



DATED 21st August 2020

**THE SECRETARY OF STATE FOR JUSTICE
(OF THE MINISTRY OF JUSTICE)**

AND

LENLEASE CONSTRUCTION (EUROPE) LIMITED

**NEC3 ENGINEERING AND CONSTRUCTION CONTRACT
(APRIL 2013 EDITION) OPTION A (PRICED CONTRACT
WITH ACTIVITY SCHEDULE)**

**FOR THE DESIGN & CONSTRUCTION OF HMP GLEN
PARVA**

**(AWARDED UNDER SCAPE PROCURE LIMITED'S
NATIONAL CONSTRUCTION FRAMEWORK: LOT 5)**



FORM OF AGREEMENT

THIS FORM OF AGREEMENT is made on 21st August

2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ (the "**Employer**", with such term including its successors in title and permitted assigns); and
 - (2) **LENLEASE CONSTRUCTION (EUROPE) LIMITED** (company number 00467006), whose registered office is at 20 Triton Street, Regent's Place, London, NW1 3BF (the "**Contractor**"),
- each a "**Party**" and together the "**Parties**".

RECITALS

- (A) The *Contractor* is a party to a framework agreement with Scape Procure Limited (company number 09955814, whose registered office is at Level 2, City Gate West, Tollhouse Hill, Nottingham, NG1 5AT) ("**Scape**") entitled "Framework Agreement – National Construction Framework: Lot 5" dated 1 June 2017 (as amended on 25 July 2018 and on 11 June 2020) (the "**Framework Agreement**").
- (B) The *Employer* is a "contracting authority" for the purposes of the Public Contracts Regulations 2015 and is authorised to access and use the Framework Agreement to enter into one or more contracts with the *Contractor* in connection with the provision of construction services and/or works (each defined as a "**Delivery Agreement**" in the Framework Agreement).
- (C) The *Employer* wishes to appoint a contractor to carry out and complete the design and construction of a new custodial facility at HMP Glen Parva, Leicestershire, England (the "**Project**", as further described in the Works Information) under a Delivery Agreement.
- (D) This contract is a "Delivery Agreement" for the purposes of the Framework Agreement.

IT IS AGREED:

1. The *Employer* will pay the *Contractor* the amount due and carry out its duties in accordance with this contract.
2. The *Contractor* will Provide the Works and comply with its other obligations in connection with the Project in accordance with this contract (and for an amount to be determined in accordance with the *conditions of contract*).
3. This contract comprises:
 - 3.1 this Form of Agreement;
 - 3.2 the conditions of contract in the form of the NEC3 Engineering and Construction Contract (April 2013 Edition) (as amended) incorporating Option A – Priced contract with activity schedule (as amended) as identified in Contract Data: Part One (the "**NEC3 ECC**");
 - 3.3 Option W2 – Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 applies);
 - 3.4 the Secondary Option clauses as selected and identified in Contract Data: Part One;
 - 3.5 Schedule 1: Contract Data (and all additional conditions of contract referred to therein);



- 3.6 Schedule 2: Additional conditions of contract;
- 3.7 Schedule 3: Works Information;
- 3.8 Schedule 4: Site Information;
- 3.9 Schedule 5: Template Contractor Collateral Warranty;
- 3.10 Schedule 6: Template Subcontractor Collateral Warranty;
- 3.11 Schedule 7: Template Subsubcontractor Collateral Warranty;
- 3.12 Schedule 8: Template Subconsultant Collateral Warranty;
- 3.13 Schedule 9: Third Party Rights Schedule;
- 3.14 Schedule 10: Template Vesting Agreement;
- 3.15 Schedule 11: Parent Company Guarantee;
- 3.16 Schedule 12: Trust Deed and Joining Deed;
- 3.17 Schedule 13: Data Protection Schedule;
- 3.18 Schedule 14: Collateral Warranty Schedule;
- 3.19 Schedule 15: Provisional Sums and Agreed Instructions;
- 3.20 Schedule 16: Programme;
- 3.21 Schedule 17: Activity Schedule;
- 3.22 Schedule 18: Valid Invoice Template;
- 3.23 Schedule 19: All Risks Policy;
- 3.24 Schedule 20: IDI Policy;
- 3.25 Schedule 21: COVID-19 Management Plan;
- 3.26 Schedule 22: Import Schedule;
- 3.27 Schedule 23: Tigers Road Deed of Release;
- 3.28 Schedule 24: Consents;
- 3.29 Schedule 25: Planning Tracker;
- 3.30 Schedule 26: Logistics Plan;
- 3.31 Schedule 27: Project Execution Plan;
- 3.32 Schedule 28: 115 – Organogram;
- 3.33 Schedule 29: 205 – Construction Documents;
- 3.34 Schedule 30: 210 – Security Aspects Letter;



- 3.35 Schedule 31: 285 – IT Software;
- 3.36 Schedule 32: 290 – WI Derogations Schedule;
- 3.37 Schedule 33: 295 – MoJ Technical Standards;
- 3.38 Schedule 34: 310 – Design Deliverables;
- 3.39 Schedule 35: 325 – Employer’s requirements;
- 3.40 Schedule 36: 350 – RDD Schedule;
- 3.41 Schedule 37: 445 – Government Soft Landings Requirements;
- 3.42 Schedule 38: 450 – Estate Cluster Handover Documents;
- 3.43 Schedule 39: 455 – Permitted Post-Completion Works;
- 3.44 Schedule 40: 506 – PPI Reporting Template;
- 3.45 Schedule 41: 605 – Samples;
- 3.46 Schedule 42: 606 – Benchmark Schedule;
- 3.47 Schedule 43: 607 – Mock Up Cells;
- 3.48 Schedule 44: 625 – Commissioning & Witnessing;
- 3.49 Schedule 45: 710 – Management of Tests & Inspections;
- 3.50 Schedule 46: 929 – Permanent Internet Connection;
- 3.51 Schedule 47: 950 – Operator Interface Requirements;
- 3.52 Schedule 48: 1010 – Services etc to be Provided by the Employer;
- 3.53 Schedule 49: 1130 – PCI Handover;
- 3.54 Schedule 50: 1320 – Use of Northern Compound;
- 3.55 Schedule 51: 1405 – Employer’s Works Specification;
- 3.56 Schedule 52: 1410 – Drawings List;
- 3.57 Schedule 53: 1700 – BIM Requirements;
- 3.58 Schedule 54: 1800 – KPIs;
- 3.59 Schedule 55: 2005 – Reporting;
- 3.60 Schedule 56: 2105 – Matrix of BREEAM Responsibilities; and
- 3.61 Schedule 57 – VE Schedule and Flowchart
- 3.62 any and all other documents annexed to and/or referred to in the Contract Data,



which, together with the Shorter Schedule of Cost Components, form this contract and all references to this "contract" shall mean the contract as referred to in this paragraph 3 of this Form of Agreement.

4. If there is any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence:
 - 4.1 the Form of Agreement;
 - 4.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
 - 4.3 Contract Data: Part One (including any annexures to or documents referred to in the same);
 - 4.4 Contract Data: Part Two (including any annexures to or documents referred to in the same); and
 - 4.5 the other documents forming part of this contract.

If there is any conflict, ambiguity, discrepancy or inconsistency in or between:

- (a) the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* take priority over the *conditions of contract*;
 - (b) the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the Contract Data: Part Two; and
 - (c) the content of the Works Information other than the section of the Works Information entitled "Works Information Derogations" (the "**WI Derogations Schedule**") and the content of the WI Derogations Schedule, the WI Derogations Schedule takes priority over the relevant part(s) of the Works Information in respect of which the conflict, ambiguity, discrepancy and/or inconsistency relates.
5. Where the *Contractor* has performed any works and/or services for the *Employer* in connection with the Project before the Contract Date (including under the Pre-Construction Services Agreement and the Early Works Contract(s) or otherwise), such works and/or services shall be deemed to have been performed under this contract on the later of:
 - 5.1 if performed under the Pre-Construction Services Agreement and/or the Early Works Contract, the date on which such works and/or services are determined as having been completed pursuant to and in accordance with the same (or the date on which any such contract is terminated in accordance with its terms); and
 - 5.2 the Contract Date,

provided always that nothing in this paragraph 5 shall relieve the *Contractor* of the requirement to perform, discharge and complete any duties and/or obligations under the Pre-Construction Services Agreement and/or any Early Works Contract that remain outstanding under the same as at the Contract Date.

Any payments made to the *Contractor* in respect of any above-mentioned works and/or services, whether as at the Contract Date or otherwise, shall be deemed to have been paid to the *Contractor* on account of the tendered total of the Prices (and the *Contractor* shall have no entitlement to any further payment from the Employer in respect of the same under this contract but this shall not prejudice any entitlement that the *Contractor* may have (if any) under the Pre-Construction Services Agreement and/or any Early Works Contract in connection with completed works and/or



services for which it has not been paid under such Pre-Construction Services Agreement and/or Early Works Contract(s)).

The *Contractor* shall have no entitlement to notify the *Employer* of and/or submit a claim in respect of a compensation event under this contract arising out of or in connection with any works and/or services that it has so undertaken (or has yet to undertake) prior to, on or after the Contract Date, whether under the Pre-Construction Services Agreement and/or Early Works Contract(s) or otherwise.

6. This contract shall be governed by and construed in accordance with English law and the Parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.
7. The Parties acknowledge and agree that this contract may be executed:
 - 7.1 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
 - 7.2 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).

IN WITNESS WHEREOF THIS FORM OF AGREEMENT WAS EXECUTED AS A DEED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE



The corporate seal of the **SECRETARY OF STATE FOR JUSTICE** hereto affixed is authenticated by:

Authenticated by (signature):

_____ [REDACTED]

Authenticated by (printed name):

_____ [REDACTED]

EXECUTED (but not delivered until the date hereof) **AS A DEED** by **LENLEASE CONSTRUCTION (EUROPE) LIMITED** acting by two directors or a director and its company secretary:

Director (signature):

_____ [REDACTED]

Director (printed name):

_____ [REDACTED]

Director / Secretary (signature):

_____ [REDACTED]

Director / Secretary (printed name):

_____ [REDACTED]



SCHEDULE 1

CONTRACT DATA

PART ONE – DATA PROVIDED BY THE *EMPLOYER*

- General • The **conditions of contract** are the core clauses and the clauses for main Option A, dispute resolution Option W2 and Secondary Option clauses X2, X4, X7, X15, X16, X18, X20, X21, Y(UK)1, Y(UK)2, Y(UK)3 of the NEC3 Engineering and Construction Contract (April 2013 Edition), as amended and supplemented by the Option Z clauses as set out in Schedule 2.
- The **works** are the construction and delivery of the New Glen Parva Category C Resettlement prison (as more particularly described in the Works Information, subject always to the application of paragraph 5 of the Form of Agreement).
- The **Employer** is:
Name: The Secretary of State for Justice, of the Ministry of Justice.
Address: 102 Petty France, Westminster, London, SW1H 9AJ.
- The **Project Manager** is:
Name: Mace Ltd, Company Number 02410626.
Address: 155 Moorgate, London EC2M 6XB.
- The **Supervisor** is:
Name: Mace Ltd, Company Number 02410626.
Address: 155 Moorgate, London, EC2M 6XB.
- The **Project** is the project more particularly identified as such in Section 1.1 of the Works Information.
- The **Works Information** is set out at Schedule 3 of this contract.
- The **Site** is HMP Glen Parva, Leicester as shown on the Site Red Line Plan included in Schedule 4 of this contract.
- The **Site Information** is set out at Schedule 4 of this contract.
- The **boundaries** of the *site* are as shown on the Site Red Line Plan included in Schedule 4 of this contract.
- The **Early Works Contracts** are the:
 - NEC3 Engineering & Construction Short Contract (as amended) dated 26th July 2019 between the *Employer* and the *Contractor* in respect of Geo-Environmental and Multi-discipline surveys in connection with the Project;
 - NEC3 Engineering & Construction Short Contract (as amended) dated 22nd April 2020 between the *Employer* and the *Contractor* in respect of Early Works Tranche 1 in connection with the Project; and
 - NEC3 Engineering & Construction Short Contract (as amended) 7th May 2020 between the *Employer* and the *Contractor* in respect of Early Works Tranche 2 in connection with the Project.
- The **Pre-Construction Services Agreement** is the NEC3 Professional Services Contract: Option A (as amended) dated 26th July 2019 between the *Employer* and the



Contractor in respect of Pre-Construction Services in relation to the design and construction of a new custodial facility at the existing HMP Glen Parva site in connection with the Project.

- The **Consents Schedule** is set out at Schedule 24 of this contract.
- The **Import Schedule** is set out at Schedule 22 of this contract.
- The **O&M Manuals** are the operation and maintenance manuals to be provided by the *Contractor* identified at Works Information Section WI 405 and associated documents included in Schedule 38 by reference to the relevant plant and/or machinery to which each such manual relates.
- **PIR Materials** means the polyisocyanurate-containing thermoset plastic insulation materials referred to in the Works Information and to be installed by the *Contractor* as part of the *works*.
- **PIR Encasing** means the materials that encase and the purpose of which is to protect the PIR Materials once installed as part of the *works* (whether such materials are used exclusively to encase the PIR Materials or otherwise) in accordance with the PIR Requirements.
- **PIR Requirements** are the requirements in the Works Information that describe and specify the technical requirements, specification requirements (including performance specifications), standards, testing requirements, method(s) of installation and specific installation requirements in respect of the incorporation and installation of (and intended use for) the PIR Materials in the *works*.
- **PIR Manual** is the document prepared by the *Contractor* that the *Contractor* is required to provide to the *Employer* as a pre-condition to Completion in accordance with the Works Information (but is not an O&M Manual) that, amongst other things, specifies the:
 - location of the PIR Materials in the *works*;
 - type(s) of PIR Materials used in the *works*;
 - the type and specification of the PIR Encasing used for the different types of PIR Materials at the area at which they are located; and
 - express requirements in respect of what intrusive works can be undertaken at or around the location of such PIR Materials (and any tolerances within which such works can be undertaken) without materially affecting and/or compromising the structural integrity of the PIR Materials such that they would, following such works, no longer satisfy the PIR Requirements,in such form and including detail as may be agreed between the Parties (and the *Project Manager*), in each case acting reasonably.
- **Toughened Glass** is the tempered or toughened glass identified as such (and according with the treatment, specification and performance requirements in respect of such glass) in the Works Information.
- **Permitted Post-Completion Works** are the works identified as such at Schedule 39 of this contract.
- **Permitted PCW Area** is the area shown as Working Area 'B' on the Principal Contractor's Working Area Plan included at Schedule 35 of this contract.
- **Permitted PCW Period** is the period to be agreed in writing between the *Project Manager* and the *Contractor* during which the *Contractor* will carry out and complete



the Permitted Post-Completion Works in accordance with this contract, with such period to be agreed no later than ninety (90) days after the Contract Date.

- **Permitted PCW Requirements** are the requirements identified as such at Schedule 39 of this contract.
- **Permitted PCW Times** means the hours of 08:00 to 18:00 on a Business Day Saturday 08:00 to 13:00 (unless otherwise agreed in writing in advance by the *Project Manager*).
- The rate of **Permitted PCW Delay Damages** is five thousand pounds (£5,000) per week or part thereof.
- The **Agreed Instructions** are set out at Part C of Schedule 15 of this contract.
- As at the Contract Date, there are no **Third Party Agreements**.
- The **language of this contract** is English.
- The **law of the contract** is the law of England.
- The **period for reply** is ten (10) Business Days.
- The **Adjudicator** is as nominated by the *Adjudicator nominating body*.
- The **Adjudicator nominating body** is Royal Institution of Chartered Surveyors.
- The **tribunal** is litigation in the courts of England.
- The following matters will be included in the Risk Register:
 - Not Used.
- The **Principal Contractor** is the *Contractor*.
- The **Principal Designer** is the *Contractor*.
- The **BIM Requirements** are set out at Schedule 53 of this contract.
- The **Project Consultants** are:
 - **Mace Limited** (company number 02410626, whose registered office is situated at 155 Moorgate, London, EC2M 6XB); and
 - **W.T. Partnership Limited** (company number 01130989, whose registered office is situated at AMP House, Dingwall Road, Croydon, CR0 2LX).
- The **Collateral Warranty Schedule** is set out at Schedule 14 of this contract.
- The form of **Contractor Collateral Warranty** is set out at Schedule 5 of this contract.
- The form of **Subcontractor Collateral Warranty** is set out at Schedule 6 of this contract.
- The form of **Subsubcontractor Collateral Warranty** is set out at Schedule 7 of this contract.
- The form of **Subconsultant Collateral Warranty** is set out at Schedule 8 of this



contract.

- The **Third Party Rights Schedule** is set out at Schedule 9 of this contract.
- The form of **Vesting Agreement** is set out at Schedule 10 of this contract.
- The form of **Parent Company Guarantee** is set out at Schedule 11 of this contract.
- The **Data Protection Schedule** is set out at Schedule 13 of this contract of this contract.

General:
COVID-19

- The **Initial Activities** are the activities forming part of the *works* that are to be provided by the Contractor up to the and including 31 December 2020.
- The **COVID-19 Management Report** is set out at Schedule 21 of this contract (or is such other form as the Parties may agree from time to time in writing, acting reasonably).
- The **COVID-19 Management Plan** is set out at Schedule 21 of this contract (or is such other form as the Parties may agree from time to time in writing, acting reasonably).

Time

- The **starting date** is 21st August 2020.
- The **access dates** are:

Part of the Site	Date
Area A (The Development Area) as identified on document reference [REDACTED] included in schedule 325 of the Works Information.	21 st August 2020
Area B (The Northern Compound area) as identified on document reference [REDACTED] included in schedule 325 of the Works Information.	21 st August 2020
Area C (The Joint Inspection Area) as identified on document reference [REDACTED] included in schedule 325 of the Works Information	21 st August 2020

- The **Contractor submits revised programmes** at monthly intervals that are aligned with the *assessment intervals*.

Testing and
Defects

- The **defects date** is one hundred and four (104) weeks after Completion of the whole of the *works*.
- The **defect correction period** is:
 - twenty-eight (28) days for "**Routine Defects**"; and
 - forty-eight (48) hours for "**Emergency Defects**";
 with each such *defect correction period* commencing:
 - where the *Contractor* has notified the *Project Manager* of the Defect, on the date of the *Project Manager's* response to the *Contractor's* notification specifying whether the Defect is a Routine Defect or an Emergency Defect; and
 - where the *Project Manager* has notified the *Contractor* of the Defect, the date of



the Project Manager's notice;
in each case, subject to clause 13.2 and as notified in accordance with clause 42.3.

- Payment • The **assessment interval** is monthly,
- For the purposes of Option Y(UK)2, the **final date for payment** is the later of twenty-one (21) days after the date:
 - on which payment becomes due; and
 - of receipt by the *Employer* of a Valid Invoice for the sums due.
 - The **Provisional Sums** for the **Provisional Activities** are set out at Schedule 15 of this contract.
 - The **Provisional Sum Activities** are set out at Schedule 15 of this contract.
 - The template form of **Valid Invoice** is set out at Schedule 18 of this contract.
 - The **currency of this contract** is pounds sterling (£).
 - The **Purchase Order Number** is to be confirmed within 10 working days of the execution date of this contract.
 - The **interest rate** is three per cent (3%) per annum above the base rate in force from time to time of the Bank of England.

- Compensation events • The **place where weather is to be recorded** is Cosby, LE18 4TW.
- The **weather measurements** to be recorded for each calendar month are:
 - the cumulative rainfall (millimetres);
 - the number of days with rainfall more than five (5) millimetres;
 - the number of days with minimum air temperature less than zero (0) degrees; Celsius; and
 - the number of days with snow lying at 09.00 hours (Greenwich Mean Time).
 - The **weather measurements** are supplied by the Meteorological Office.
 - The **weather data** are the records of past *weather measurements* for each calendar month which were recorded at Cosby, LE18 4TW and which are available from the Meteorological Office.
 - Where no recorded data is available, the **assumed values** for the ten (10) year return *weather data* for each *weather measurement* for each calendar month are: Not Used

- Risks and insurance • In respect of the insurances that the *Contractor* is required to take out and maintain pursuant to and in accordance with this contract, the minimum amount of cover /



indemnity for these insurances is as follows:

Insurance against	Minimum amount of cover or minimum level of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials (with such insurance being referred to in this contract as the " All Risks Policy ").	The reinstatement cost of the <i>works</i> , Plant and Materials, from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to Equipment.	The replacement cost of the relevant Equipment from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Liability for 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 <i>Contractor</i>) caused by activity in connection with this contract.	[REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any policy period, but in the aggregate in respect of product liability or pollution liability (to the extent insured under the policy) from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract.	The greater of the amount required by applicable law or [REDACTED] in respect of any one occurrence inclusive of costs, the number of occurrences being unlimited in any annual policy period from the Contract Date and up to and including the end of liability date, from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate
Liability for new pollution and new contamination caused by the <i>Contractor's</i> activity under this contract, including exacerbation of existing pollution and contamination at the Site.	[REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any policy period (which shall not exceed three (3) years) but not less than [REDACTED] in the aggregate during the policy period, as from the Contract Date and up to and including the <i>end of liability date</i> .
Liability for negligent act, error or omission in the performance of the	[REDACTED] for each and every claim against the <i>Contractor</i> in relation to the



<p><i>Contractor's</i> professional obligations under this contract (with such insurance being referred to in this contract as "professional indemnity insurance")</p>	<p><i>works</i> (within a minimum consequential / indirect loss sub-cap of [REDACTED]) from the Contract Date for the duration of the contract renewable on an annual basis unless agreed otherwise by the <i>Employer</i> and up to and including the <i>end of the liability date</i>.</p>
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- A copy of the **All Risks Policy** is set out at Schedule 19 of this contract.
- The **IDI Insurer** is the insurer who provides the IDI Policy as set out at Schedule 20 of this Contract.
- The *Employer* elects to "self-insure" the existing buildings and property at the *site* and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such "self-insurance". In accordance with the *Employer's* decision to "self-insure", the *Employer* does not require any additional premium / cost from the *Contractor* other than as set out above and/or referred to in the Insurance Table.

Optional statements

- The **completion date** for the whole of the *works* is 31st January 2023.

Early take over

- The **Employer is not willing to take over the works before the Completion Date**.
- Take over of "Working Area A" (as shown on the Principal Contractor's Working Area Plan included within Schedule 35) will take place on the same date as Completion of the *works*.
- Take over of "Working Area B" (as shown on the Principal Contractor's Working Area Plan included within Schedule 35 and which comprises the Permitted PCW Area) will take place on the same date on which the Permitted Post-Completion Works have been completed by the *Contractor* in accordance with clause 20A.

