



Engineering and Construction Contract

OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE

This contract should be used for the appointment of a contractor under the Engineering Delivery Framework for engineering and construction work, including any level of design responsibility

June 2017

(with amendments January 2019 and during the formation of the Engineering Delivery Framework dated 21st September 2022)

Contract Data

PART ONE – DATA PROVIDED BY THE CLIENT

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *conditions of contract* are the core clauses, the clauses for main Option A, the following Options for resolving and avoiding disputes, secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019), and amendments from the Engineering Delivery Framework.

Option for resolving and avoiding disputes W2

Secondary Options

X2: Changes in the law
X7: Delay damages
X9: Transfer of rights
X10: Information Modelling
X18: Limitation of Liability
X23: Design Liability

The *works* are

Site preparatory work for the new building required for the Single Species ASU [Animal Science Unit].

The *Client* is

The Department for Environment, Food and Rural Affairs
Nobel House
Smith Square
London
SW1P 4DF

Name

Address for communications

Animal and Plant Health Agency
Woodham Lane
Addlestone
KT15 3NB

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Animal and Plant Health Agency
Woodham Lane
Addlestone
KT15 3NB

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in	<div style="border: 1px solid black; padding: 5px;"> Task Order Requirements "PRJ_8803_B423_B425_TOR_v0.3_WIP" </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> General Scope 2022 Contractor dated February 2022 </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> Clarification Log 11 dated 07/09/23 </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> Tender Addendums 1 - 4 </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> Revised design information issued 24/08 & 31/08 & 07/09 </div>
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The Site Information is in	<div style="border: 1px solid black; padding: 5px;"> PCI - DEFRA - B423 B425 Upgrade- V.06. </div>
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The <i>boundaries of the site</i> are	<div style="border: 1px solid black; padding: 5px;"> As shown in the Scope </div>
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The <i>language of the contract</i> is	<div style="border: 1px solid black; padding: 5px;"> English </div>
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The <i>law of the contract</i> is the law of	<div style="border: 1px solid black; padding: 5px;"> England, subject to the jurisdiction of the courts of England and Wales </div>
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The <i>period for reply</i> is	<div style="border: 1px solid black; padding: 5px; display: inline-block;">2 weeks</div> except that
• The <i>period for reply</i> for	<div style="border: 1px solid black; padding: 5px; display: inline-block;"></div> is <div style="border: 1px solid black; padding: 5px; display: inline-block;"></div>
• The <i>period for reply</i> for	<div style="border: 1px solid black; padding: 5px; display: inline-block;"></div> is <div style="border: 1px solid black; padding: 5px; display: inline-block;"></div>

The following matters will be included in the Early Warning Register

Not used

Early warning meetings are to be held at intervals no longer than	<div style="border: 1px solid black; padding: 5px; display: inline-block;">2 weeks</div>
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2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

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

<i>condition</i> to be met	<i>key date</i>
(1) <div style="border: 1px solid black; padding: 5px;">Not used</div>	<div style="border: 1px solid black; padding: 5px;"></div>
(2) <div style="border: 1px solid black; padding: 5px;">Not used</div>	<div style="border: 1px solid black; padding: 5px;"></div>
(3) <div style="border: 1px solid black; padding: 5px;">Not used</div>	<div style="border: 1px solid black; padding: 5px;"></div>

3 Time

The <i>starting date</i> is	<div style="border: 1px solid black; padding: 5px;"> 21st November 2023 </div>
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The *access dates* are

	part of the Site	date
(1)	Contract Start	21 st November 2023
(2)		
(3)		

The *Contractor* submits revised programmes at intervals no longer than

4 weeks

If the *Client* has decided The *completion date* for the whole of the *works*

The *completion date* for the whole of the *works* is

17th December 2024

Taking over the *works* before the Completion Date

The *Client* **is not** willing to take over the *works* before the Completion Date

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

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

2 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

4 weeks

The period between Completion of the whole of the *works* and the *defects date* is

52

The *defect correction period* is

2 weeks

except that

- The *defect correction period* for

a public safety issue

is

24 hours

- The *defect correction period* for

an issue relating to science activities

is

24 hours

5 Payment

The *currency of the contract* is the

Pounds Stirling (£)

The *assessment interval* is

One month

The *interest rate* is

2

% per annum (not less than 2) above the

base rate

rate of the

Bank of England

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

30 days of the invoice date

6 Compensation events

The place where weather is to be recorded is

Heathrow weather station

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 0900 hours GMT

and these measurements:

Not applicable

The *weather measurements* are supplied by

The Met Office

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

Heathrow weather station

and which are available from

The Met Office

Where no recorded data
are available

Assumed values for the ten year weather return *weather data* for each *weather measurement* for
each calendar month are

Not required

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case
it is

%

If there are additional
compensation events

These are additional compensation events

Not applicable

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's* liabilities

(1) Not applicable

(2) Not applicable

(3) Not applicable

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

£10,000,000.00

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

Not less than the amount
required by law

If the *Client* is to provide
Plant and Materials

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

The replacement cost of the
Plant and/or Materials

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

The *Client* provides these insurances from the Insurance Table

(1) Insurance against

Not applicable

Minimum amount of cover is

Not applicable

The deductibles are

Not applicable

The *Contractor* provides these additional insurances

(1) Insurance against

Not applicable

Minimum amount of cover is

Not applicable

The deductibles are

Not applicable

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

Not applicable

The place where arbitration is to be held is

Not applicable

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

Not applicable

If Option W1 or W2 is used

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Animal and Plant Health Agency
Weybourne Building
Woodham Lane
Addlestone
KT15 3NB

Address for electronic communications

Name (2)

Address for communications

Animal and Plant Health Agency
Weybourne Building
Woodham Lane
Addlestone
KT15 3NB

Address for electronic communications

The *Adjudicator* is

Name

To be confirmed by the ICE

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

The Institution of Civil Engineers, London

Secondary option (X) clauses

X2: Changes in the law

If Option X2 is used No contract data required

X7: Delay damages

If Option X7 is used Delay damages for Completion of the whole of the *works* are £650 per day

X9: Transfer of rights

If Option X9 is used No contract data required

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing

Information similar to the Project Information is, in respect of each claim

£5,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 years

X11: Termination by the *Client*

If Option X11 is used No contract data required

X18: Limitation of liability

If Option X18 is used

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

25% of the Prices

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

The level of public liability insurance required to be taken out under this Task order

