Client*, the

*Contractor* or otherwise) including any designs contained in and/or referred to in the Scope.

If the *Contractor* identifies any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in

1.25.1 the Scope which does not relate to design, the *Contractor* notifies the *Project Manager* who gives an instruction resolving the same and any such instruction is not a compensation event and/or

1.25.2 any design of the works (including any designs contained in and/or referred to in the Scope), the *Contractor* submits its proposals for the correction of such error, mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency, conflict or omission in the same way as it submits particulars of its design to the *Project Manager* for acceptance and any such correction or instruction of the *Project Manager* in relation to the same is not a compensation event."

1.26 Replace the wording of clause 19 with "Not used".

## **2 AMENDMENTS TO CLAUSE 2 – THE CONTRACTOR'S MAIN RESPONSIBILITIES**

2.1 Replace the wording of clause 20.1 with the following:

"20.1 The *Contractor*:

- Provides the Works in accordance with the Scope, the applicable laws (and (to the extent that the *Contractor* can control the same) so that the product of the works complies with all applicable laws), the other parts of and requirements of the contract and in a good and workmanlike manner,
- in Providing the Works, uses only materials which are new (unless the contract states otherwise or as otherwise agreed with the *Client* in writing), and are sound and of good quality and which are consistent with the intended use of the works as stated in the contract or reasonably to be inferred given the nature of the *works*,
- (where identified as the Principal Designer in the Contract Data) fulfils the role of Principal Designer in connection with the *works*,
- (where identified as the Principal Contractor in the Contract Data) fulfils the role of Principal Contractor in connection with the *works*,
- warrants that if identified in the Contract Data, it is competent to fulfil the duties of the Principal Contractor and Principal Designer under the Building Regulations 2010 (as amended) in relation to this Contract and has allocated or (as the case may be) will allocate adequate resources to enable it to comply with the provisions of this clause."

2.2 Insert a new clause 20.5 with the following wording:

"The *works* when completed by the *Contractor* shall comply with all appropriate requirements of any relevant local or other relevant authority and all relevant statutory requirements."

2.3 Insert a new clause 20.6 as follows:

"The *Contractor* advises the *Project Manager* on the practical implications of the design of the *works* and on subcontracting arrangements."



- 2.4 Replace the wording of clause 21.1 in its entirety with the following:

"Whether the *Contractor* designs the whole or part of the *works*, the *Contractor*, subject to exercising the Standard of Care, accepts the entire responsibility for the design of the whole of the *works* and adopts the same as its own (whether or not such design has been prepared by or on behalf of the *Contractor*) including any designs contained in and/or referred to in the Scope."

- 2.5 Delete the second sentence in clause 21.2 and replace with the following:

"A reason for not accepting the *Contractor's* design is that it does not comply with the contract or the applicable law."

- 2.6 Insert a new clause 21.4 as follows:

"Without prejudice to the generality of Option X15, the Parties acknowledge and agree that nothing in the contract, whether express or implied, shall impose a fitness for purpose obligation on the *Contractor* in relation to the design of the works."

- 2.7 Insert a new clause 21.5 as follows:

"Without prejudice to the generality of clause 17.3, the *Contractor* checks the Scope provided by the *Client* and satisfies itself that its own design meets the *Client's* Scope with no discrepancy within and/or between the Scope and its own design or the *Contractor's* Scope. Where there is ambiguity, inconsistency or conflict between these documents, the provisions of clause 17.1 and clause 17.2 shall apply."

- 2.8 Delete clause 22 and replace with "Not Used".

- 2.9 In clause 23.1, insert the words "or other requirements of this contract" at the end of the first bulleted item.

- 2.10 In clause 24.2, insert "(1)" after "one".

- 2.11 Replace the wording of clause 25.3 in its entirety with the following:

"If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Client* incurs additional costs, losses and/or expenses either

- in carrying out work or
- by paying an additional amount to Others in carrying out work (including the costs of acceleration measures under other contracts),

on the same project, the additional costs, losses and/or expenses which the *Client* has paid, incurred or will incur are paid by the *Contractor* or may be deducted from any sum due to the *Contractor*. The *Project Manager* assesses the additional costs, losses or expenses within four (4) weeks of the date when the Condition for the Key Date is met. These costs, losses and/or expenses have been excluded from the calculation and do not form any part of the delay damages for late Completion or the delay damages for failure to meet a Condition by the relevant Key Date, and the *Client* is entitled to recover them from the *Contractor*."

- 2.12 In clause 26.1:

- after the word "work" in the first line insert the words "(including design)"; and
- delete the full stop at the end of the clause and insert the following:



"and the *Contractor* accordingly is and remains responsible for the acts and omissions (including tortious acts and omissions) of its Subcontractors and their employees and any acts or omissions by its Subcontractor and their employees shall be treated as if they were the acts or omissions of the *Contractor*."

2.13 In clause 26.2:

- In the third line of clause 26.2, after the words "Provide the Works", insert: "and/or the *Client* has reasonable grounds for concern in relation to the Subcontractor's experience, performance on other projects, financial stability, insurance cover or status"; and
- insert the following as a new paragraph at the end of the clause: "No sum due under a subcontract is eligible for treatment as the Price for Work Done to Date under the contract if and for so long as the requirements of this clause 26.2 are not satisfied in relation to that subcontract."

2.14 Replace the wording of clause 26.3 in its entirety with the following:

"The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that (save where one or more of the requirements below is waived in respect of a specific subcontract by way of advance written approval of the *Project Manager* only)

- the *Contractor* has not complied with the requirements of clause 26.2,
- the appointment of the proposed Subcontractor and/or the proposed conditions of contract will not allow the Contractor to Provide the Works,
- there are compulsory grounds for excluding the Subcontractor under regulation 57 of the Public Contracts Regulations 2015,
- the terms of the proposed conditions of contract do not, in the *Project Manager's* reasonable opinion, adequately reflect the terms of the contract or are inconsistent with the Main Works Terms,
- the proposed conditions of contract do not include provisions
  - requiring the Subcontractor to grant a licence in favour of the *Client* in relation to the materials produced by or on behalf of the Subcontractor equivalent to that granted by the *Contractor* to the *Client* pursuant to clause 11 of the Contract Terms,
  - requiring the Subcontractor to provide any Subcontractor Collateral Warranty (or Subconsultant Collateral Warranty, as applicable) or procure in favour of any Beneficiary a Subsubcontractor Collateral Warranty and
  - imposing equivalent obligations of confidentiality on the proposed Subcontractor to those required by the contract,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation and/or
- the period for payment of the amount due to the Subcontractor stated in the conditions is greater than twenty-one (21) days after the due date in the contract or the date on which the Subcontractor issues a valid VAT invoice to the *Contractor* in accordance with the terms of the subcontract, if later.

The *Contractor* will have no entitlement to any sums under the contract that related to work that has been subcontracted and has been (or will be) undertaken by a Subcontractor as part of the Price for Work Done to Date under the contract if and for so long as the requirements of this clause 26.3 are not satisfied in relation to that subcontract."

2.15 Insert a new clause 26.4 to clause 26.6 (inclusive) as follows:

"26.4 Without prejudice to the generality of clause 26.3, the *Contractor*, in relation to any subletting of any portion of the *works* (or the design of them)

- procures that each subcontract contains such obligations as necessary to ensure that it is, in all respects, compatible with the terms of the contract and without limitation, replicates the obligation to use the degree of skill and care specified in clause 21.1 and requires collateral warranties to be provided in favour of any Beneficiary in the form of the Subcontractor Collateral Warranty and/or Subsubcontractor Collateral Warranty (as the context requires, in each case with any such amendments that the *Client* may agree, acting reasonably),
- procures that all subcontracts are executed and delivered as deeds,
- warrants each Subcontractor's compliance with any provisions referred to herein and/or the FAC-1 Contract that are expressed as applying to Subcontractors of the *Contractor*,
- 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,
- warrants that all Subcontractors are fully aware of their obligations under the Building Regulations and are fully competent and are adequately resourced to meet those obligations,
- provides to the *Project Manager* a certified copy of any subcontract,
- ensures that the period for payment of any amount due to a Subcontractor under a subcontract is not greater than twenty-one (21) days after the payment due date under this contract,
- 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 and
- notifies the Client of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor."

26.5 The *Contractor* includes in any subcontract awarded by it 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 the contract includes provisions to the same effect as the provisions referred to in clause 26.4 and this clause 26.5 (unless otherwise agreed by the *Client*, acting reasonably).



26.6 The *Contractor* does not vary the terms of any subcontract or terminate the engagement of any Subcontractor or supplier without the prior written consent of the *Client* (such consent not to be unreasonably withheld or delayed). Any such consent by or on behalf of the *Client* does not give rise to any liability (whether it contract, tort (including negligence) or under any other legal theory) on the part of the *Client* under, in connection with or pursuant to the contract or otherwise (save to the extent that such liability cannot be limited or excluded by applicable law)."

2.16 In clause 27.1, replace "The *Contractor*" with "Without prejudice to the generality of clause 28B, the *Contractor*".

2.17 Insert a new clause 27.5 as follows:

"The *Contractor*

- at all times Provides the Works preventing public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker and assists the *Client* in defending any action or proceedings which may be instituted in relation thereto and
- is responsible for and indemnifies the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, save only where such nuisance or interference is the consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using all reasonable and practical means,

provided always that the *Project Manager* may issue to the *Contractor* such instructions as the *Project Manager* considers necessary if any injunction is granted or Court order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction is a compensation event."

2.18 Insert a new clause 27.6 as follows:

"The *Contractor* ensures that in Providing the Works there is no trespass on or over any adjoining or neighbouring property. If Providing the Works is likely to necessitate any interference (including, without limitation, the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Client*, obtains the prior written agreement of such owners or occupiers thereto, and such agreement is subject to the reasonable approval of the *Client* before execution (such approval not to be unreasonably withheld or delayed). The *Contractor* complies with any conditions contained in any such agreement."

2.19 Insert a new clause 27.7 as follows:

"The *Contractor* Provides the Works in accordance with the *Client's* Policies. If the *Contractor* is unable to Provide the Works in accordance with the *Client's* Policies, the *Contractor* notifies the *Project Manager* and the *Client* stating the reason(s) for its inability to comply and the Parties discuss whether the *Contractor* should be obliged to so comply."

2.20 Replace the wording of clause 28.1 in its entirety with the following:

"The *Contractor* does not assign, transfer, charge or otherwise deal with the contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Client*."