Key dates

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

condition to be met	key date
Not Used	

Employer's risks

- There are no **additional Employer's risks**.

Option X2 **If Option X2 is used**

- The change in law **base date** is 28 May 2020.

Option X7 **If Option X7 is used**

- The **Delay Damages Holiday Period** is the period of [REDACTED] commencing on the Completion Date.
- The rate of **delay damages** is [REDACTED] per week or part thereof.

Option X16 **If Option X16 is used**

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

Option X18 **If Option X18 is used**

- For the purposes of the Option X18, the Parties have agreed the following:
 - The *Contractor's* total aggregate liability to the *Employer*, to all and any



Beneficiary(s) and/or third parties (including third party operators) for indirect or consequential loss which includes without limitation loss of profits, loss of sales, loss of production, loss of goodwill, loss of business opportunity, loss of anticipated saving and business interruption is limited to the sum of [REDACTED] (**Option X18.1**).

- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to a sum equal to [REDACTED] of the tendered total of the Prices (as at the Contract Date) and the total of the Prices, whichever is the greater (**Option X18.2**).
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to a sum equal to [REDACTED] of the tendered total of the Prices (as at the Contract Date) and the total of the Prices, whichever is the greater (**Option X18.3**).
- Notwithstanding any other provision of this contract, the total aggregate liability of the *Contractor* (and any of its group Companies) to the *Employer* and to all and any Beneficiary(s) for all matters arising under or in connection with this contract (whether in contract, tort (including negligence) or any other basis of law) other than in respect of the excluded matters, is limited to a sum equal to [REDACTED] of the tendered total of the Prices (as at the Contract Date) and the total of the Prices, whichever is the greater (**Option X18.4**).
- For the purposes of Option X18.5, the **end of liability date** is the date falling twelve (12) years after the earlier of the date of the:
 - Completion of the whole of the *works*; or
 - termination of the engagement of the *Contractor* under this contract.

Option X20 For the purposes of Option X20

- The **KPI Schedule** is set out at Schedule 54 of this contract.
- The **KPI Reporting Interval** is every month.

Option Y(UK)1 For the purposes of Option Y(UK)1

- The **Trust Deed** is set out at Part 1 of Schedule 12 of this contract.
- The **Joining Deed** is set out at Part 1 of Schedule 12 of this contract.
- The **named suppliers** are:

Earthworks

KELTBRAY LIMITED (01274344)
St Andrew's House, Portsmouth Road, Esher, Surrey KT10 9TA

Piling

KELTBRAY LIMITED (01274344)
St Andrew's House, Portsmouth Road, Esher, Surrey KT10 9TA

Groundworks

MITCHELLSON FORMWORK & CIVIL ENGINEERING LIMITED (02072364)
Mitchellson House, Horton Trading Estate, Stanwell Road, Horton SL3 9PF

PCC

P C E LIMITED (01146346)
5/6 Mariner, Lichfield Road Industrial Estate, Tamworth, Staffordshire B79 7UL

MEP

CROWN HOUSE TECHNOLOGIES LIMITED (05083313)
Bridge Place, Anchor Boulevard Admirals Park, Dartford, Kent DA2 6SN



Lifts

KONE PUBLIC LIMITED COMPANY (01372978)
Global House Station Place, Fox Lane North, Chertsey, Surrey KT16 9HW

Kitchen

WHITCO CATERING AND BAKERY EQUIPMENT LIMITED (03120033)
14 Cottingham Way, Thrapston, Kettering, Northamptonshire, England NN14 4PL

Security Fencing

BINNS FENCING LIMITED (00489736)
Harvest House, Cranborne Road, Potters Bar, Hertfordshire EN6 3JF

Security Windows & Doors

ASSA ABLOY LIMITED (02096505)
Portobello, School Street, Willenhall, West Midlands WV13 3PW

Option Z **If Option Z is used**

The *additional conditions of contract* are contained in Schedule 2 to this contract.



PART TWO – DATA PROVIDED BY THE CONTRACTOR

Statements given in all contracts

- The **Contractor** is:
Name: Lendlease Construction (Europe) Limited.
Address: 20 Triton Street, Regent's Place, London NW1 3BF.
- The **Contractor's Parent Company** is Lendlease Europe Holdings Limited (company number 02594928, whose registered office is at 20 Triton Street, Regent's Place, London, NW1 3BF).
- The **direct fee percentage** is [REDACTED] %.
- The **subcontracted fee percentage** is [REDACTED] %.
- The **Working Areas** are the Site and **Contractor's** offices at Manchester, Birmingham and London and the **Contractor's** staff and employees working remotely in the UK (which also includes the Subcontractor's Working Areas).
- The **key people** are:

Name	[REDACTED]
Job	Project Director
Responsibilities	Ultimate management responsibility for the successful management, planning and organisation of the works.
Experience	25 yrs. experience with Lendlease delivering major projects, including: <ul style="list-style-type: none"> Olympic village, Stratford, London. International Quarter London, Stratford. Devonshire square, London. Cannon Bridge House, Cannon St. Station.

Name	[REDACTED]
Job	Commercial Director
Responsibilities	Ultimate management responsibility for the successful commercial management, of the works.
Experience	15 yrs. experience with Lendlease delivering major projects and frameworks, including: <ul style="list-style-type: none"> HMP Berwyn – Wrexham South West Regional Prime Contract Project SLAM.

- The following matters will be included in the Risk Register:
 - Risk to programme from utility installation and capacity constraints.
 - Supply chain constraints and capacity.
 - There is a risk that ecological conditions such as Badgers, Newts, Japanese Knotweed, nesting birds, tree removal, hemlock will cause delay over and above what has been reasonably allowed.
 - Unavailability of product from countries effected by COVID 19 up to Dec 20.
 - Unavailability of plant, materials and labour due to COVID 19.
 - Operator appointment and operator training and other requirements.



- There is a risk of interface issues between standardised design, production, procurement, assembly and construction.
- Security vetting procedures and application process requirements.
- There is a risk that exchange rate fluctuations lead to increased cost of materials and equipment as a result of exchange rate changes during the procurement and contract execution phases, there may be a risk or opportunity associated with the purchase of materials.
- The use of Perimeter Road inside boundary for Construction Traffic isn't robust to take traffic load.
- Derogations from MoJ Technical Standards.
- Objections from protest groups to the new Glen Parva Prison.
- CAT 2 FF&E storage area not available.
- Localised spike in COVID 19 restrictions and lockdown.
- Tigers Road access and adequacy.
- Availability of Labour and Specialist Labour.
- Materials shortages.
- Third party management of local COVID 19 related lockdown effecting co-ordination of supply chain, utilities and planning matters.

Optional statements

- The **activity schedule** is set out at Schedule 17 of this contract.
- The **tendered total of the Prices** is [REDACTED].
- The **programme** identified in the Contract Data is set out at Schedule 16 of this contract.

Data for the Shorter Schedule of Cost Components

- The **percentage for people overheads** is [REDACTED] %.
- The **published list of Equipment** is the last edition of the list published by CECA (Daywork Schedule List – current October 2019).
- The **percentage for adjustment for Equipment** in the published list is [REDACTED] %.
- The **rates for other Equipment** are:
 - Project-specific rates to be used.
- The **hourly rates for Defined Cost of design outside the Working Areas** are:

Item No.	Discipline	Level	Staff Rates
			ECC Cost Rate £/hour
A	Project Manager any Discipline and specialism	Director / Partner / Principal / Group Leader	Redacted
		Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
B	Design Manager/Coordinator	Director / Partner / Principal / Group Leader	Redacted



	including general architect, regeneration architect etc acting as coordinator and technical advisor.	Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
C	BIM Model Manager	Senior Professional	Redacted
		Professional	Redacted
		Senior Technician / Technician	Redacted
D	Planner/Programmer	Senior Professional	Redacted
		Professional	Redacted
		Senior Technician / Technician	Redacted
E	Temporary Works Manager	Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
F	Building Surveyor, Party Wall Surveyor, SAP Surveyor, DDA Surveyor	Director / Partner / Principal / Group Leader	Redacted
		Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
G	Engineering - Civil Engineering, Mechanical Engineers, Electrical Engineers, Structural Engineers, M&E Coordinator	Director / Partner / Principal / Group Leader	Redacted
		Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
H	Quantity Surveyor Services for all Disciplines - Building Surveyors, Civil Engineers, Mechanical Engineers, Electrical Engineers, Structural Engineers, Landscape Architect	Director / Partner / Principal / Group Leader	Redacted
		Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted
I	CDM - Principal Designer, technical advisor etc	Senior Professional	Redacted
		Professional	Redacted
		Senior Technician	Redacted
		Technician / Assistant	Redacted

The above rates are indexed to April 2020

- The percentage for design overheads is [REDACTED] %.



SCHEDULE 2

ADDITIONAL CONDITIONS OF CONTRACT (Z CLAUSES)

The conditions of contract in the form of the NEC Engineering and Construction Contract: Option A (April 2013 Edition) are amended and supplemented by the following clauses incorporated in accordance with Option Z:

1. AMENDMENTS TO CLAUSE 1 – GENERAL

- 1.1 At the end of clause 10.1, 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 Works Information states it is to do by the Completion Date,
 - delivered to the *Employer* all of the Contractor Collateral Warranties and Subcontractor Collateral Warranties which the *Contractor* is obliged under this contract to provide and/or procure as at that date (provided always that the *Employer* 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 Y3.3 to Option Y3.5 (inclusive)) 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 *Employer* 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 Contract Date is the date of the Form of Agreement."
- 1.4 Replace the definition of "**Defect**" at clause 11.2(5) with the following:
"A Defect is a part of the *works* (whether designed or treated as having been designed by the *Contractor*) which is not in accordance with
- the Works Information,
 - the designs for the *works*,
 - applicable law,
 - the Consents or
 - any other part of or requirement in this contract,
- subject always to clause 43A and clause 43B."
- 1.5 In the definition of "**Parties**" at clause 11.2(11):
- after the word "*Employer*" insert "(which expression includes its successors in title and assigns)"; and
 - insert "and the term "Party" means the *Employer* or the *Contractor*, as the case may be" immediately before the full stop at the end of the clause.



- 1.6 In line 2 of the definition of "**To Provide the Works**" at clause 11.2(13):
- 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.
- 1.7 At clause 11.2(22), insert the following after "preparing quotations for compensation events":
- "Unless the *Project Manager* otherwise agrees, all "people" costs and "preliminaries" based Equipment and Plant and Materials costs within the Defined Cost shall not exceed the relevant rates within the Framework Commercial Model, applicable to the value and characteristics of the *works* or role, seniority and regional adjustment factors stated within the Framework Commercial Model.
- Defined Cost shall exclude those items, payments and activities included in table 1(a), table 1(b), table 2 or table 3 of Schedule 7 of the Framework Agreement".
- 1.8 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) "The term **additional conditions of contract** means the additional conditions of contract set out in this Schedule 2 of the contract.
 - (2) **Adverse Site Condition** means the presence of:
 - Asbestos,
 - Contamination,
 - treasure, historic artefacts, antiquities and/or human remains that the *Employer* and/or the *Contractor* is required by applicable law to report to a Statutory Authority or a third party with jurisdiction over the same under applicable law prior to its removal and/or
 - unexploded ordnances, unexploded bombs and/or explosive remnants of war, at or within the perimeter of the Site.
 - (3) **Agreed Instruction** is an instruction identified as such in Contract Data: Part One.
 - (4) **All Risks Policy** means the insurance policy to be taken out and maintained by the *Contractor* pursuant to clause 84.2 and clause 85A and which is referred to in Contract Data: Part One.
 - (5) The term **applicable law** means
 - any Act of Parliament or subordinate legislation, exercise of the Royal Prerogative and/or enforceable community right under the European Communities Act 1972,
 - any statute, directive, regulation, rule or order made under any statute or directive and having the force of law (including building and fire regulations),
 - any rule of equity or common law or the ruling, judgment or order of any Court and/or
 - any Consents and any other official request or requirement made by or of any Statutory Authority and all orders, rules, guidance notes, bye-laws, codes of practice and any other document with analogous and/or equivalent effect relating to any of



the foregoing.

- (6) **Asbestos** has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632.
- (7) **Beneficiary** means
- in respect of a Contractor Collateral Warranty (and the applicable part of the Third Party Rights Schedule, as the context requires), any party with a direct operational and/or financial interest in the Project as notified by the *Project Manager* to the *Contractor* from time to time in writing and
 - in respect of a Subcontractor Collateral Warranty, a Subconsultant Collateral Warranty and/or a Subsubcontractor Collateral Warranty (and the applicable part of the Third Party Rights Schedule, as the context requires), the *Employer* and any party with a direct operational and/or financial interest in the Project as notified by the *Project Manager* to the *Contractor* from time to time in writing,
- provided always that (save in respect of any private operator that may be appointed by the *Employer* in connection with the Project) the *Contractor* shall not be required to provide or procure either form of document (or any third party rights pursuant to the Third Party Rights Schedule, as the context requires) in favour of another construction contractor or professional consultant appointed by the *Employer* (including any Project Consultant) to provide professional services and/or works in connection with the actual design and/or physical construction of the Project."
- (8) **BIM** means building information modelling.
- (9) **BIM Requirements** mean the requirements in relation to BIM as identified in Contract Data: Part One.
- (10) **Business Day** means any day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.
- (11) **CDM Regulations** means the Construction (Design and Management) Regulations 2015.
- (12) **Central Government Body** means 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 UK Office for National Statistics
- Government department,
 - non-departmental public body or Welsh Government sponsored body (advisory, executive, or tribunal),
 - non-ministerial department or
 - executive agency.
- (13) A **Class 1 Force Majeure Event** is an event identified as such in the definition of Force Majeure Event.
- (14) A **Class 2 Force Majeure Event** is an event identified as such in the definition of Force Majeure Event.



- (15) **Collateral Warranty Schedule** means the schedule identified as such in Contract Data: Part One.
- (16) **Consent** means any and all (as the context requires) approvals, agreements (including Statutory Agreements), consents, permits, licences, qualifications, filings, exemptions, certificates and permissions (including, without limitation, all planning permissions (whether outline or full) and consents and such other matters or authorisations whatsoever (including Planning Consents), including any conditions thereof (including Planning Conditions and reserved matters) as are lawfully and necessarily required from any Statutory Authority or third party (including, without limitation, any landowner and any consents relative to any utilities and crossings of roads and/or cables (whether temporary and/or permanent)) in connection with the *works* and/or the performance of any obligation of the *Contractor* under and pursuant to this contract and all applicable laws.
- (17) **Consents Schedule** means the matrix identified as such in Contract Data: Part One.
- (18) **Contractor Collateral Warranty** means a collateral warranty in the form identified as such in Contract Data: Part One.
- (19) **Communications Software** means the cloud-based software application known as "CEMAR", as developed and maintained by Client Managers Toolkit Limited (company number 05430351, whose registered office is at Welland House Meteor Court, Barnett Way, Barnwood, Gloucester, England, GL4 3GG).
- (20) **Confidential Information** is the Employer Confidential Information and/or the Contractor Confidential Information (as the context permits).
- (21) **Contamination** means any pollutants or contaminants, including any chemical, industrial, radioactive, dangerous, medical / biomedical and sharps waste, toxic or hazardous substances, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour).
- (22) **Contractor Background Materials** means all Materials owned by the *Contractor* before the Contract Date and/or created by the *Contractor* independently of this contract and/or the *works*, in each case which are or will be used by the *Contractor* on or after the Contract Date in connection with this contract and/or the Project.
- (23) **Contractor Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the *Contractor*, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential (including commercially sensitive information).
- (24) **Contractor Materials** means all Contractor Background Materials and/or Foreground Materials (as the context permits).
- (25) **Contractor's Parent Company** means the entity identified as such in Contract Data: Part Two.
- (26) **Controller** has the meaning given to it in the GDPR.



- (27) **Convictions** means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders, including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.
- (28) **Copyright** has the meaning given to such term in Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.
- (29) **COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.
- (30) **COVID-19 Event** means any of the following matters relative to the occurrence (including any occurrence as at the Contract Date) and/or reoccurrence of any epidemic, pandemic or other regional public health issue (including any localised or widespread occurrence of an infectious disease caused by any pathogen, whether bacterial, viral, or any other biological or natural agent) which results, directly or indirectly, from COVID-19
- the infection or suspected infection of any person engaged by the *Contractor* in connection with the *works* by COVID-19,
 - the implementation of any public health measures mandated by the United Kingdom government (including Public Health England) in relation to COVID-19, including any
 - preventative measures intended to minimise the transmission of COVID-19 which result in shortages of labour and/or supervision in relation to the *works* (including self-isolation and the restricted use of public transport) and
 - measures to contain COVID-19 resulting in the mandatory closure of the site of the *works*, restricted access to that site and/or amended working hours and/or methods in connection with the *works*,
 - the exercise by the United Kingdom government of any statutory power in connection with COVID-19 that is not occasioned by a default of the *Contractor* or any person for whom the Contractor is responsible,
 - where the *Employer*, as a Crown body, is required to temporarily close and/or restrict access the Site on the advice or instruction of the United Kingdom government expressly in connection with COVID-19 and
 - the shortage of Equipment and/or Plant and Materials intended for use in the *works* due to a delay in their manufacture, importation and/or transportation as a consequence of COVID-19."
- (31) **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.
- (32) **COVID-19 Management Plan** means



- in respect of the Initial Activities, the plan 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 plan 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.
- (33) **COVID-19 Notification Date** has the meaning given to such term at clause 61.1.
- (34) **COVID-19 Relief** has the meaning given to such term at clause 62.1.
- (35) **Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract and/or actual or potential loss and/or destruction of such Personal Data, including any Personal Data Breach.
- (36) **Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
- (37) **Data Protection Laws** means the GDPR and the LED, the Data Protection Act 2018 (to the extent it relates to Processing of Personal Data and privacy) and all applicable laws about the Processing of Personal Data and privacy.
- (38) **Data Protection Officer** has the meaning given to such term in the GDPR.
- (39) **Data Protection Schedule** means the schedule identified as such in the Contract Data.
- (40) **Data Subject** has the meaning given to such term in the GDPR.
- (41) **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject under the Data Protection Laws to access its Personal Data.
- (42) **Database Rights** means any rights in a "database" as such term is defined in Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.
- (43) **Delay Damages Holiday Period** is the identified as such in Contract Data: Part One.
- (44) **Disclosure and Barring Services** means the body of the same name as established under the Protection of Freedoms Act 2012.
- (45) **DOTAS** means the "Disclosure of tax avoidance schemes rules" which require a promoter of tax schemes to notify Her Majesty's Revenue and Customs of notifiable arrangements or proposals and provide prescribed information on them within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.
- (46) **Early Works Contracts** the contracts identified as such in Contract Data: Part One, with each such contract entered into pursuant to and in accordance with the Framework



Agreement (as "Delivery Agreements" thereunder), with "**Early Works Contract**" being construed accordingly.

(47) **Early Works Contractor** means the *Contractor* in its capacity as the "Contractor" under any Early Works Contract.

(48) **Emergency Defect** is a Defect which

- substantially adversely affects the performance and/or use of all or part of the *works* and/or the Site by the *Employer* or any third party, including
 - any failure (whether intermittent or otherwise) of any central heating system and/or comfort cooling and/or air conditioning systems,
 - any impact on the constant availability of hot water at any time,
 - water leaks (if the water cannot or there is a danger that the water will not be contained) and/or if the water leak is causing or is likely to cause damage and/or penetration into any electrical fitting(s) and/or personal items,
 - any loss (whether intermittent or otherwise) of gas, electricity and/or the water supply,
 - gas leaks,
 - any loss of roof and/or ridge coverings which may result in water penetration and
 - blocked foul water drains causing flooding and/or overflowing internally and/or externally,
- requires immediate rectification in order to ensure the continuous safe occupation and/or use of all or part of the *works* and/or any part(s) of the Site (including its immediate surroundings) and/or to protect the health and safety of those occupying, using or visiting the *works* and/or the Site (including its immediate surroundings) and
- presents a security risk at the Site or is such that a failure to rectify it immediately would be materially detrimental to the security of any part(s) of the Site (including in relation to any Security Measures).

(49) **Employer Confidential Information** means

- this contract and anything referred to herein,
- all information disclosed by the *Employer* to the *Contractor* in connection with this contract, the *works* and/or the Project,
- any information concerning the business and/or financial affairs of the *Employer* which the *Contractor* learns due to its relationship with the *Employer* under this contract and
- all Personal Data which the *Contractor* obtains and/or becomes aware of due to being appointed under this contract,
- in each case of any type and in any medium, communicated directly or indirectly, and whether disclosed before, on or after the Contract Date.

(50) **Employer Contribution** has the meaning given to such term in clause 28B.1.

(51) **Employer Materials** means all Materials prepared by and/or on behalf of the *Employer* and provided to the *Contractor* in connection with the Project (but excluding any Contractor



Materials).

- (52) **Employer's Consent** means a Consent identified as such in the Consents Schedule.
- (53) **Environmental Information Regulations** means the Environmental Information Regulations 2004 and all associated guidance and/or codes of practice in relation to such regulations from time to time.
- (54) **Excluded Insurance Matter** means any matter, event or occurrence in respect of which the All Risks Policy does not provide insurance coverage expressly in relation to any loss and/or damage to the *works* and/or the Plant or Materials that is occasioned by such matter, event or occurrence.
- (55) **Facilitation Consent** has the meaning given to such term in clause 28B.1.
- (56) **FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner and/or the Department for Constitutional Affairs in relation to that Act from time to time.
- (57) 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 an *Employer's risk*
- a "**Class 1 Force Majeure Event**", being any of the following events
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assumption or nuclear component thereof (unless caused or contributed towards by the acts and/or omissions of the *Contractor*),
 - pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
 - any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government) other than a COVID-19 Event,
 - action by protestors outside of the Working Areas that is directly related to the intended construction and/or use of the completed *works* as a custodial establishment (and neither involving solely nor originating with the personnel or other employees of the *Contractor* or Subcontractors or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Contractor*) and/or
 - (save in relation to COVID-19 and/or where resulting in a COVID-19 Event and other than pursuant to a change in law for the purposes of Option X2 and/or arising out of or in connection with any circumstances analogous to those referred to in clause 60.1(21) that are consequential to the occurrence of the Transition Period Expiration Date) the occurrence of an event after the Contract Date which neither Party could prevent, an experienced contractor would have judged at the Contract Date as having such a small chance of occurring that it would have been unreasonable to it to have allowed for it



and that has a nationwide impact on the construction industry and directly adversely affects the ability of contractors in the United Kingdom of a similar size, type and nature of the *Contractor* to perform and discharge construction-related duties and obligations in the United Kingdom of a type and nature similar to those that the *Contractor* is required to perform and discharge under this contract by having the effect, for reasons that are not solely financial in nature, of

- restricting the provision of (or resulting in the shortage of) labour,
 - resulting in the mandatory closure of the Site and/or restricting access to the Site and/or
 - restricting the provision and/or availability Equipment and/or Plant and Materials that are required by the *Contractor* to so perform and discharge such duties and obligations and
- a "**Class 2 Force Majeure Event**", being any of the following events
 - riot, civil commotion, public disorder, sabotage and/or acts of vandalism outside of the Working Areas that is not covered by the fifth bulleted item of the category of "Class 1 Force Majeure Event" above (and neither involving solely nor originating with the personnel or other employees of the *Contractor* or Subcontractors or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Contractor*) and/or
 - strike, industrial action, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the Contractor or Subcontractors or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Contractor*.