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

the type and level of professional indemnity insurance required to be taken out under this Task Order

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than

excluded matters, is limited to

the higher of:
a) 110% of the Prices; and
b) the level of professional indemnity insurance required to be taken out under this Task Order

The *end of liability date* is 12 years after the Completion of the whole of the works

X23: Design Liability

If Option X23 is used No contract data required

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due The period for payment is 23 days after the date on which payment becomes due

Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

Option Z: Schedule of Amendments to the core clauses and additional conditions

Z1 The following is incorporated as part of the *conditions of contract* and in the event of a conflict with any other term, the terms of this Schedule take precedence:

CORE CLAUSES

1. General

Insert new clause 10.3:

“10.3 The appointment of the *Contractor* commences from the Contract Date or from the date on which the *Contractor* starts to Provide the Works, whichever is the earlier.”

In clause 11.2(2) delete the second bullet point and replace with:

- “corrected all Defects which would have prevented the *Client* from using the *works* or Others from doing their work,
- provided or procured all collateral warranties, deeds of novation, letters of reliance, bonds and guarantees that the *Contractor* is obliged to provide under the contract,
- provided as-built drawings, manufacturers’ guarantees and maintenance manuals and any other Documents that the *Contractor* is obliged to provide under the contract and
- provided the BIM Model, where relevant.”

Delete clause 11.2(4) and replace with:

“11.2(4) The Contract Date is the date specified in the Task Order”

Delete clause 11.2(5) and insert, “number not used.”

Delete clause 11.2(6) and replace with:

“11.2(6) A Defect is

- a part of the *works* which is not in accordance with the contract,
- defective design of the *works*,
- a part of the *works* which is defective due to the *Contractor’s* defective workmanship or its use of materials in the *works* which are defective or unsuitable for the use they are put to in the *works*.
- a defect arising due to the *Contractor’s* inadequate preparation of the Site on which the *works* are to be constructed or
- a failure by the *Contractor* to comply with its obligations under the contract.”

In clause 11.2(12) after “supplier” in the third line, insert “(including the Key Suppliers)”.

In clause 11.2(15) after “to do” in the first line, insert “in an efficient manner”.

In clause 11.2(19) after “A Subcontractor is” insert “Key Supplier,”.

In clause 11.2(23) after “components” insert “whether work is subcontracted or not, excluding the cost of preparing quotations for compensation events save for cost incurred pursuant to preparing quotations under Clause 65”.

In clause 11.2(29) delete “the correction of which will delay the following work”.

Insert new clauses 11.2(36) to (60):

- “(36) The Act is the Housing Grants, Construction and Regeneration Act 1996, as amended from time to time.
- (37) Beneficiary is
- a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
 - Government Department,
 - Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal),
 - Non-Ministerial department or
 - Executive Agency,together and each a "Central Government Body"),
 - a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Client and
 - any party so selected in the relevant Task Order.
- (38) BIM Documents means any documents identified as such in the Task Order.
- (39) Business Days means a day (other than a Saturday or Sunday or Bank Holiday) on which banks are open for domestic business in the City of London.
- (40) CDM Regulations are the Construction (Design and Management) Regulations 2015, as amended from time to time.
- (41) Client Consents are those consents identified in the Task Order.
- (42) Critical Failure Event has the meaning set out in the Framework Agreement.
- (43) Documents are any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual “cloud”, in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the *Contractor* or any Subcontractors (whether in existence or to be created) in connection with the *works* and all such other documentation as would reasonably be required by a competent third party capable of exercising the Standard of Care contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that Provide The Works but excluding the BIM Documents.
- (44) Framework Agreement is the framework agreement between the parties dated 21st September 2022.
- (45) Free Issue Items are any materials (including the quantities of any such materials) to be

provided by the *Client* as identified in the Scope.

- (46) Key Suppliers are those parties specified as a Key Supplier in the Task Order.¹
- (47) Other Framework Contractors means the other contractors and/or consultants which the *Client* has entered into a framework agreement with to deliver the construction works and associated services at the *Client's* Weybridge and regional laboratories (as identified in the Framework Agreement).
- (48) Pool Re Cover is such insurance against loss or damage to the works, Plant and Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool ReInsurance Company Limited scheme or of any similar successor scheme.
- (49) Portal means the e-tendering portal [the *Client's* document management system] and/or data room used by the *Client* to share and/or store information in relation to the works, the Task Order, any other Task Order and/or the Framework Agreement the as notified to the *Contractor* from time to time.
- (50) *Principal Contractor* is the person fulfilling the role of principal contractor for the works under the CDM Regulations.
- (51) *Principal Designer* is the person fulfilling the role of principal designer for the works under the CDM Regulations.
- (52) Project means the *Client's* wider development plans across the Site and its other sites, including enabling works, demolition works, refurbishment and fit out works.
- (53) Project Deliverables means those deliverables set out in the Task Order.
- (54) Project Programme means that programme identified as such in the Task Order.
- (55) Site Working Protocol means that site working protocol identified as such in the Task Order.
- (56) Specified Peril means fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil and commotion.
- (57) Standard of Care means all the reasonable skill, care, diligence, prudence, foresight and judgment to be expected of a fully qualified and competent designer experienced in designing and performing and carrying out design providing service of a similar scope, nature, complexity and timescale to the works.
- (58) Statutory Requirements are:
- all planning and/or other permissions, consents, approvals, permits, licences and certificates ("Consents") which are necessary lawfully to design, construct, complete, commission, maintain and use the works,
 - any statute, regulation or subordinate legislation, the common law and (to the extent applicable) any treaty or European Union law or treaty or law of the United Kingdom which is of an equivalent standard which relates to the protection of the environment or health and safety whether administrative, civil or criminal,
 - any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the works or the performance of any of the obligations under the contract or Government

¹ Note: This is intended to also apply to any consultant who is novated, so those consultants need to be included in the Task Order.

guidelines,

- any regulation or bye-law of any local authority, statutory undertaker or similar body or organisation which has any jurisdiction with regard to the *works* or with whose systems the *works* are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under them which controls the right to develop the Site and
- the Consents required in relation to any *third-party* agreement and of all persons who have rights or interests in or over the *works* or the Site who by the lawful exercise of their powers in the absence of such Consents could delay or disrupt the carrying out or progress of the *works* or the use or enjoyment of the Site

(59) Statutory Undertakers are:

- any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work and/or
- any organisation (whether public or private) providing utilities and/or services

(60) Task Order is a task order issued under the Framework Agreement.