2.21 Insert a new clause 28.2 as follows:



"The *Client* may assign in whole or in part any benefit or right under the contract at any time to any person."

2.22 Not used.

2.23 Insert a new clause 28A with the heading "Planning and Consents" as follows:

**"28A Planning and Consents**

28A.1 Save in respect of the Client Consents only, the *Contractor* shall

- (save as stated in the third bulleted item of this clause 28A.1) obtain, enter into and maintain (as the context permits) and discharge the requirements of each and every Consent required by applicable law for it to design and construct and/or provide any works and/or services in connection with the *works* and/or to remedy any defects in the *works* and otherwise perform its obligations under the contract,
- give all notices and submit all applications as may be required in order to discharge its obligations in the above-mentioned bulleted item and
- pay (at its own cost) any and all costs, taxes, duties, fees and otherwise satisfy and/or discharge any financial and/or security requirements in connection with each Consent as may be required, save only where
  - the Consents Schedule expressly specifies that the *Client* is responsible for making specific types of payment to an identified third party in connection with a Consent (and identifies the nature, type and, where known, value of any such payment) and/or
  - due to the nature of the Consent, the counterparty to the Consent confirms in writing to the *Contractor* and the *Client* that certain sums payable under or in connection with the Consent can only be paid directly by the *Client*, in which case, to the extent that the Activity Schedule includes any sums in connection with such Consent on the assumption that the *Contractor* is responsible for paying it directly under this clause 28A.1, the Prices will be reduced following a written notice of the *Project Manager* to the *Contractor*, without constituting a compensation event, in an amount equal to the sums paid by the *Client* to such third party where it is identified that the *Contractor* is unable to make such payment directly, provided that where the amount to be paid to such third party is greater than the sum allowed for by the *Contractor* in the Activity Schedule, the surplus will be borne by the *Client*.

28A.2 The *Contractor* shall indemnify the *Client* against the *Client's* reasonably foreseeable and properly incurred and mitigated expenses, liabilities, losses, claims and proceedings whatsoever arising out of or in connection with a failure by the *Contractor* to comply with the requirements of this clause 28A, save only where such failure is the direct consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using reasonable and practical means.

28A.3 The *Contractor* shall provide to the *Client* such

- advice and information as may be reasonably required and
- additional assistance (including providing confirmations to third parties and Statutory Authorities) as may be reasonably required,



including the provision of information and of documents (including methodologies, specifications, plans and drawings), as and when reasonably requested by the *Client* and/or the *Project Manager* from time to time in connection with the *works* and/or the obtaining, maintenance and discharge by the *Client* of the *Client Consents* and/or any payments that are to be made by the *Client* in connection with a Consent pursuant to clause 28A.1 (and at such times, in such form and content and with such level of detail reasonably required or approved by the *Client*).

28A.4 If and insofar as discharge of any condition of any Consent is part of the works and/or services in connection with the *works* (or necessary to create and/or complete the same), the *Contractor* shall discharge the same in accordance with (and by the date(s), if any, required by) the Consent.

28A.5 The *Contractor* hereby agrees that it shall:

- ensure that the *works* comply with, and its performance of its obligations under the contract are in compliance with the Consents,
- ensure that the *works* (as designed, constructed, commissioned and completed in accordance with the contract) are capable of operation in accordance with the applicable laws and Consents applicable to the *works* and/or to the *Client* and
- as otherwise necessary or appropriate for the proper carrying out of the *works*, be responsible for the removal and/or re-routing of any temporary cables, utilities and/or pipelines which are present on the Site,

provided that nothing in this clause 28A.5 shall

- have the effect of preventing or limiting the operation of Option X2 and/or
- impose upon the *Contractor* a higher standard of care in respect of the preparation of the design of such part(s) of the *works* as may be referred to in and/or specified by any Consents than the Standard of Care.

28A.6 The *Contractor* shall be responsible, at its own cost, for liaising with all appropriate Statutory Authorities to locate and connect water and electricity, where required in relation to the *works*, and for obtaining and installing all necessary apparatus for the metering and consumption of such consumables and will pay the cost for all electricity and water consumed at the Site(s) by or on behalf of the *Contractor* (including its Subcontractors) until the date of Completion.

28A.7 The *Contractor* shall carry out and complete the works and/or services it is required to perform for the *works* in accordance with all Statutory Agreements, which shall include paying all sums, fees and/or fines required pursuant to the Statutory Agreements in order to perform such works and/or services."

2.24 Insert a new clause 28B with the heading "**Third Party Agreements**" as follows:

**"28B Third Party Agreements**

28B.1 The *Contractor* acknowledges that the *Client* has and will from time to time enter into agreements with third parties and be bound by decisions, consents and approvals of relevant authorities which may relate to the *Contractor's* obligations hereunder (each a "Third Party Agreement" and each counter-party to such Third Party Agreement being a "Third Party"). The details of any Third Party Agreement entered into by the *Client* before the Effective Date are referred to in Contract Data: Part One.

28B.2 The *Contractor* complies with and performs its obligations under and arising out of the contract so that no negligent act, omission or default on its part (or on the part of any Subcontractors engaged by it or other subcontractors of any tier engaged in connection with the *works*)



- causes or contributes to any breach by the *Client* of any of its obligations,
- gives rise to any liability of the *Client* and/or
- leads to any diminution or loss of any rights, entitlements or other benefits of the *Client*,

under any Third Party Agreement, save to the extent that the *Contractor* has not been provided with a copy of such Third Party Agreement.

28B.3 The *Contractor* shall indemnify the *Client* against the *Client's* reasonably foreseeable and properly incurred and mitigated expenses, liabilities, losses, claims and proceedings whatsoever arising out of or in connection with a failure by the *Contractor* to comply with the requirements of this clause 28B, save only where such failure is the direct consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using reasonable and practical means.

28B.4 In the event the *Client* enters into any Third Party Agreement after the Effective Date that was not disclosed to the *Contractor* and/or referred to in Contract Data: Part One as at the Effective Date (including any amendment agreement to a Third Party Agreement entered into before the Effective Date) the same shall constitute a change to the Scope and be treated as a compensation event under clause 60.1(1).

28B.5 The *Contractor* provides the *Project Manager* with copies of all correspondence and communications between the Contractor and any Third Party in relation to any actual or potential Third Party Agreements."

2.25 Replace the wording of clause 29 in its entirety with "Not used."

### **3 AMENDMENTS TO CLAUSE 3 – TIME**

3.1 Replace the wording of clause 30.1 in its entirety with the following:

"Subject to any modification to the Completion Date and/or any Key Date in pursuant to and in accordance with clause 60 to clause 66 (inclusive), the *Contractor* starts work on the starting date and starts work on the Site on the first access date and proceeds with the work regularly and diligently in accordance with the Accepted Programme and the contract so that:

- (if identified in Contract Data: Part One) the Condition stated for each Key Date is met on or before the Key Date and
- Completion is on or before the Completion Date."

3.2 In clause 30.2, replace "one week" with "two (2) weeks".

3.3 Delete clause 30.3 in its entirety.

3.4 In the final sentence of clause 31.2, replace "in the Scope" with "in Contract Data: Part One".

3.5 In clause 31.3:

- insert "(2)" after "two"; and
- insert "(1)" after "one".

3.6 In clause 32.1, insert a new bulleted item after the first bulleted item with the following wording:

"the effects of implemented compensation events,"

3.7 In clause 33.1:

- replace the words "The *Client* allows access to and use of each part of the Site to the *Contractor*" with "The *Client* allows non-exclusive access to and use of each part of the Site to the *Contractor*" and
- insert the following as a new sentence at the end of the clause:

"The *Contractor* acknowledges and agrees that the *Client* and all persons authorised by the *Client* shall at all times have access to the Site and the non-exclusive access that it is entitled to under this clause 33.1 takes effect as a non-exclusive licence only for the purpose of Providing the Works and performing the *Contractor*'s other obligations under the contract, and such non-exclusive licence shall not give rise to any other rights or entitlements in favour of the *Contractor* over or in connection with the Site and/or the Site's use. Any additional arrangements and/or requirements relating to this period of non-exclusive possession referred to in this clause 33.1 will be set out in the Scope and/or (if stated Contract: Data Part One as applying to this contract) the Decant Protocol.

[If the *Contractor* require access to any area within the *Client*'s control outside the agreed Site of the works, it shall notify the *Client* as soon as reasonably practicable and not access any such area(s) without the *Client*'s express written approval. The *Contractor* shall comply with any restrictions in relation to such areas that are referred to in this contract (including as part of the Scope and/or the 4.20 Meeting Minutes) which shall be deemed the equivalent requirements set out in this contract in relation to the Site and/or any other requirements that may be notified to the Contractor by the *Project Manager*.]<sup>7</sup>

3.8 Insert a new clause 33A with the following wording:

"33A Decant Protocol<sup>8</sup>

33A.1 The provisions of this clause 33A apply where it is specified in Contract Data: Part One that a Decant Protocol applies to this contract.

33A.2 The Parties acknowledge that the Contractor shall comply (and ensure that its Subcontractors comply) with the Decant Protocol (and if the works are to be constructed in *sections*, the Decant Protocol shall apply to each *section* on the basis set out therein).

33A.3 Without prejudice to the generality of clause 33A.2), the *Contractor* shall not commence any works and/or services in connection with the works at the Site other than in accordance with the Decant Protocol."

3.9 Insert a new clause 33B with the following wording:

"33B 4.20 Meeting Minutes<sup>9</sup>

33B.1 The provisions of this clause 33B apply where it is specified in Contract Data: Part One that the 4.20 Meeting Minutes apply to this contract.

<sup>7</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment.

<sup>8</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment

<sup>9</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment

33A.2 The Contractor shall at all times comply (and ensure that its Subcontractors comply) with any requirements set out and/or referred to in the 4.20 Meeting Minutes."

- 3.10 In the second bulleted item of clause 34.1, insert "pursuant to and in accordance with clause 14.5" after "remove the work from the Scope".
- 3.11 In clause 35.1, insert "(2)" after "two".
- 3.12 In clause 35.3, replace "one week" with "two (2) weeks".
- 3.13 In clause 36.1, insert "(3)" after both instances of "three".