- (58) **Foreground Materials** means all Materials created by or on behalf of the *Contractor* specifically in connection with the Project and/or this contract, but excluding the Contractor Background Materials.
- (59) **Form of Agreement** means the document entitled "Form of Agreement" forming part of this contract and to which these *additional conditions of contract* are annexed.
- (60) **Framework Agreement** has the meaning given to such term in Recital (A) of the Form of Agreement.
- (61) **Framework Commercial Model** has the meaning given to such term in the Framework Agreement.
- (62) **GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (63) **General Anti-Abuse Rules** means the legislation in Part 5 of the Finance Act 2013 and any future applicable law in relation to the counteraction of tax advantages arising from abusive arrangements to avoid NICs.
- (64) **Government Buying Standards** are the standards published here: <https://www.gov.uk/government/collections/sustainable-procurement-the->



[government-buying-standards-gbs](#) (as updated from time to time).

- (65) **Greening Government Commitments** means the Government's policy to reduce its effects on the environment, the details of which are published here: <https://www.gov.uk/government/collections/greening-government-commitments> (as updated from time to time).
- (66) **Hackitt Change in Law** means any change in applicable law (but excluding any orders, rules, guidance notes, codes of practice and any other document with analogous and/or equivalent effect that does not have the force of law) that
- comes into force on or after the Contract Date as a consequence of
 - the publication of the "Independent Review of Building Regulations and Fire Safety: Final Report" (May 2018),
 - the public inquiry into the fire at Grenfell Tower on 14 June 2017 and/or
 - any associated public or governmental inquiries in the United Kingdom associated with the aforementioned into the prevention of fires and ensuring fire safety on building and construction projects,the subject matter of which concerns
 - the prevention of fires,
 - the promotion of fire safety (and associated legal standards),
 - the use of and/or any prohibiting of the use of specific materials and
 - any standardised and/or minimum design requirements (and associated prohibitions) in relation to the above-mentioned bulleted items,in relation to building and construction projects in the United Kingdom and
 - has retrospective effect such that
 - it applies to building and construction contracts and/or construction works that have commenced prior to its enactment and the date of such change in applicable law coming into force and
 - it is necessary, to ensure that the *works* comply with such applicable law as at the date of Completion following the date of the change in law, that one or more parts of the *works* are redesigned, replaced, removed and/or reconstructed,provided that the Parties acknowledge and agree that the draft "Building Safety Bill" published in July 2020 shall not constitute a Hackitt Change in Law until it comes into force.
- (67) **Halifax Abuse Principle** means the principle explained in the CJEU Case C-255/02 Halifax and others.
- (68) **IDI Defect** has the meaning given to such term in clause 84.4(3).
- (69) **IDI Insurer** is the insurer identified as such in Contract Data: Part One.
- (70) **IDI Policy** has the meaning given to such term in clause 84.4(1).
- (71) **Import Schedule** is the document identified as such in Contract Data: Part One.



- (72) **Insured Risk** means any matter, event or occurrence in respect of which the All Risks Policy provides insurance coverage in relation to any loss and/or damage to the *works* and/or the Plant or Materials that is occasioned by such matter, event or occurrence and is not an Excluded Insurance Matter.
- (73) **Initial Activities** means the activities identified as such in Contract Data: Part One.
- (74) **Intellectual Property Rights** means any and all
- Copyright, rights related to or affording protection similar to Copyright, Database Rights, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs including building information modelling, know-how, trade secrets and other rights in Confidential Information,
 - applications for registration, and the right to apply for registration, for any of the rights referred to above that are capable of being registered in any country or jurisdiction and
 - all other rights having equivalent or similar effect in any country or jurisdiction.
- (75) **ITEPA** means the Income Tax (Earnings and Pensions) Act 2003.
- (76) **KPI Reporting Interval** is the period identified as such in Contract Data: Part One.
- (77) **KPI Schedule** is the document identified as such in Contract Data: Part One.
- (78) **LED** means the Law Enforcement Directive (Directive (EU) 2016/680).
- (79) **Material** means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided that the same do not contain any Personal Data) (including relating to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations (except where the same relate to documents produced solely for the *Contractor's* own internal purposes to determine the Prices), photographs, brochures, reports, meeting notes, and any other materials, in any medium provided by or prepared on behalf of a Party (in each case as may be amended or replaced from time to time) in connection with the *works*, this contract and/or the Project.
- (80) **MSA Offence** means an offence under the Modern Slavery Act 2015.
- (81) **Named Employee** has the meaning given to such term in clause 101 of the contract.
- (82) **National Audit Office** means the body of the same name as established under the National Audit Act 1983.
- (83) **NEC3 ECC** has the meaning given to it in clause 3.2 of the Form of Agreement.
- (84) **NICs** means national insurance contributions.
- (85) **O&M Manual** has the meaning given to such term in Contract Data: Part One.



- (86) **Occasion of Tax Non-Compliance** means any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 which, on or after 1 April 2013
- is found to be incorrect as a result of
 - a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rules or the Halifax Abuse Principle or under any rules or applicable law having equivalent or similar legal effect and/or
 - the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime and/or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (87) **Other Activities** means any activities comprising the *works* other than the Initial Activities
- (88) **Permitted Post-Completion Works** are the works identified as such in Contract Data: Part One.
- (89) **Permitted PCW Area** is the area identified as such in Contract Data: Part One.
- (90) **Permitted PCW Delay Damages** is the rate of damages identified as such in Contract Data: Part One.
- (91) **Permitted PCW Period** is the period identified as such in Contract Data: Part One.
- (92) **Permitted PCW Requirements** are the requirements identified as such in Contract Data: Part One.
- (93) **Permitted PCW Times** are the requirements identified as such in Contract Data: Part One.
- (94) **Personal Data** has the meaning given to such term in the GDPR.
- (95) **Personal Data Breach** has the meaning given such term in the GDPR.
- (96) **PIR Encasing** has the meaning given to such term in Contract Data: Part One.
- (97) **PIR Manual** is the manual identified as such in Contract Data: Part One.
- (98) **PIR Materials** has the meaning given to such materials in Contract Data: Part One.
- (99) **PIR Requirements** means the requirements identified as such in Contract Data: Part One.
- (100) **Planning Conditions** means the conditions relating to a Planning Consent as specified by the relevant Statutory Authority.
- (101) **Planning Consents** means the Consents in relation to planning approval for the Project.



- (102) **Pre-Construction Services Agreement** means the agreement identified as such in Contract Data: Part One, entered into between the Parties pursuant to and in accordance with the Framework Agreement (as a "Delivery Agreement" thereunder).
- (103) **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.
- (104) **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.
- (105) **Process** has the meaning given such term under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly).
- (106) **Processor Personnel** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in performing the Processor's obligations under this contract.
- (107) **Processor** has the meaning given to such term in the GDPR.
- (108) **professional indemnity insurance** has the meaning given to such term in clause 84.2.
- (109) **Prohibited Act** means
- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to induce that person to perform improperly a relevant function or activity and/or reward that person for improper performance of a relevant function or activity, whether in connection with this contract and/or the Project or otherwise,
 - an offence under the Bribery Act 2010, under any applicable law or common law concerning fraudulent acts and/or in connection with the defrauding, attempting to defraud or conspiring to defraud the *Employer* and/or
 - any activity, practice or conduct which would constitute one of the offences stated at the second bulleted item of this definition if it had been carried out in the United Kingdom.
- (110) **Project** has the meaning given to such term in Recital (C) of the Form of Agreement.
- (111) **Project Appointment** means any appointment entered into by the *Employer* with a Project Consultant as notified by the *Employer* to the *Contractor* from time to time.
- (112) **Project Consultant** means any consultant identified as such in the Contract Data or as otherwise notified by the *Employer* to the *Contractor* from time to time in writing.
- (113) **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the Project which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money.
- (114) **Protective Measures** means all appropriate technical and organisational measures ensuring confidentiality, integrity, availability and resilience of systems and services,



ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in the Data Protection Schedule.

- (115) A **Provisional Sum** is an allowance (and not fixed sum) of money identified as such in Contract Data: Part One that relates to and is specific to the provision of a Provisional Sum Activity.
- (116) A **Provisional Sum Activity** is an activity identified as such in Contract Data: Part One and to which a Provisional Sum relates.
- (117) **Purchase Order Number** means the number identified as such in the Contract Data.
- (118) **Reasonable Rates and Terms** has the meaning given to such term in clause 84.3.
- (119) **reinstatement work** has the meaning given to such term in clause 85A(3).
- (120) **Relevant Policies** means the policies of Scape (as specified in the Framework Agreement or as provided to the *Contractor* by Scape under the Framework Agreement from time to time) and the *Employer's* ethics, anti-bribery and anti-corruption policies, as included in the Works Information or as otherwise provided by the *Employer* to the *Contractor* from time to time.
- (121) **Relevant Requirements** means all applicable laws, statutes, regulations and codes relating to fraud, anti-bribery and anti-corruption, including (but not limited to) the Bribery Act 2010 and section 117 of the Local Government Act 1972.
- (122) **Relevant Tax Authority** means Her Majesty's Revenue and Customs or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.
- (123) **Relevant Terms** has the meaning given to such term in clause 104.
- (124) **Request for Information** means any request for information under the FOIA or the Environmental Information Regulations.
- (125) **Routine Defect** is a Defect that is not determined by the Project Manager pursuant to clause 42.3 as being an Emergency Defect.
- (126) **Scape** is the party identified as such in Recital (A) of the Form of Agreement.
- (127) **Security Aspects Letter** means the document so entitled forming part of the Works Information as may be modified from time to time upon reasonable notice from the *Employer* to the *Contractor*.
- (128) **Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to
- maintain the safety of persons and public and personal property,



- prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm,
- prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire),
- maintain political, national and/or international security,
- prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties and/or
- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with applicable law,

such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts.

- (129) **Site (and "site")** means the site of the *works* as identified in Contract Data: Part One.
- (130) **Site Conditions** has the meaning given to such term in clause 28A.1.
- (131) **SSCBA** means the Social Security Contributions and Benefits Act 1992.
- (132) **Statutory Agreement** means each and every agreement with a Statutory Authority, including any agreement(s) pursuant to section 38 and/or section 278 of the Highways Act 1980 and/or pursuant to section 104 of the Water Industry Act 1991 and/or pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972.
- (133) **Statutory Authority** includes (without limitation) any
- authority or other agency empowered by applicable law, including planning authorities, local authorities, the Environment Agency, police, fire, health and safety agencies,
 - national or local government or governmental department or legislative minister or commission, board, body, bureau, agency (whether state or supranational or a national park),
 - authority, Court or other judicial or administrative body (be it central or local) and/or
 - statutory undertaker and utility providers (to the extent that such utility provider is required to and/or is engaged by a Party to perform any works and/or services in connection with the *works*),
- having jurisdiction over any part of the Project, the *works* forming part of the Project and/or the Site, the Parties and/or performance of any other obligations of the Parties under this contract, with "**statutory body**" or "**utility**" being construed accordingly (as the context permits).
- (134) **Subconsultant Collateral Warranty** means a collateral warranty in the form identified as such in Contract Data: Part One.
- (135) **Subcontractor Collateral Warranty** means a collateral warranty in the form identified as such in Contract Data: Part One.



- (136) **Subsubcontractor Collateral Warranty** means a collateral warranty in the form identified as such in Contract Data: Part One.
- (137) **Sub-Processor** means any third party appointed to Process any Personal Data on behalf of a Processor in connection with this contract.
- (138) **Tigers Road** means Tigers Road, South Wigston, Leicestershire, LE18 4WS.
- (139) **Tigers Road Deed of Release** means a deed of release and grant of right of way between (1) the Secretary of State for Defence (as grantor) and (2) Her Majesty's Principal Secretary of State for the Home Department (as grantee) dated 23 October 2003, the benefit of which extends to the *Employer* in its capacity as the freehold owner of the land known as HM Young Offenders Institution, Queen Park Way, Glen Parva, as more particularly described in the "Official Copy of Register of Title" for title number LT109188, copies of each the *Contractor* acknowledges that it has been provided by (or on behalf of) the *Employer* prior to the Contract Date.
- (140) **Toughened Glass** means the material(s) identified as such in Contract Data: Part One.
- (141) **Third Party** has the meaning given to such tem in clause 28C.1.
- (142) **Third Party Agreement** has the meaning given to such tem in clause 28C.1.
- (143) **Third Party Rights Schedule** means the schedule identified as such in Contract Data: Part One.
- (144) **Transition Period Expiration Date** means the date on which the "transition period" as defined in Article 2(e) of and referred to in Article 126 of the "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community" (2019/C 3841/01) or any such equivalent or extended period as may be agreed between the government of the United Kingdom and the European Union on or after the Contract Date in relation to the date on which any transitional arrangement(s) arising out of or in connection with the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community expires.
- (145) **Unforeseeable** means, in respect of any potential Adverse Site Condition, whether it would not have been reasonably foreseeable to an experienced contractor as at the Contract Date, exercising the standard of care specified at Option X15 and having
- regard to the same information concerning the Site as expressly identified and/or documented by the *Contractor* under
 - any Early Works Contract in its capacity as the Early Works Contractor thereunder and/or
 - the Pre-Construction Services Agreement in its capacity as the "Consultant" thereunder,whether or not communicated by the *Contractor* in such capacity under any of these documents to the *Employer* in its capacity as the "Employer" thereunder,
 - regard to any condition(s) in relation to the Site expressly stated in the Site Information and/or the Works Information (excluding any surveys and/or reports procured by or on behalf of the *Contractor* in its capacity as the Early Works Contractor under any Early Works Contract and/or in its capacity as the "Consultant"



under the Pre-Construction Services Agreement, as the context requires),

- undertaken a visual inspection of the Site and its surroundings and
- regard to any relevant publicly available information in respect of the Site as referred to in the Site Information,

provided always that

- if there is any inconsistency
 - within the information referred to in the first bulleted item above and/or
 - between the information referred to in the first bulleted item above and any information referred to in the second to fourth (inclusive) bulleted items above,

the *Contractor* shall be assumed to have taken into account the conditions at the Site less favourable to undertaking the construction of the *works* and

- if there is any inconsistency within the information referred to in the second to fourth (inclusive) bulleted items above, the *Contractor* shall be assumed to have taken into account the conditions at the Site more favourable to undertaking the construction of the *works*.

(146) **Valid Invoice** means a VAT compliant invoice in the form referred to in Contract Data: Part One, provided that the *Employer* 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 *Employer's* notification.

(147) **VAT** means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it.

(148) **Vesting Agreement** means a vesting agreement in the form identified as such in the Contract Data.

(149) **WI Derogations Schedule** has the meaning given to such term in paragraph 4 of the Form of Agreement.

1.9 Delete the text of clause 12.1 and replace with the following:

"In this contract, unless the context indicates otherwise

- words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders,
- any reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking,
- any references to any enactment, code of practice, statute or statutory instrument or any of their provisions is to be construed as a reference to such enactment or such code of practice or such statute or such statutory instrument or such provision as the same may have been or may from time to time hereafter be amended, consolidated, replaced or re-enacted,
- where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date (provided that if the relevant period includes Christmas Day, Good Friday or a day which is a bank holiday, that day is excluded),
- week means a continuous period of seven (7) days,
- a general expression shall not be limited by any more specific expression preceding or following it and references to "includes" or "including" shall be without limitation in relation to



any foregoing phrase,

- references to recitals, clauses, paragraphs, annexes or schedules are to recitals, clauses and paragraphs of and annexes and schedules to this contract (and such recitals, schedules and annexes form part of the operative provisions of this contract and references to this contract shall, unless the context otherwise requires, include references to the same) and
- the headings to the sections, clauses and sub-clauses in this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract* and/or the *additional conditions of contract*.

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

"and shall be construed in accordance with".

1.11 Delete the text of clause 12.4 and replace it with the following:

"Subject to clause 5 of the Form of Agreement, this contract supersedes any previous agreement, arrangement or understanding between the *Employer* and *Contractor* in relation to the matters dealt with in this contract, and this contract represents the entire understanding and agreement between the *Employer* and *Contractor* in relation to such matters. Without prejudice to either Party's liability for fraudulent misrepresentation, each Party hereby acknowledges and agrees that in entering into this contract 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 body of this contract or any documents referred to herein."

1.12 Insert a new clause 12.5 as follows:

"Without prejudice to the generality of clause 12.2, the Parties submit to the exclusive jurisdiction of the courts of England."

1.13 Insert a new clause 12.6 as follows:

"A reference to applicable law and/or any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to such applicable law, statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it. Where a capitalised term is stated in this contract as having the meaning given to that term in any applicable law, the letter case used to define the term in the relevant applicable law shall be disregarded."

1.14 Insert a new clause 12.7 as follows:

"In the event that

- any provision or clause of this contract is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of this contract shall continue in full force and effect as if the contract had executed without the provision or clause in question or
- a court holds a provision or condition to be invalid, illegal and unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the contract, the Parties shall immediately commence negotiations in good faith to ensure that the purpose of the contract is achieved in the absence of the provision or clause in question."

1.15 Insert a new clause 12.8 as follows:

"Nothing in this contract shall be construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the *Employer* and *Contractor*."



1.16 Insert a new clause 12.9 as follows:

"Failure by a Party at any time to enforce any provision of this contract or to require performance by the other Party of any of the provisions of this contract is not construed as a waiver of any such provision and does not affect the validity of the contract or any part of the contract or create any estoppel or in any other way affect the right of such Party to enforce any provision in accordance with its terms."

1.17 Replace clause 13.1 as follows:

"13.1 Unless otherwise agreed by the Parties from time to time and in writing (but subject always to clause 13.2A), all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions, certificates, submissions, proposals, records, acceptances, notifications, replies and other communications between the Parties, the *Project Manager* and/or the *Supervisor* under or in connection with this contract (referred to in this clause 13 as "**communications**") shall be issued and received exclusively via the Communications Software.

The *Employer* shall be solely responsible for maintaining any software licencing arrangements that are required from time to time in connection with the Communications Software and the *Contractor* acknowledges and agrees that such a licence does (and will) not extend to any Subcontractors or other third parties engaged by the *Contractor* in connection with the Project from time to time.

Copies of communications that are issued via the Communications Software may also be issued by a sender to a recipient by

- hand delivery,
- first class inland (or recorded delivery) post and/or
- electronic mail."

1.18 Replace clause 13.2 with the following:

"Subject always to clause 13.2A

- a communication issued via the Communications Software shall have effect when it is communicated by the sender to the recipient in accordance with the Communications Software, provided that any communication sent after 17:00 shall be treated as having been received at 09:00 on the first (1st) Business Day after its transmission and
- any other communication shall have effect on the following basis
 - any communication sent by hand is deemed to be received upon delivery to the address of the recipient as set out in the Form of Agreement (or as notified by a Party to the other from time to time and in writing),
 - any communication sent by first class inland post and/or recorded delivery post to the address of the recipient (determined by reference to the above) is deemed as having been received two (2) Business Days following the date of posting,
 - any communication sent by electronic mail is deemed to have been received on the day of its transmission in legible form unless outside the hours of 09:00 to 17:00 in which case it is treated as having been received at 09:00 on the first (1st) Business Day after its transmission, provided that the recipient has previously confirmed to the sender its electronic mail address in writing and
 - any other communication sent by electronic means instead of electronic mail shall be deemed to have been received when, in addition to the issue or uploading of the original communication itself, confirmation of the same is provided by the sender to the relevant recipients by one of the above-mentioned means (and in accordance



with the rules of receipt referred to therein)."

1.19 Insert a new clause 13.2A after clause 13.2 as follows:

"13.2A The use of the Communications Software or any other electronic means of communication is not an effective method of communication for

- any notification by the *Contractor* of its intention to suspend performance of its obligations under this contract,
- any notification by a Party in relation to the actual or potential termination of this contract or the employment of the *Contractor* under this contract,
- any invoking by a Party of the procedures applicable under this contract (or under applicable law) in relation to the resolution of disputes or differences and/or any notification of an actual or potential dispute or
- any agreement between the Parties amending the provisions of this contract,

provided that a duplicate copy of any such communication may also be sent to the receiving party (or parties) by electronic mail (or other electronic means) for information only."

1.20 Insert a new clause 13.9 as follows:

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

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

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

1.22 Delete clause 14.3 and replace with the following:

"The *Contractor* acknowledges and agrees that the *Project Manager* may give an instruction to the *Contractor* (at its absolute discretion on the instruction of the *Employer*) the Works Information to remove or omit all or part of the *works* at any time and for any reason and the *Employer* 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 *Employer's* reasonable determination of the value attributable to such omitted part(s) or by such other sum as otherwise agreed between the Parties,
- the *Employer* shall have no liability whatsoever to the *Contractor* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), which 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 this 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 14.3,

provided always that nothing in this clause 14.3 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 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 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 final bulleted item above in respect of Plant and Materials, Equipment or other physical items in respect of which the *Contractor* is contractually committed to pay, it shall be a precondition to the *Contractor's* entitlement to payment in respect of the same under this clause 14.3 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 or other physical items transfers to the *Employer* 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 *Employer* in connection with the relevant Plant and Materials, Equipment or other physical items under this clause 14.3."

1.23 Insert a new clause 14.5 as follows:

"No communication from the *Employer*, the *Project Manager* or the *Supervisor* given in accordance with the provisions of this 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 this contract, including (without limitation) its responsibility to Provide the Works and its liability for Defects and defective design."