(61) Third Party Agreements means those agreements made or to be made between the *Client* and any third party concerning the *works*, the Site and/or the Project and as identified in the Task Order.”

In clause 12.4 at the end of the sentence, insert “as specified in the Task Order”.

Insert new clause 12.5:

“12.5 A reference to any Act of Parliament, Statutory Instrument or any specific provision in such legislation is deemed to include a reference to any subsequent re-enactment or amendments or to any replacement enactment covering the same or substantially the same subject matter.”

Delete clause 13.4 and replace with:

“13.4 The *Project Manager* replies to a communication submitted or resubmitted by the *Consultant* for acceptance. If the reply is that the *Contractor’s* communication is not accepted, the *Contractor* resubmits the communication within the *period for reply* taking into account the reasons (if any) provided by the *Project Manager*.”

In clause 13.8 delete the second sentence.

In clause 14.3 after “Key Date” insert, “or requires the *Contractor* to correct a Defect so that a condition stated for a Key Date is met by that Key Date”.²

Insert new clause 14.5:

“14.5 Where the *Supervisor* and the *Project Manager* are the same party, the contract is read accordingly and in the event this causes a conflict, ambiguity or inconsistency in the terms of the contract the provisions of clause 17.1 apply.”

In the first bullet point of clause 15.2 after “meeting” insert, “as soon as reasonably practicable after

² Note: To be used for documents, tests and inspections.

such instruction taking into the account the nature of the risks identified in the notice,”.

Delete clause 17.1 and replace with:

“17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity, discrepancy, omission, mistake or inconsistency in or between the Documents which are part of the contract. The *Project Manager* states how the ambiguity, discrepancy, omission, mistake or inconsistency should be resolved.”

Delete clause 18 and replace with, “number not used.”

2. The Contractor’s Main Responsibilities

In clause 20.1 after “Scope” insert, “the contract, the Environmental Objectives (as defined in the Framework Agreement), all Statutory Requirements, the Site Working Protocol and the Standard of Care.”

Insert new clause 20.2:

“20.2 The *Contractor* performs its obligations under the contract so that no act, omission or default of the *Contractor*, any Subcontractor, or any Key Supplier causes or contributes to any breach by the *Client* of any Third Party Agreements provided that copies of the whole or parts of the relevant Third Party Agreements (excluding matters related to price and payment and/or any Secret Matter (as defined by the Special Conditions attached to the Framework Agreement) have been provided to the *Contractor* in sufficient time as is reasonable to allow the *Contractor* to take these into account.”

Delete clause 21.1 and replace with:

“21.1 To the extent that the *Contractor* is responsible for the design of any element of the *works* (as identified in the Scope, Task Order and or the Contract Data) the *Contractor* designs the *works* and in the provision of its design uses the Standard of Care.”

Delete clause 21.2 and replace with:

“21.2 The *Contractor* submits the particulars of its design as the contract requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor’s* design is that:

- it does not comply with the Scope, the contract, any Statutory Requirements and/or the Standard of Care,
- it may increase the cost of operating or maintaining the *works*,
- it requires an additional consent to be obtained,
- it may have an adverse effect on Others and/or the Other Framework Contractors, or
- that more information is required.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted its design.

The *Project Manager’s* acceptance of the *Contractor’s* design (or any part of it) does not change or remove the *Contractor’s* responsibility to Provide the Works or the *Contractor’s* liability for the design of the *works*.”

Insert new clauses 21.4 to 21.5:

“21.4 Where clause X23 applies, the *Contractor* accepts entire responsibility for the Scope Engineering and Construction Contract Option A | 11

and the design of the *works* (including all design work prepared before or after the Contract Date and whether carried out by or on behalf of the *Client* or the *Contractor*).

- 21.5 The *Contractor* ensures that all Plant and Materials are in accordance with the Scope, the contract and Statutory Requirements and are of satisfactory quality and fit for the purposes of the *works*."

Delete clause 22.1 and insert, "number not used."

Delete clause 23.1 and replace with

"23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs the *Contractor* to. A reason for not accepting is that the *Contractor's* design of an item of Equipment:

- does not comply with the Scope, the contract, any Statutory Requirement, the Standard of Care,
- may increase the cost of operating or maintaining the *works*,
- requires an additional consent to be obtained,
- may have an adverse effect on Others and/or the Other Framework Contractors, or
- that more information is required.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted its design.

The *Project Manager's* acceptance of the *Contractor's* design (or any part of it) does not change or remove the *Contractor's* responsibility to Provide the Works or the *Contractor's* liability for the design of the *works*."

In clause 24.2 delete "the *Project Manager*" and replace with "the *Client*".

In clause 25.1 delete "as stated in the Scope" and replace with "in accordance with clause 33".

In clause 25.3 delete the last sentence.

Insert new clause 25.4:

"25.4 Where necessary in order to Provide the Works, the *Contractor* holds or attends meetings with Others and/or Other Framework Contractors, the *Contractor* informs the *Project Manager* of such meetings in sufficient time to enable the *Project Manager* to attend such meetings if the *Project Manager* so wishes."

In clause 26.3 delete the first bullet point. In the second list of bullet points insert the following new bullet point:

- "they include terms which restrict the duty of care owed to the *Contractor*, restrict the copyright available, restrict the terms of any professional indemnity insurance required and/or include a net contribution clause or cap on liability (that is lower than the applicable level of professional indemnity insurance and/or 110% of the applicable prices)."

Insert new clauses 26.4 to 26.11:

"26.4 The *Contractor* notifies the *Project Manager* of any impending disputes with any Subcontractor which could affect the operation of the *works*.

26.5 The *Contractor* performs its obligations under the contract so that no act, omission or

default of the *Contractor*, any Subcontractor, or any Key Supplier causes or contributes to any breach by the *Client* of any Third Party Agreement.