#### **4 AMENDMENTS TO CLAUSE 4 – QUALITY MANAGEMENT**

- 4.1 In clause 40.1, replace "in the Scope" with "in Contract Data: Part One".
- 4.2 In clause 41.3, insert at the end of the second sentence before the bulleted item:  
  
"and if the *Contractor* fails to so notify, the *Contractor* repeats (at its own cost) the test or inspection and gives notification as required in this clause".
- 4.3 In clause 43.1, insert "opening-up," before "uncovering" in the first bulleted item of the clause.
- 4.4 Insert a new clause 43.3 as follows:

"If

- the *Contractor* notifies the *Project Manager* of a Defect, the *Project Manager* will specify in a response to such notice, acting reasonably, whether the defect is an Emergency Defect or a Routine Defect and
- the *Project Manager* notifies the *Contractor* of a Defect, the *Project Manager* will, as part of such written notification, acting reasonably, specify whether the Defect is an Emergency Defect or a Routine Defect.

Following the notification of a Defect by the *Contractor* or the *Project Manager* to the other, the *Contractor* shall

- make good any Defects that the *Project Manager* determines to be Emergency Defects and
- make good all Routine Defects,

within the relevant defect correction period applicable to such category of Defect as specified in Contract Data: Part One (referred to below as the "relevant period") following the date of the notification for that Defect being issued by the *Project Manager* or the *Contractor* (whichever is earlier and as the context requires).

If, following such notification and no later than twenty-four (24) hours after the initial inspection of the Defect by the *Contractor*, the *Contractor* notifies the *Project Manager* that due to the

- severity, extent and/or material nature of the Defect and/or
- lack of immediate availability to the *Contractor* of the relevant Plant and Materials that are necessary for the *Contractor* to make good the Defect within the relevant period,

the *Contractor* is unable to make good the Defect within the relevant period, the *Project Manager* may (acting reasonably and as soon as reasonably practicable upon receiving the *Contractor's* notification) authorise

- an extension to the relevant period in respect of such Defect only and/or
- the *Contractor* in writing to, in advance of making good the Defect as required in accordance with the contract, initially undertake such temporary works as may reasonably be necessary (as agreed by the *Project Manager*) in order to make safe and/or minimise the long-term impact and effect of the Defect,

provided always that

- any such authorisation of the *Project Manager* shall be in writing and shall not be implied in any circumstance and
- the *Contractor* shall
  - make good such Defect in full no later than the date on which the relevant period expires (as such relevant period may have been extended pursuant to this clause 43.3),
  - (or its Subcontractor, acting on behalf of the *Contractor*, shall) provide guidance and/or make recommendations to the *Client* in writing in respect of potential preventative and/or mitigatory measures (that do not involve the undertaking of any physical works) that might be reasonable in the context of the use of the completed works as a custodial facility and may assist with mitigating on a temporary basis the cause and/or potential impact of that Defect (referred to below as "temporary measures"), provided always that
    - the *Client* may accordingly choose to implement (or not implement) any such temporary measures at its sole discretion,
    - the liability of the *Contractor* for any Defect under the contract shall not be reduced if the *Client* chooses to or chooses not to implement any such temporary measures and
    - the liability of the *Contractor* for a Defect shall only be reduced to the extent that the *Client*, at its sole discretion, attempts to implement its own mitigatory and/or temporary measures (other than any temporary measures of the *Contractor* or a Subcontractor under this bulleted item) that the *Contractor* is subsequently then able to demonstrate is the direct cause of any worsening of the Defect (or causes, by such act but not any omission, any manufacturer warranty and/or product guarantee to be invalidated), in which case the *Contractor* will remain liable for remedying the Defect but shall not be liable to the *Client* for any worsening of the Defect that can be demonstrated by the *Contractor* as having been a direct consequence of the *Client's* actions,
  - be liable to the *Client* for any costs that the *Client* reasonably and properly incurs arising out of or in connection with the hiring and/or purchase of any plant, materials and/or equipment (of any type) that may reasonably be required on a temporary basis to minimise the impact of the Defect on the completed works and the operation of the completed works throughout any period during which the Defect has not been made good and
  - keep the *Project Manager* fully informed as to the progress of such temporary and/or other works in relation to such Defects."

4.5 Replace the wording of clause 44.2 in its entirety with the following:

"For a Defect notified



- before Completion, the Contractor corrects the Defect before Completion and
- on or after Completion, the Contractor corrects the Defect before the end of the defect correction period which begins when the Defect is notified."

4.6 In clause 44.3, replace "earlier of" with "the later of the following dates to occur".

4.7 Delete the second sentence of clause 44.4.

4.8 Insert a new clause 44.5 as follows:

"The *Project Manager* arranges for the *Client* to give the *Contractor* the access to those parts of the Site which the *Contractor* needs to correct a Defect which it is required to correct under the contract, after the *Client* has taken over any part of the *works*. In this case the defect correction period begins when the necessary access has been provided."

4.9 Insert a new clause 44A as follows:

"Without prejudice to the generality of clause 44, all Defects shall be rectified by the *Contractor* in accordance with any requirements as set out in (as the context requires) the 4.20 Meeting Meetings, the Decant Protocol and/or the Scope at no additional cost to the *Client* unless the *Project Manager* otherwise agrees in writing."

4.10 Insert a new clause 46.3 as follows:

"The provisions of clauses 43 to 45 (inclusive) are without prejudice to any other rights or remedies the *Client* may have whether in contract, by statute, in tort or otherwise at law (including negligence) and the *Contractor* remains liable for Defects after:

- the defects date and
- the termination of the *Contractor's* obligation to Provide the Works for any reason, up to and including the End of Liability Date."

## **5 AMENDMENTS TO CLAUSE 5 – PAYMENT**

5.1 Insert a new sentence at the end of clause 50.1: "The *Contractor* acknowledges and agrees that:

- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 53 (inclusive) and Option Y(UK)2 in respect of an application for payment submitted by or on behalf of the *Contractor* that the application for payment is a Valid Invoice (provided always that the *Project Manager* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice),
- where an invoice submitted by the *Contractor* to the *Project Manager* pursuant to clause 50.2 is not a Valid Invoice, the *Client* shall notify the *Contractor* of this in writing and the *Contractor* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant application for payment as part of the invoice that it issues to the *Client* at the next assessment date and no earlier and
- clause 50 to clause 53 (inclusive) and Option Y(UK)2 shall be construed accordingly."

5.2 In clause 50.2, replace "stated in the Scope" with "of a Valid Invoice".

5.3 In clause 50.3:



- replace "If the *Contractor* submits an application for payment before the assessment date, the" with "The"; and
- in the second bulleted item of the clause, insert "(which includes any VAT that may be payable on the amount due)" after "paid to the *Contractor*".

5.4 Replace the wording of clause 50.4 in its entirety with "Not used."

5.5 Insert a new clause 50.7 as follows:

"If there is subsequently any adjustment to the consideration due to the *Contractor* under the contract or the extent to which the *Contractor* Providing the Works is a supply on which VAT is chargeable under applicable law, then

- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
  - the *Contractor* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Client*, and
  - the *Client* will pay to the *Contractor* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of the supply for which the *Contractor* is liable to account, and
- if the adjustment is downward or the extent to which the supply is a supply on which the VAT that is chargeable decreases, then:
  - the *Contractor* shall issue a valid VAT credit note or a revised Valid Invoice to the *Client*, and
  - the *Contractor* will pay to the *Client* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Contractor* is liable to account, or
- the Parties may agree in writing to withhold from any further sums payable to the *Contractor* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Contractor* is liable to account."

5.6 In clause 51.1, replace "one week" with "seven (7) days".

5.7 In clause 51.2:

- replace "within three weeks" until the end of the sentence with "by the final date for payment as referred to in Option Y2.2" and
- insert the following as a new sentence at the end of the clause:

"If the *Client* pays the *Contractor* any sums under or in connection with the contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Contractor* on account and shall be deductible from the next payment to be made to the *Contractor* under the contract."

5.8 In clause 51.4 replace "compounded annually" with "simple interest".

5.9 Insert a new clause 51.6 as follows:

"If the *Client* is a "contractor" for the purposes of the Construction Industry Scheme ("CIS") under the Finance Act 2004, or if at any time the *Client* becomes such a "contractor", the obligation of the *Client* to make any payment under the contract is subject to the provisions of the CIS."



5.10 Insert a new clause 51.7 as follows:

"Notwithstanding clause 51.3, where a Party notifies the other Party that it has made an overpayment to that Party in connection with the contract, the payee shall repay such overpaid amount to the payer within twenty-eight (28) days of the date of the notification of the overpayment and the amount of such sum, if not so repaid, shall be recoverable on demand by the payer as a debt. The Parties agree that this clause 51.7 shall not apply in relation to any overpaid amounts that are, as at the time of the notification, the subject of any dispute which has been referred to an Adjudicator and/or a tribunal to be resolved. The Parties further acknowledge and agree that neither shall exercise the rights afforded under this clause 51.7 in a manner which is inconsistent with Part II of the Housing Grants Construction and Regeneration Act 1996 (as amended)."

5.11 Insert a new clause 51.8 as follows:

"The *Contractor* shall make all payments due to the *Client* under or in connection with the contract without any deduction (whether by set-off, counterclaim, abatement or otherwise) unless the *Contractor* has a valid adjudication, judgment (or equivalent) or court order requiring an amount equal to such deduction to be paid to the *Contractor*."

5.12 Insert a new clause 51.9 as follows:

"Where any sum of money is recoverable from or payable by the *Contractor* under this contract, such sum is assessed by the *Project Manager* and deducted from the *Price for Work Done to Date*. Where the assessment exceeds any payment due to the *Contractor* in respect of this *Works Package*, the sum assessed may be deducted from any sum falling due to the *Contractor* in respect of any other activities carried out under the FAC-1 Contract with the *Client* (including any *Order* or *Notice to Proceed*) whether before or after the date of this contract. The right to exercise this clause remains at the *Client's* discretion."

5.13 In clause 53.1:

- insert "(4)" after "four";
- insert "(13)" after "thirteen";
- insert "(2)" after "two"; and
- replace the final sentence of clause 53.1 with the following:  
"Where an amount is due to the *Client*, the final payment is made within three (3) weeks after the end of the relevant period described in the bullet points above, as applicable. Where an amount is due to the *Contractor*, the final payment is made within three (3) weeks of the later of the following to occur:
  - the end of the relevant period described in the bullet points above, as applicable and
  - the date of receipt by the *Client* of a Valid Invoice from the *Contractor* in respect of the amount due."

5.14 Replace the final sentence of clause 53.2 with the following:

"If the *Client* agrees with this assessment, then

- where an amount is due to the *Client*, a final payment is made within three (3) weeks of the assessment,
- where an amount is due to the *Contractor*, a final payment is made within three (3) weeks of the later of the following to occur

- the assessment and
- the date of receipt by the *Client* of a Valid Invoice from the *Contractor* in respect of the amount due."

