



PART 1 – FORM OF NOTICE TO PROCEED TO PHASE 2

THIS NOTICE TO PROCEED TO PHASE 2 is made on the

20[21]

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) **[INSERT NAME OF CONTRACTOR]** (company number **[INSERT COMPANY NUMBER]**), whose registered office is at **[INSERT ADDRESS OF REGISTERED OFFICE]** (the "**Contractor**").

BACKGROUND:

- (A) This Notice to Proceed to Phase 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 the Allocation Procedure **[and the Main Works Package Procedure]**¹, the *Client* wishes to appoint the *Contractor* to undertake the design and construction of the Main Works Package known as **[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 Main 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:²
 - 3.1 this Notice to Proceed to Phase 2;
 - 3.2 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 (with such "*conditions of contract*" deemed to be incorporated into the Main Works Terms by reference);
 - 3.3 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);
 - 3.4 the Contract Terms (incorporating the Special Terms and subject always to clause 12.1);
 - 3.5 Schedule 1: Contract Data (and the Main Works Amendments referred to therein);
 - 3.6 Schedule 1 – Appendix 1: Scope;
 - 3.7 Schedule 1 – Appendix 2: Site Information;

¹ **DRAFTING NOTE:** This wording should be deleted if the Notice to Proceed to Phase 2 relates to Full Sutton (as the "Main Works Package Procedure" does not apply to it).

² **DRAFTING NOTE:** This list will be updated on a case-by-case basis as appropriate.



- 3.8 the Collateral Warranties & Third Party Rights Schedule;
- 3.9 the Parent Company Guarantee;
- 3.10 [the Performance Bond];
- 3.11 the Vesting Agreement;
- 3.12 the Data Protection Schedule; and
- 3.13 any and all other documents annexed to and/or referred to in the Contract Data,

which, together with the Short 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 Phase 2;
- 4.2 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);
- 4.3 the Special Terms;
- 4.4 the Contract Terms (excluding the Special Terms);
- 4.5 Contract Data: Part One (forming part of the Contract Data referred to above);
- 4.6 Contract Data: Part Two (forming part of the Contract Data referred to above); and
- 4.7 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:

- (a) the "*conditions of contract*" and the Main Works Amendments, the Main Works Amendments shall take precedence; and
- (b) 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.

5. Where the *Contractor* has performed any Phase 1B Pre-Construction Services and/or any Pre-Construction Activities pursuant 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*]³, 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 Phase 1B Pre-Construction Services and/or any Pre-Construction Activities that it has so completed (or is yet to complete) prior to, on or after the Effective Date.

³ **DRAFTING NOTE:** The treatment of payment for such works and services will be updated on a case-by-case basis.



6. The Parties acknowledge and agree that this Notice to Proceed to Phase 2 may be executed:
- 6.1 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
- 6.2 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).
7. Pursuant to and in accordance with the FAC-1 Contract, this Notice to Proceed to Phase 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.⁴

IN WITNESS WHEREOF THIS NOTICE TO PROCEED TO PHASE 2 HAS BEEN SIGNED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE

SIGNED by **THE SECRETARY OF STATE FOR JUSTICE** acting by affixing hereto its corporate seal and authenticated by:

Authenticated by (signature): _____

Authenticated by (printed name): _____

[EXECUTION BLOCK FOR THE CONTRACTOR TO BE CONFIRMED.]

SIGNED by **[INSERT NAME OF CONTRACTOR]** acting by a director in the presence of a witness:

Director (signature): _____

Director (printed name): _____

Witness (signature): _____

Witness (printed name): _____

Witness address: _____

Witness occupation: _____

⁴ **DRAFTING NOTE:** To be updated if the works relate to a site in Wales.



SCHEDULE 1

CONTRACT DATA

[TO BE INSERTED IN THE FINAL VERSION OF EACH NOTICE TO PROCEED TO PHASE 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.
- The **Option for resolving and avoiding disputes** is Option W2.
- The **Secondary Options**⁵ are [REDACTED SAVE FOR OPTION X4, X7, X11, [X13, X16, X20], 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 **Site (or "site")** is [INSERT DETAILS].
- The **Site Information** is in [Appendix 2] of the Contract Data.
- [REDACTED]
- The **boundaries of the site** are [INSERT DETAILS].