- 26.6 The *Contractor* ensures in respect of any Key Supplier (such person to be approved in advance by the *Client*) that it is appointed by deed in such terms as the *Client* approves (such approvals not to be unreasonably withheld or delayed).
- 26.7 No more than seven days after the appointment of any Key Supplier the *Contractor* supplies the *Client* with a copy of such appointment.
- 26.8 The *Contractor* ensures that each Key Supplier within 14 days of its appointment or novation pursuant to clause 26.6 executes and delivers a deed of warranty in favour of the *Client* substantially in the form of the warranty contained in Part E of Appendix 2 to the Framework Agreement. Such warranties are provided at the same time as the appointment pursuant to clause 26.7.
- 26.9 Within 21 days of a request in writing from the *Client*, the *Contractor* ensures that each Key Supplier executes and delivers a deed of collateral warranty and/or a letter of reliance in favour of any Beneficiary substantially in the form contained in Part E of Appendix 2 to the Framework Agreement, provided always that each Key Supplier shall not be required to execute more than five (5) (or such amount as set out in the Task Order) collateral warranties under this clause 26.9.
- 26.10 The amount to be inserted in any warranty provided pursuant to clauses 26.8 or 26.9 in respect of professional indemnity insurance is such reasonable amount approved by the *Project Manager* (such approval not to be unreasonably withheld or delayed).
- 26.11 The *Contractor* does not without the written consent of the *Client*:
- 26.11.1 vary any appointment of a Key Supplier,
- 26.11.2 waive or release any of the Key Supplier's obligations, or
- 26.11.3 terminate or do or omit to do any act or thing which would entitle a Key Supplier to regard its respective appointment as terminated."

Insert new clause 27.5:

"27.5 The *Contractor* is the *Principal Contractor* and (where stated in the Task Order) the *Principal Designer* and performs the requirements imposed on such parties under the CDM Regulations."

Delete clause 28 and replace with:

"28.1 The *Contractor* may not assign or transfer the benefit of the contract or any rights under it without the prior written consent of the *Client*."³

Delete clause 29 and replace with, "number not used."

Insert new clause 29A:

"Deleterious Materials

- 29A Exercising the Standard of Care, the *Contractor* shall not use or permit to be used in the *works* and/or the Project any materials, substance, building practice or technique which:

- by their nature or application contravene any British Standard, EU equivalent, code of practice or agreement certificate issued by the British Board of Agreement,
- contravene the recommendations of the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011",
- are generally considered to be deleterious within the building design professions in the UK or
- are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long-term integrity of the Project."

3 Time

Insert new clause 30.4:

"30.4 The *Contractor* proceeds regularly and diligently with the *works* and in accordance with the Accepted Programme."

In clause 31.2 in the fourth bullet point, after "and Others" insert "and Statutory Undertakers"

In clause 31.2 after the sixth bullet point, insert the following bullet points:

- "the resources planned to be used, and the resources actually used in whole or in part for each operation,
- all sub-networks, fragnets and network diagrams used to illustrate sequences of operations,
- compliance with the Project Programme and
- compliance with the Project Deliverables."

In clause 31.2 delete "Scope" in the final sentence and replace with "the Contract Data and the *Contractor* prepares and maintains each programme using such software (including version) as may be specified in the Contract Data or as otherwise agreed with the *Client*."

Insert new clause 31.4:

"31.4 If the *Contractor* fails to provide a Project Programme in accordance with the contract, the *Client* may:

- employ and pay others to make whatever reasonable investigations the *Project Manager* sees fit and
- make and keep any records or programmes the *Project Manager* reasonably requires to assist in the Providing of the Works.

The *Contractor* is responsible for the cost of such investigations, record keeping and/or programme preparation."

At the end of clause 34.1, insert: "During any period in which any work is so stopped or not started, the *Contractor* keeps secure and protects the Site and the *works* and all Equipment, Plant and Materials against any deterioration, loss, damage or theft."

In clause 35.1 delete "if the Contract Data states it is not willing to do so. Otherwise, the" and replace with ". The".

Delete the bullet points in clause 35.2 and replace with:

- "for a reason stated in the contract,

- to mitigate the effects of any delay to Completion,
- to ensure that a condition stated for each Key Date is met by the Key Date or
- to suit the *Contractor's* method of working."

4. Quality Management

Delete clause 40.2 and replace with:

"40.2 Within the period stated in the Contract Data, the *Contractor* provides the *Project Manager* with a quality plan for acceptance. The quality plan sets out the *Contractor's* proposals for the management and resourcing of the *services*. A reason for not accepting a quality plan is that:

- it does not allow the *Contractor* to Provide the Works,
- it is inadequately prepared or is not practicable,
- it does not incorporate the information which the Scope requires,
- it does not represent a realistic approach for the *works* or
- it does not comply with the Project Programme.

If any changes are made to the quality plan, the *Contractor* provides the *Project Manager* with the changed quality plan for acceptance."

Insert new clauses 40.4 and 40.5:

"40.4 Any Key Supplier appointed by the *Contractor* operates a quality system enabling them to comply with the quality plan.

40.5 The *Contractor* warrants:

- that the representations contained in the quality plan are accurate in every respect and may be fully relied upon by the *Client* where the standards represented exceed the minimum originally specified by the *Client*.
- that the quality plan does not constitute a qualification to its tender. Should any discrepancy arise between the quality plan and other contractual documents, the Scope takes precedence."

In clause 41.1 delete "Scope or the applicable law" and replace with "contract".

Insert new clause 43.3:

"43.3 Where the *Contractor* fails to comply with an instruction issued by the *Supervisor* under clause 43.1, the *Project Manager* may appoint a third party to comply with such instruction. The *Project Manager* assesses the cost incurred by the *Client* in appointing a third party and the *Contractor* pays the amount assessed."

In clause 44.2 insert after "*defect correction period*" in the first line "and where applicable so that a condition stated for a Key Date is met by that Key Date."

Delete clause 44.3 and replace with:

"44.3 Subject always to clause 53.3, the *Supervisor* issues the Defects Certificate at the *defects date* if there are no notified Defects, or otherwise the date when all notified Defects have been corrected. The *Client's* rights in respect of a Defect are not affected

by the issue of Completion which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate."