5.15 In clause 53.3:

- insert "(3)" after each instance of "three"; and
- insert "(4)" after each instance of "four".

5.16 In clause 53.4, insert "(4)" after "four".

## 6 AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS

Replace the first sentence of clause 60.1 with the following:

"The following are compensation events, but only to the extent that they

- are not due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by the Contractor or due to any acts and omissions (including tortious acts and omissions) of its Subcontractors and its employees,
- are not attributable or related to any works and/or services undertaken (or to be undertaken) by or on behalf of the Contractor pursuant to any Order for Pre-Construction Services and/or the Pre-Construction Activities, whether due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the relevant contract (in each case, by act or omission) or due to any acts or omissions of its subcontractors and/or its employees in respect of the same and/or
- do not otherwise arise as a consequence of (or are related to) the presence at the Site of the Contractor pursuant to and in accordance with any Order for Pre-Construction Activities issued pursuant to the Contract Terms as referred to in Contract Data: Part One."

6.1 In clause 60.1(1):

- delete the words "for its design" in the second bulleted item of the clause; and
- replace the "or" at the end of the first bulleted item with "," and the full stop at the end of the second bulleted item with "," and insert the following as new bulleted items:
  - "(subject to Option X2, where selected in Contract Data: Part One) a change made in order to deal with an illegal or impossible requirement in the Scope,
  - a change made to resolve a conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of the contract,
  - a change to deal with any error, mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency or omission in the Scope (including in any designs contained in and/or referred to in the Scope, whether the same has been prepared by or on behalf of the *Client*, the *Contractor* or otherwise), or
  - a change required as a result of an event or matter which is the *Contractor's* liability or at the *Contractor's* risk or which is the *Contractor's* responsibility pursuant to the contract or which is expressly stated in the contract not to give rise to a compensation event."





- 6.2 At the beginning of clause 60.1(5), replace "The" with "Save in respect of any Consents and/or any works undertaken (or to be undertaken) by a Statutory Authority in its capacity as a statutory undertaker and/or utility provider, the".
- 6.3 Insert a new clause 60.1(5A) with the following wording:
- "A Statutory Authority or other third party fails to issue to, enter into or approve (as the context requires) a Consent by the date stated on the Accepted Programme in respect of the same, provided always that
- where the Consent is not a Client Consent, the *Contractor* demonstrates to the *Project Manager* (acting reasonably) that the *Contractor*:
    - has used reasonable endeavours to secure (or, as the context requires, facilitate) such issuance, entering into and/or approval in accordance with clause 28B by the date shown on the Accepted Programme and
    - (save where attributable to the acts or omissions of such Statutory Authority or third party) is not in breach of its obligations under clause 28B or
  - where the Consent is a Client Consent, such failure is not attributable to any failure by or on behalf of the *Contractor* to comply with the requirements of clause 28B."
- 6.4 Insert a new clause 60.1(5B) with the following wording:
- "A Statutory Authority, acting in the capacity of a statutory undertaker or utility provider and pursuant to a Consent fails to undertake the works and/or services that it is required to undertake and complete under that Consent within any period(s) identified in the Accepted Programme for such works and/or services, provided that where such works and/or services are to be undertaken pursuant to
- a Consent other than a Client Consent, the *Contractor*
    - has first supplied such information required, placed any necessary orders and otherwise performed its obligations under the contract in respect of such work and/or services as soon as reasonably practicable after the Effective Date so as not to delay or disrupt such Statutory Authority in undertaking and completing such work and/or services and/or
    - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B and/or under the relevant Consent or
  - a Client Consent (and without prejudice to the generality of clause 28B), the *Contractor*
    - has first supplied to the *Client* such information required, assisting the *Client* with the placing of any necessary orders and otherwise performed its obligations under the contract in respect of such work and/or services as soon as reasonably practicable after the Effective Date so as not to cause the *Client* to delay or disrupt such Statutory Authority in relation to such work and/or services and
    - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B."
- 6.5 Replace the wording of clause 60.1(7) in its entirety with "Not used."
- 6.6 At clause 60.1(10), at the end of the clause after the words "obstructing a required test or inspection" but before the full stop, insert the words "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".

6.7 Not used.

6.7A In clause 60.1(14), insert the following at the end of the clause:

"provided always that where the *Client* liability results in loss or damage to the *works* and/or any Plant and Materials and such loss or damage is also

- a Specified Peril for the purposes of the All Risks Policy, the compensation event at clause 60.1(22)
- a ES Specified Peril, the compensation event at clause 60.1(23) shall apply to such loss or damage.

6.8 Replace the wording of clause 60.1(18) in its entirety with the following:

"A breach of contract or other act of prevention by the *Client* which is not one of the other compensation events in the contract."

6.9 Replace the wording of clause 60.1(19) with the following:

"The occurrence of a Force Majeure Event which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme."

6.10 Replace the wording of clause 60.1(21) with "Not used."

6.10(A) Insert a new clause 60.1(22) with the following wording:

"The *Contractor* is delayed in undertaking the *works* as a consequence of loss or damage to the *works* and/or any Plant and Materials occasioned by a Specified Peril and an insurance claim is made under the All Risks Policy by either Party in respect of the same."

6.10(B) Insert a new clause 60.1(23) with the following wording:

"The *Contractor* is delayed in undertaking the *works* as a consequence of loss or damage to the *works* and/or any Plant and Materials at or within any Existing Structure occasioned by an ES Specified Peril"

6.10(C) Insert a new clause 60.1(24) with the following wording:

"Notwithstanding any other provision in this contract which refers to any inaccuracy, any inadequacy or any inconsistency or the like (i) an assumption made by the *Contractor* in the Scope Derogations Schedule is not correct and/or (ii) a Client Consent which is relevant to the Scope Derogations Schedule is not obtained on time or at all by the *Client*, for whatever reason."

6.11 Not used.

6.12 Not used.

6.12A In clause 61.2, in the first bulleted item, replace the words "the event arises from a fault of the *Contractor*" with "the event arises (save in respect of a Specified Peril) from any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by or on behalf of the



*Contractor* or from any acts or omissions (including tortious acts and omissions) of its Subcontractors or suppliers or their respective employees, subcontractors or agents or".

6.13 Not used.

6.14 In clause 61.3, insert "(8)" after "eight".

6.15 In clause 61.4:

- replace "one week" in the first bulleted item of the clause with "the period for reply";
- insert "(acting reasonably)" after "has agreed" in the second bulleted item of the clause;
- replace the words "arises from a fault of the *Contractor*" with "arises from any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by or on behalf of the *Contractor* or from any acts or omissions (including tortious acts and omissions) of its Subcontractors or suppliers or their respective employees, subcontractors or agents," in the first bulleted item of the second bulleted list;
- insert "(2)" after "two"; and
- in the final sentence, insert after "submit quotations" the following:

"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to reply and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.16 In clause 61.6, insert "the *Project Manager* decides that" before "the effects".

6.17 Insert a new clause 61.8 as follows:

"Notwithstanding any other provision of the contract, where the compensation event notified by the *Contractor* to the *Project Manager* is a Force Majeure Event that is a Class 2 Force Majeure Event, the *Contractor* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and the Completion Date only."

6.17A Insert a new clause 6.19 as follows:

"Notwithstanding any other provision of the contract, where the compensation event notified by the *Contractor* to the *Project Manager* relates to loss or damage to the *works* and/or Plant and Materials occasioned by a Specified Peril for the purposes of clause 60.1(22) or loss or damage to the *works* occasioned by a latent defect in the Existing Structures and/or Existing Services for the purposes of clause 60.1(23):

- the *Contractor* shall not be entitled to any adjustment to the Prices arising out of or in connection with the same under clause 61 to clause 65 (inclusive) and shall, subject to the provisions of clause 61 to clause 65 (inclusive) and clause 85A.7, be entitled to an adjustment to any Key Date(s) and the Completion Date only, and
- the *Contractor's* sole entitlement to any payment in connection with the same shall be governed exclusively by the provisions of clause 85A."

6.18 Delete clause 62.2 and replace with the following:

"Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of its



assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations in its quotation."

6.19 In clause 62.3:

- insert "(3)" after "three";
- insert "(2)" after "two".

6.20 At clause 62.4:

- after the words "revised quotation" in the second sentence, insert "as soon as possible, and in any event"; and
- insert "(3)" after "three".

6.21 In clause 62.6:

- insert "(2)" after "two"; and
- insert the following after "quotation" at the end of the clause:

"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to reply and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.22 Not used.

6.23 Replace the wording of clause 63.5 in its entirety with the following:

"A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations."

6.24 Replace the wording of clause 63.6 in its entirety with the following:

"The rights of the *Client* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event. The *Client* has no other liability under the contract or in law to the *Contractor* for a compensation event."

6.25 Replace the wording clause 63.8 in its entirety with "Not used."

6.26 In clause 64.4:

- insert "(2)" after "two"; and
- insert the following after "the quotation " at the end of the clause:

"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.27 In clause 65.2:

- insert "(3)" after "three"; and
- insert the following after "quotation is not accepted " at the end of the clause:

"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to accept the quotation and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

## 7 AMENDMENTS TO CLAUSE 7 – TITLE

7.1 Replace the wording of clause 70.1 in its entirety with "Not used".

7.2 Replace the wording of clause 70.2 in its entirety with the following:

"Each item of Plant and Materials becomes the property of the *Client* at whichever is the earlier of the following circumstances to occur

- when it is brought within the Working Areas or
- (whether or not the item has been brought within the Working Areas), the date when the *Contractor* receives payment from the *Client* for the item in question.

Where, prior to delivery to the Working Areas, the title to Plant and Materials passes to the *Client*, the *Contractor* sets such item of Plant and Materials aside and marks it clearly and visibly as the *Client's* property and identifies its destination as the Working Areas.

It is a precondition to payment for any Plant and Materials that the *Contractor* marks and stores such Plant and Materials in accordance with the contract (including the Scope) and, unless otherwise agreed in advance and in writing by the *Project Manager*, provides a properly executed Vesting Agreement in favour of the *Client* in respect of such Plant and Materials in the form referred to in the Contract Data (with such amendments as the *Project Manager* may approve in advance, acting reasonably) or in such alternative form as is acceptable to the *Project Manager*, acting reasonably).