⁵ **DRAFTING NOTE:** To be confirmed on a case-by-case basis.



- [The *Contractor* has provided (or is in the process of providing) **Phase 1B 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.⁶
- 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*).
- [REDACTED].
- [REDACTED].
- [REDACTED].

2 The *Contractor's* main responsibilities

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

condition to be met	key date
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⁶ **DRAFTING NOTE:** The Client's position is that the Contractor will be required to procure all consents in connection with the works. However, specific (and limited) exclusions from this position may be agreed on a case-by-case basis to reflect works-specific circumstances.



[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]
[INSERT DESCRIPTION]	[INSERT DATE]

3 Time

- The **starting date** is [INSERT DETAILS].

- The **access dates** are:

Part of the Site	Date
[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].⁷
- 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 [REDACTED].

5 Payment

- The **currency of the contract** is pound sterling (£).
- The **assessment interval** is monthly on the final Working Day of the month.

⁷ **DRAFTING NOTE:** The Client's position is that the works should have a single completion date but it reserves the right to update the Contract Data (and, as required, the Main Works Terms) to incorporate sectional completion (and associated delay damages) on a case-by-case basis.



- 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 [REDACTED].
- 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 [REDACTED].
- 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

- [REDACTED].

8 Liabilities and insurance

Client's liabilities • There are no **additional Client's liabilities**.

Insurance • [REDACTED].

Resolving and avoiding disputes

- The **tribunal** is litigation in the courts of England.⁸
- The **Senior Representatives** of the *Client* are:

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

Name:	[INSERT NAME]
Address communications:	for [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).

⁸ **DRAFTING NOTE:** To be updated if the works relate to a site in Wales.



[REDACTED]

- [REDACTED].

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]).

X7: Delay damages⁹

- **Delay damages for Completion of the whole of the works** are [REDACTED] pounds per week or part thereof.¹⁰

[X13: Performance bond]

- The form of **Parent Company Guarantee** is the document identified as such in the FAC-1 Agreement.
- The amount of the Performance Bond is [INSERT AMOUNT IN WORDS] (£[INSERT AMOUNT AS A NUMBER]).]

X16: Retention

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

[REDACTED]

- [REDACTED].
- The **End of Liability Date** is the date identified as such in the FAC-1 Agreement.

X20: Key performance indicators¹¹

- [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 Account¹²

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

⁹ **DRAFTING NOTE:** See the earlier comment in relation to sectional completion (if required).

¹⁰ **DRAFTING NOTE:** This is an indicative figure based on previous projects of the Client. However, the final amount will be confirmed on a project-specific basis based on the information that is available as at the date of the Allocation Procedure or Main Works Package Procedure (as the context requires).

¹¹ **DRAFTING NOTE:** To be populated in due course to reflect the final form of KPI Schedule and measures etc.

¹² **DRAFTING NOTE:** The Client reserves the right to amend and update Option Y(UK)1 (and its associated schedules) to reflect any changes to the October 2020 wording of the Option published by NEC that it may require to reflect any guidance from the Cabinet Office in connection with the use of project bank accounts on public sector projects, as well as any specific requirements that the Client might have in respect of the same in connection with a specific works package.



- The **named suppliers** are [INSERT DETAILS].
- The **account holder** is [the Contractor / the Parties].
- The Contractor [is / is not] to pay any charges made and to be paid any interest paid by the project bank

Z: Main Works Amendments

- The **Main Works Amendments** is the document identified as such in the FAC-1 Agreement and referred to in the Notice to Proceed to Phase 2 to which the Contract Data is annexed.
- [REDACTED].



PART TWO – DATA PROVIDED BY THE CONTRACTOR

1 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]:

Name	[INSERT DETAILS]
Job	[INSERT DETAILS]
Responsibilities	[INSERT DETAILS]
Experience	[INSERT DETAILS]

Name	[INSERT DETAILS]
Job	[INSERT DETAILS]
Responsibilities	[INSERT DETAILS]
Experience	[INSERT DETAILS]

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

5 Payment

- The **activity schedule** is in [INSERT LOCATION OF DOCUMENT].
- The **tendered total of the Prices** is [INSERT NUMBER] pounds (£[INSERT NUMBER]).