In clause 44.4 after "correcting a Defect" insert, "provided that the *Contractor* causes the minimum amount of disruption to the *Client*, Other Framework Contractors or others occupying the Site".

In clause 45.1 insert the following prior to the full stop: "but the *Client* is not obliged to consider or accept any such proposal".

5. Payment

In clause 50.2 after "assessment date" in the third line insert, "The *Contractor* shall also give the *Client* the supporting documents and information that the *Client* reasonably requires to enable it to evaluate the application for payment."

In clause 50.5 at the end of the clause insert: "and such programme has been accepted by the *Project Manager*."

In clause 51.2 at the start of the clause insert: "Provided that there has been no double counting". Delete "three weeks" in the first line and replace with "30 days".

In clause 51.5 delete "tax" and replace with "Value Added Tax at the applicable rate".⁴

In clause 53.2 delete "agrees with this assessment" in the third line and insert "notifies in writing that the assessment is agreed". Delete "three weeks" and replace with "four weeks".

In clause 53.3 delete "the final amount due under or in connection with this contract" and replace with "all and any such compensation events, if any, as are due under clause 60".

In clause 53.4 delete the final sentence and replace with, "subject to clause 53.3, no payment by the *Client* shall of itself be conclusive evidence that any *works*, any materials and goods or any design to which it relates are in accordance with this contract."

6. Compensation Events

In clause 60.1(1) replace bullet point two with: "a change to the Scope which is made either at the *Contractor's* request or to comply with to the contract,"

Add the following bullet points under the second bullet point:

- removing a requirement in the Scope for the *Contractor* to use a specified or named Subcontractor or Key Supplier,
- a change relating to an item which is a *Contractor* responsibility under the contract or
- a change required in order to achieve a consent which is the *Contractor's* responsibility to secure and comply (including Client Consents)."

Delete clause 60.1(2) and replace with

"(2) Subject to clause 33 and any access protocols that have been agreed between the *Client*, the *Contractor* and any relevant third parties, the *Client* does not allow access to and use of each part of the Site by the later of its *access date* and the date for access shown on the Accepted Programme."

In clause 60.1(4) after the words "gives an instruction" insert, "except an instruction given because of a

Defect” and insert prior to the full stop “and it is not one of the other compensation events stated in the contract”.

Delete clause 60.1(5) and replace with:

“(5) The *Client*:

- does not work within the times shown on the Accepted Programme,
- does not work within the conditions stated in the contract or
- carries out work on the Site that is not in accordance with the contract,

except where such work is required to correct a Defect or to ensure that a condition stated for a Key Date is met by that Key Date.”

Delete clause 60.1(7) and insert: “The *Project Manager* gives an instruction for dealing with fossils, antiquities and other objects of interest or value which may be found on the Site or in excavating it during the progress of the *works*.”

In clause 60.1(8) insert prior to the full stop “unless it was reasonable in the circumstances to change the decision”.

In clause 60.1(10) after “inspection” insert, “or unless it was reasonable for the *Supervisor* to instruct the *Contractor* to search, having regard to previous instances of non-compliant work.”

In clause 60.1(11) after “unnecessary delay” insert, “except where such test or inspection is carried out because of a Defect.”

Delete clause 60.1(14) and replace with: “An event expressly referred to in clause 80.1 and/or clause 81A.”

In clause 60.1(20) insert at the end: but only to the extent that the quotation relates to an instruction issued pursuant to clause 65.”

Insert a new clause 60.1(21):

“(21) There is any defects in or unreasonable delay in the delivery of the Free Issue Materials.”

Insert a new clause 60.1(22):

“(22) Loss or damage caused to the works, Plant, Materials, and/or property owned or occupied by the Client caused by a Specified Peril.”

Insert a new clause 60.1(23):

“(23) The carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the *works*, or the failure to carry out such works. but provided always that the Contractor has collaborated, co-ordinated and managed the works of such Statutory Undertaker.”

Insert a new clause 60.1(24):

“(24) The use of terrorism at the Site.”

In clause 60.2 at the start of the clause delete “In” and insert “Subject to clause 60.4, in”. At the end of the third bullet point delete the word “and” and insert a new fourth bullet point:

“all information made available to the *Contractor* prior to the *works*:

- as part of the tender process in relation to the Framework Agreement,
- as part of the award process in relation to the Task Order, or

- otherwise via the Portal,

whether by the *Client*, the *Project Manager* and/or any other person otherwise instructed by and acting on behalf of the *Client*, provided that such information is made available to the *Contractor* in sufficient time as is reasonable to allow the *Contractor* to take it into account and”.

Insert new clause 60.4:

“60.4 The *Contractor* is assumed to have proactively and diligently reviewed and raised all queries (including in relation to any clear errors, ambiguities, inconsistencies and/or any omissions) relating to the information identified in clause 60.2, as would be expected of a competent and experienced contractor and taking into account the *Contractor’s* experience and knowledge of the Project.”

In clause 61.2 delete “from a fault of the *Contractor*” and insert:

“from a fault, act or omission of the *Contractor* (which includes the fault of any Key

Supplier, Subcontractor or any employee or supplier of the *Contractor*),

- arises from any act or omission by the *Contractor*, any Key Supplier, or any Subcontractor or agent or employee of the *Contractor*, under any separate contract with the *Client* to do anything on or adjacent to the Site (whether concurrent with the *Contractor* Providing the Works or otherwise),
- is a *Contractor* responsibility under the contract.”

In clause 61.3 after “has happened” insert, “(or, if earlier, within eight weeks of the date an experienced contractor would reasonably have become aware of the event)”.

In clause 61.4 delete “from a fault of the *Contractor*” and insert:

“from a fault, act or omission of the *Contractor* (which includes the fault of any Key Supplier, Subcontractor or any employee or supplier of the *Contractor*),

- arises from any act or omission by the *Contractor*, any Key Supplier, or any Subcontractor or agent or employee of the *Contractor*, under any separate contract with the *Client* to do anything on or adjacent to the Site and/or pursuant to any other Task Order (whether concurrent with the *Contractor* Providing the Works or otherwise),
- is a *Contractor* responsibility under the contract.”

Insert at the end of clause 62.2:

“If the *Project Manager* accepts the *Contractor’s* quotation the *Contractor* provides a revised programme within one week of such acceptance.”