1.24 In clause 16.1:

- 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:
 - affecting the procuring and/or discharge of any Consents,
 - change the Accepted Programme,
 - affect the work of the *Employer*, an *Employer's* contractor or another consultant or adversely affect the *Employer* (including, without limitation, by increasing the monies payable by the *Employer* to Others),
 - constitute a Defect,
 - constitute a compensation event which has not been previously notified,
 - result in a breach of this contract or
 - cause a breach of any applicable law or statutory requirements."

1.25 At the end of the final paragraph of clause 16.1 insert the following:



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

- 1.26 Insert a new clause 16A with the heading "**Early warning: COVID-19 Management Report**" as follows:

16A COVID-19 Management Report

16A.1 Initial Activities

Without prejudice to the generality of clause 16, the *Contractor* will

- submit to the *Project Manager* on a weekly basis (or at such other frequency as the Parties may agree, acting reasonably) a completed COVID-19 Management Report in connection with the Initial Activities only and
- as part of such COVID-19 Management Report
 - provide details of how the *Contractor* is complying (and will continue to comply) with the COVID-19 Management Plan and
 - notify the *Project Manager* if it becomes aware that a specific COVID-19 Event could increase the total of the Prices and/or delay Completion.

The submission of a COVID-19 Management Report shall be deemed to satisfy the early warning requirements of clause 16 in relation to the actual or potential impact of a COVID-19 Event in relation to the Initial Activities.

16A.2 Other Activities

Without prejudice to the generality of clause 16, the *Project Manager* may (if the *Employer* and the *Project Manager* consider it being reasonably foreseeable that COVID-19 could adversely impact the delivery of the Other Activities by the *Contractor*) instruct the *Contractor* to prepare and submit to the *Project Manager* a quotation in respect of the *Contractor* reporting to the *Project Manager* of the potential and/or actual impact of COVID-19 (including any COVID-19 Events) on the *works* in respect of all or part of the Other Activities on the same basis as set out in clause 16A.1 in the context of the Initial Activities.

Such an instruction shall be treated as an "instruction" to prepare a quotation issued by the *Project Manager* under clause 61.2.

If the *Contractor's* quotation in response to the instruction is accepted by the *Project Manager* in accordance with this contract, the provisions of clause 16A.1 shall apply to the Other Activities referred to in the instruction or accepted quotation (as the context requires) mutatis mutandis (subject to the time period for submission of the COVID-19 Management Report being deemed to be the period specified in the instruction or accepted quotation (as the context requires))."

- 1.27 At the end of clause 16.4 insert the following:

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

- 1.28 Insert a new clause 16.5 as follows:



"The risks identified in the Risk 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 Risk Register or for any matter notified as an early warning. The *Employer* has no liability to the *Contractor* for any risks entered into the Risk Register or for any matter notified as an early warning unless the risks are carried by the *Employer* as stated in the *conditions to contract*."

1.29 Delete the text of clause 17.1 and replace with the following:

"The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract. Subject to paragraph 4 of the Form of Agreement, the *Project Manager* gives an instruction resolving the conflict, ambiguity, discrepancy or inconsistency. Notwithstanding any other provision of this contract, any such conflict, ambiguity, discrepancy, inconsistency and/or instruction is not a compensation event."

1.30 Insert a new clause 17.2 as follows:

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

Nothing in this clause 17.2 shall have the effect of preventing or limiting the operation of clause 43A and/or clause 43B."

1.31 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 Works Information (including any designs contained in and/or referred to in the Works Information) and the accuracy, adequacy and sufficiency of any design which has not been prepared by or on behalf of the *Contractor*,
- accepts that the *Employer* makes no representations and does not give any warranty, whether express or implied, as to the accuracy, adequacy, sufficiency, suitability or completeness of the Works Information or any designs prepared by or on behalf of the *Employer* (including any designs contained in and/or referred to in the Works Information),
- the *Contractor* accepts responsibility for any mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency or omission in the Works Information and any design of the *works* (whether the same has been prepared by or on behalf of the *Employer*, the *Contractor* or otherwise) including any designs contained in and/or referred to in the Works Information.

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

- the Works Information 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 Works Information), the *Contractor* submits his 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."



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

2.1 Delete clause 20.1 and replace with the following:

"The *Contractor*

- Provides the Works in accordance with the Works Information, the applicable law, the other parts of and requirements of this contract and in a proper and workmanlike manner and
- performs its other obligations under, pursuant to or in connection with this contract in accordance with the applicable law."

2.2 Insert a new clause 20.2 as follows:

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

2.3 Insert a new clause 20A with the following wording:

"20A **Permitted Post-Completion Works**

20A.1 Subject to the provisions of clause 20A.2 to clause 20A.6 (inclusive), following Completion of the *works*

- the *Employer* shall allow (or, as the context requires, procure that any third party responsible for the day-to-day operation of the Site) the *Contractor* access to the Permitted PCW Area during the Permitted PCW Times on a non-exclusive basis to undertake the Permitted Post-Completion Works during the Permitted PCW Period and
- the *Contractor* shall carry out and complete the Permitted Post-Completion Works (including the reinstatement of the Permitted PCW Area) during the Permitted PCW Period (and during the Permitted PCW Times) in accordance with the Permitted PCW Requirements.

20A.2 The Parties acknowledge and agree that

- the cost of the *Contractor* undertaking the Permitted Post-Completion Works is included in the Prices and the *Contractor* shall not be entitled to any adjustment to the Prices in relation to undertaking and completing the Permitted Post-Completion Works during or after the Permitted PCW Works Period,
- notwithstanding the second bulleted item of clause 50.1, further assessment dates shall occur in respect of the Permitted Post-Completion Works only on an interim basis during the Permitted PCW Period at the *assessment interval* and at the date falling ten (10) Business Days after the Permitted Post-Completion Works have been completed, with the provisions of clause 50 being construed *mutatis mutandis* during the Permitted PCW Period in relation to the ability of the *Contractor* to submit applications for payment in respect of the same during the Permitted PCW Period,
- the provisions of Option X16 will apply to any payments made to the *Contractor* in respect of the Permitted Post-Completion Works (at the rate of Retention applicable as from the date of Completion, this being [REDACTED]) and
- where any defects, excessive shrinkages and/or faults are identified on or after the date on which the Permitted Post-Completion Works are notified as being completed pursuant to clause 20A.6, these shall be treated as Defects for the purposes of clause 40 to clause 45 (inclusive) and this contract shall be



construed accordingly.

20A.3 When undertaking the Permitted Post-Completion Works at the Site, the *Contractor* shall at all times ensure that it does not (and its Subcontractors do not) access or use any adjoining or neighbouring part of the Site other than the part of the Site covered by the Permitted PCW Area unless such access has been authorised by the *Project Manager* in advance and where such access is reasonably necessary so as to allow the *Contractor* to undertake the Permitted Post-Completion Works.

20A.4 Subject to clause 20A.5, where the *works* and/or the property of any third party at the Site suffers loss and/or damage as a consequence of the *Contractor* undertaking the Permitted Post-Completion Works, the *Contractor* shall rectify any such loss or damage at its own cost.

20A.5 The *Contractor* shall

- be liable for, and shall indemnify the *Employer* against, any liability, damage, loss, expense, cost, claim or proceedings in respect of personal injury to or death of any person and in respect of loss of or damage to any property arising out of, or in connection with the Permitted Post-Completion Works, whether arising on or off the Site, provided that the *Contractor's* liability
 - in respect of loss of or damage to any such property shall arise only insofar as this is due to any negligence, omission or default of the *Contractor* or any Subcontractor and
 - to indemnify the *Employer* under this bulleted item of clause 20A.5 shall reduce proportionately to the extent that the negligence, omission or default of the *Employer*, any Project Consultant [and/or any third party responsible for the day-to-day operation of the Site has contributed to the relevant injury, death, loss or damage and
- comply with all applicable laws and the *Contractor's* own construction phase plan (referred to as the "Environmental Health & Safety Plan") as set out in the Works Information in carrying out and completing the Permitted Post-Completion Works.

20A.6 If the *Contractor* fails to complete the Permitted Post-Completion Works on or before the expiration of the Permitted PCW Period

- the *Project Manager* shall notify the *Contractor* in writing of such failure,
- the *Contractor* shall thereafter complete any outstanding part(s) of the Permitted Post-Completion Works no later than fourteen (14) days after the date of the *Project Manager's* notice and
- if the *Contractor* fails to complete the outstanding Permitted Post-Completion Works within the period referred to in the above-mentioned bulleted item, the *Contractor* pays to the *Employer* Permitted PWC Delay Damages at the rate stated in Contract Data: Part One per week or part thereof for the period up to and including the date on which the *Contractor* completes the Permitted Post-Completion Works in accordance with this clause 20A,

provided that

- if the *Contractor* is delayed in performing its duties under this clause 20A during the Permitted PCW Period due to a compensation event, the provisions of clause 60 to clause 65 shall be construed as applying mutatis mutandis to the Permitted Post-Completion Works and the Permitted PCW Period, provided always that (save in respect of an instruction issued by the Project Manager pursuant to clause 60.1(1)) the *Contractor* shall not be entitled to any adjustment to the Prices arising out of or in connection with any compensation event in respect of the Permitted Post-Completion Works and the *Contractor* shall be entitled to an adjustment to the Permitted PCW Period and
- the provisions of Option X7.4 to Option X7.6 (inclusive) shall be construed as



applying mutatis mutandis to the Permitted Post-Completion Works and the Permitted PCW Delay Damages where the *Contractor* fails to complete the Permitted Post-Completion Works within the Permitted PCW Period pursuant to this Option X20A."

2.4 Replace clause 21.1 in its entirety with the following:

"Exercising the standard of care referred to at Option X15, the *Contractor* designs the parts of the *works* which the Works Information states the *Contractor* is to design and designs such parts of the *works* in accordance with the requirements stated in the Works Information 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 his 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 Works Information.

Nothing in this clause 21.1 shall have the effect of preventing or limiting the operation of clause 43A, clause 43B, and/or Option X2."

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 this contract, or the applicable law."

2.6 Insert a new clause 21.4 as follows:

"Notwithstanding any other provision within this contract and without prejudice to the generality of Option X15, the Parties acknowledge and agree that nothing in this contract, whether express or implied, shall impose fitness for purpose or a fitness for purpose obligation on the *Contractor* in relation to the design and/or the *works*."

2.7 Insert a new clause 21.4 as follows:

"Without prejudice to the generality of clause 17.3 and Option X15, the *Contractor* checks the Works Information provided by the *Employer* and satisfies itself that its own design meets the *Employer's* Works Information with no discrepancy within and or between the Works Information and its own design or Works Information. Where there is ambiguity, inconsistency or conflict between these documents, the provisions of clause 17.1 and clause 17.2 shall apply.

Nothing in this clause 21.4 shall have the effect of preventing or limiting the operation of clause 43A, and/or clause 43B."

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

2.9 Insert new a clause 24.3 to clause 24.7 (inclusive) as follows:

"24.3 If the *Contractor* wishes to replace any *key person* or appoint a new *key person*, the *Contractor*

- (save in the event of illness or termination of employment without prior notice being given to the relevant *key person*) gives at least 1 (one) month's written notice to the *Project Manager*,
- seeks the *Project Manager's* acceptance to and consults with the *Project Manager* concerning the proposed *key person* and
- if requested provides the *Project Manager* with the curriculum vitae of the proposed *key person*.



- 24.4 The *Employer* or the *Project Manager* may interview any proposed *key person*.
- 24.5 The *Project Manager* (acting reasonably) notifies the *Contractor* in writing of any objections to a proposed *key person* within two (2) weeks of receipt of the *Contractor's* notice given under clause 24.3 failing which the *Project Manager's* acceptance will be deemed to have been given. If the *Project Manager* notifies the *Contractor* of objections the *Contractor* does not engage the proposed *key person* and put forwards a different proposed *key person* for the acceptance of the *Project Manager*.
- 24.6 The *Contractor*
- uses reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any *key persons* to ensure continuity in Providing the Works and
 - ensures that, where possible in the circumstances, there is a handover period of not less than four (4) weeks from the outgoing *key person* to the incoming one.
- 24.7 The *Contractor*, at all relevant times, engages an adequate number of competent, suitably qualified and experienced personnel to Provide the Works."
- 2.10 In the first line of clause 26.1, after the word "work" insert the words "(including design)".
- 2.11 Delete the full stop at the end of clause 26.1 and insert the following:
"and the *Contractor* accordingly is and remains responsible for the acts and omissions (including tortious acts and omissions) of his Subcontractors and their employees and any acts or omissions by his 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 *Employer* 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 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 this 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 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 sub-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,
 - the terms of the proposed conditions of contract do not, in the *Project Manager's* reasonable opinion, adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
 - the proposed conditions of contract do not include provisions
 - requiring the Subcontractor to grant a licence in favour of the *Employer* in relation to



the materials produced by or on behalf of the Subcontractor equivalent to that granted by the *Contractor* to the *Employer* pursuant to clause 114,

- 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 this 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 no greater than twenty-four (24) days after the due date in this contract or the date on which the Subcontractor issues a valid VAT invoice to the *Contractor* in accordance with the terms of the subcontract, if later.

The *Contractor* will have no entitlement to any sums under this contract that related to work that has been subcontracted and have been (or will be) undertaken by a Subcontractor as part of the Price for Work Done to Date under this 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, clause 26.5 and clause 26.6 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 the relevant subcontract shall contain such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract,
- warrants each Subcontractor's compliance with this contract's Modern Slavery Act requirements,
- 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,
- procures that all relevant subcontracts shall be executed and delivered as a deed and
- provides to the *Project Manager* a certified copy of any sub-contract (save for particulars of the cost of such sub-contract works unless other provisions of this contract or the Framework Agreement oblige the *Contractor* to disclose them).

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

26.5 The *Contractor* includes in any subcontract awarded by him provisions requiring that

- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions (unless otherwise agreed by the *Employer*, 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 *Employer* (such consent not to be unreasonably withheld or delayed). Any such consent by or on behalf



of the *Employer* does not give rise to any liability (whether it contract, tort (including negligence) or under any other legal theory) on the part of the *Employer* under, in connection with or pursuant to this 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* warrants and undertakes to the *Employer* that it has complied and will comply with its statutory duties under the CDM Regulations in relation to the *works*, and the *Contractor* also

- warrants that it is competent to discharge under the CDM Regulations, the role(s) of Principal Contractor and/or Principal Designer and/or "Designer" (as such term is defined in the CDM Regulations),
- warrants that it will ensure 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 and
- allocates adequate resources for health and safety to enable him to perform his duties as required by these defined roles.

Where the *Contractor* is stated in Contract Data: Part One as fulfilling the role of Principal Designer, those undertaking the role will possess the skills, knowledge, experience and training to deliver the appointment."

2.17 Insert a new clause 27.6 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 reasonably assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto and
- the *Contractor* is responsible and liable to the *Employer* for the *Employer's* reasonably foreseeable and properly incurred and mitigated expenses, liabilities, losses, claims and proceedings whatsoever arising out of or in connection with any such nuisance or interference, save only where such nuisance or interference 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,

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

2.18 Insert a new clause 27.7 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 *Employer*, obtains the prior written agreement of such owners or occupiers thereto, and such agreement is subject to the reasonable approval of the *Employer* before execution (such approval not to be unreasonably withheld or delayed). The *Contractor* complies with any conditions contained in any such agreement."



2.19 Insert new clauses 27.8 and 27.9 as follows:

"27.8 Subject to Option X2 in the context of a Hackitt Change in Law only, for the purposes of this contract, material is "prohibited" if, in the context of its use or specification in the *works* (whether alone or in combination with other Plant and Materials)

- it poses a hazard to the health and safety of any person who may come into contact with the *works* (whether during its construction or after Completion of the whole of the *works*),
- either by itself or as a result of its use in a particular situation or in combination with other Plant and Materials, it would or is likely to have the effect of reducing the normal life expectancy of any other Plant and Materials or structure in which the material is incorporated or to which it is affixed,
- it poses a threat to the structural stability or performance or the physical integrity of any part of the *works* or any part or component of the Plant and Materials,
- it has been prohibited for use in or otherwise does not comply with the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,
- it does not conform with British or European Standards (where appropriate) or industry codes of practice (or where no such standard exists, do not conform with a British Board of Agrément Certificate),
- it is generally known in the construction industry to be deleterious, in the particular circumstances it is specified for use, to health and safety and/or durability of buildings or structures and/or
- it is specifically prohibited by this contract.

27.9 Using the standard of standard of care specified in Option X15, the *Contractor* does not specify for use, approve for use or accept any Plant and Materials which at the time the *works* are being provided are generally accepted or reasonably suspected of

- being prohibited in themselves,
- becoming prohibited when used in a particular situation or in combination with other Plant and Materials,
- becoming prohibited with the passage of time,
- becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction and/or or
- being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed."

2.20 Insert a new clause 28A with the heading "**Site Conditions**" as follows:

"28A **Site Conditions**

28A.1 For the purposes of this contract, "**Site Conditions**" means the physical conditions and other conditions of or affecting the Site and/or the sub-surface and/or sub-soil of the Site including (but not limited to) climatic, hydrological, hydro-geological, environmental, geotechnical, geological and archaeological conditions, adjacent properties, services and pipes below or over the surface of the Site and any structures or sub-structures on the Site.

28A.2 Subject to clause 28A.4, the Site Conditions are the sole responsibility of the *Contractor* and accordingly (but without prejudice to any other obligation of the *Contractor* under this contract) the *Contractor* is deemed to have

- carried out a ground physical and geophysical investigation and to have



inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site,

- satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for Providing the Works,
- (without limiting the application of clause 60.1(22)) satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this contract (such as additional land or buildings outside the Site) and
- satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties,

and the *Contractor* acknowledges that it has sufficient knowledge of the Site and its surroundings (including but not limited to the risks listed as bullet points above) and the *Contractor* acknowledges that should it encounter any of the foregoing in providing the *works* or in Providing the Works in accordance with this contract (and save as expressly stated above and/or in clause 28A.4) the Prices, the Completion Date and/or the Key Dates are not to be changed, the *Contractor* will not be entitled to have or make a claim for a compensation event nor entitled to have a claim against the *Employer* in law or otherwise to deal with such matters under this clause 28A.2.

Subject to clause 28A.4, no failure on the part of the *Contractor* to discover any such condition, risk, contingency or circumstance relating to the Site and its surroundings entitles the *Contractor* to a compensation event nor a change in the Prices, the Completion Date and the Key Dates, nor entitles the *Contractor* to have a claim against the *Employer* in law or otherwise to deal with such matters under this clause 27.13.

28A.3 Notwithstanding clause 28A.2 and without prejudice to clause 28A.4

- the *Employer* makes no representation or gives any warranty as to the accuracy, adequacy, sufficiency, suitability or completeness of any information (including surveys) provided by or on behalf of it to the *Contractor* in respect of the Site and
- to the extent permitted by applicable law, the *Employer* has no liability arising out of or in relation to such information or from any representation or statement, whether negligently or otherwise made in relation to the same.

28A.4 Notwithstanding any other provision of this contract, and without prejudice to the generality of clause 28A.1 to clause 28A.3 (inclusive), if the *Contractor* encounters any Adverse Site Conditions at the Site that are Unforeseeable, this shall constitute a compensation event for the purposes of clause 60.1(12)."



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

"28B **Planning and Consents**

28B.1 Save in respect of the Employer's Consents only, the *Contractor* shall

- (save as stated in the second 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 this contract,
- be responsible for procuring that the freehold owner of Tigers Road enters into any such Consents that it is required to enter into with (as the context requires) the *Employer*, the *Contractor* and/or any third party in order to facilitate (and securing from the freehold owner such authorisation as may be required for) the carrying out and completion (whether under licence or otherwise) such part(s) of the *works* that necessitate the undertaking of works and/or services on Tigers Road itself and not within the Site and that are expressly specified as being "**Facilitation Consents**" in the Consents Schedule,
- 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 specifies that the *Employer* is responsible for making specific types of payment to an identified third party in connection with a Consent (with each such payment being expressly stated as an "**Employer Contribution**" in the Consents Schedule) and/or
 - (excluding any sums that are to be paid by the *Contractor* to a Statutory Authority in respect of a Consent and that are expressed as being a Provisional Sum in connection with a Provisional Sum Activity for the purposes of clause 50.7) due to the nature of the Consent, the counterparty to the Consent confirms in writing to the *Contractor* and the *Employer* that certain sums payable under or in connection with the Consent can only be paid directly by the *Employer* (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 *Employer* 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 *Employer*.

28B.2 The *Contractor* is responsible and liable to the *Employer* for the *Employer'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 *Employer* 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 *Employer* and/or the *Project Manager* from time to time in connection with the *works* and/or the obtaining, maintenance and discharge by the *Employer* of the *Employer's* Consents and/or any payments that are to be made by the *Employer* 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 *Employer*).

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 this contract are in compliance, with the Consents,
- ensure that the *works* (as designed, constructed, commissioned and completed in accordance with this contract) is capable of operation in accordance with the applicable laws and Consents applicable to the *works* and/or to the *Employer* 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 always 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 that set out in Option X15.

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."

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

"28C.1 The *Contractor* acknowledges that the *Employer* 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 *Employer* before the Contract Date are referred to in Contract Data: Part One.

28C.2 The *Contractor* complies with and performs its obligations under and arising out of this contract so that no negligent act, omission or default on its part



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

under any Third Party Agreement, save to the extent that the *Contractor* has not been provided with a copy and to the extent they relate to the design, construction and/or use of the completed *works*.

- 28C.3 The *Contractor* is responsible and liable to the *Employer* for the *Employer'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 *Employer* enters into any Third Party Agreement after the Contract Date that was not disclosed to the *Contractor* and/or referred to in Contract Data: Part One as at the Contract Date (including any amendment agreement to a Third Party Agreement entered into before the Contract Date) the same shall constitute a change to the Works Information 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."



3. **AMENDMENTS TO CLAUSE 3 – TIME**

3.1 Replace the wording of clause 30.1 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 65 (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 this contract so that

- (if identified in the Contract Data) 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 31.2, insert the following wording as a new bulleted item immediately after the bulleted item beginning "the dates when the *Contractor* plans to meet":

"the date(s) by which the *Project Manager* is required to issue an instruction (if at all) to the *Contractor* in respect of a Provisional Sum Activity under clause 50.7 and an Agreed Instruction under clause 63A."