Resolving and avoiding disputes

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

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



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

Data for the Short Schedule of Cost Components

- The **people rates** are:

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

- The **published list of Equipment** is the edition current at the Effective Date of the list published by [INSERT DETAILS].
- 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:

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 in the Defined Cost are [INSERT DETAILS].



APPENDIX 1

SCOPE

[TO BE INSERTED]



APPENDIX 2
SITE INFORMATION
[TO BE INSERTED]



PART 3 – 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
- done all the work (and provided any documentation) which the Scope states it is to do by the Completion Date,
 - 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
 - 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 Phase 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):



- after the word "*Client*" insert "(which expression includes its successors in title and assigns)"; and
- 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):

- insert ", applicable law and statutory requirements" after the first instance of the word "contract" in the clause; and
- 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."

1.9 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) [REDACTED].

(2) [REDACTED].

(3) [REDACTED].

(4) [REDACTED].

(5) **Client Consent** means a Consent (if any) identified in the Consents Schedule as being a "Client Consent".

(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*).

(7) **Consents Schedule** means the schedule (if any) identified as such in Contract Data: Part One.

(8) [REDACTED].

(9) **Contractor's Parent Company** means the entity identified as such in Contract Data: Part One.

(10) **Contract Data: Part One** means the document identified as such and forming part of the Contact Data.

(11) **Contract Data: Part Two** means the document identified as such and forming part of the Contact Data.

(12) [REDACTED].



- (13) [REDACTED].
- (14) **COVID-19 Management Report** means
- in respect of the Initial Activities, the report identified as such in Contract Data: Part One (or in such other form as may otherwise be agreed by the *Project Manager* in writing from time to time) and
 - in respect of the Other Activities, any report agreed between the Parties following the issue by the *Project Manager* of an instruction in respect of the same pursuant to clause 16A.2 and the subsequent implementation of such instruction in accordance with this contract.
- (15) [REDACTED].
- (16) [REDACTED].
- (17) [REDACTED].
- (18) **Data Protection Schedule** means the schedule identified as such in the Contract Data.]
- (19) [REDACTED].
- (20) **FAC-1 Contract** has the meaning given to such term in the Notice to Proceed to Phase 2.
- (21) 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
- [REDACTED].
- (22) [REDACTED].
- (23) **Key Performance Indicator** has the meaning given to such term in Option X20.1.
- (24) **KPI Reporting Interval** is the period identified as such in Contract Data: Part One.
- (25) **KPI Schedule** is the document identified as such in Contract Data: Part One.
- (26) **Notice to Proceed to Phase 2** means the document entitled "Notice to Proceed to Phase 2" as executed by the *Client* and the *Contractor* in connection with the *works* pursuant to and in accordance with the Contract Terms.
- (27) [REDACTED].
- (28) **Phase 1B 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.



- (29) **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.
- (30) **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.
- (31) **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.
- (32) **professional indemnity insurance** has the meaning given to such term in clause 84.4.
- (33) **Purchase Order Number** means the number identified as such in Contract Data: Part One.
- (34) **Reasonable Rates and Terms** has the meaning given to such term in clause 84.4.
- (35) [REDACTED].
- (36) **Site (and "site")** means the site of the *works* as identified in Contract Data: Part One.
- (37) [REDACTED].
- (38) [REDACTED].
- (39) **Third Party** has the meaning given to such term in clause 28C.1.
- (40) **Third Party Agreement** has the meaning given to such term in clause 28C.1.
- (41) **Third Party Rights Schedule** means the schedule identified as such in Contract Data: Part One.
- (42) [REDACTED].

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 Phase 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 Phase 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 *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 Phase 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 tendered 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 that 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 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:

- insert "(1)" after "one" and "(2)" after "two";
- delete "either" and replace "or *Contractor* instructs the other" in the first bulleted item of clause 15.2 with "instructs the *Contractor*";
- replace "or *Contractor* may instruct" in the penultimate paragraph of clause 15.2 with "may instruct"; and
- 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:

- insert "(4)" after "four"; and
- 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 [REDACTED].