In clause 62.6 delete “two weeks” and replace with “three weeks”.

At the beginning of clause 63.1, delete “The” before “change to the Prices” and replace with:

“The changes to the Prices are assessed using rates for activities from the Activity Schedule:

- where the additional or substituted work is of a similar character to, is executed under similar conditions as, and does not significantly change the quantity of work set out in the Scope, the rates and prices for the work set out in the Activity Schedule determines the valuation,
- where the additional or substituted work is of similar character to work set out in the Scope but is not executed under similar conditions thereto and/or significantly changes its

quantity, the rates and prices for the work set out in the Activity Schedule is the basis for determining the valuation and the valuation includes a fair allowance for such difference in conditions and/or quantity, or

- where additional or substantial work is not of similar character to work set out in the Scope the work is valued at market rates and prices, and such rates and prices shall be added to the Price List and notwithstanding this, where the *Client* and *Contractor* agree, the”.

In clause 63.3, delete “the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*” and replace with “the total of the Prices, the total of the Prices is so reduced.”

Delete clause 63.4 and insert, “number not used.”

In clause 63.8, at the end of the clause insert “but excluding inefficiencies within the *Contractor’s* organisation.”

In clause 63.9, in the second line after “*Contractor*” insert “, all Subcontractors and Key Suppliers” and delete “Defined Cost” and replace with “and any costs to the extent they are recoverable under this contract”.

Delete clause 63.10 and insert, “number not used.”

Delete clause 63.12 and insert, “number not used.”

Insert new clauses 63.17 to 63.20:

“63.17 Any extension to the Completion Date and/or to a Key Date and increase in Prices are reduced by the extent to which the *Contractor*, any Subcontractor, supplier and or Key Supplier contributed to the effect of the compensation event.

63.18 Any compensation event under clauses 60.1(13), 60.1(14) (but only to the extent that such compensation event arises under clause 81A), 60.1(19), 60.1(22), 60.1(23) and 60.1(24) does not give rise to any changes to the Prices and the *Contractor* is only entitled to an extension to the Completion Date and/or to a Key Date.

63.19 There is no extension to the Completion Date and/or Key Date where the compensation event relates to work for which the *Contractor* has been required by the Scope to make due allowance for in any Accepted Programme save that this clause shall not prevent any float and/or time risk allowance provided for in an Accepted Programme from being taken into account when assessing the effect of any compensation event (where relevant).

63.20 Any compensation event under clause 60.1(12) shall be subject to clause 60.4, as well as clauses 60.2 and 60.3.”

7. Title

In clause 70.2 at the end of the first sentence insert “or the *Client* has paid for them. Unless the title has passed pursuant to this clause as a result of the *Client* paying for them, the title to Plant and Materials passes back to the *Contractor* if they are removed from the Working Areas with the *Project Manager’s* permission.” Delete the final sentence.

Insert new clause 70.3:

“70.3 The *Contractor* provides proof of its title to Plant and Materials prior to inclusion in the assessment of the amount due and if required by the Project Manager the *Contractor* delivers to the *Client* a vesting certificate in favour of the *Client* in the relevant form set out in Part E of Appendix 2 to the Framework Agreement.”

Delete clause 71.1 and replace with:

- “71.1 The *Supervisor* or *Project Manager* marks Equipment, Plant and Materials which are outside the Working Areas if:
- the contract identifies them for payment and the *Contractor* has prepared them for marking as the Scope requires,
 - they are Free Issue Materials, or
 - the *Client* has paid for them in whole or in part”.

Insert new clause 75:

“Free Issue Items

- 75.1 Where the Scope specifies that Free Issue Materials shall be provided, the *Client* shall supply and deliver to the Site the Free Issue Materials.
- 75.2 The *Contractor* shall be responsible for notifying the *Client* in writing of the amount of Free Issue Materials it requires in sufficient time so as to allow a reasonable period of time for delivery of the Free Issue Materials to be made so as to meet the Accepted Programme and Completion Date and/or any Key Dates.
- 75.3 The *Client* and the *Contractor* shall carry out a joint inspection of the Free Issue Materials on delivery to the Site.
- 75.4 The risk of loss and damage to the Free Issue Materials shall pass from the *Client* to the *Contractor* when the Free Issue Materials have been delivered to the Site and the joint inspection referred to in clause 75.3 has been completed and approved.
- 75.5 The parties agree that the *Client* shall be responsible for unloading the Free Issue Items and the *Contractor* shall be responsible for installing and incorporating the Free Issue Materials into the *works* and/or for use of the Free Issue Items in Providing the Works.
- 75.6 The *Contractor* may make the rights granted under this clause 75 in relation to Free Issue Items available to a Subcontractor.”

8. Liabilities and insurance

In clause 80.1, delete the fifth bullet point. In the eighth bullet point after “other than the *works*” add “and/or any act, omission or default”. Add at the end of the bullet point insert: “and/or arises due to any act or omission by any Key Supplier and/or any Subcontractor.”²

Insert new clause 81A:

“Additional Client’s Liabilities (neutral events)

- 81A Loss or damage to the works, Plant and Materials are also Client’s liabilities provided that they are due to:
- war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strike, riots and civil commotion not confined to the Contractor’s employees, or
 - radioactive contamination.”

Delete clause 81.1 and replace with:

- “81.1 From the *starting date* until the Defects Certificate has been issued, the liabilities which are not carried by the *Client* are carried by the *Contractor*.”

In clause 82.2 at the end insert, “provided that the *Contractor* has notified the *Client* of such cost and the *Client* has approved such cost in writing.”

If selected to apply in the Task Order, add new clause 83.4:

“83.4 Insert new clause 83.4:

“The *Contractor* provides the insurance specified below:

Liability for negligent management or design	The amount and type specified in the Task Order from the date the <i>Contractor</i> starts to Provide the Works for a period of twelve years from Completion with a well-established United Kingdom insurance office, provided that such insurance remains available on commercially reasonable terms and rates having regard to the premiums required and policy terms available. Any increased or additional premium required by insurers by reason of the <i>Contractor's</i> own claims record or other acts, omissions or matters particular to the <i>Contractor</i> is deemed to be within commercially reasonable rates and terms.”
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The *Contractor* shall notify the *Client* immediately if this insurance ceases to be available to the *Contractor* at reasonable premium rates or on reasonable commercial terms. If this happens:

- the *Client* and the *Contractor* shall discuss and agree on the best means of protecting themselves and
- the *Client* may require the *Contractor* to take out and maintain insurance at the best premium rates and on the best commercial terms available to the *Contractor*. If the *Client* exercises this right, it shall reimburse to the *Contractor* the difference between the premium paid and the premium that would have been reasonable.”