3.3 Delete the text of clause 30.3 and replace with "Not used".

3.4 In clause 33.1:

- replace the words "The *Employer* allows access to and use of each part of the Site to the *Contractor*" with "The *Employer* allows non-exclusive access to and use of each part of the Site to the *Contractor*" and
- insert the following after "Accepted Programme":

"The *Contractor* acknowledges and agrees that the *Employer* and all persons authorised by the *Employer* shall at all times have access to the Site. The *Contractor* acknowledges and agrees that the non-exclusive access 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 this 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 or the Site's use."



4. AMENDMENTS TO CLAUSE 4 – TESTING AND DEFECTS

4.1 In clause 40.3, insert at the end of the second sentence:

"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".

4.2 In clause 42.1, after the first bulleted item after the word "uncovering," insert the words "opening-up,".

4.3 Insert a new clause 42.3 as follows:

"If

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

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

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

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

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

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

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

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

provided always that

- any such authorisation of the *Project Manager* shall be in writing and shall not be implied in any circumstance and
- the *Contractor* shall
 - make good such Defect in full no later than the date on which the relevant period



expires (as such relevant period may have been extended pursuant to this clause 42.3),

- (or its Subcontractor, acting on behalf of the *Contractor*, shall) provide guidance and/or make recommendations to the *Employer* in writing in respect of potential preventative and/or mitigatory measures (that do not involve the undertaking of any physical works) that might be reasonable in the context of the use of the completed *works* as a custodial facility and may assist with mitigating on a temporary basis the cause and/or potential impact of that Defect (referred to below as "**temporary measures**"), provided always that
 - the *Employer* may accordingly choose to implement (or not implement) any such temporary measures at its sole discretion,
 - the liability of the *Contractor* for any Defect under this contract shall not be reduced if the *Employer* chooses to or chooses not to implement any such temporary measures and
 - the liability of the *Contractor* for a Defect shall only be reduced to the extent that the *Employer*, at its sole discretion, attempts to implement its own mitigatory and/or temporary measures (other than any temporary measures of the *Contractor* or a Subcontractor under this bulleted item) that the *Contractor* is subsequently then able to demonstrate is the direct cause of any worsening of the Defect (or causes, by such act but not any omission, any manufacturer warranty and/or product guarantee to be invalidated), in which case the *Contractor* will remain liable for remedying the Defect but shall not be liable to the *Employer* for any worsening of the Defect that can be demonstrated by the *Contractor* as having been a direct consequence of the *Employer's* actions,
- be liable to the *Employer* for any costs that the *Employer* reasonably and properly incurs arising out of or in connection with the hiring and/or purchase of any plant, materials and/or equipment (of any type) that may reasonably be required on a temporary basis to minimise the impact of the Defect on the completed *works* and the operation of the completed *works* throughout any period during which the Defect has not been made good and
- keep the *Project Manager* fully informed as to the progress of such temporary and/or other works in relation to such Defects.

For the purposes of clause 42 to clause 45 (inclusive), a "Defect" shall not include any defects, shrinkages and/or other faults in any element of the completed *works* in respect of which an O&M Manual is provided by the *Contractor* to the *Project Manager* (and is clearly and separately identified as such) on or before the date of Completion where the *Contractor* can demonstrate that such defect, shrinkage and/or fault is directly attributable to a failure by the *Employer* and/or any third party responsible for managing and/or operating the completed *works* to operate, maintain and/or service any such element in accordance with any absolute requirements of such O&M Manual or where such failure is the principal cause of the same."

4.4 Delete clause 43.2 and replace 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."

4.5 Delete the text of clause 43.3 and replace with the following:

"The *Supervisor* (or the *Project Manager*) issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect



which the *Supervisor* (or the *Project Manager*) has not found or notified are not affected by the issue of the Defects Certificate."

4.6 Delete the second sentence of clause 43.4.

4.7 Insert a new clause 43.5 as follows:

"The *Project Manager* arranges for the *Employer* 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 *Employer* has taken over any part of the *works*. In this case the *defect correction period* begins when the necessary access has been provided."

4.8 Insert a new clause 43A as follows:

"The obligations and liabilities of the *Contractor* under clause 43 to clause 45 (inclusive) do not apply to any Defect(s) in the *works* in relation to any PIR Materials and/or PIR Encasing installed and incorporated into the *works* by the *Contractor* in accordance with this contract where it is determined that the Defect(s) in such PIR Materials and/or PIR Encasing

- is not attributable to any failure by or on behalf of the *Contractor* to comply with and discharge its duties and obligations under this contract in relation to the design and construction of the *works* generally and specifically in relation to the installation and incorporation of the relevant PIR Materials and/or the PIR Encasing into the *works* in accordance with the PIR Requirements and the Works Information and
- is instead attributable to
 - intentional and substantial vandalism or damage to the *works*,
 - intrusive work to the building fabric of the *works* at the Site and/or
 - intrusive modifications or alterations to the building fabric of the *works*,on or after the date of Completion that
 - is (or are) attributable to the *Employer* (or any party acting on its behalf) and/or a party other than the *Contractor* (or any party acting on its behalf) ,
 - due to
 - the nature of such intentional vandalism or damage and/or
 - a failure by (or on behalf of) the *Employer* to ensure that any such intrusive works and/or modifications are undertaken in accordance with the express requirements of the PIR Manual in respect of the samepursuant to which such PIR Materials and/or the PIR Encasing have been materially affected and/or had their structural integrity compromised and
 - consequently the relevant PIR Materials and/or the PIR Encasing no longer comply with the PIR Requirements as a direct result of the same,

with the Parties acknowledging and agreeing that the *Contractor* shall have no liability to the *Employer*, any Beneficiary and/or any third party arising out of or in connection with any damage to and/or destruction of the *works* that is a direct consequence of any such Defect(s) in respect of which the obligations and liabilities of the *Contractor* under clause 43 to clause 45 (inclusive) do not apply as determined by the provisions of this clause 43A.

Nothing in this clause 43A shall have the effect of preventing or limiting the operation of Option X2."

4.9 Insert a new clause 43B as follows:

"The obligations and liabilities of the *Contractor* under clause 43 to clause 45 (inclusive) do not



apply to any latent Defect(s) in any Toughened Glass that is installed by the *Contractor* as part of the *works* where it is determined that the Defect(s) in such Toughened Glass

- is not attributable to any failure by or on behalf of the *Contractor* to comply with and discharge its duties and obligations under this contract in relation to the design and construction of the *works* generally and specifically in relation to the requirement to ensure that such Toughened Glass is treated in accordance with the requirements in the Works Information (and in accordance with any specification and/or standard referred to therein) prior to its delivery to the Site and its installation and incorporation into the *works* and
- is instead attributable to, as a latent defect in the affected Toughened Glass, nickel sulphide inclusions in such Toughened Glass that results in nickel sulphide breakage (or spontaneous breakage of the Toughened Glass) causing that Defect."

4.10 Insert a new clause 45.3 as follows:

"The provisions of clauses 43 to 45 (inclusive) are without prejudice to any other rights or remedies the *Employer* 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 the *end of liability date*."



5. **AMENDMENTS TO CLAUSE 5 – PAYMENT**

5.1 Insert a new sentence at the end of clause 50.1:

"The *Contractor* acknowledges and agrees that

- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 52 (inclusive) and Option Y(UK)2 in respect of an invoice submitted by or on behalf of the *Contractor* that the invoice is a Valid Invoice (provided always that the *Project Manager* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice),
- where an invoice submitted by the *Contractor* to the *Project Manager* at an assessment date is not a Valid Invoice, the *Employer* shall notify the *Contractor* of this in writing and the *Contractor* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant invoice as part of the invoice that it issues to the *Employer* at the next assessment date and no earlier and
- clause 50 to clause 53 (inclusive) and Option Y(UK)2 are construed accordingly."

5.2 In the second bulleted item of clause 50.2, insert "(which includes any VAT that may be payable on the amount due)" after "paid to the *Contractor*".

5.3 Insert a new clause 50.6 as follows:

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

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

5.4 Insert a new clause 50.7 with the heading "**Provisional Sum Activities**" as follows:

"50.7 **Provisional Sum Activities**

(1) The Parties acknowledge and agree that

- as at the Contract Date, the *Contractor* is not instructed by the *Employer* or



- the *Project Manager* to (and shall not, unless otherwise instructed to do so under this clause 50.7) undertake and complete any Provisional Sum Activity,
- each Provisional Sum is an estimate of the cost that the *Contractor* may incur in undertaking and completing the Provisional Sum Activity to which it refers (based upon the *Employer's* requirements in respect of such Provisional Sum Activity as set out in the Works Information at the Contract Date) if and when instructed to do so by the *Project Manager* on or after the Contract Date,
 - the *Contractor* has made an allowance in its programme for the *works* for undertaking and completing each Provisional Sum Activity on the assumption that it will receive an instruction from the *Project Manager* to commence each Provisional Sum Activity no later than the instruction date in respect of the same as stated on the Accepted Programme as at the Contract Date,
 - the Provisional Sums (as at the Contract Date) are included in the tendered total of the Prices,
 - the *Project Manager* may (but is not obliged to) instruct the *Contractor* to undertake and complete a Provisional Sum Activity in accordance with this clause 50.7 and
 - if the *Contractor* is instructed to so undertake and complete a Provisional Sum Activity, the *Contractor's* entitlement to payment in respect of the same shall be determined on a cost reimbursable basis as set out in clause 50.7(2).
- (2) If the *Project Manager* instructs the *Contractor* to undertake and complete a Provisional Sum Activity
- (notwithstanding clause 60.1(1)) such instruction shall not constitute (nor be treated as) a compensation event in itself provided that
 - if the *Project Manager* fails to issue an instruction in respect of a Provisional Sum Activity by the instruction date in respect of the same as stated on the Accepted Programme and
 - the *Project Manager* does not then notify the *Contractor* that it does not intend to (and will not) issue an instruction to the *Contractor* in respect of the same,
- the Parties shall use reasonable endeavours to agree in writing such adjustment to the Completion Date as may be reasonable and proportionate in the circumstances and given the nature of the Provisional Sum Activity to account for such delay in the issue of the instruction in advance of the *Project Manager* issuing it to the *Contractor*,
- the *Contractor* shall comply with and shall undertake and complete the Provisional Sum Activity in accordance with such instruction (and within the time period(s) stated therein) following its receipt of the same,
 - in undertaking an instructed Provisional Sum Activity
 - the *Contractor* will provide regular updates to (or whenever reasonably requested by) the *Project Manager* on an open book basis on the costs that the *Contractor* has incurred (and expects to incur) in performing and completing that Provisional Sum Activity (as against the original Provisional Sum for the same) and
 - the *Contractor* shall use the standard of care referred to in Option X15 to mitigate and minimise the actual cost incurred (or to be incurred) by it in undertaking and completing any Provisional Sum Activity (including by promptly ordering any Plant and Materials or other items that the *Contractor* requires to undertake and complete that Provisional Sum Activity),



- the final Prices for that Provisional Sum Activity will be determined by the *Project Manager*, acting reasonably and by reference to
 - the actual cost that the *Contractor* has incurred in undertaking and completing the same (based upon the information provided by the *Contractor* to the *Project Manager* in respect of the same under this clause 50.7(3) or, where such information has not been provided, by reference to its own assessment of the value of such works and/or services in connection with the Provisional Sum Activity) and
 - any assessed and implemented compensation events that relate to that Provisional Sum Activity and
- where the final Prices for a Provisional Sum Activity (as instructed pursuant to this clause 50.7 and once completed by the *Contractor*) are
 - less than the Provisional Sum for that Provisional Sum Activity, the Prices are (and total of the Prices is) reduced to account for the same and
 - greater than the Provisional Sum for that Provisional Sum Activity, the Prices are (and total of the Prices is) deemed to be increased to account for the same,with the *Contractor* having no further entitlement to payment in respect of the relevant Provisional Sum Activity.

- (3) If the *Project Manager* notifies the *Contractor* that it will not instruct it to undertake and complete a Provisional Sum Activity, the Prices are reduced to account for the removal of the Provisional Sum that relates to such Provisional Sum Activity from the total of the Prices and there is no adjustment to the Completion Date."

5.5 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 *Employer* pays the *Contractor* any sums under or in connection with this 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 this contract."

5.6 In clause 51.4 delete the words "compounded annually" and replace with the words "simple interest".

5.7 Insert a new clause 51.5 as follows:

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

5.8 Insert a new clause 51.6 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 this 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 such sum, if not so repaid, the amount shall be recoverable on demand by the payer as a debt. The Parties agree that this clause 51.3 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 51.6 in a manner which is inconsistent with Part II of the Housing Grants Construction and Regeneration Act 1996 (as amended)."

5.9 Insert a new clause 51.7 as follows:

"The *Contractor* shall make all payments due to the *Employer* under or in connection with this 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*."



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

- (save in respect of and without prejudice to clause 60.1(23)) are not due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with this contract by the *Contractor* (in each case, by act or omission) or due to any acts or omissions of its Subcontractors and its employees,
- are not attributable or relate to any works and/or services undertaken (or to be undertaken) under any Early Works Contract and/or the Pre-Construction Services Agreement by the *Contractor* in its capacity as the "Contractor" and "Consultant" thereunder respectively, 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* in its capacity as the "Contractor" under any Early Works Contract."

6.2 In clause 60.1(1):

- insert "(other than an instruction for the *Contractor* to undertake and complete a Provisional Sum Activity pursuant to clause 50.7 and subject to clause 63A) after "instruction";
- delete the words "for his design" in the second bulleted item of the clause; and
- replace the "or" at the end of the first bulleted item with "." and the full stop at the end of the second bulleted item with "," and insert the following as new bulleted items:
 - "• (subject to Option X2) a change made in order to deal with an illegal or impossible requirement in the Works Information,
 - a change made to resolve a conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract,
 - a change to deal with any mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency or omission in the Works Information (including in any designs contained in and/or referred to in the Works Information, whether the same has been prepared by or on behalf of the *Employer*, the *Contractor* or otherwise) or
 - a change required as a result of an event or matter which is the *Contractor's* liability or at the *Contractor's* risk or which is the *Contractor's* responsibility pursuant to this contract or which is expressly stated in the contract not to give rise to a compensation event."

6.3 At the beginning of clause 60.1(5), replace "The" with "Save in respect of any Consents, any works undertaken (or to be undertaken) by a Statutory Authority in its capacity as a statutory undertaker and/or utility provider and/or any required access to and from the Site by the *Contractor* via Tigers Road, the".

6.4 Insert a new clause 60.1(5A) with the following wording:

"A Statutory Authority or other third party (excluding the freehold owner of Tigers Road) fails to issue to, enter into or approve (as the context requires) a Consent by the date stated on the Accepted Programme in respect of the same, provided always that

- where the Consent is not an Employer's Consent, the *Contractor* demonstrates to the *Project*



Manager (acting reasonably) that the *Contractor*

- has used reasonable endeavours to secure (or, as the context requires, facilitate) such issuance, entering into and/or approval in accordance with clause 28B by the date shown on the Accepted Programme and
- (save where attributable to the acts or omissions of such Statutory Authority or third party) is not in breach of its obligations under clause 28B or
- where the Consent is an Employer's Consent, such failure is not attributable to any failure by or on behalf of the *Contractor* to comply with the requirements of clause 28B."

6.5 Insert a new clause 60.1(5B) with the following wording:

"A Statutory Authority, acting in the capacity of a statutory undertaker or utility provider and pursuant to a Consent

- (for a reason other than where the freehold owner of Tigers Road has prevented the Statutory Authority from undertaking its work and/or services on Tigers Road) fails to undertake the works and/or services that it is required to undertake and completed under that Consent and/or
- (where the freehold owner of Tigers Road has prevented the Statutory Authority from undertaking such works and/or services on Tigers Road itself) is unable to undertake the works and/or services that it is required to undertake and complete under that Consent,

within any period(s) identified in the Accepted Programme for such works and/or services, provided that where such works are to be undertaken pursuant to

- a Consent other than an Employer's Consent, the *Contractor*
 - has first
 - supplied such information required, placed any necessary orders and otherwise performed its obligations under this contract in respect of such work as soon as reasonably practicable after the Contract Date so as not to delay or disrupt such Statutory Authority in undertaking and completing such work and/or services and/or
 - where the failure is attributable the freeholder owner of Tigers Road preventing the Statutory Authority from undertaking such works and/or services on Tigers Road itself, notified the Project Manager no later than twenty-four (24) hours upon becoming aware of the same and
 - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B and/or under the relevant Consent or
- an Employer's Consent (and without prejudice to the generality of clause 28B), the *Contractor*
 - has first supplied to the *Employer* such information required, assisting the Employer with the placing of any necessary orders and otherwise performed its obligations under this contract in respect of such work as soon as reasonably practicable after the Contract Date so as not to cause the *Employer* to delay or disrupt such Statutory Authority in relation to such work and
 - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B."

6.6 Insert a new clause 60.1(5C) with the following wording:

"The continuous supply of electricity, gas and/or water to the Site during the period of 08:00 to 18:00 on a Business Day is disrupted for a continuous period of at least one (1) Business Day, save where such disruption is a direct consequence of works to be undertaken by a Statutory Authority acting in



the capacity of a statutory undertaker and in accordance with a Consent during the undertaking of such works."

- 6.7 Replace the wording of clause 60.1(7) in its entirety with "Not used".
- 6.8 At clause 60.1(10), at the end of the clause after the words "obstructing a required test or inspection" but before the full stop, insert the words "or unless it was reasonable for the *Project Manager* to instruct the *Contractor* to search, having regard to similar previous instances of non-compliant work in Providing the Works".
- 6.9 Replace the wording of clause 60.1(12) with the following:
"The *Contractor* encounters Adverse Site Conditions that are Unforeseeable for the purposes of Clause 28A.4."
- 6.10 Delete clause 60.1(18) and replace with the following:
"A breach of contract or other act of prevention by the *Employer* which is not one of the other compensation events in this contract."
- 6.11 Replace the wording of clause 60.1(19) with "The occurrence of a Force Majeure Event."
- 6.12 Insert a new clause 60.1(20) as follows:
"The *Contractor's* ability to undertake any of the *works* (or part thereof) is directly affected by a COVID-19 Event."
- 6.13 Insert a new clause 60.1(21) as follows:
"The *Contractor* is delayed in undertaking the *works* as a direct consequence of any mandatory ports and customs processes and/or procedures applicable to the importation of any of the Plant and Materials identified in the Import Schedule from the European Union into the United Kingdom (by the date(s) and within the period(s) allowed for in the Import Schedule in respect of the same) that come into force on or after the Transition Period Expiration Date as a direct consequence of the expiration of the "transition period" (as referred to in the definition of "**Transition Period Expiration Date**")."
- 6.14 Insert a new clause 60.1(22) as follows:
"In respect of Tigers Road only, the *Contractor* is delayed in undertaking the *works* as a direct consequence of the *Contractor* being prevented by the freehold owner of Tigers Road from accessing and using Tigers Road as an access road to and from the Site for the purposes of undertaking the *works*, provided that the *Contractor*
- has complied with its obligations in the Works Information in relation to the access and use of Tigers Road in connection with the *works* (including any restrictions regarding the undertaking of the *works* and/or use of Tigers Road during any specific time periods as set out in the Works Information and/or any Consent) and
 - the *Contractor* has notified the *Project Manager* of such prevention no later than twenty-four (24) hours of becoming aware of it,
- with the *Contractor* agreeing to provide such reasonable assistance to the *Employer* and the *Project Manager* as may be required in resolution to resolving any potential or actual issues with the freehold owner of Tigers Road in relation to the use of Tigers Road in connection with the *works*."



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

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

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

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

6.18 Insert a new clause 60.4 as follows:

"Without prejudice to the generality of clause 61.2, it shall be a precondition to the *Contractor's* entitlement to any adjustment to the Prices and/or the Completion Date arising out of or in connection with a compensation event under clause 60.1(20) that the *Contractor* has first

- complied with the requirements of the COVID-19 Management Plan,
- complied with the requirements of clause 16A,
- identified the potential or actual occurrence of the relevant COVID-19 Event in a previous COVID-19 Management Report (insofar as possible in advance of its specific occurrence) and
- used reasonable endeavours to mitigate the impact of the relevant COVID-19 Event on the delivery of the *works* (and demonstrates to the satisfaction of the *Project Manager*, acting reasonably, that it has done so by reference to any costed breakdowns previously provided to the *Project Manager* in relation to the potential impact of a COVID-19 Event on the *works*),

provided always that, in respect of the first three bulleted items above and in respect of the Other Activities only, the *Project Manager* has first accepted the *Contractor's* quotation in relation to reporting on the actual and/or potential impact of COVID-19 on the Other Activities pursuant to clause 16A.2.

6.19 Insert a new sentence at the end of clause 61.1 as follows:

"Notwithstanding the above, the *Contractor* submits a single notification to the *Employer* on the last Business Day of each calendar month (the "**COVID-19 Notification Date**") in respect of any notifications that the *Contractor* wishes to make in relation to one or more COVID-19 Events that have occurred since the last COVID-19 Notification Date (or the Contract Date if a COVID-19 Notification Date has yet to occur) or which the *Contractor* expects to occur before the next COVID-19 Notification Date (or Completion, if earlier) and otherwise does not submit any such notifications on an individual or grouped basis during the course of any month."

6.20 In clause 61.4:

- 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 this contract by or on behalf of the *Contractor* or from any acts or omissions of its Subcontractors or suppliers or their respective employees, subcontractors or agents," in the first bulleted item of clause 61.4 and
- in the final sentence of clause 61.4, insert after quotations "(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) Business Days of such notice)".



6.21 Insert a new clause 61.8 as follows:

"Notwithstanding any other provision of this contract, where the compensation event notified by the *Contractor* to the *Project Manager*

- is a Force Majeure Event that is a Class 2 Force Majeure Event or is a compensation event under clause 60.1(21) or clause 60.1(23), the *Contractor* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and the Completion Date only and
- is a compensation event under clause 60.1(21), the assessment of the *Contractor's* entitlement to an adjustment to the Completion Date (and any Key Date(s)) under clause 61 to clause 64 (inclusive) shall take into account the extent to which the compensation event is caused and/or contributed towards by any
 - delay by the *Contractor* in ordering such Plant and Materials by the relevant date(s) specified in the Import Schedule for the relevant Plant and Materials (or where such date is not stated, as soon as is reasonably appropriate in the circumstances to minimise the risk of the Plant and Materials not being delivered to their final destination in the United Kingdom by the date that the *Contractor* has identified on the Accepted Programme that it requires such Plant and Materials to undertake and/or complete the activity or activities for which the Plant and Materials have been ordered) and/or
 - other act or omission of the *Contractor*."