1.24 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 Phase 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."

- 1.25 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 ([REDACTED]), any such illegality, impossibility and/or instruction is not a compensation event."

- 1.26 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),
- the *Contractor* accepts responsibility for any mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency 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

- 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
- 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 mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency 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."

- 1.27 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* and
- (where identified as the Principal Contractor in the Contract Data) fulfils the role of Principal Designer in connection with the *works*."

2.2 Insert a new clause 20.2 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 20.3 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:

"Exercising the Standard of Care, the *Contractor* designs the parts of the *works* which the Scope states the *Contractor* is to design and designs such parts of the *works* in accordance with the requirements stated in the Scope and the other requirements of the contract.

Whether the *Contractor* designs the whole or part of the *works*, the *Contractor* 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 *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 24.2, insert "(1)" after "one".

2.10 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*."

2.11 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*."

2.12 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."

2.13 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 [REDACTED], 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."

2.14 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,
 - 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 these provisions (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 law)."
- 2.15 In clause 27.1, replace "The *Contractor*" with "Without prejudice to the generality of clause 28B, the *Contractor*".
- 2.16 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
 - the *Contractor* 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."
- 2.17 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."
- 2.18 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."

2.19 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*."

2.20 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."

2.21 [REDACTED]

2.22 Insert a new clause 28B with the heading "**Planning and Consents**" as follows:

"28B **Planning and Consents**

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

- (save as stated in the third bulleted item of this clause 28B.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 28B.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*.

28B.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 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.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 28B.1 (and at such times, in such form and content and with such level of detail reasonably required or approved by the *Client*).

28B.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.

28B.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 28B.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.

28B.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.

28B.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."

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

"28C **Third Party Agreements**

28C.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.

28C.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.

28C.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 28C, 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.

28C.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).

28C.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."

2.24 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."
- 3.8 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".
- 3.9 In clause 35.1, insert "(2)" after "two".
- 3.10 In clause 35.3, replace "one week" with "two (2) weeks".
- 3.11 In clause 36.1, insert "(3)" after both instances of "three".



4. AMENDMENTS TO CLAUSE 4 – TESTING AND DEFECTS

- 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 **[REDACTED]**.
- 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 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 [REDACTED].

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 [REDACTED].

5.6 [REDACTED].

5.7 In clause 51.2:

- replace "within three weeks" until the end of the clause 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 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."

5.13 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."

5.14 In clause 53.3:

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

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



6. AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS

6.1 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 the Phase 1B Pre-Construction Services and/or the Pre-Construction Activities issued pursuant to the Contract Terms as referred to in Contract Data: Part One, 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."

6.2 [REDACTED].

6.3 [REDACTED].

6.4 [REDACTED].

6.5 [REDACTED].

6.6 [REDACTED].

6.7 [REDACTED].

6.8 [REDACTED].

6.9 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."

6.10 [REDACTED].

6.11 [REDACTED].

6.12 [REDACTED].

6.13 Delete clause 60.2 and replace with "Not used."

6.14 Delete clause 60.3 and replace with "Not used."



- 6.15 [REDACTED].
- 6.16 [REDACTED].
- 6.17 In clause 61.3, insert "(8)" after "eight".
- 6.18 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)".
- 6.19 In clause 61.6, insert "the *Project Manager* decides that" before "the effects".
- 6.20 [REDACTED].
- 6.21 [REDACTED].
- 6.22 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."
- 6.23 In clause 62.3:
- insert "(3)" after "three" and
 - insert "(2)" after "two".
- 6.24 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".
- 6.25 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)".

6.26 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."

6.27 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."

6.28 [REDACTED].

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

6.30 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)".

6.31 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."



8. AMENDMENTS TO CLAUSE 8 – RISKS AND INSURANCE¹³

8.1 [REDACTED].

8.2 [REDACTED].

8.3 [REDACTED].

8.4 [REDACTED].

8.5 [REDACTED].

8.6 [REDACTED].