In clause 84.1 after “complies with the contract” insert the words “with a well-established United Kingdom insurance office”.

9. Termination

In clause 90.1 delete “the *Project Manager* and” in line 2 and in line 3 replace “the *Project Manager*” with “the *Client*”.

Insert new clause 90.1A:

“90.1A The *Contractor* will in any subcontract or order the value of which is £10,000 sterling or over made or placed by them with any one Subcontractor in connection with or for the purpose of this contract take power to determine such subcontract in the event of termination of this contract under this clause upon the terms of clauses 90.1 and 90.2 inclusive.”

In clause 90.2 replace “A” at the start with “Save for so far as the Corporate Insolvency and Governance Act 2020 applies, a”.

In clause 90.2 delete the Termination Table and replace with:

Termination Table			
Terminating Party	Reason	Procedure	Amount Due
The <i>Client</i>	A reason other than R1-R22	P1, P2, P3, P4 and P5	A1, A2 and A4
	R1-R15, R18, R22-R25	P1, P2, P3, P4 and P5	A1, A3 and A5
	R17 or R20	P1, P2, P3, P4 and P5	A1 and A2
	R21	P1, P2, P3, P4 and P5	A1 and A2
The <i>Contractor</i>	R1-R10, R16 or R19	P1, P2, P3, P4 and P5	A1, A2 and A4
	R17 or R20	P1, P2, P3, P4 and P5	A1 and A2
-	-	In relation to P1, P2, P3, P4 and P5 in each case to the extent specified in the relevant instruction.	-

In clause 90.3 replace “the *Project Manager*” with “the *Client*”.

In clause 91.1 delete the fourth sub-bullet point of the second main bullet point and replace with:

- “had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the 1986 Act) (R8)”.

In clause 91.1 at the end of the second main bullet point, after (R10) delete the full stop and insert the following additional two sub-bullet points:

- “provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or re construction (R10A), or
- applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B).”

In clause 91.2 delete “four weeks” and replace with “two weeks”. At the end of the second bullet point and before “(R12)” add “, or such bond or guarantee becomes unenforceable” In the third bullet point after both “work” and “the Subcontractor” add “or a Key Supplier”.

In clause 91.2 at the end of the clause insert:

- “Failed to comply with its statutory obligations as set out in the Special Conditions (R23).”

Insert new clauses 91.9 and 91.10:

“91.9 The *Client* may terminate the *Contractor’s* obligation to Provide the Works if the *Client* terminates another Task Order and/or the Framework Agreement (R24).

91.10 The *Client* may terminate the Task Order immediately if the *Client* considers that a Critical Failure Event has occurred (R25).”

In clause 92.2, in the first line of P2 after “leave the Site,” insert, “leaving the Site in a safe, clean and

orderly condition,”

In clause 92.2, insert at the end of P4: “ Assists and co-operates with the *Client* to ensure an orderly transition

of the *works* to any replacement contractor and/or the Completion of any work in progress.”

Insert at the end of clause 92.2:

“P5 The *Contractor* promptly and in an orderly manner delivers to the *Client* all Documents and all BIM Documents on termination. The *Contractor* uses reasonable endeavours to ensure the *Client* receives any manufacturer’s warranties and guarantees in respect of Plant, Materials and Equipment. Any Plant, Materials or Equipment to which the *Client* has title but which are stored off site are delivered to Site immediately by the *Contractor*.”

Insert at the end of clause 93.2:

“A5 A deduction of the costs, damages, expenses and losses suffered or incurred by or on behalf of the *Client* as a result of termination of the contract. Where this clause A5 applies then the third bullet point in 93.1 shall not apply.”

Insert new clauses 93.2A and 93.2B:

“93.2A No other payments are made by the *Client* in consequence of the termination.

93.2B On termination of the contract, the *Client* is not liable for any loss of profits, bonuses or incentives.”

OPTION CLAUSES

Main Option Clauses

Option C: Target Contract and Option E: Cost Reimbursable Contract

Insert new clause 11.2(23):

“11.2(23) Cash Flow Profile means the cash flow profile identified as such in the relevant Task Order”.

Delete clause 11.2(26) and replace with:

“(26) Disallowed Cost is cost which

- is incurred by or on behalf of the *Contractor* in Providing the Works arising out of or in connection with any negligent act, omission, default, negligence and/or breach of any provision of this contract by the *Contractor* and/or any Subcontractor and/or any Key Supplier, including in connection with:
 - rectifying a Defect,
 - any failure to:
 - follow an acceptance or procurement procedure stated in this contract,
 - give an early warning which this contract requires the *Contractor* to give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier or Key Supplier (including, without limitation, preparation for and

- attendance at early warning meetings and other meetings regarding the progress of the *works* and risk management in relation to the *works*), or
 - take into account and apply the Standard of Care (including, without limitation, proactive risk management),
- any matter, event or circumstance for which the *Contractor* and/or any Subcontractor and/or any Key Supplier is responsible for pursuant to this contract,
- any costs, disbursements and/or expenses incurred by the *Contractor* arising out of or in connection with:
 - preparation for and conduct of an adjudication, payments to a member of the Dispute Avoidance Board or proceedings of the tribunal between the Parties,
 - the preparation and issuing of an early warning, save where the *Client* agrees to call an early warning meeting in respect of such early warning, or
 - any claim in respect of a compensation event (save in respect of any compensation events certified by the *Project Manager* in accordance with this contract),
- any provision of this contract express states as being excluded and/or shall not be taken into account in determining the Defined Cost,
- arises out of or in connection with events for which this contract requires the Contractor to insure including, for the avoidance of doubt, any excess and/or deductible associated with any insurance,
- are not justified by the Contractor's accounts and/or records,
- should not have been paid to the Contractor, a Sub-Contractor or supplier in accordance with this contract,
- are attributable to a compensation event under a Sub-Contract which is not also a compensation event under this contract,
- are not expressly permitted to be chargeable by the Contractor to the Client pursuant to this contract,
- is the cost of:
 - Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Scope, or
 - resources and/or Equipment not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the Project Manager requested,
- arises out of or in connection with the provision of any bond, guarantee and/or collateral warranties required in connection with this contract or
- includes fines and/or royalties."