Upon request, the *Contractor* provides reasonable proof to the *Client* (in a form to be agreed in writing in advance with the *Project Manager*) that the relevant item of Plant and Materials has been so set aside and marked (including procuring access for the *Client* and/or the *Supervisor* and/or the *Project Manager* to inspect the item of Plant and Materials at the relevant place of storage). The *Contractor* does not remove the relevant item from its place of storage without the prior written consent of the *Project Manager* (unless it is delivered to the Site)."

7.3 After clause 70.2, insert a new clause 70.3 as follows:

"Title to Plant and Materials that the *Client* has not paid for under this contract passes back to the *Contractor* if they are removed from the Working Areas. If the Plant and Materials have been paid for by the *Client* under this contract, the title in such Plant and Materials remains with the *Client* even if they are removed from the Working Areas and the *Contractor* complies with the requirements of clause 70.2 as to the marking and storage of such removed Plant and Materials. No Plant and Materials within the Working Areas may be removed from the Working Areas without the *Project Manager's* prior written permission."

7.4 At clause 73.1, at the end of the first sentence after "Site" but before the full stop insert the words:

"and the *Contractor* acknowledges and agrees that title in any such object vests in the *Client*"

7.5 In clause 73.2, delete the word "*Contractor*" and replace with "*Client*".

7.6 Replace the wording of clause 74.1 in its entirety with "Not used."

7.7 Insert a new clause 75 with the heading "**Free Issue Materials**" as follows:

**"75 Free Issue Materials**

75.1 Where Contract Data: Part One specifies that the *Client* will provide Free Issue Materials to the *Contractor* in connection with the *works*

- the *Contractor* agrees and acknowledges that it is familiar with the specification of the Free-Issue Materials and has no objection to the incorporation of such items in the *works*,
- the *Client* supplies to the *Contractor*, free of charge, the Free Issue Materials in accordance with the Accepted Programme, so as not to prevent, hinder and/or delay the *Contractor* complying with its obligations under the contract,
- unless otherwise agreed between the *Client* and the *Contractor*, such Free Issue Materials may be supplied in one of the following ways (at the sole discretion of the *Client*)
  - the *Contractor* may be required to collect the Free Issue Materials from a location specified in advance and in writing by the *Client* and/or the *Project Manager* or
  - the *Client* may deliver (or arrange the delivery of) the Free Issue Materials to the Site or an area within its prison estate which may include a location under the control of the *Contractor* and
- when attending a location specified by the *Client* and/or the *Project Manager* to collect the Free Issue Materials or taking receipt of the Free Issue Materials (as the context permits)
  - the *Contractor* shall inspect the Free Issue Materials within the Free Issue Inspection Period to determine their suitability for use in the works (as assessed by reference to the *Contractor's* own duties and obligations relating to the provision of goods and materials under or in connection with the contract) provided always that the *Contractor* cannot object to their suitability if such items are in accordance with the specification referred to in the Scope or otherwise made known to the *Contractor* in advance of delivery,
  - the *Contractor* shall give notice to the *Client* (or the party delivering the Free Issue Materials to the *Contractor*, if not the *Client*) of any shortage and/or defect in the Free Issue Materials identified by such inspection (and in the context of Free Issue Materials delivered by a party other than the *Client*, comply with any requirements of that party in relation to the inspection and notification of shortages and/or defects in the Free Issue Materials as may be specified in any accompanying delivery note or as notified to the *Contractor* as at the time of such delivery, including within a time period shorter than the Free Issue Inspection Period where so specified, with the Free Issue Inspection Period being deemed to be adjusted to reflect such time period),
  - the *Client* (acting reasonably) shall rectify any notified shortage and/or arrange for any defective Free Issue Materials to be replaced as soon as reasonably practicable upon being notified of the same and the provisions of the fourth main bullet point of this clause 75 shall apply mutatis mutandis to such replacement Free Issue Materials and



- following the expiration of the Free Issue Inspection Period (or following the inspection of any shorter period specified by a party other than the Client where that party has delivered the Free Issue Materials), risk in the Free Issue Materials shall come under the care, custody and control of the *Contractor* and the *Contractor* procures that the Free Issue Materials are insured pursuant to the first entry of the Insurance Table (save in respect of any defective or missing Free Issue Materials that have been properly notified by the *Contractor* in accordance with this clause 75, in which case the defective and/or missing Free Issue Materials so notified shall come under the care, custody and control of the *Contractor* (and the *Contractor* is obliged to insure the same pursuant to the first entry of the Insurance Table) once replaced, inspected and free from any further shortage or defect in accordance with the fourth main bullet point of this clause 75)."

## 8 AMENDMENTS TO CLAUSE 8 – RISKS AND INSURANCE

### 8.1 In the first bulleted item of clause 80.1:

- after the words "use or occupation of the Site by the works or for the purpose of the works which is the unavoidable result of the works" in its first sub-bulleted item insert "(save where the relevant claims, proceedings, compensation and/or costs arise from a risk and/or liability borne by the *Contractor* pursuant to this contract (including where the *Contractor* breaches clause 27.5 and/or clause 27.6)"; and
- at the end of its second sub-bullet point, insert "and except any such negligence, breach of statutory duty or interference in respect of any design or any other documentation or information provided and/or prepared by or on behalf of the *Client* for which the *Contractor* is responsible pursuant to the terms of this contract."

### 8.2 At the end of the second bulleted item of clause 80.1, insert the following:

"and except any fault in any design or any other documentation or information provided and/or prepared by or on behalf of the *Client* for which the *Contractor* is responsible pursuant to the terms of this contract."

### 8.3 Delete the third bulleted item of clause 80.1 in its entirety.

### 8.4 Delete the fifth bulleted item of clause 80.1 in its entirety.

### 8.5 In the sixth bulleted item of clause 80.1, delete the first sub-bulleted item (which starts with the words "a Defect").

### 8.6 Replace the ninth bulleted item of clause 80.1 in its entirety and replace with the following:

"Such part(s) of any loss of or damage to any Existing Structure and/or the Existing Services where the overall loss of or damage to such Existing Structure and/or the Existing Services has first arisen from or in connection with the *Contractor* Providing the Works and is attributable to the existence of a latent defect in the Existing Structures and/or the Existing Services as at the date on which the loss of or damage caused by the *Contractor* occurred."

### 8.7 Replace the wording of clause 81.1 in its entirety with the following:

"From the starting date until the Defects Certificate has been issued, the risks which are not carried by the *Client* are carried by the *Contractor*."

### 8.8 At the beginning of clause 82.1, replace "Any cost" with "Without prejudice to the *Contractor's* indemnities in this contract and its other liabilities pursuant to the contract, any cost".



8.9 Replace the wording of clause 83.1 in its entirety with "Not used."

8.10 In clause 83.3:

- in the first sentence, replace the "fourth insurance stated" with "any professional indemnity insurance and/or pollution and contamination insurance as stated in the Insurance Table"; and
- replace the second sentence with "The insurances are maintained for the periods identified in Contract Data: Part One against each relevant type of insurance."

Replace the Insurance Table in clause 83.3 with the version of the Insurance Table identified as such in Contract Data: Part One.

8.11 In clause 84.1, replace "and if the insurer's commercial position" with "and/or if the insurer's commercial position".

8.12 Insert a new clause 85A with the heading "**Additional provisions in relation to the All Risks Policy**" as follows:

"85A Additional provisions in relation to the All Risks Policy

85A.1 The *Contractor* shall ensure that the All Risks Policy provides for the recognition of each Subcontractor (which term shall include a Subcontractor's own subcontractors at any tier) as an insured under the All Risks Policy in respect of loss or damage by the Specified Perils to the *works* or relevant *section* and Plant and Materials and that this recognition continues up to and including the date of Completion or other document which states that in relation to the *works*, each Subcontractor's works are practically complete or, if earlier, the date of termination of the Subcontractor's employment under its subcontract (provided that, where the works are in *sections*, the recognition for a Subcontractor in relation to a *section* shall cease upon the issue of such equivalent statement or other document in relation to its subcontract work in respect of the relevant *section* of the *works*).

85A.2 If during the carrying out of the *works* any loss and/or damage affecting any executed part of the *works* and/or the Plant and Materials is occasioned by a Specified Peril, or where there is loss or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services

- the *Contractor* shall, immediately upon becoming aware of the same, give notice to the *Project Manager* of its nature, location, impact and extent,
- the *Contractor*, for itself and for all its Subcontractors recognised as an insured under the All Risks Policy, shall (unless otherwise agreed by the *Client* at its sole discretion) pursue all claims under *the* All Risks Policy directly with the insurer,
- the *Contractor* shall pay any money it recovers from its insurer under the All Risks Policy to the *Client* in the event of any loss and/or damage affecting the *works* and/or any Plant and Materials that is occasioned by the Specified Peril or where there is loss or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services,
- (subject to clause 85A.7) the *Contractor* shall, after any inspection required by the insurers as required pursuant to and under the All Risks Policy and with due diligence and with the advance written approval of the *Project Manager*, reinstate and restore such damaged part(s) of the *works*, replace or repair any lost or damaged Plant and Materials, remove and dispose of any debris (collectively referred to in this contract as "reinstatement work") and proceed with the carrying out and Completion of the *works* in accordance with the requirements of this contract,



- the *Client* shall pay all monies from that it receives pursuant to and in accordance with the All Risks Policy under this clause 85A.2 in connection with the Specified Peril, or where there is loss or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services, to the *Contractor* in instalments under separate reinstatement work statements issued by the *Project Manager* at the same dates as the date on which it issues a payment certificate to the *Contractor* pursuant to Option Y.2 but without deduction of the *retention percentage*, and
- the *Contractor* shall not be entitled to any additional payment under or in connection with this contract, including but not limited to under clause 60 to clause 65 (inclusive), in respect of such reinstatement work (including where arising out of or in connection with and/or consequential to the loss and/or damage to the *works* and/or Plant and Materials by the Specified Peril or loss and/or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services) (and subject to the above bulleted items) in excess of the amounts received by the *Client* under the All Risks Policy for the Specified Peril.

85A.3 If, during the carrying out of the *works*, any loss and/or damage affecting any executed part of the *works* and/or the Plant and Materials is occasioned by an Excepted Risk

- the *Contractor* shall immediately, upon becoming aware of the same, give notice to the *Project Manager* of its nature, location, impact and extent and
- the *Contractor* shall, after any inspection required by the insurers as required pursuant to and under the All Risks Policy and with due diligence and with the advance written approval of the *Project Manager* (such approval not to be unreasonably withheld and/or delayed but subject always to clause 85A.7), undertake at its own cost and without any entitlement to any adjustment to the *completion date* and/or the Prices undertake and complete all necessary reinstatement work and proceed with the carrying out and completion of the *works*,

provided always that where such loss or damage is attributable to an Excepted Risk that is also expressed as being another compensation event under this contract, nothing in this clause 85A.3 shall preclude the *Contractor* from notifying the *Project Manager* of such compensation event separately under clause 60.1.