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

"From the stating 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 second sentence before the full stop, insert ", subject always to clause 84.4"; and
- add the following two rows to the Insurance Table:

Insurance against	Minimum amount of cover or minimum limit of indemnity
[REDACTED].	[REDACTED].
Negligent acts, errors and/or omissions in the performance of the <i>Contractor's</i> professional obligations under the contract (with such insurance being referred to in the contract as " professional indemnity insurance ").	The amount stated 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 84.4 with the heading "**Professional indemnity insurance**" as follows:

"84.4 **Professional indemnity insurance**

- Without prejudice to the generality of clause 83.3, the *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under

¹³ **DRAFTING NOTE:** See the earlier comment on the treatment of insurance in the Main Works Terms.



the contract for the given insurance policy year in the event that it breaches the contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, with the minimum level of indemnity as stated in the Insurance Table, in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending [REDACTED] after the date of Completion or termination of the contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance ("**Reasonable Rates and Terms**").

- Any increased or additional premium required by insurers in respect of the *Contractor's* professional indemnity insurance by reason of the *Contractor's* own claims record or other acts, omissions, matters or things particular to the *Contractor* shall be deemed to be within Reasonable Rates and Terms.
- The *Contractor* shall immediately inform the *Project Manager* if its professional indemnity insurance ceases to be available upon Reasonable Rates and Terms in order that the *Contractor* and the *Project Manager* can discuss means of best protecting their respective positions in respect of the contract and the *works* in the absence of such professional indemnity insurance.
- The *Contractor* shall co-operate fully with any measures reasonably required by the *Project Manager* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the *Project Manager* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above Reasonable Rates and Terms.
- Without prejudice to the generality of clause 85 and when reasonably requested to do so by the *Project Manager* the *Contractor* shall produce promptly for inspection and/or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- The *Contractor* shall notify the *Project Manager* in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of the contract and within seven (7) days of the *Project Manager's* request at any time the *Contractor* will produce for inspection documentary evidence as to compliance with this clause 84.4."

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 <i>Client</i>	R1 – R15 (including 5A)	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:¹⁴

"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*,

¹⁴ **DRAFTING NOTE:** This wording deals with recent changes to legislation regarding a supplier's right to terminate a contract where its employer is insolvent. This situation will not apply to the Client as a Crown body but it is included for completeness.



(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 (R17)."

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. **AMENDMENTS TO DISPUTE RESOLUTION OPTION W2**

- 10.1 In Option W2.1(2), insert "(1)" after "one".
- 10.2 In Option W2.1(3), insert "(3)" after "three".
- 10.3 In Option W2.2(5), insert "(4)" after "four".
- 10.4 In Option W2.3(1), insert "(3)" after both instances of "three".
- 10.5 In Option W2.3(2):
- insert "(7)" after "seven"; and
 - insert "(14)" after "fourteen".
- 10.6 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."
- 10.7 In Option W2.3(7), insert "(7)" after "seven".
- 10.8 In Option W2.3(8):
- insert "(28)" after "twenty-eight"; and
 - insert "(14)" after "fourteen".
- 10.9 In Option W2.3(12), insert "(5)" after "five".
- 10.10 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*."
- 10.11 In Option W2.4(2), insert "(4)" after "four".



11. AMENDMENTS TO SECONDARY OPTION CLAUSES¹⁵

11.1 [REDACTED]

11.2 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)."

11.3 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

¹⁵ **DRAFTING NOTE:** This section may be updated to reflect any sectionalisation of the works and/or (dis)application of the options stated.



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)."

11.4 **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*) [REMAINDER OF CLAUSE REDACTED]. 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] 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*,
- [REDACTED] 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 [REDACTED] 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*,

[REDACTED] 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 [REDACTED] 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, by 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 subsubcontract) 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."

11.5 **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*."

11.6 [REDACTED].

11.7 [REDACTED].

11.8 **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 of 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."

11.9 **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 *Contractor* with regard to the amount is solely that of debtor and unsecured creditor, subject to the terms of the contract."

11.10 **[REDACTED]**

11.11 **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."

11.12 **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";
- in Option Y2.4, insert "(or pursuant to Option X11)" after "R22"; and



- in Option Y2.4, insert "(including R5A)" after "R10".

11.13 **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."