6.22 Insert a new sentence at the end of clause 62.1 as follows:

"As part of any quotation relating to a COVID-19 Event, the *Contractor* must

- disclose on an open book basis the extent, value and nature of any financial support and/or relief that it (or any person and/or Subcontractor engaged by the *Contractor* that is affected by that COVID-19 Event) has received (or is in the process of claiming or is expected to receive) from any third party in connection with that COVID-19 Event, including (without limitation) any grants, rebates, rates and taxation deferrals or holidays and/or relief packages ("**COVID-19 Relief**") and
- confirm in writing that, to its knowledge, it has not received (or claimed or expected to receive) or entitled to claim any COVID-19 Relief other than that disclosed (if any) in connection with the relevant COVID-19 Event."

6.23 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 his 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 his quotation."

6.24 At clause 62.4, after the words "revised quotation" in the second sentence, insert "as soon as possible, and in any event".

6.25 In clause 62.6, insert the following after "quotation by the Project Manager" 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) Business Days of such notice)".



6.26 Insert a new clause 63A with the following wording:

"The Parties acknowledge and agree that, as at the Contract Date, the *Contractor* is not instructed to (nor shall it) undertake any works and/or services that are the subject of an Agreed Instruction and shall have no entitlement to any payment whatsoever in respect of the same. Notwithstanding the generality of clause 62 and clause 63, if the *Project Manager* issues an Agreed Instruction to the *Contractor* on or after the Contract Date

- the Works Information shall be deemed to be amended to incorporate and reflect the agreed scope and specification of the works and/or services as set out in the Agreed Instruction,
- the Prices shall be deemed to be amended to reflect the agreed adjustments to the same as set out in the Agreed Instruction,
- the Activity Schedule will be deemed to be amended to incorporate the activities that are (as works and/or services) the subject of the Agreed Instruction.
- the issue of the Agreed Instruction in itself shall not in itself give rise (or entitle the *Contractor*) to any adjustment to the Completion Date, provided that
 - if the *Project Manager* fails to issue an Agreed Instruction by the instruction date in respect of the same as stated on the Accepted Programme and
 - the *Project Manager* does not then notify the *Contractor* that it does not intend to (and will not) issue such Agreed Instruction to the *Contractor*,

the Parties shall use reasonable endeavours to agree in writing such adjustment to the Completion Date as may be reasonable and proportionate in the circumstances and given the nature of the works and/or services that are the subject of the Agreed Instruction to account for such delay in the issue of the Agreed Instruction in advance of the *Project Manager* issuing the Agreed Instruction to the *Contractor* and

- there shall be no further adjustment to the Works Information, the Activity Schedule, the Prices and/or the Completion Date (as the context requires) arising out of or in connection with the issue by the Project Manager of any such Agreed Instruction in itself."

6.27 In clause 63.1, add the following words after the second paragraph:

"Unless the *Project Manager* otherwise agrees, all "people" costs, "preliminaries" costs, Equipment and Plant and Material costs used in assessing compensation events shall not exceed the relevant rates within the Framework Commercial Model, applicable to the value and characteristics of the works or role, seniority and regional adjustment factors stated with the Framework Commercial Model."

6.28 Replace the wording of clause 63.3 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."

6.29 Replace the wording of clause 63.4 with the following:

"The rights of the *Employer* 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 *Employer* has no other liability under this contract or in law to the *Contractor* for a compensation event."



6.30 Replace the wording clause 63.5 with the following:

"A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information save that this clause 63.5 does not apply regarding the assessment of a compensation event which arises from an ambiguity or inconsistency in relation to parts of the Works Information which is the responsibility of the *Contractor* as stated in this contract."

6.31 Insert a new paragraph at the end of clause 63.7 as follows:

"Any assessment in respect of a COVID-19 Event shall take into consideration any COVID-19 Relief that the *Contractor* has disclosed in its initial (or in any updated) quotation (and/or that the *Employer* has otherwise become aware of as at the date of the assessment), as well as any pricing and/or time allowances allowed for by the *Contractor* in its COVID-19 Management Report and/or COVID-19 Management Plan current as at the date of the assessment and previously accepted by the *Project Manager*. The *Contractor's* entitlement to an adjustment to the Prices or the rates shall be adjusted to take into account any such COVID-19 Relief and pricing and/or time allowance. Without prejudice to the generality of clause 62.1, the *Contractor* must disclose any COVID-19 Relief that it has received (but has not previously disclosed) in connection with a COVID-19 Event after the date of any assessment in respect of that COVID-19 Event and the *Employer* may, at its reasonable discretion, adjust the Prices and rates as previously assessed accordingly to take into account such COVID-19 Relief."

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

6.33 In clause 63.14, after "rates and lump sums" insert the words "including those contained within the Framework Commercial Model".

6.34 In clause 64.4, insert the following after "quotation by the Project Manager" 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) Business Days of such notice)".



7. AMENDMENTS TO CLAUSE 7 – TITLE

7.1 Delete clause 70.1 and insert "not used".

7.2 Delete the text of clause 70.2 and replace with the following:

"Each item of Plant and Materials becomes the property of the *Employer* at whichever is the earlier of the following times:

- 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 *Employer* for the item in question.

Where, prior to delivery to the Working Areas, the title to Plant and Materials passes to the *Employer*, the *Contractor* sets such item of Plant and Materials aside and marks it clearly and visibly as the *Employer'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 it in accordance with this contract (including the Works Information) and, unless otherwise agreed in advance and in writing by the *Project Manager*, provides an executed Vesting Agreement in favour of the *Employer* 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 *Employer* (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 *Employer* 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 delivery to the Site)."

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

"Title to Plant and Materials for which the *Employer* has not paid passes back to the *Contractor* if they are removed from the Working Areas. If the Plant and Materials have been paid for by the *Employer*, the title to them remains with the *Employer* even if they are removed from the Working Areas and the *Contractor* complies with the requirements of clause 70.2 as to 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* permission."

7.4 After the end of the first sentence in clause 73.1 insert:

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

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



8. AMENDMENTS TO CLAUSE 8 – RISKS AND INSURANCE

8.1 Replace the wording of clause 80.1 in its entirety with the following:

"The following are *Employer's* risks.

- Claims, proceedings, compensation and costs payable which are due to
 - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
 - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or
 - a fault of the *Employer* that is not another compensation event under this contract (other than under clause 60.1(14)).
- Loss of damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Other on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or wear or damage to the parts of the *works* taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect which existed at take over,
 - an event occurring before take over which was not itself an *Employer's* risk or
 - the activities of the *Contractor* on the Site after take over.
- Loss of or wear or damage to the works and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to
 - a Defect which existing at termination,
 - an event occurring before termination which was not itself an *Employer's* risk or
 - the activities of the *Contractor* on the Site after the termination."

8.2 In clause 84.2 and in respect of the Insurance Table:

- after "Loss of or damage to the *works*, Plant and Materials" in the first row of the Insurance Table, insert "(with such insurance being referred to in this contract as the **"All Risks Policy"**)";
- in the "Minimum amount of cover or minimum limit of indemnity" for the first item, insert "reinstatement and" before "replacement cost"; and
- add the following two rows to the Insurance Table:

Insurance against	Minimum amount of cover or minimum limit of indemnity
Liability for new pollution and new contamination caused by the <i>Contractor's</i> activity under this contract, including exacerbation of existing pollution and contamination at the Site.	[REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any policy period (which shall not exceed three (3) years) but not less than [REDACTED] in the aggregate during the policy period, as from the Contract Date and up to and including the <i>end of liability date</i> .
Liability for negligent act, error or omission in the performance of the <i>Contractor's</i> professional	[REDACTED] for each and every claim against the <i>Contractor</i> in relation to the <i>works</i> (within a



<p>obligations under this contract (with such insurance being referred to in this contract as "professional indemnity insurance").</p>	<p>minimum consequential / indirect loss sub-cap of [REDACTED] from the Contract Date for the duration of the contract renewable on an annual basis unless agreed otherwise by the <i>Employer</i> and up to and including the <i>end of the liability date</i>.</p>
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8.3 Insert a new clause 84.3 with the heading "**Professional indemnity insurance**" as follows:

"84.3 **Professional Indemnity insurance**

- Without prejudice to the generality of clause 84.2, the *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract for the given insurance policy year in the event that it breaches this contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, to an amount as stated in the Insurance Table, relevant to the lot, in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar for a period beginning now and ending twelve (12) years after the date of Completion or termination of the contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance ("**Reasonable Rates and Terms**").
- Any increased or additional premium required by insurers by reason of the *Contractor's* own claims record or other acts, omissions, matters or things particular to the *Contractor* shall be deemed to be within Reasonable Rates and Terms.
- The *Contractor* shall immediately inform the *Project Manager* if such insurance ceases to be available upon Reasonable Rates and Terms in order that the *Contractor* and the *Project Manager* can discuss the most commercially appropriate means of protecting the *Employer's* position in respect of this contract and the *works* (and the *Contractor's* duties, responsibilities and liabilities under this contract) in the absence of such insurance.
- The *Contractor* shall co-operate 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 85.1 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 this contract and within ten (10) days of the *Project Manager's* request at any time the *Contractor* will produce for inspection documentary evidence as to compliance with this clause."

8.4 Insert a new clause 84.4 entitled "Latent and inherent defects insurance policy" with the following



wording:

"84.4 **Latent and inherent defects insurance policy**

- (1) Within ninety (90) days of the Contract Date and without prejudice to the generality of clause 84.2 and subject to clause 84.4(7)), the *Contractor* shall procure in favour of the *Employer* (as the named insured) a policy of latent and inherent defects insurance in relation to the *works* ("**IDI Policy**") through the IDI Insurer on terms and conditions that the *Employer* has approved in writing in advance of the Contract Date (and which it is agreed shall include a waiver of subrogation in favour of the *Contractor*).
- (2) The Parties acknowledge and agree that
 - the period of coverage of the IDI Policy procured under this clause 84.4 shall be for the period commencing on the date of Completion until the *end of liability date*,
 - the *Contractor* shall be responsible for paying or, as the context requires, reimbursing the *Employer* (at the *Contractor's* own cost) any additional premiums incurred (as required) throughout the term of the IDI Policy and
 - the *Employer* shall use reasonable endeavours that it does not, by act or omission, do anything that may invalidate the IDI Policy.
- (3) The Parties acknowledge and agree that
 - the insurance coverage under the IDI Policy procured under this clause 84.4 shall not (and is not intended to) extend to any material modifications and/or alterations to the completed *works* that are undertaken by or on behalf of the *Employer* on or after the date of Completion (other than where consequential to the rectification of Defects in the *works* up to the *defects date*) and
 - if the IDI Policy is invalidated at any point during its period of coverage as a consequence of any act and/or omission of the *Employer*
 - a Party shall notify the other Party in writing as soon as practicable upon becoming aware of such invalidation (whether pursuant to its receipt of a notification from the IDI Insurer confirming the same or otherwise) but, in any event, no later than twenty (20) Business Days of such date,
 - the *Contractor* shall not be required to procure and maintain a further inherent and/or latent defects insurance policy in substitution for the IDI Policy unless the *Employer* agrees in writing to bear the cost of any premiums in respect of such new policy (and the *Contractor's* reasonable costs in procuring the same on behalf of the *Employer*) within twenty (20) Business Days of the *Employer* being notified by the IDI Insurer or the *Contractor* (whichever occurs first) that the IDI Policy has been invalidated and
 - if the *Employer* notifies the *Contractor*, following its receipt of such notice, that it does not require a substitute policy to be taken out and maintained, the provisions of this clause 84.4 shall not apply to any IDI Defects (as defined below) in respect of which a claim under the IDI Policy has not already been made by the *Employer* as at the date of the invalidation notice.
- (4) If the *Contractor* is liable pursuant to this contract for any latent and/or inherent Defects that are insured under the IDI Policy and that arise out of or in connection with the *works* (an "**IDI Defect**") and without prejudice to the *Contractor's* duties and obligations under clause 40 and clause 45 (or limiting the rights and remedies of the *Employer* in connection with the same)
 - the *Employer*, the *Project Manager* and the *Contractor* shall use reasonable endeavours to meet as soon as reasonably practicable after the date of the notification issued under clause 42.3 in respect of such IDI Defect and in accordance with the "Problem Solving Hierarchy" (as set out in the Works Information) to assess whether the costs arising out of or in connection with the



rectification of such IDI Defect are likely to exceed the amount of the excesses set out in the IDI Policy and to agree whether a claim should be made under the IDI Policy in respect of the IDI Defect and

- following such meeting and if so agreed the *Employer*, the *Project Manager* and the *Contractor* (each acting reasonably and having regard to the type, nature, severity and likely financial cost to the *Contractor* of rectifying the IDI Defect)
 - the *Employer* shall pursue a claim under the IDI Policy on the basis so agreed and
 - the *Contractor* will provide the *Project Manager* with such information and assistance as the *Employer* and/or the *Project Manager* may reasonably request in order to assist the *Employer* in making and (as the applicable, settling) such claim under the IDI Policy (and in order respond to any queries of the IDI Insurer in respect of the same).

(5) Any insurance proceeds that are recovered by the *Employer* under the IDI Policy in connection with any claim made pursuant to clause 84.4(4) shall be applied by the *Employer* to the cost of the rectification of such IDI Defect (whether paid directly to the *Contractor* where it rectifies the IDI Defect or to any third party that the *Employer* appoints to rectify the same) less any amounts reasonably and properly incurred by the *Employer* in respect of its professional fees arising out of or in connection with the occurrence of such IDI Defect and the associated claim under the IDI Policy, provided always that nothing in this clause 84.4(5) shall relieve the *Contractor* of its liability to the *Employer* in connection with the rectification of the IDI Defect (less any proceeds recovered by the *Employer* under the IDI Policy after deducting such professional fees), including in respect of any shortfall in the cost as between any sums recovered from the IDI Insurer and the actual cost of rectifying the IDI Defect.

(6) The *Contractor* shall reimburse the *Employer* for the cost of any deductibles (or other costs, including premium increases) that the *Employer* is required to pay to the IDI Insurer in connection with pursuing a claim under the IDI Policy in respect of an IDI Defect.

(7) Where, prior to the *Contractor* procuring the IDI Policy as required by this clause 84.4, the IDI Insurer notifies the *Contractor* in writing that it requires payment of any premiums in respect of the IDI Policy directly from the *Employer* and not the *Contractor*

- the *Contractor* shall notify the *Project Manager* of this as soon as possible and within one (1) Business Day of its receipt of the notice from the IDI Insurer,
- the *Project Manager* and the *Contractor* shall, acting reasonably and as soon as reasonably practicable following the date of the *Contractor's* notification, agree in writing what allowances were included in the Prices as at the Contract Date by the *Contractor* on the assumption that the *Contractor* would be required to pay all costs associated with the procuring and maintenance of the IDI Policy directly (the "**IDI Policy Allowance**"),
- upon such agreement, the *Project Manager* shall notify the *Contractor* in writing that the Prices will be reduced by an amount equal to the IDI Policy Allowance (with such notice not constituting a compensation event) and
- the *Employer* shall
 - be responsible for paying the initial premium cost (and any deferred premium cost, if agreed in advance and in writing with the IDI Insurer) in connection with the initial provision of the IDI Policy and
 - make such payment to the IDI Insurer within such timescale as may be reasonably requested by the *Contractor* so as to ensure that the IDI Policy is in place for the term referred to at clause 84.4(2),

provided always that nothing in this clause 84.4(7) shall relieve the *Contractor* of its obligation to reimburse the *Employer* of the cost of any deductibles (or other costs,



including premium increases) that the *Employer* is required to pay to the IDI Insurer in connection with pursuing a claim under the IDI Policy in respect of an IDI Defect on or after the date on which the IDI Policy comes into force.

- (8) Nothing in the clause 84.4 shall
- limit or affect the professional indemnity insurance to be procured and maintained by the *Contractor* under clause 84.3 or shall derogate from the rights of the *Employer* under this contract including, without limitation, under clause 40 to clause 45 (inclusive), provided that the liability of the *Contractor* to the *Employer* will reduce by the amount of any sum recovered under the IDI Policy (less any professional fees referred to in this clause 84.4) and
 - prevent or preclude (or be construed as preventing or precluding) the *Employer* from exercising, pursuing and/or enforcing its rights and remedies against the *Contractor* under this contract or at applicable law in relation to any IDI Defect, whether prior to, on or after the date of any meeting between the *Employer*, the *Project Manager* and/or the *Contractor* under clause 84.4(4)."

8.5 In clause 85.2, insert "(including its Subcontractors, if insured under the policy)" after "every insured".

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

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

- (1) The *Contractor* shall ensure that the All Risks Policy provides for the recognition of each Subcontractor as an insured under the policy in respect of loss or damage by the Insured Risks to the *works* or relevant *section* and Plant and Materials and that this recognition continues up to and including the date of Completion or other document which states that in relation to the *works*, the Subcontractor's works are practically complete or, if earlier, the date of termination of the Subcontractor's employment under its subcontract. Where there *works* are in *sections*, the recognition for a Subcontractor in relation to a *section* shall cease upon the issue of such equivalent statement or other document in relation to its subcontract work in respect of the relevant *section*.
- (2) If during the carrying out of the *works* any loss or damage affecting any executed part of the *works* and/or the Plant and Materials is occasioned by an Insured Risk
- the *Contractor* shall immediately upon becoming aware of the same give notice to the *Project Manager* of its nature, location and extent,
 - the *Contractor*, for itself and for all its Subcontractors recognised as an insured under the All Risks Policy, shall (unless otherwise agreed by the *Employer* at its sole discretion) pursue all claims under the All Risks Policy directly with the insurer,
 - authorise and ensure that its insurer pays to the *Employer* all monies recovered under such All Risks Policy in the event of any loss or damage affecting the *works* and/or any Plant and Materials that is occasioned by the Insured Risk,
 - (subject to clause 85A(7)) the *Contractor* shall, after any inspection required by the insurers as required pursuant to and under the All Risks Policy and with due diligence and with the advance written approval of the *Project Manager*, restore such damaged part(s) of the *works*, replace or repair any lost or damaged Plant and Materials, remove and dispose of any debris (collectively referred to in this contract as "**reinstatement work**") and proceed with the carrying out and completion of the *works*
 - the *Employer* shall pay all monies from that it receives pursuant to and in accordance with the All Risks Policy under this clause 85A(2) in connection with



the Insured Risk to the *Contractor* in instalments under separate reinstatement work statements issued by the *Project Manager* at the same dates as the date on which it issues a payment certificate to the *Contractor* pursuant to Option Y.2 but without deduction of Retention and less any amounts reasonably and properly incurred by the *Employer* in respect of its professional fees arising out of or in connection with the occurrence of the Insured Risk and such reinstatement works (and which are not recovered under the All Risks Policy) and

- the *Contractor* shall not be entitled to any payment under or in connection with this contract in respect of such reinstatement work (including where arising out of or in connection with and/or consequential to the loss and/or damage to the *works* and/or Plant and Materials by the Insured Risk) (and subject to the above bulleted items) in excess of the amounts received by the *Employer* under the All Risks Policy for the Insured Risk.

(3) If during the carrying out of the *works* any loss or damage affecting any executed part of the *works* and/or the Plant and Materials is occasioned by an Excluded Insurance Matter

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

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

(4) Where a Party makes a claim under the All Risks Policy (whether the matter is eventually determined to be an Insured Risk or an Excluded Insurance Matter), it shall keep the other Party fully notified in writing as to the progress and outcome of any such claim, including by

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

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

(6) The *Contractor* does not

- settle any claim under the All Risks Policy without first obtaining the *Employer's* prior written acceptance, such acceptance not to be unreasonably withheld or delayed and
- (and ensures that its personnel and Subcontractors do not) make any admissions in connection with any actual or potential claim under the All Risks



Policy unless agreed in writing by the *Employer* in advance or where such admission is required by the applicable law, provided that the other Party has given the *Contractor* reasonable prior notice of the same.

(7) If there is material loss or damage to the *works* and/or the Plant and Materials, the *Project Manager*

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

provided that, where this contract is terminated pursuant to this clause 85A(7):

- the *Contractor* shall not be relieved of its obligation to authorise and ensure that its insurers under the All Risks Policy pay to the *Employer* all monies from such All Risks Policy under clause 85A(1) where the loss or damage is occasioned by an Insured Risk,
- the *Employer* shall not be required to make any payment to the *Contractor* from or in connection with any such sums received from the insurer and
- the *Contractor's* sole entitlement to payment in connection with the termination shall be determined pursuant to clause 92 to clause 93 (inclusive)."

8.7 Replace the wording of clause 86.1 as follows:

"If the *Contractor* fails to procure and maintain any of the insurances referred to in clause 84, the *Employer* may take out insurance (or, where the relevant insurance is professional indemnity insurance, make alternative financial arrangements in lieu of taking out such insurance itself) to cover some or all of the loss or damage which could result from a breach of the *Contractor's* obligations under this contract and may recover the costs and expenses of taking out the same from the *Contractor* as a debt."

8.8 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 this 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 In clause 90.2, insert "on twenty (20) Business Days' prior written notice to the *Contractor*" after "The Employer may terminate for any reason".
- 9.2 In the Termination Table at clause 90.2:
- insert ", R15A" after "R1 – R15" in the "Reason" column for the *Employer*; and
 - insert "(and P5)" against each entry in the "Procedure" column for both the *Employer* and the *Contractor*.
- 9.3 In clause 91.1, insert "and/or has entered administration" after "had an administration order made against it" in the bulleted item for "(R8)".
- 9.4 Insert a new clause 91.3A as follows:
- "The *Employer* may terminate with thirty (30) days' prior written notice the *Contractor's* obligation to Provide the Works if the *Contractor* is in breach of clause 104 (R15A)."
- 9.5 Insert a new clause 91.8 as follows:
- "The *Employer* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.
- If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with his obligations (R11).
- If the *Employer* otherwise terminates under the provisions of 73(1) of the Public Contracts Regulations 2015, 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 this contract (R17)."
- 9.6 In clause 92.2, "P4", replace "Working Area" with "Site" and insert the following as a new paragraph under "P4":
- "P5 The *Contractor* provides for such reasonable period as required by the *Employer* following termination to answer any queries raised by the *Employer* and supply any information required by the *Employer* in connection with the works and co-operates with the *Employer*. The *Contractor*, upon notification from the *Employer*, delivers to the *Employer* all Material and other items of any kind whatsoever relating to this 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 *Employer* for which the *Employer* has paid or discharged payment and delivers such Plant and Materials to the Site or such location as instructed by the *Employer*."