85A.4 Where a Party makes a claim under the All Risks Policy (whether the matter is eventually determined to be a Specified Peril or an Excepted Risk or where there is loss or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services), it shall keep the other Party fully notified in writing as to the progress and outcome of any such claim, including by

- providing a copy of the initial insurance claim to the other Party (as well as copies of any communications with the insurer in respect of the claim) as soon as reasonably practicable upon issuing and/or receiving any such communications and
- notifying (and evidencing in writing to) the other Party what sums (if any) are paid or are to be paid by the insurer in connection with the claim (including where arising out of or in connection with any settlement reached with the insurer in respect of the same).

85A.5 Where a Party makes a claim under the All Risks Policy, the other Party provides reasonable assistance to that Party in connection with the pursuance and resolution of (including by way of a settlement with the insurer, as appropriate, in respect of) the claim.

85A.6 The *Contractor* shall not

- settle any claim under the All Risks Policy without first obtaining the *Client's* prior written acceptance, such acceptance not to be unreasonably withheld or delayed and
- (and ensures that its personnel and Subcontractors do not) make any admissions in connection with any actual or potential claim under the All Risks Policy unless agreed in writing by the *Client* in advance or where such admission is required by the applicable law, provided that the other Party has given the *Contractor* reasonable prior notice of the same.

85A.7

If there is material loss and/or damage to the *works* and/or the Plant and Materials, occasioned by a Specified Peril or an Excepted Risk or there is loss or damage to the *works* that is occasioned by a latent defect in the Existing Structures and/or Existing Services the *Project Manager*

- may notify the *Contractor* that the *Client* does not wish the *Contractor* to undertake the reinstatement works and
- terminate this contract immediately on written notice to the *Contractor* and such termination shall be treated as a termination under "R21" (as stated in clause 91.7) for the purposes of clause 90 to clause 93 (inclusive),

provided that, where this contract is terminated pursuant to this clause 85A.7

- the *Contractor* shall not be relieved of its obligation to authorise and ensure that its insurers under the All Risks Policy pay to the *Client* all monies from such All Risks Policy under clause 85A.1 where the loss or damage is occasioned by a Specified Peril or where there is loss or damage to the works that is occasioned by a latent defect in the Existing Structures and/or Existing Services,
- the *Client* shall not be required to make any payment to the *Contractor* from or in connection with any such sums received from the insurer, and
- the *Contractor's* sole entitlement to payment in connection with the termination shall be determined pursuant to clause 92 to clause 93 (inclusive)."

8.13 After clause 86, insert a new clause 86A with the heading "Joint Fire Code" as follows:

"In Providing the Works and performing its other obligations pursuant to the contract, the Contractor complies with the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association (as the same may be updated from time to time)."

## 9 AMENDMENTS TO CLAUSE 9 – TERMINATION

9.1 Replace the first row of the Termination Table in clause 90.2 (for "The *Client*") with the following:

TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The Client	R1 – R15, R18, R22 and R23	P1, P2, P3 and P5	A1 and A3
	R17 or R20	P1, P4 and P5	A1 and A2
	R21	P1, P3 and P5	A1 and A2



9.2 In the "Procedure" column for each of the "P1 and P4" entries in the row for "The Contractor", insert "(and P5)".

9.3 Replace the wording of clause 91.1 in its entirety with the following:

"Subject to clause 91.1A below

- either Party may terminate the contract immediately if the other Party is subject to or has suffered an Insolvency Event or
- where the *Client* (in its capacity as the "Client" under the FAC-1 Contract) terminates the Contractor's engagement (in its capacity as an "Alliance Member" under the FAC-1 Contract) under the FAC-1 Contract pursuant to Contract Term 14.3, the notice of such termination shall also constitute a valid notice of termination of the obligation of the Contractor to Provide the Works purposes of clause 90.1 if the notice states that it also applies to the same,

(R1 to R10 (inclusive))."

9.4 Insert a new clause 91.1A as follows:

"The *Contractor's* right to terminate under clause 91.1 where the *Client* is subject to or suffers an Insolvency Event will not arise where the Insolvency Event involves the *Client*

- having a winding-up order made against it,
- having a monitor appointed or any document is filed at court to obtain or apply for a moratorium or order is made for a moratorium to come into force,
- having a provisional liquidator appointed to it,
- passing a resolution for winding-up (other than in order to amalgamate or reconstruct),
- having an administration order made against it or had an administrator appointed over it,
- having an administrative receiver appointed over the whole or a substantial part of its underlying or assets,
- making an arrangement, compromise or composition with its creditors, where a voluntary arrangement approved under Part 1 of the Insolvency Act 1986 takes effect in relation to the *Client* or after a court order is made under section 901C(1) of the Companies Act 2006 in relation to the *Client*,

(in each case, a "relevant insolvency procedure") unless and to the extent that

- in a case where the *Client* has entered administration, an administrative receiver of the company has been appointed (otherwise than in succession to another administrative receiver), gone into liquidation and/or a provisional liquidator of the *Client* is appointed (otherwise than in succession to another provisional liquidator), the office-holder consents to the termination,
- in any other case, the *Client* consents to the termination,
- the court is satisfied that the continuation would cause the *Contractor* hardship and grants permission for the termination or
- the termination is otherwise permitted pursuant to Section 233B of the Insolvency Act 1986 (as amended and in force from time to time)."



- 9.5 In clause 91.2, insert "(4)" after "four".
- 9.6 In clause 91.3, insert "(4)" after "four".
- 9.7 In clause 91.4, insert "(13)" after "thirteen".
- 9.8 In clause 91.5, insert "applicable" before "law".
- 9.9 In clause 91.6:
- insert "(13)" after "thirteen"; and
  - insert "(pursuant to clause 14.5 or otherwise)" after "from the Scope".
- 9.10 In clause 91.7:
- insert "(13)" after "thirteen"; and
  - replace "Contract Date" with "Effective Date".
- 9.11 Replace the wording of clause 91.8 in its entirety with the following:
- "The *Client* may immediately terminate the *Contractor's* obligation to Provide the Works if the *Client* (in its capacity as the "Client" under the FAC-1 Contract) terminates or has the right to terminate the *Contractor's* engagement (in its capacity as an "Alliance Member" under the FAC-1 Contract) under the FAC-1 Contract pursuant to Contract Term 14.4 of the FAC-1 Contract (R22)."
- 9.12 Insert a new clause 91.9 as follows:
- "The *Client* may immediately terminate the engagement of the *Contractor's* obligation to Provide the Works by reference to the circumstances set out at regulation 73(1)(a) or regulation 73(1)(c) of the Public Contracts Regulations 2015, in which case the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of the contract (R23)."
- 9.13 Insert a new clause 91.10 as follows:
- "The *Contractor's* termination rights under clauses 91.4, 91.5 and 91.6 may not be exercised while the *Client* is and remains subject to a relevant insolvency procedure unless such exercise is expressly permitted and/or is not prohibited by the provisions of Section 233B of the Insolvency Act 1986 (as amended and in force from time to time)."
- 9.14 In the "P4" entry of clause 92.2, replace "Working Areas" with "Site".
- 9.15 After the "P4" entry of clause 92.2, insert the following as a new paragraph:
- "P5 The *Contractor* provides for such reasonable period as required by the *Client* following termination to answer any queries raised by the *Client* and supply any information required by the *Client* in connection with the works and co-operates with the *Client*. The *Contractor*, upon notification from the *Client*, delivers to the *Client* all Plant and Materials and other items of any kind whatsoever relating to the contract and/or in respect of the works which is in the *Contractor's* control, custody or possession, including those in the control, custody or possession of the Subcontractors. The *Contractor* transfers title in all Plant and Materials to the *Client* for which the *Client* has paid or discharged payment and delivers such Plant and Materials to the Site or such location as instructed by the *Client*."

9.16 In the "A4" entry of clause 93.2, replace "Contract Date" with "Effective Date".

## 10 ADDITIONAL CLAUSE 10 – ADDITIONAL PROVISIONS

10.1 Insert a new core clause 10 after core clause 9 (Termination) in the conditions of contract with the heading "**Additional provisions**".

10.2 Insert a new clause 101 as follows:

### "101 Apprenticeships

- 101.1 The *Contractor* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *works*.
- 101.2 The *Contractor* takes all reasonable steps to ensure that no less than the Required Apprenticeship Number are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Works, (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes.
- 101.3 The *Contractor* makes available to its people and Subcontractors working on the contract, information about the United Kingdom government's apprenticeship programme and wider skills opportunities.
- 101.4 The *Contractor* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Works.
- 101.5 The *Contractor* provides a report detailing the following measures at the reporting interval specified in Contract Data: Part One and is prepared to discuss apprenticeships at its regular meetings with the *Project Manager*
  - the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
  - the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,
  - the percentage of all people taking part in an apprenticeship programme,
  - if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified number target,
  - actions being taken to improve the take up of apprenticeships and
  - other training/skills development being undertaken by people in relation to this contract, including
    - work experience placements for fourteen (14) to sixteen (16) year olds,
    - work experience / work trial placements for other ages,
    - student sandwich / gap year placements,
    - graduate placements,
    - vocational training,

- basic skills training and
- on-site training provision / facilities.”

10.3 Insert a new clause 102 as follows:

**"102 Cooperation**

102.1 The *Contractor* acknowledges and agrees that due to the operational (or to be operational) nature of the Site, each Operational Party has an interest in the on-going management and operation of the Site and the interfacing of the works and/or services comprising the Project with its own duties, obligations and responsibilities to the *Client* under separate contractual arrangements and shall cooperate and work with the Operational Parties on the basis set out in this contract generally and specifically pursuant to this clause 102.

102.2 The *Contractor* shall

- cooperate with and interface in the performance of the works with the Operational Parties in connection with the Project as may be reasonably required and
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Contractor* and the Operational Parties,

in each case so far as reasonably practicable on a Project Focused basis.

102.3 The *Contractor* shall work with the Operational Parties so far as is reasonably practicable, using the Standard of Care, to

- to the extent reasonably within the *Contractor's* control, assist the Operational Parties in performing their obligations under their respective contractual arrangements with the *Client* in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Contractor* in connection with Project and
- share best practice in connection with the Project,

on a Project Focused basis.