At the end of clause 11.2(31) insert the following: "(provided such forecast does not exceed the relevant amount in the Cash Flow Profile or such other amount as agreed by the *Client* and the *Contractor* in advance)."

Delete clause 52.2 and 52.4 and replace with clauses 52.2 to 52.10:

"52.2 Until the issue of the Defects Certificate the *Contractor* maintains, in a form reasonably required by the *Client*, records which show in detail:

- the provision of the *works*,
- the costs incurred by it in the execution of this *contract* (including, for example, man hours and applicable charging rates (including labour and overheads)),
- verification reviews of the cost incurred in the delivery of the *works* to ensure that at all times the *Client*, receives value for money,

- the Sub-Contractor's contracts and documents relating to the *Contractor's* procurement of such contracts,
- payments made to or received from Subcontractors under this *contract* and
- such further particulars of the costs of the provision of the *works* as the *Client*, may from time to time reasonably require as being necessary for the purpose of determining such costs with reasonable accuracy, (together the "Audit Records").

- 52.3 The *Contractor*, upon reasonable notice from the *Client*, makes the Audit Records available to the *Client*.
- 52.4 The *Contractor* ensures that the Audit Records are kept up-to-date.
- 52.5 The *Contractor* retains the Audit Records for a period of at least twelve (12) years after expiry or termination of this Contract at no cost to the *Client*.
- 52.6 The *Contractor* ensures that provisions set out in clauses 52.2 to 52.5 apply to all Subcontractors.
- 52.7 The *Client* may nominate representatives to undertake audits in relation to this *contract*. The *Contractor* allows the *Client*, and any such representatives access to the Audit Records. The *Contractor* provides such support as the *Client*, reasonably requires to perform such audits.
- 52.8 The *Contractor* keeps detailed records of the Defined Cost incurred in respect of the *works* on an "open book" basis, i.e. on the basis that records of Defined Cost are maintained in a fully auditable manner and are made available to the *Client* whenever reasonably required for the purposes of verification in connection with the *works*. The *Contractor* keeps such records for a period of twelve (12) years from expiry of the *contract*.
- 52.9 The *Contractor* provides to the *Client*, and its representatives or agents, full access to and/or details of, all original vouchers and books of account necessary to demonstrate its Defined Cost if and when reasonably requested to do so by the *Client*."

Resolving and Avoiding Disputes

Option W2

In clause W2.3(11) delete the final sentence.

Delete clause W2.4(1) and replace with:

"(1) A Party may refer a dispute under or in connection with the contract to the tribunal at any time."

Insert new clause W2.5:

"W2.5 Any Party may at any time ask that additional parties shall be joined in the adjudication. Joinder of additional parties shall be subject to the agreement of the Adjudicator and the existing and additional parties. An additional party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Adjudicator and the parties. The Adjudicator shall not agree to the joinder of additional parties unless the original parties to the dispute agree an amended timetable for the adjudication which is, in all the circumstances, reasonable."

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The Contractor is

Name	Walter Lilly & Co Limited
Address for communications	Knollys House 17 Addiscombe Road Croydon Surrey. CR0 6SR
Address for electronic communications	
The fee percentage is	7 %
The working areas are	Site, Knollys House, remote and home working

The key persons are

Name (1)	
Job	Project Leader
Responsibilities	Site activities
Qualifications	
Experience	
Name (2)	
Job	Diversional Commercial Manager
Responsibilities	Commercial and Contractual
Qualifications	
Experience	

The following matters will be included in the Early Warning Register

Not used

2 The Contractor's main responsibilities

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

The Scope provided by the *Contractor* for its design is in

Task Order Requirements
"PRJ_8803_B423_B425_TO
R_v0.3_WIP"
General Scope 2022
Contractor dated February
2022
B423 B425_Commercial
Clarification_WL Log
1(1.12)
230907 Arup_ B423
B425_WL
Clarification_Defra
Comments v0 (002)

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

TBA

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

The *completion date* for the whole of the works

TBA

5 Payment

Activity schedule:

Activity number	Activity description	£s Excl Vat
	B423 425 Upgrade - Activity Schedule (WL Enhancements)(1.0) FINAL Rev C(1.1)	
	Tendered total of the prices	5,545,276.13

Resolving and avoiding disputes

If Option W1 or W2 is used

The *Senior Representatives* of the Contractor are

Name(1)

Address for communications

Knollys House
17 Addiscombe Road
Croydon
Surrey. CR0 6SR

Address for electronic communications

Name(2)

Address for communications

Knollys House
17 Addiscombe Road
Croydon
Surrey.
CR0 6SR

Address for electronic communications

X10: Information modelling

If Option X10 is used

If an <i>information execution plan</i> is to be identified in the Contract Data	The <i>information execution plan</i> identified in the Contract Data is	See Commercial Commentary – Not used
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Data for the Short Schedule of Cost Components

The *people rates* are

category of person	unit	rate
As detailed in the Walter Lilly Delivery Framework Contract		

The published list of Equipment is the edition current at the Contract Date of the list published by	TBA
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The percentage for adjustment for Equipment in the published list is	TBA	% (state plus or minus)
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The rates for other Equipment are

Equipment	rate
As detailed in the Walter Lilly Delivery Framework Contract	

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

category of person	rate
As detailed in the Walter Lilly Delivery Framework Contract	

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

category of person	rate
As detailed in the Walter Lilly Delivery Framework Contract	

The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

As detailed in the Walter Lilly Delivery Framework Contract

The Contractor’s Offer and Client’s Acceptance

The Contractor offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The contract is made on

24 day of 11 month 23 year

Between the Client and the Contractor.

The contract is made pursuant to the Engineering Delivery Framework Agreement.

The offered total of the prices is

£5,545,276.13 excl VAT

Signed on behalf of the Contractor

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The Client accepts the Contractor’s Offer to Provide the Works

Signed on behalf of the Client

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