10. **ADDITIONAL CLAUSE 10 – ADDITIONAL PROVISIONS**

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

10.2 Insert a new clause 101 as follows:

"101 **Convictions**

101.1 Unless agreed in writing in advance by the *Employer*, the *Contractor* shall procure that, in respect of all potential persons performing any of the *works*, whether an employee of the *Contractor* or any Subcontractor (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *works* are being or are to be carried out in connection with this contract

- each Named Employee is questioned as to whether they have any Convictions,
- a Disclosure and Barring Services check is undertaken in respect of each Named Employee and
- save to the extent prohibited by law, a copy of the results of such check are notified to the *Employer*.

101.2 The *Contractor* shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Services check is employed without the *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed).

101.3 Save to the extent prohibited by applicable law, the *Contractor* shall procure that the *Employer* is informed if any member of staff of the *Contractor* (or any employee of a Subcontractor), whether a Named Employee or otherwise, involved in the provision of the *works* who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the *Contractor*.

101.4 Without prejudice to clause 101.1 to clause 101.3 (inclusive), where the *Employer* notifies the *Contractor* that the *Contractor* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer* and/or the *Employer*, the *Contractor* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *works* to the *Employer*, which may include (without limitation)

- asking any person acting for or on behalf of the *Contractor* in connection with this contract for details of any Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
- complying with the HM Government Baseline Personnel Security Standard or similar standard,

and the results of such disclosures shall be shared with the *Employer* in writing, copied to the relevant representative for Scape under the Framework Agreement."

10.3 Insert a new clause 102 as follows:

"102 **Modern slavery**

102.1 The *Contractor* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Employer* that neither the *Contractor* nor any of its employees, agents and/or Subcontractors (as far as the



Contractor is aware, having made reasonable enquiries of each Subcontractor prior to the date of their subcontracts and having also included wording in their subcontracts that is no less onerous than this clause 102) has

- committed an MSA Offence,
- been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015 and/or
- is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

102.2 The *Contractor* shall notify the *Employer* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Sub-contractors have, breached or potentially breached any of the *Contractor's* obligations under clause 102.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Contractor's* obligations under clause 102.1."

10.4 Insert a new clause 103:

"103 **Whistle blowing**

The *Contractor* shall ensure that staff engaged by the *Contractor* in connection with any of the *works* (and use reasonable endeavours to ensure that any staff engaged by any Subcontractor, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Contractor* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998."

10.5 Insert a new clause 104:

"104 **Competition law, corrupt gifts and payment**

104.1 The *Contractor* represents and warrants that neither it nor (as far as the *Contractor* is reasonably aware or can reasonably ascertain) any persons any person associated with the *Contractor* in connection with this contract and/or the Project have at any time prior to the Contract Date

- committed a Prohibited Act and/or have been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act,
- been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment and/or otherwise ineligible for participation in governmental procurement programmes or contracts on the grounds of a Prohibited Act and /or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person directly or indirectly connected with the contract has committed or attempted to commit a Prohibited Act.

104.2 The *Contractor* shall

- not commit a Prohibited Act,
- comply with the Relevant Policies,
- comply with the Relevant Requirements,
- have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and to prevent the occurrence of a Prohibited Act and shall enforce them



as appropriate,

- provide reasonable evidence to demonstrate the *Contractor's* compliance with the provisions of this clause 104 as the *Employer* may reasonably request from time to time,
- ensure that any person associated with the *Contractor* who is performing services in connection with this contract (including any Subcontractor) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Contractor* in this clause 104 (the "**Relevant Terms**") and the *Contractor* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *Employer* and Scape for any breach by such persons of any of the Relevant Terms and
- not act in a manner, in relation to the performance of this contract, which the *Employer* reasonably considers to be inconsistent with the relevant "UK Construction Industry Competition Law Code of Conduct" or in breach of Chapters I and/or II of the Competition Act 1998 and/or the Treaty on the Functioning of the European Union (2012/C 326/01) or any other applicable law that is equivalent in intent.

104.3 The *Contractor* shall immediately notify the *Employer* in writing if it becomes aware of any breach of this clause 104 or if it has reason to believe that it has or any person associated with the *Contractor* has

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
- been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in governmental procurement programmes or contracts on the grounds of a Prohibited Act and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person directly or indirectly connected with the contract has committed or attempted to commit a Prohibited Act.

104.4 For the purpose of this clause 104, the meaning of "**adequate procedures**" and whether a person is "**associated**" with another person shall be determined in accordance with (as the context permits)

- section 7(2) of the Bribery Act 2010 and any guidance issued under section 9, section 6(5), section 6(6) and section 8 of the Bribery Act 2010 (as applicable) and
- the definition of "associated person" in section 44(4) of the Criminal Finances Act 2017,

and, for the purposes of this clause 104, a person associated with the *Contractor* includes any Subcontractor.

104.5 Any dispute, difference and/or question arising in respect of the interpretation of this clause 104 shall be decided by the *Employer* (acting reasonably), whose decision, in the absence of manifest error, shall be final and conclusive."

10.6 Insert a new clause 105 as follows:

"105 **Audit**

105.1 The *Contractor* shall

- keep and maintain during the *period for retention*, full and accurate records in connection with this contract, including the *works* supplied under it and all



payments made by the *Employer*,

- on request, afford the *Employer* or the *Employer's* representatives such access to those records and processes as may be requested by the *Employer* in connection with this contract,
- make available to the *Employer*, without charge and on request, copies of audit reports obtained by the *Contractor* in relation to the *works*,
- allow authorised representatives of the *Employer* and/or the National Audit Office, the Financial Reporting Council and/or the Cabinet Office to examine the *Contractor's* records and documents relating to this contract and provide such copies and oral or written explanations as may reasonably be required to substantiate the same and
- allow the Comptroller and Auditor General (as the head of the National Audit Office from time to time, as well as its appointed representatives) access free of charge during normal business hours on reasonable notice, to all such documents (in any medium) and other information as the Comptroller and Auditor General may reasonably require for the purposes of its financial audit of the *Employer* and for carrying out examinations into the economy, efficiency and effectiveness with which the *Employer* has used its resources and the *Contractor* shall provide such explanations as are reasonably required for these purposes."

10.7 Insert a new clause 106 as follows:

"106 **Conflicts of interest**

106.1 The *Contractor* shall

- take appropriate steps to ensure that neither the *Contractor* nor any person engaged by or on behalf of it (including its Subcontractors) is placed in a position where, in the reasonable opinion of the *Employer*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the *Employer* in connection with the Project and/or under this contract and
- notify the *Employer* immediately giving full particulars of any such conflict of interest which may arise."

10.8 Insert a new clause 107 as follows:

"107 **Tax compliance**

107.1 If, during the *Contractor's* engagement under this contract, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall notify the *Employer* in writing of such occasion within seven (7) days of its occurrence and promptly give the *Employer*

- details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant and
- such other information in relation to the Occasion of Tax Non-Compliance as the *Employer* may reasonably require.

107.2 If the *Contractor* or any persons engaged by it from time to time are liable to be taxed in the UK and/or to pay NICs in respect of consideration received under this contract, the *Contractor* shall

- at all times comply with ITEPA and all other statutes and regulations relating to income tax, SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration and
- indemnify the *Employer* against any income tax, NICs and social security



contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the *works* by the *Contractor* or any persons engaged by it.”

10.9 Insert a new clause 108:

"108 **Data protection**

108.1 The Parties acknowledge that

- for the purposes of the Data Protection Laws, the *Employer* is the Controller and the *Contractor* is the Processor unless otherwise specified in the Data Protection Schedule and
- the only Processing that the Processor is authorised to do is listed in the Data Protection Schedule by the Controller and may not be determined by the Processor.

108.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.

108.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include

- a systematic description of the envisaged Processing operations and the purpose of the Processing,
- an assessment of the necessity and proportionality of the Processing operations in relation to the *works*,
- an assessment of the risks to the rights and freedoms of Data Subjects and/or
- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

108.4 The Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this contract

- Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by applicable law (provided that if it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law),
- ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
 - nature of the data to be protected,
 - harm that might result from a Data Loss Event,
 - state of technological development and
 - cost of implementing any measures and
- ensure that
 - the Processor Personnel do not Process any Personal Data except in accordance with this contract (and in particular the Data Protection Schedule) and
 - it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure



that they

- are aware of and comply with the Processor's duties under this clause 108,
- are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor,
- are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this contract and
- have undergone adequate training in the use, care, protection and handling of Personal Data,
- it does not transfer Personal Data outside of the European Union unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled
 - the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Controller,
 - the Data Subject has enforceable rights and effective legal remedies,
 - the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations) and
 - the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data and
 - at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by applicable law to retain the Personal Data.

108.5 Subject to clause 108.6, the Processor shall notify the Controller immediately if it

- receives a Data Subject Access Request (or purported Data Subject Access Request),
- receives a request to rectify, block or erase any Personal Data,
- receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws,
- receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this contract,
- receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable law and/or
- becomes aware of a Data Loss Event.

108.6 The Processor's notification obligation under clause 108.5 includes the provision of further information to the Controller in phases, as details become available.

108.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause



- 108.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing
- the Controller with full details and copies of the complaint, communication or request,
 - such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws,
 - the Controller, at its request, with any Personal Data it holds in relation to a Data Subject,
 - assistance as requested by the Controller following any Data Loss Event and
 - assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 108.8 Unless the Processor employs fewer than two-hundred and fifty (250) staff, the Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 108 unless the Controller determines that
- the Processing is not occasional,
 - the Processing includes special categories of data under Article 9(1) of the GDPR or Personal Data concerning criminal convictions and offences under Article 10 of the GDPR and/or
 - the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 108.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 108.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Law.
- 108.11 Before allowing any Sub-Processor to Process any Personal Data related to this contract, the Processor must
- notify the Controller in writing of the intended Sub-Processor and Processing,
 - obtain the written consent of the Controller,
 - enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 108 such that they apply to the Sub-Processor and
 - provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 108.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 108.13 The Controller may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).
- 108.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Business Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 108.15 The *Contractor* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause 108 by the *Contractor* and/or its personnel (of any type)



and/or its Subcontractors."

10.10 Insert a new clause 109 as follows:

"109 **Confidentiality**

109.1 Except where expressly stated otherwise in this contract, the *Contractor* shall treat all Confidential Information as confidential and safeguard it accordingly and not disclose Confidential Information to any other person without the owner's prior written consent.

109.2 Subject always to clause 109.7, the *Contractor's* obligations in relation to Confidential Information pursuant to clause 109.1 do not apply to the extent that (and nothing shall prevent the *Employer* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law or that apply to the *Employer* in its capacity as a Crown body) disclosing the Contractor Confidential Information where)

- the disclosure is a requirement of applicable law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations,
- the information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- the information was obtained from a third party without obligation of confidentiality,
- the information was already in the public domain at the time of disclosure otherwise than by a breach of this contract and/or
- it is independently developed without access to the Employer Confidential Information.

109.3 The *Contractor* shall only disclose the Employer Confidential Information relevant to the carrying out and completion of the Project to its personnel (of any type) and Subcontractors who are directly involved in carrying out and completing the Project, and shall ensure that such persons are aware of and comply with their obligations in respect of Confidential Information.

109.4 The *Contractor* shall not, and shall procure that its personnel (of any type) and Subcontractors do not, use of any of the Employer Confidential Information received otherwise than for the purposes of this contract.

109.5 At the written request of the *Employer*, the *Contractor* shall procure that its personnel (of any type) and/or Subcontractors identified in the *Employer's* notice sign a confidentiality undertaking on similar terms to this contract prior to commencing any work in accordance with this contract.

109.6 Nothing in this contract shall prevent the *Employer* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law or that apply to the *Employer* in its capacity as a Crown body) disclosing the Contractor Confidential Information

- to any Crown body or any other public body on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or other public bodies on the basis that the information is to be treated as confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body,
- to any party engaged by the *Employer* in connection with the Project or any person conducting a review of the Project (subject to any commercial redactions as may be reasonably appropriate so as not to disclose any commercially sensitive financial information of the *Contractor's* to a competitor organisation),
- for the purpose of the examination and certification of the *Employer's* accounts



and/or

- for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

109.7 The *Contractor* warrants and undertakes to the *Employer* to comply with the requirements of the Security Aspects Letter at all times in the performance of the *works*.

Notwithstanding clause 109.1 to clause 109.6 (inclusive), the *Contractor* warrants and undertakes to the *Employer* that it shall not (and shall ensure that its personnel (of any type) and its Subcontractors shall not) use and/or disclose to any third party any Foreground Materials and/or Employer Materials relating to any Security Measures in respect of the Project without the prior written approval of the *Employer* (not to be unreasonably withheld or delayed).

The Parties acknowledge and agree that this general prohibition shall not apply to such disclosure (on a limited basis) in connection with any tender and/or procurement processes undertaken by the *Contractor* in connection with the Project provided that the *Contractor* shall ensure that any recipient(s) of the relevant Foreground Materials and/or Employer Materials complies fully with all data security and/or disclosure policies forming part of or referred to in the Works Information (including, for the avoidance of doubt, the Security Aspects Letter) or as otherwise issued by the *Employer* to the *Contractor* from time to time in writing in connection with such disclosure.

109.8 Notwithstanding any other term of this contract

- the *Contractor* consents that the *Employer* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public,
- the *Contractor* shall assist and co-operate with the *Employer* in order to make information available to the general public as required by the *Employer* from time to time and
- prior to such publication the *Employer* may, at its sole discretion, in whole or in part, redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a FOIA analysis), third party confidential information, information technology security and/or the prevention of corruption and/or fraud."

10.11 110 Insert a new clause 110:

"110 **Freedom of information**

110.1 The *Contractor* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and the *Contractor* shall assist and co-operate with the *Employer* (at its own expense) to enable it to comply with these information disclosure requirements.

110.2 The *Contractor* shall and shall ensure that its Subcontractors shall provide

- the *Employer* with a copy of all information in its possession, power or control in the form that they require within five (5) days (or such other period as the *Employer*, as the context permits, may notify to the *Contractor*) of receiving a written request from the *Employer* for such information and
- all necessary assistance as is reasonably requested by the *Employer* to enable them to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations, and the *Contractor* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause 110.2 by the



Contractor and/or its personnel (of any type) and/or its Subcontractors.

- 110.3 If the *Contractor* considers that all or any information provided to the *Employer* under clause 106A.2 is a "trade secret" in accordance with section 43(1) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA
- it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the *Employer* and
 - notwithstanding any such identification, the *Employer* (as the context permits) shall be solely responsible for determining at its absolute discretion whether such information and / or any other information is exempt from disclosure in accordance with the provisions of the current version "Freedom of Information Code of Practice" (as published by the Cabinet Office, or any successor body, at the relevant time), the FOIA and/or the Environmental Information Regulations or is to be disclosed in response to a Request for Information.
- 110.4 In no event shall the *Contractor* (or shall the *Contractor* allow its personnel (of any type) and/or its Subcontractors to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the *Employer*.
- 110.5 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information without consulting with the *Contractor* and/or following consultation with that *Contractor* and having considered its views."

10.12 Insert a new clause 111 as follows:

"111 **Equality legislation**

Notwithstanding any other provision of this contract, the *Contractor* shall comply with and use all reasonable endeavours to ensure its personnel (of any type) and/or its Subcontractor comply at all times with the Human Rights Act 1998, the Employment Rights Act 1996, the Equality Act 2010 and all other applicable laws relating to non-discrimination and equality."

10.13 Insert a new clause 112:

"112 **Sustainability**

112.1 The *Contractor* shall

- comply with the applicable Government Buying Standards,
- provide, from time to time, in a format reasonably required by the *Employer*, reports on the environmental effects of providing the *works*,
- maintain ISO 14001 (as the family of standards related to environmental management published by the International Organisation for Standardisation) or BS 8555 (as the standard published to help organisations improve their environmental performance by the British Standards Institution) or an equivalent standard intended to manage its environmental responsibilities and
- perform its obligations under this contract in a way that
 - supports the *Employer's* achievement of the Greening Government Commitments,
 - conserves energy, water, wood, paper and other resources,
 - reduces waste and avoids the use of ozone depleting substances and
 - minimises the release of greenhouse gases, volatile organic compounds



and other substances damaging to health and the environment."

10.14 Insert a new clause 113:

"113 **Co-operation**

113.1 The *Contractor* shall, using the standard of skill and care required in Option X15

- promote collaborative behaviours throughout its organisation and its supply chain in connection with the Project and act collaboratively with the Project Consultants at all times,
- comply with any requirements in the Works Information in connection with the cooperation and/or interfacing with the Project Consultants in connection with the Project,
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Contractor* and the Project Consultants and
- proactively consult the Project Consultants when seeking to make decisions in relation to the Project,

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

113.2 The *Contractor* shall work with the Project Consultants so far as reasonably practicable, using the standard of skill and care required by Option X15, to

- to the extent reasonably within the *Contractor's* control, assist the Project Consultants in performing their obligations under their respective Project Appointments in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Contractor* in connection with the *works*,
- share best practice in connection with the Project and
- collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project,

on a Project Focused basis.

113.3 The *Contractor* agrees, for the purposes referred to in this clause 113, to promptly supply or allow each Project Consultant access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions by statute or this contract and
- reasonably required by a Project Consultant to properly perform its obligations under its Project Appointment.

113.4 The *Contractor* shall, in complying with its obligations under this clause 113, consult with each Project Consultant and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this contract, any Project Appointment and/or in relation to the Project.

113.5 Nothing in this clause 113 shall require the *Contractor* to perform tasks and/or duties which are the responsibility of a Project Consultant under its Project Appointment."

10.15 Insert a new clause 114 as follows:

"114 **Transfer of rights**

114.1 The Intellectual Property Rights in all Contractor Materials provided in connection with the *works* and the Project shall remain vested in the *Contractor*, but the *Contractor*



grants to the *Employer* and its nominees with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce the Contractor Materials for any purpose whatsoever, including but not limited to in connection with Project (and any other project of the *Employer*) and in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project (and any other project of the *Employer*).

114.2 The licence granted under clause 114.1, carries the right for the *Employer* to grant sub-licences (including, but not limited to, any contractor(s) responsible for the design, construction, execution, operation and/or maintenance of the Project), is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiry of this contract or termination (for any reason) of the *Contractor's* employment under this contract. The right to assign, novate, transfer or otherwise deal with the licence given under clause 114.1 shall include the right for the *Employer* to use such means to grant the licence to a Central Government Body or to any body which carries on any of the functions and/or activities that have previously been performed and/or carried on by the *Employer*.

114.3 Any change in the legal status of the *Employer* which means that it ceases to be a Central Government Body, shall not affect the validity of the licence granted in clause 114.1. If the *Employer* ceases to be a Central Government Body, the successor body to the *Employer* shall be entitled to the benefit of the licence granted in clause 114.1.

If a licence granted under clause 114.1 is novated under clause 114.2 or there is a change in the *Employer's* status pursuant to this clause 114.3, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the *Employer*.

114.4 The *Contractor* unconditionally and irrevocably agrees to waive, in respect of any Contractor Materials in which it has granted a licence under clause 114.1 above, all moral rights to which the *Contractor* may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other applicable law in respect of the Contractor Materials, with this waiver being made in favour of the *Employer* and extended to (as the context permits) the *Employer's* sub-licensees, assignees, transferees and successors in title.

114.5 The Intellectual Property Rights in all Employer Materials shall remain vested in the *Employer* but the *Employer* shall grant to the *Contractor* and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Employer Materials for any purpose in connection with the Project, provided always that such licence shall automatically terminate upon the termination of this contract.

114.6 The *Contractor* warrants and undertakes to the *Employer* that

- all Contractor Materials are and will continue to be its own original work (or the original work of its Subcontractors, where appropriate),
- the licence granted in any Contractor Materials pursuant to clause 114.1 does not and will not at any time infringe the rights of any third party,
- it has not and will not infringe the rights of the *Employer* or any other third party in the use of any Employer Materials to which the licence provided by the *Employer* to the *Contractor* pursuant to clause 114.4 applies, and
- it has obtained (and shall maintain at all times) all of the necessary licenses and consents in relation to the Intellectual Property Rights that are used or may be used by the *Contractor* or licenced to and/or by the *Contractor* under or in connection with this contract and will provide evidence of the same on the written request of the *Employer*.

114.7 The *Contractor* shall not be liable for any such use by the *Employer*, its nominees or any other third parties (including any Beneficiary) of any Contractor Materials for any



purpose other than that for which such Contractor Materials were prepared by or on its behalf, with it being acknowledged and agreed by the Parties that this "purpose" is the design and construction of the *works* at the Site.

114.8 The *Employer* shall have no liability whatsoever to the *Contractor* or any third party whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of and/or reliance by the *Contractor* on any Employer Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the *Contractor* pursuant to clause 114.4.

114.9 The *Contractor* shall indemnify the *Employer* and its sub-licensees, assignees, transferees and successors in title against, without limitation, all payments, losses, demands, claims, damages, actions, costs, legal fees, fines, financial penalties and expenses that are paid, made or incurred by the *Employer* as a consequence of and in relation to any actual and/or alleged infringement of Intellectual Property Rights arising out of or in connection with the Contractor Materials and/or the *Contractor's* use of the Employer Materials."

10.16 Insert a new clause 115 as follows:

"115 **Building Information Modelling**

115.1 Without prejudice and subject always to Option X15, the *Contractor* shall comply with the BIM Requirements at all times in the provision of the *works*."



11. **AMENDMENTS TO DISPUTE RESOLUTION OPTION W2**

- 11.1 In line 1 of clause W2.1(1), delete "is" and insert "may be".
- 11.2 After clause W2.3(4), insert a new clause W2.3(4A) as follows:
"The *Adjudicator* has the power to determine more than one dispute under this 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 he determines any other matter referred to him."
- 11.3 Delete the text of clause W2.4(1) and insert the following:
"A Party may refer any dispute under or in connection with this contract to the *tribunal*."



12. AMENDMENTS TO SECONDARY OPTION CLAUSES

12.1 Option X2 – Changes in the law

Delete the text of Option X2.1 and insert the following:

"A change in the applicable law of the country in which the Site is located (other than a Hackitt Change in Law) is a compensation event if it occurs after the *base date* and except where the change would have been reasonably foreseeable at the *base date* to a contractor exercising the standard of care provided for at Option X15, provided that a *change* in applicable law is treated as occurring before the base date if it is stated in a statute or statutory instrument before the *base date* but comes into force after the *base date*.

A Hackitt Change in Law is a compensation event if it occurs on or after the Contract Date.

The *Project Manager* may notify the *Contractor* of a compensation event for a change in the law (including a Hackitt Change in Law) and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total of the Defined Cost, the Prices are reduced.

12.2 Option X4 – Parent company guarantee

Replace Option X4.1 with the following:

"Where the Contract Data states that Option X.4 applies to this contract, at the same time as entering into this contract the *Contractor* provides to the *Employer* the Parent Company Guarantee executed by the Contractor's Parent Company. The *Contractor* acknowledges and agrees that the *Employer* shall not be bound to make any or all payments to the *Contractor* under this contract until such parent company guarantee is provided by the *Contractor*."

12.3 Option X7 – Delay damages

Delete the text of Option X7 and insert the following:

"X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the date commencing on the expiration of the Delay Damages Holiday Period per week or part thereof until the earlier of

- Completion and
- the date on which the *Employer* takes over the *works*.

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

X7.3 If the *Employer* 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 *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* 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 *Employer's* genuine pre-estimate of all losses the *Employer* may sustain as a result of late Completion except for those losses referred to in Option X7.7.

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

X7.6 The delay damages

- are the *Employer's* sole and exclusive remedy in respect of any failure by the *Contractor* to achieve Completion of the *works* by the Completion Date other than



in the event of termination before Completion of the whole of the *works*,

- are in addition to any damages or other sums for which the *Contractor* is liable under this contract other than pursuant to this Option X7 and
- do not relieve the *Contractor* from his obligation to Provide the Works, or from any other duties, obligations or responsibilities which he may have under this contract.

If these delay damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the *Employer* 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 this contract and the remainder of this contract remains in full force and effect. For the avoidance of doubt, the *Employer* is entitled to recover from the *Contractor* general damages in respect of all losses which the *Employer* 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 do not exceed the delay damages which would have been due under this contract had Option X7.1 (or the relevant part thereof) remained enforceable."

12.4 **Option X15 – Limitation of the Contractor's liability for his design to reasonable skill and care**

Replace the wording of Option X15.1 with the following:

"The *Contractor* is not liable for Defects in the *works* due to his design (including the preparation by it of any specifications and the selection by him of any Plant or Materials and including design for which it is responsible pursuant to this contract), unless it failed to carry out that design using all the reasonable skill, care and diligence to be expected of a suitably qualified designer experienced in the design of works similar in size, scope, nature and complexity to the Project.

Nothing in this Option X15 shall have the effect of preventing or limiting the operation of clause 43A and/or clause 43B."

12.5 **Option X16 – Retention**

Add new Option X16.3 as follows:

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

12.6 **Option X18 – Limitation of liability**

In lines 5 and 6 of Option X18.4, delete "as stated in this contract".

Replace the wording of the third bulleted item of Option X18.4 with the following:

- personal injury or death and
- fraud and fraudulent misrepresentation."

12.7 **Option X20 – Key Performance Indicators**

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

X20.1 A "**Key Performance Indicator**" is an aspect of performance by the *Contractor* for which a target is stated in the KPI Schedule.

X20.2 From the Contract Date until the Defects Certificate has been issued, the *Contractor* reports to the Project Manager its performance against each of the Key Performance Indicators. Reports are provided at the KPI Reporting Interval and include the forecast final measurement against each Key Performance Indicator.



- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the KPI Schedule, it submits to the *Project Manager* its proposals for improving performance.
- X20.4 The *Employer* may add a Key Performance Indicator to the KPI Schedule from time to time on written notice to the *Contractor*."

12.8 **Option X21 – Principal M&E Works**

Insert a new Option X21 with the following wording:

"X21 Principal M&E Works

X21.1 In this Option X21, the following capitalised words shall have the meanings given to them below

- **Actual CHT Sum** has the meaning given to such term in Option X21.7 or Option X21.8 (as the context requires),
- **Actual Principal M&E Works Scope** has the meaning given to such term in Option X21.7 or Option X21.8 (as the context requires),
- **CHT** means Crown House Technologies Limited (company number 05083313), whose registered office is at Bridge Place, Anchor Boulevard Admirals Park, Dartford, Kent, DA2 6SN,
- **CHT Process Map** means the document that, amongst other things, sets out the agreed process for undertaking the value engineering exercise referred to in this Option X21, as set out at section Schedule 57],
- **Initial CHT Sum** means the sum of [REDACTED],
- **Maximum Adjustment Sum** means [REDACTED]
- **Principal M&E Works** means the principal mechanical and electrical works that form part of the *works* (as more particularly described in the Works Information) which the *Contractor* intends to subcontract to CHT,
- **Principal M&E Works Assumptions** means the assumptions concerning the specification and delivery methodology for the Principal M&E Works as at the Contract Date, as set out at in the Works Information,
- **Principal M&E Works Proposal** has the meaning given to such term at Option X21.4,
- **Proposal Response Notice** has the meaning given to such term at Option X21.6,
- **Proposal Review Period** is the period of ten (10) Business Days from the date on which the first Principal M&E Works Proposal is submitted by the *Contractor* to the *Project Manager* in accordance with Option X21.4 (or such other period as may be notified by the *Project Manager* to the *Contractor* in writing from time to time),
- **Proposed Principal M&E Works Specification** has the meaning given to such term at Option X21.4,
- **Proposed CHT Sum** has the meaning given to such term at Option X21.4 and
- **Value Engineering Period** is the period of Five (5) Business Days commencing on the Contract Date.

X21.2 As at the Contract Date and subject to the provisions of this Option X21

- the Works Information requires the *Contractor* (and the *Contractor* has agreed) to



undertake and complete the Principal M&E Works,

- whilst the *Employer's* outcome and output requirements for the Principal M&E Works are fixed (and identified in the Works Information), the precise specification and delivery methodology that the *Contractor* will use to design, undertake and complete the Principal M&E Works in order to achieve the same in accordance with this contract has yet to be finalised by the *Contractor* and agreed by the *Employer*,
- the *Contractor* has appointed CHT as a Subcontractor under a subcontract to undertake and complete the Principal M&E Works on behalf of the *Contractor* and
- the tendered total of the Prices includes a sum equal to the Initial CHT Sum, which the Parties acknowledge and agree has been so included in the tendered total of the Prices on the following basis
 - it has been assumed in the *Contractor's* subcontract with CHT that (subject to the provisions of this Option X21), CHT will confirm, on or after the Contract Date, that
 - all of the Principal M&E Works Assumptions can be realised by CHT and
 - (as the subcontract assumes that such Principal M&E Works Assumptions will be so realised) no changes will be required to the subcontract and/or this contract to reflect any changes in the specification and delivery methodology to be used by CHT to design, undertake and complete the Principal M&E Works on behalf of the *Contractor*,
 - without prejudice to the foregoing, the *Contractor*, the *Project Manager*, the *Employer* and CHT will undertake and complete a value engineering exercise pursuant to this Option X21 prior to CHT being authorised by the *Contractor* to undertake the Principal M&E Works under its subcontract, with the objective of confirming that the Principal M&E Works Assumptions can be realised by CHT,
 - if it is confirmed that all of the Principal M&E Works Assumptions can be realised during this value engineering exercise, there will be no changes to the subcontract and/or this contract and the *Contractor* will be required to design, undertake and complete the Principal M&E Works on the basis set out in this contract (and reflecting the Principal M&E Works Assumptions) as at this Contract Date and
 - if it is confirmed that all or any of the Principal M&E Works Assumptions cannot be realised during this value engineering exercise, an instruction will be issued by the *Contractor* under the subcontract, following the prior written approval of the *Project Manager* under this contract, to reflect any changes to
 - the scope and description of CHT's subcontract works under the subcontract and
 - any subsequent adjustment to the fixed cost to be paid by the *Contractor* to CHT under the subcontract in connection with the subcontract works,

to reflect the extent to which any Principal M&E Works Assumptions can (or cannot) be realised and, accordingly, the Works Information, the Activity Schedule and the Prices under this contract will be deemed to be adjusted accordingly to account for the same pursuant to this Option X21, provided always that any adjustment to the Prices under this Option X21 shall not exceed the Maximum Adjustment Sum),



- this Option X21 describes the process that the Parties have agreed to follow in order to reach an agreement as to the "Actual Principal M&E Works Scope" and the "Actual CHT Sum" (as each such term is defined in this Option X21) for the CHT Subcontract Works as part of the above-mentioned value engineering exercise and
- irrespective of whether or not the Principal M&E Works Assumptions can be realised, the *Employer* still requires the *Contractor* to undertake and complete the Principal M&E Works on the basis set out in this Option X21.

X21.3 During the Value Engineering Period, the *Contractor*, the *Project Manager* and the *Employer* shall undertake the value engineering exercise referred to in Option X21.1 with CHT on an open book and transparent basis in accordance with the CHT Process Map with a view to securing a written and fixed agreement in principle from CHT as soon as reasonably practicable following the commencement of the Value Engineering Period on

- the extent to which all or any of the Principal M&E Works Assumptions can be realised,
- any adjustments that may be required to the scope of the subcontract works to be undertaken by CHT as originally included in its subcontract to reflect the outcome of the value engineering exercise and the extent to which the Principal M&E Works Assumptions can be realised in order to allow the *Contractor* to design, undertake and complete the Principal M&E Works under this contract and
- any adjustments to the Initial CHT Sum as originally included in CHT's subcontract to reflect the outcome of the value engineering exercise on the same basis as set out in the above bulleted item.

X21.4 No later than the final day of the Value Engineering Period, the *Contractor* will submit to the *Project Manager* for acceptance (as the "**Principal M&E Works Proposal**"):

- any adjustments that may be required to the scope of and/or specification and delivery methodology for the subcontract works to be undertaken by CHT as originally included in its subcontract (which shall be expressly stated as including the provision of all design and redesign services that may be required in connection with the CHT Subcontract Works) to reflect the outcome of the value engineering exercise and the extent to which the Principal M&E Works Assumptions can be realised in order to allow the *Contractor* to design, undertake and complete the Principal M&E Works under this contract (the "**Proposed Principal M&E Works Specification**"),
- the proposed changes to the Initial CHT Sum originally included in CHT's subcontract to reflect the outcome of the value engineering exercise on the same basis as set out in the above bulleted item (the "**Proposed CHT Sum**") and
- any adjustments that may be required to the Works Information, the Activity Schedule and/or the Prices under this contract to reflect any equivalent changes in the subcontract should the Proposed Principal M&E Works Specification and/or the Proposed CHT Sum be approved in accordance with this Option X21,

provided always that if the *Contractor* fails to submit a Principal M&E Works Proposal to the *Project Manager* within the above-mentioned timescale, the *Contractor* shall be deemed to have submitted a Principal M&E Works Proposal to the *Project Manager* that confirms that

- the Proposed Principal M&E Works Specification and the Proposed CHT Sum for the CHT Subcontract Works are unchanged from the Provisional CHT Subcontract Works Scope and the Proposed CHT Sum and that both are accepted by the *Contractor* and CHT and
- all of the Principal M&E Works Assumptions can be realised by the *Contractor*



and CHT.

- X21.5 Following the submission of a Principal M&E Works Proposal pursuant to Option X21.4 and during the Proposal Review Period, the *Project Manager* may
- make such further enquiries of the *Contractor* and/or CHT as it may require to inform its review and assessment of the Principal M&E Works Proposal (and to satisfy itself, acting reasonably, that the CHT Process Map has been followed by the *Contractor*) and the *Contractor* shall ensure that it (and use reasonable endeavours to ensure that CHT does) respond to all such queries as soon as reasonably practicable and organise any joint meetings that the *Project Manager* may reasonably request in order to allow it to make an informed assessment of the Principal M&E Works Proposal and/or
 - request that the *Contractor* resubmits the Principal M&E Works Proposal to reflect any adjustments to the Proposed Principal M&E Works Specification and/or Proposed CHT Sum as may be required following the outcome of any such enquiries, in which case
 - the original Principal M&E Works Proposal shall be superseded and deemed to be replaced by any further Principal M&E Works Proposal as from the date of its submission by the *Contractor* to the *Project Manager* and
 - the submission of such a further Principal M&E Works Proposal shall not have the effect of extending the Proposal Review Period unless otherwise specified in writing by the *Project Manager*.
- X21.6 No later than the final day of the Proposal Review Period, the *Project Manager* will notify the *Contractor* in writing (the "**Proposal Response Notice**") that the *Project Manager*
- it accepts the entirety of the Principal M&E Works Proposal or
 - it
 - accepts part but not all of the Principal M&E Works Proposal or
 - rejects in its entirety the Principal M&E Works Proposal,
- submitted pursuant to Option X21.5, following which the provisions of Option X21.7 to Option X21.9 (inclusive) shall apply.
- X21.7 If a Proposal Response Notice states that the *Project Manager* accepts the entirety of a Principal M&E Works Proposal submitted pursuant to Option X21.5, then
- the Proposed Principal M&E Works Specification will be treated by the Parties as the "**Actual Principal M&E Works Scope**" and
 - (subject always to Option X21.10) the Initial CHT Sum shall be deemed to be replaced in full by the Proposed CHT Sum, which shall be the "**Actual CHT Sum**",
- for the purposes of Option X21.9.
- X21.8 If a Proposal Response Notice states that the *Project Manager* partially accepts or rejects a Principal M&E Works Proposal submitted pursuant to Option X21.5, then the Proposal Response Notice shall
- specify what (if any) changes to the scope of (and requirements) for the Principal M&E Works in the Works Information are to be amended to reflect the part(s) (if any) of the Proposed M&E Works Specification that are accepted by the *Project Manager* and, taking into account such changes, what the "**Actual Principal M&E Works Scope**" is and
 - (subject always to Option X21.10) specify the extent to which the Initial CHT Sum is to be adjusted to reflect any such changes, which shall be the "**Actual CHT**



Sum" for the purposes of this Option X21.1,
for the purposes of Option X21.9.

X21.9 Following the issue of the Proposal Response Notice

- the *Contractor* shall be required to undertake and complete the CHT Subcontract Works in accordance with the Actual Works Scope and the Actual CHT Sum as if the Proposal Response Notice were an implemented instruction that had been agreed with the Contractor pursuant to and in accordance with clause 60 to clause 65 (inclusive),
- the *Contractor* shall be required to implement any changes as set out in the Proposal Response Notice in its subcontract with CHT as soon as reasonably practicable following its issue (and without any further modifications to the same) and
- (subject to Option X21.10) the Works Information, the Activity Schedule and the Prices shall be construed accordingly to reflect the content of the Proposal Response Notice.

X21.10 The *Contractor* acknowledges and agrees that:

- nothing in this Option X21, including the issue of a Proposal Response Notice by the *Project Manager*, shall in itself give rise to:
 - a compensation event,
 - any adjustment to the Prices (save as expressly set out in this Option X21) and/or
 - any adjustment to the Completion Date (for any reason),
- if the Actual CHT Sum exceeds the total of the Initial CHT Sum plus the Maximum Adjustment Sum for any reason, the maximum adjustment to the Initial CHT Sum to be incorporated into the Activity Schedule and the Prices pursuant to Option X21.7 to Option X21.9 (inclusive) shall not exceed the Maximum Adjustment Sum and any difference between the Prices (as adjusted to account for the inclusion of the Maximum Adjustment Sum) and the Actual CHT Sum shall be borne solely by the *Contractor* and shall not form part of the Prices,
- nothing in this Option X21 shall preclude the Project Manager, at its sole discretion, issuing an instruction to the Contractor under clause 60.1(1) in relation to the same or similar subject matter of this Option X21 and confirm (as the context requires) that the subsequent instruction practice shall be undertaken in lieu (and in replacement) this Option X20 and
- nothing in this Option X21 (including the subcontracting of the Principal M&E Works to CHT) shall relieve the *Contractor* of the requirement to undertake and complete the Principal M&E Works under this contract."

12.9 Option Y(UK)1 – Project Bank Account

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

"Y1.1 In this Option Y(UK1)

- The **Authorisation** is a document authorising the *project bank* to make payments to the *Contractor* and Named Suppliers.
- A **Joining Deed** is an agreement between the *Employer*, the *Contractor* and a *Named Supplier* that was not originally a party to the Trust Deed which contains provisions for administering the Project Bank Account in accordance with the Trust Deed.
- **Named Suppliers** are *named suppliers* that are a party to the Trust Deed or any



- Joining Deed unless later changed in accordance with this contract.
- **Project Bank Account** is the account used to receive payments from the *Employer* and make payments to the *Contractor* and Named Suppliers.
 - A **Supplier** is a person or organisation who has a contract to
 - construct or install part of the *works*,
 - provide a service necessary to Provide the Works or
 - supply Plant and Materials for the *works*,
 - **Trust Deed** is an agreement between the *Employer*, the *Contractor* and *Named Suppliers* which contains provisions for administering the Project Bank Account.
- Y1.2 The *Contractor* establishes the Project Bank Account with the project bank within one (1) week of the Contract Date.
- Y1.3 Unless stated otherwise in the Contract Data, the *Contractor* pays any charges and is paid any interest made by the *project bank*
- Y1.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the *project bank* in connection with the Project Bank Account.
- Y1.5 The *Contractor* includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
- Y1.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the *Project Manager* for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The *Employer*, the *Contractor* and the Supplier sign the Joining Deed after acceptance (where applicable).
- Y1.7 On or before each assessment date, the *Contractor* submits to the *Project Manager* an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.
- Y1.8 No later than one (1) week before the final date for payment, the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.
- Y1.9 The *Contractor* makes payment to the Project Bank Account of
 - any amount not paid by the *Employer* and
 - any amount required to make payment in full to Named Suppliers.
- Y1.10 The *Contractor* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the certified payment. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* for signature by the *Employer* and submission to the Project Bank Account.
- Y1.11 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
- Y1.12 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.
- Y1.13 Payments made from the Project Bank Account are treated as payments from the *Employer* to the *Contractor* in accordance with this contract or from the *Contractor* or



Subcontractor to Named Suppliers in accordance with their contracts as applicable.

Y1.14 The *Employer, the Contractor* and Named Suppliers sign the Trust Deed before the first assessment date.

Y1.15 If the *Project Manager* issues a termination certificate, no further payments are made into the Project Bank Account."

12.10 **Option Y(UK)2 – The Housing Grants, Construction and Regeneration Act 1996**

Replace the second paragraph of Option Y2.2 with the following:

"The **final date for payment** is the date as specified in Contract Data: Part One."

12.11 **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:

"Y3.1 The *Contractor* does not assign, transfer, charge or otherwise deal with this contract (or any of his 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 *Employer*.

Y3.2 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person.

Y3.3 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 *Employer*), up to a maximum of six (6) Contractor Collateral Warranties in the aggregate. The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option Y3.3 within the time required, the *Employer* may withhold twenty-five per cent (25%) from any further sums due and payable to the *Contractor* under this contract until such time as the outstanding Contractor Collateral Warranty is provided.

Y3.4 Within five (5) days of entering into a subcontract with any of the Subcontractors identified in the Collateral Warranty Schedule in connection with the *works*, 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 *Employer* may agree in advance and in writing, acting reasonably) in favour of

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

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

- in the case of the *Employer*, 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 Y3.4 within the time required, the *Employer* is entitled to withhold payment of the sum of five thousand pounds (£5,000) from any further sums claimed by (or due to) the *Contractor* under this contract for each Subcontractor Collateral Warranty or Subconsultant Collateral Warranty that is outstanding at the relevant time until each such outstanding Subcontractor Collateral Warranty or a Subconsultant Collateral Warranty (as applicable) is provided.

Y3.5 Within five (5) days of becoming aware of a Subcontractor entering into a subsubcontract with a subsubcontractor and/or any manufacturer identified in the Collateral Warranty Schedule 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 *Employer* may agree in advance and in writing, acting reasonably) in favour of

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

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

- in the case of the *Employer*, 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 Y3.4 within the time required, the *Employer* is entitled to withhold payment of the sum of five thousand pounds (£5,000) from any further sums claimed by (or due to) the *Contractor* under this contract for each Subsubcontractor Collateral Warranty that is outstanding at the relevant time until each such outstanding Subsubcontractor Collateral Warranty is provided.

Y3.6 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 Y3.3 to Option Y3.5 (inclusive) within twenty five (25) Business Days of a notification from the *Project Manager* of such failure

- the *Employer* (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 *Employer* 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) Business 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 Y3.6 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 Y3.3 to Option Y3.5 (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 Y3.6 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 Y3.6, 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.

- Y3.7 The *Employer* may, at any time prior to Completion of the whole of the *works*, novate this contract to any person taking over the whole of the *Employer's* interest in the *works*.
- Y3.8 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this contract are not subject to the consent of any other person.
- Y3.9 Other than as granted pursuant to this Option Y(UK)3, a person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified."



13. **AMENDMENTS TO THE SHORTER SCHEDULE OF COST COMPONENTS**

- 13.1 Add at the end of paragraph 11 "(but excluding any sums necessary to top up a pension fund)".
- 13.2 Replace the wording in paragraph 41 beginning with "to cover the cost of" to the end of paragraph 41 with the following:
- "payments for the provision of
- catering (includes tea, coffee, water, biscuits, sandwiches and other drinks for *Employer / Contractor* meetings, as well as a microwave, kettle, cutlery, refrigerator and other domestic appliances),
 - medical facilities and first aid (including for compliance with all health and safety requirements, (for example medical first aid box and eye wash),
 - recreation,
 - sanitation (including for compliance with all health and safety requirements, all cleaning equipment, materials and consumables (including brushes, mops, disinfectant, toilet rolls, tea towels, soap, hand wash, refuse sacks, dusters and bleach) and servicing chemical toilets if provided),
 - security (but includes the following in relation to the site compound only – fencing / hoardings, gates, floodlights and cabin alarms),
 - copying,
 - telephone, telex, fax, radio and cabin/compound CCTV (including any telephone, fax and ISDN/broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the *Contractor's* discretion (but no adjustment shall be made to the *Contractor's* Fee if CCTV is not provided)),
 - surveying and setting out. Includes for a site level and staff for cross check of setting out, weather surveys to determine weather measurements in accordance with this contract, digital camera for use on site,
 - computing (including for the Contractor's computer hardware and software, laptops, printers and all computer infrastructure and networking costs) and
 - hand tools not powered by compressed air (including any tools hired, bought or brought by the *Contractor* for the purposes of setting up the temporary site establishment)."
- 13.3 Insert a new paragraph 46 with the following wording:
- "46 Payments for the provision and use in the Working Areas of water, gas and electricity"
- 13.4 Insert a new paragraph 47 with the following wording:
- "47 Payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others"