102.4 The *Contractor* acknowledges and agrees, for the purposes referred to in this clause 102, to promptly supply or allow each Operational Party access to all information and documentation in its possession or control that is reasonably requested by them in connection with the Project, insofar as the same is:

- not subject to disclosure and/or confidentiality restrictions by applicable law and/or the contract,
- reasonably required by the *Contractor* to properly perform its obligations under the contract and/or
- reasonably required by an Operational Party to properly perform its obligations under its contractual arrangements with the *Client*.

102.5 The *Contractor* shall:

- comply with and perform its obligations under this contract so as to avoid or (where avoidance is not practicable) mitigate causing each Operational Party to incur any

additional cost, delay and/or disruption in connection with the performance of their duties and obligations under and in accordance with the Project and/or any separate contractual arrangement with the *Client* respectively and

- (and shall procure that its Subcontractors) otherwise not
- delay, impede, inhibit, disrupt and/or hinder any Operational Party in the carrying out of their duties and obligations in connection with the Project and
- act in a manner that might reasonably be expected to cause any Operational Party to be in breach of its own obligations under any separate contractual arrangement with the Client and/or otherwise to suffer and/or incur any loss, delay, disruption, and/or inconvenience in performance of such obligations.

102.5 The *Contractor* shall, in complying with its obligations under this clause 102, consult with the *Contractor*, the *Project Manager* and the *Client* and attend such meetings as and when reasonably requested by the *Client* or the *Project Manager* to discuss any matters arising under the contract and/or in relation to the Project.

102.5 Nothing in this clause 102 shall require the *Contractor* to perform tasks and/or duties which are the responsibility of Operational Party under any its contractual arrangements with the *Client*."

## 11 AMENDMENTS TO DISPUTE RESOLUTION OPTION W2

11.1 In Option W2.1(2), insert "(1)" after "one".

11.2 In Option W2.1(3), insert "(3)" after "three".

11.3 In Option W2.2(5), insert "(4)" after "four".

11.4 In Option W2.3(1), insert "(3)" after both instances of "three".

11.5 In Option W2.3(2):

- insert "(7)" after "seven"; and
- insert "(14)" after "fourteen".

11.6 After Option W2.3(4), insert a new Option W2.3(4A) with the following wording:

"The Adjudicator has the power to determine more than one dispute under the contract at the same time and, if requested to do so by either Party, determines any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as the Adjudicator determines any other matter referred to him."

11.7 In Option W2.3(7), insert "(7)" after "seven".

11.8 In Option W2.3(8):

- insert "(28)" after "twenty-eight"; and
- insert "(14)" after "fourteen".

11.9 In Option W2.3(12), insert "(5)" after "five".

11.10 Replace the wording of Option W2.4(1) in its entirety with the following:

"A Party may refer any dispute under or in connection with the contract to the tribunal."

11.11 In Option W2.4(2), insert "(4)" after "four".

## **12 AMENDMENTS TO SECONDARY OPTION CLAUSES**

### **12.1 Option X2 – Changes in the law**

Replace the wording of Option X2 in its entirety with the following:

"Option X2 – Changes in the applicable law

A change in the applicable law of the country in which the Site is located is a compensation event if it occurs after the Effective Date and except where:

- the change would have been reasonably foreseeable at the Change in Law Base Date to a contractor exercising the Standard of Care (and in the capacity of a contractor, not a professional designer) and
- the change would not affect the supply and/or provision of works and/or services by the *Contractor* to another customer in connection with the design and construction of a project of a similar size, scope, nature and complexity to the works,

provided that a change in the applicable law is treated as occurring before the Change in Law Base Date if it is stated in a statute or statutory instrument before but comes into force after the Change in Law Base Date.

If the effect of a compensation event which is a change in the law is to reduce the total of the Defined Cost, the Prices are reduced."

### **12.2 Option X4 – Ultimate holding parent company guarantee**

Replace the wording of Option X4 in its entirety with the following:

"Option X4 – Parent Company Guarantee

X4.1 Where the Contract Data states that Option X4 applies to the contract, at the same time as entering into the contract the *Contractor* provides to the *Client* the Parent Company Guarantee executed by the Contractor's Parent Company.

X4.2 The *Contractor's* compliance with Option X4.1 is a condition precedent to any obligation on the part of the *Client* to make any payment that might otherwise be due under this contract, and the *Contractor* acknowledges that it has no entitlement to receive payment under this contract unless and until the *Contractor* has provided a Parent Company Guarantee in accordance with Option X4.1 (where Contract Data: Part One states that Option X4 applies)."

### **12.3 Option X7 – Delay damages**

Replace the wording of Option X7 in its entirety with the following:

"Option X7 – Delay Damages

X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of

- Completion,



- the date on which the *Client* takes over the works and
- the date on which the *Project Manager* issues (or is treated as issuing) a termination certificate.

X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages without interest.

X7.3 If the *Client* takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Client* of taking over the part of the works as a proportion of the benefit to the *Client* of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.

X7.4 The *Contractor* agrees that the delay damages are fair and reasonable in all respects and represent the *Client's* genuine pre-estimate of all losses the *Client* may sustain as a result of late Completion except for those losses referred to in Option X7.7.

X7.5 The *Client* may at its option recover delay damages by way of deductions from any sum due to the *Contractor* under the contract and/or by inclusion in any pay less notice.

X7.6 The delay damages

- are, subject to Option X7.7, the *Client's* sole and exclusive remedy in respect of any failure by the *Contractor* to achieve Completion for any *section* of the works by the Completion Date other than in the event of termination before Completion of the whole of the works,
- are in addition to any damages or other sums for which the *Contractor* is liable under the contract and
- do not relieve the *Contractor* from its obligation to Provide the Works, or from any other duties, obligations or responsibilities which the *Contractor* may have under the contract.

If these delay damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the *Client* from claiming delay damages as liquidated damages on account of delay to Completion of the whole of the works or any *section* of the works, the relevant provisions are deemed to be deleted from the contract and the remainder of the contract remains in full force and effect. For the avoidance of doubt, the *Client* is entitled to recover from the *Contractor* general damages in respect of all losses which the *Client* will sustain as a result of any delay in reaching Completion of the whole of the works or any *section* of the works, provided that such general damages, except for those losses referred to in Option X7.7, do not exceed the delay damages which would have been due under the contract had Option X7.1 (or the relevant part thereof) remained enforceable.

X7.7 No allowance has been made in the delay damages or in the general damages referred to in this clause for the costs of delay, disruption, interference or interruption incurred by the *Client* to Others as a result of the *Contractor's* failure to comply with its obligations and all such costs (including the costs of acceleration measures agreed by the *Client* with such persons) are recoverable as general damages in addition to any delay damages under this clause (or any general damages referred to above)."

## 12.4 Option X8 – Undertakings to the *Client* or Others

Replace the wording of Option X8 in its entirety with the following:



### "Option X8 – Collateral Warranties

X8.1 Within twenty-one (21) days of receiving a written request from the *Project Manager*, the *Contractor* enters into a deed or deeds of Contractor Collateral Warranty in favour of any Beneficiary (excluding the *Client*), up to a maximum of six (6) Contractor Collateral Warranties in the aggregate. The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.1 within the time required, the *Client* may withhold REDACTED from any further sums due and payable to the *Contractor* under the contract until such time as the outstanding Contractor Collateral Warranty is provided.

X8.2 Within five (5) days of entering into a subcontract with a Subcontractor, the *Contractor* shall notify the *Project Manager* of the same. The *Contractor* shall then procure that the relevant Subcontractor executes a Subcontractor Collateral Warranty or a Subconsultant Collateral Warranty (as applicable) (with any such amendments that the *Client* may agree in advance and in writing, acting reasonably) in favour of:

- the *Client*,
- each Beneficiary previously notified to the *Contractor* by the *Project Manager* in writing as having an interest in the subcontracts for the works and
- any Beneficiary thereafter notified to the *Contractor* by the *Project Manager* in writing (following its receipt of the *Contractor's* notification) as having an interest in the subcontracts for the works,

(up to a maximum of seven (7) Subcontractor Collateral Warranties in the aggregate for any one (1) Subcontractor) within

- in the case of the *Client*, twenty-one (21) days of the date of the relevant subcontract,
- in the case of each Beneficiary falling within the class of previously-notified Beneficiaries covered by the second bulleted item above, twenty-one (21) days of the date of the relevant subcontract and
- in the case of each Beneficiary falling within the class of newly-notified Beneficiaries covered by the third bulleted item above, twenty-one (21) days of the date of the *Project Manager's* notification.

The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.2 within the time required, the *Client* is entitled to withhold payment of the sum of REDACTED from any further sums claimed by (or due to) the *Contractor* under the contract for each Subcontractor Collateral Warranty or Subconsultant Collateral Warranty that is outstanding at the relevant time until each such outstanding Subcontractor Collateral Warranty or Subconsultant Collateral Warranty (as applicable) is provided.

X8.3 Within five (5) days of becoming aware of a Subcontractor entering into a subsubcontract with a subsubcontractor in connection with the works, the *Contractor* shall notify the *Project Manager* of the same. The *Contractor* shall then procure that the relevant Subcontractor procures that that subsubcontractor executes a Subsubcontractor Collateral Warranty (with any such amendments that the *Client* may agree in advance and in writing, acting reasonably) in favour of:

- the *Client*,
- each Beneficiary previously notified to the *Contractor* by the *Project Manager* in writing as having an interest in the subsubcontracts for the works and



- any Beneficiary thereafter notified to the *Contractor* by the *Project Manager* in writing (following its receipt of the *Contractor's* notification) as having an interest in the subsubcontracts for the *works*,

(up to a maximum of seven (7) Subsubcontractor Collateral Warranties in the aggregate for any one Subsubcontractor) within

- in the case of the *Client*, thirty (30) days of the date of the relevant subsubcontract,
- in the case of each Beneficiary falling within the class of previously-notified Beneficiaries covered by the second bulleted item above, thirty (30) days of the date of the relevant subsubcontract and
- in the case of each Beneficiary falling within the class of newly-notified Beneficiaries covered by the third bulleted item above, thirty (30) days of the date of the Project Manager's notification.

The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.3 within the time required, the *Client* is entitled to withhold payment of the sum of **REDACTED** from any further sums claimed by (or due to) the *Contractor* under the contract for each Subsubcontractor Collateral Warranty that is outstanding at the relevant time until each such outstanding Subsubcontractor Collateral Warranty is provided.

X8.4 In the event that the *Contractor* has not procured or provided (as the context requires) one or more of any Contractor Collateral Warranty, Subcontractor Collateral Warranty, Subconsultant Collateral Warranty and/or Subsubcontractor Collateral Warranty that are required to be provided (or procured) by the Contractor pursuant to Option X8.1 to Option X8.3 (inclusive) within twenty-five (25) Working Days of a notification from the Project Manager of such failure:

- the Client (or the Project Manager on its behalf) or another Beneficiary may, but is not obliged to, issue a written notice to the relevant party (the "relevant party" being the Contractor or the relevant Subcontractor (including a subconsultant) or subsubcontractor) in the form set out in the Third Party Rights Schedule (or in such equivalent form as may be set out in the relevant subcontract or subsubcontract) and
- such notice shall confirm the granting of the rights referred to in the part of the Third Party Rights Schedule appropriate to that relevant party (or such equivalent rights as may be set out in the relevant subcontract or subsubcontractor) by the relevant party to the relevant Beneficiary,

provided always that

- the relevant Beneficiary does not already have the benefit of a Contractor Collateral Warranty, Subcontractor Collateral Warranty, Subconsultant Collateral Warranty or Subsubcontractor Collateral Warranty (as the context permits) from that relevant party,
- where a notice is issued to a Subcontractor or a Subsubcontractor, the *Client* or the *Project Manager* shall notify the *Contractor* of the same as soon as reasonably practicable after its issue (and in any event within ten (10) Working Days of that date) for its records (provided that the provision of such notice shall not be a precondition to the effectiveness of the relevant notice) and
- the issue of any notice under this Option X8.4 shall be subject to the limitations on the number of (as applicable) Contractor Collateral Warranties, Subcontractor Collateral

Warranties and Subsubcontractor Collateral Warranties referred to in Option X8.1 to Option X8.3 (inclusive) and be treated as counting towards the total number of any such applicable class of document for the purposes of determining this number.

Any notice issued pursuant to this Option X8.4 shall take effect on the date of the notice and state the name of the Beneficiary to whom the rights stated in that notice are granted and their interest in the *works*.

In order to give effect to the intention of this Option X8.4, the Contractor shall ensure that

- any subcontract (including consultant appointment) that it enters into with a Subcontractor (including a subconsultant) includes an equivalent right for a Beneficiary (or a party acting on its behalf) to serve a written notice on such relevant on the basis described above and
- any subsubcontracts entered into by a Subcontractor (excluding subconsultants) in connection with the works also includes an equivalent right in favour of any Beneficiary,

in materially in the same form and manner as prescribed above."

## 12.5 Option X10 – Information Modelling

Replace the wording of Option X10 in its entirety with the following:

### "Option X10 – Information Modelling

X10.1 The *Contractor* shall comply with the BIM Requirements at all times in the provision of the *works*."

## 12.6 Option X11 – Termination by the *Client*

In Option X11.2:

- replace "P1 and P2" with "P1, P2 and P5"; and
- replace "A1, A2 and A4" with "A1 and A2".

## 12.7 Option X15 – The *Contractor's* design

In Option X15:

- replace the wording of Option X15.1 in its entirety with the following:

"The *Contractor* is not liable for Defects in the works due to its design (including the preparation by it of any specifications and the selection by the *Contractor* of any Plant and Materials and including design for which it is responsible pursuant to the contract), unless it failed to carry out that design using the Standard of Care.";

- replace the wording of Option X15.3 in its entirety with "Not used.";
- replace the wording of Option X15.4 in its entirety with the following:

"The *Contractor* retains copies of the Alliance Member Materials for the Period for Retention. The copies are retained in the form stated in the Scope (or as otherwise notified by the *Project Manager* to the *Contractor* in writing before Completion, acting reasonably)."; and

- replace the wording of Option X15.5 in its entirety with "Not used."

## 12.8 Option X16 – Retention

Replace the wording of Option X16.3 in its entirety with the following:

"The *Client* has the full beneficial interest in the amount retained, without any fiduciary obligation, and the relationship of the *Client* and the *Contractor* with regard to the amount is solely that of debtor and unsecured creditor, subject to the terms of the contract."

## 12.9 Option X18 – Limitation of liability

In Option X18.5, insert the following bulleted items before the bullet point starting "loss of or damage to":

- "personal injury or death,
- interest on any debt or damages,
- fraud or wilful default,
- costs in any proceeding,".

## 12.10 Option X20 – Key Performance Indicators

Replace the wording of Option X20 in its entirety with the following:

### "Option X20 – Key Performance Indicators

- X20.1 A "Key Performance Indicator" is an aspect of performance by the *Contractor* in connection with the *works* for which a target is stated in the KPI Schedule (and identified as a Key Performance Indicator or other equivalent wording therein).
- X20.2 From the starting date until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* on its performance against each of the Key Performance Indicators on the basis set out in the Scope and/or the KPI Schedule (and on such other basis as the Project Manager, acting reasonably, may reasonably request from time to time). Reports are provided at the KPI Reporting Interval and include the forecast final measurement against each Key Performance Indicator (as well as any other information stated as needed to be provided by the *Contractor* in the KPI Schedule).
- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the KPI Schedule (whether by reference to any specified timeframe or any other measure), it submits to the *Project Manager* its proposals of improving performance and for (if possible) achieving the relevant measure (whether in whole or in part).
- X20.4 The *Contractor's* entitlement to be paid any sum(s) in connection with the Key Performance Indicators (by reference to any stated target(s) in the KPI Schedule), as well as the basis (and frequency / time) upon which sums shall become payable under this contract, shall be governed by the rules and procedure set out in the KPI Schedule.
- X20.5 Any sums payable to the *Contractor* under or in connection with this Option X20 are in addition to the Prices for the works and the Prices shall not be reduced where the Contractor fails to achieve one (1) or more of the targets for the Key Performance Indicators set out in the KPI Schedule by reference to this Option X20 and/or the KPI Schedule alone."

## 12.11 Option Y(UK)2 – The Housing Grants, Construction and Regeneration Act 1996 In Option Y(UK)2:

- in the first sentence of Option Y2.2, insert "(7)" after "(seven)";

- replace the second sentence of Option Y2.2 with "The date on which the final payment becomes due is as set out in Contract Data: Part One";
- replace the third sentence of Option Y2.2 with "The final date for payment is the date as specified in Contract Data: Part One"; and
- in Option Y2.4, insert "(or pursuant to Option X11)" after "R22".

## 12.12 Option Y(UK)1 – Project Bank Account

Replace the wording of Option Y(UK)1 in its entirety with the following:

"Y1.1 In this Option Y(UK)1

- The Authorisation is a document authorising the project bank to make payments to the *Contractor* and Named Suppliers.
- A Joining Deed is an agreement between the *Client*, the *Contractor* and a Named Supplier that was not originally a party to the Trust Deed which contains provisions for administering the Project Bank Account in accordance with the Trust Deed.
- Named Suppliers are, as at the Effective Date, any named suppliers that are identified as such in Contract Data: Part One and, after the Effective Date, the parties to the Trust Deed and any later Joining Deed(s) unless later changed in accordance with this contract.
- Project Bank Account is the account used to receive payments from the *Client* and make payments to the *Contractor* and Named Suppliers.
- A Supplier is a person or organisation who has a contract to
- construct or install part of the *works*,
- provide a service necessary to Provide the Works or
- supply Plant and Materials for the *works*,
- Trust Deed is an agreement between the *Client*, the *Contractor* and Named Suppliers which contains provisions for administering the Project Bank Account.

Y1.2 The *Contractor* establishes the Project Bank Account with the project bank within one (1) week of the Effective Date.

Y1.3 The *Contractor* pays any charges and is paid any interest made by the project bank.

Y1.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the project bank in connection with the Project Bank Account.

Y1.5 The *Contractor* includes in his contracts with Named Suppliers (and ensures that any Subcontractors that enter into contracts with Named Suppliers include) the arrangements in this contract for the operation of the Project Bank Account and Trust Deed and the details of the *Project Manager* under this contract as part of a clause that expressly states that the Named Supplier has the right to contact the *Project Manager* directly if it believes that the *Contractor* (or Subcontractor) has failed (or is failing) to pay sums properly due to it within the

time period(s) stated in its contract for a reason other than a reason expressly permitted under its contract. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

- Y1.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the Project Manager for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The *Client*, the *Contractor* and the Supplier sign the Joining Deed after acceptance (where applicable).
- Y1.7 On or before each assessment date, the *Contractor* submits to the *Project Manager* an application for payment.
- Y1.8 No later than one (1) week before the final date for payment, the *Client* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.
- Y1.9 The *Contractor* makes payment to the Project Bank Account of:
  - any amount not paid by the *Client* and
  - any amount required to make payment in full to Named Suppliers.
- Y1.10 The *Contractor* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the certified payment as determined pursuant to clause 50 to clause 53 (inclusive) and Option Y (UK) 2.
- Y1.11 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment and in any event no later than the final date for payment specified in the respective contracts for and applicable to the Named Suppliers.
- Y1.12 A payment which is due from the *Contractor* to the *Client* is not made through the Project Bank Account.
- Y1.13 Payments made from the Project Bank Account are treated as payments from the *Client* to the *Contractor* in accordance with this contract or from the *Contractor* or Subcontractor to Named Suppliers in accordance with their contracts as applicable.
- Y1.14 The *Client*, the *Contractor* and Named Suppliers sign the Trust Deed before the first assessment date.
- Y1.15 If the *Project Manager* issues a termination certificate, no further payments are made into the Project Bank Account.
- Y1.16 The *Contractor* provides to the *Project Manager*, on an open book basis, a summary of all payments made into and out of the Project Bank Account (by the Contractor, any Subcontractor and/or the *Client*) to each individual Named Supplier on an interim and final account basis up to and following Completion (as the context requires, reflecting the basis upon which such payments are made in accordance with the relevant contract or subcontract) on or about each assessment date as from the second (2nd) occurrence of the assessment date under this contract and following the final assessment under clause 53 by providing the *Project Manager* with a copy of the monthly bank account statement."

#### 12.13 Option Y(UK)3 – The Contracts (Rights of Third Parties) Act 1999

Replace the wording of Option Y (UK) 3 in its entirety with the following:

"Option Y(UK)3 – The Contracts (Rights of Third Parties) Act 1999

- Y3.1 The *Client* may, at any time prior to Completion of the whole of the *works*, novate the contract to any person taking over the whole of the Client's interest in the *works*.
- Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the contract are not subject to the consent of any other person.
- Y3.3 Other than as granted pursuant to this Option Y (UK)3 and/or the Contract Terms, a person who is not a party to the contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified."