



Department of Health & Social Care

(1) Secretary of State for Health and Social Care

-and-

(2) Morgan Sindall Construction and Infrastructure Ltd

CONTRACT

relating to the 7th Floor at 10 South Colonnade

incorporating the conditions of the JCT Minor Works with Contractor's Design 2016

THIS AGREEMENT is made on the 17 March 2022

BETWEEN

Secretary of State for Health and Social Care whose registered office is at Department of Health and Social Care, 39 Victoria Street, London, United Kingdom, SW1H 0EU (**Employer**)

AND

Morgan Sindall Construction and Infrastructure Limited (04273754) whose registered office is at Kent House, 14-17 Market Place, London, W1W 8AJ (**Contractor**)

WHEREAS

First the Employer wishes to have the following work carried out:

New Office Environment

- Refit part of the 7th Floor at 10 South Colonnade - (referred to as "the Works")

at ('the Works') under the direction of the Architect/Contract Administrator referred to in Article 3;

Second the Works include the design and construction of:

- Refit part of the 7th Floor at 10 South Colonnade

Third the Employer has had the following documents prepared which show and describe the work to be done:

Pre-Construction Information Pack named '10 South Colonnade DHSC – PCI – REV A'

Schedule of Rates / Pricing Schedule named 'DHSC 7th Floor CSA 07.02.22'

Other documents showing or describing or otherwise stating the requirements for the design and construction of the Contractor's Designed Portion ('the Employer's Requirements'), which for identification have been signed or initialled by or on behalf of each Party.

Those documents together with this Agreement, the Conditions, and if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively 'the Contract Documents') are annexed to this Agreement;

Fourth the Contractor shall supply the Employer with a copy of the priced Contract Specification or Work Schedules or with a Schedule of Rates;

Fifth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Sixth for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Seventh where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;

Eighth whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

ARTICLES

NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1: Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer will pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of £777,250.29 ('the Contract Sum') or such other sum as becomes payable under this Contract.

The Employer is an end user for the purposes of section 55A VAT Act 1994 relating to the reverse charge for building and construction services. Please issue us with normal VAT invoices, with VAT charged at the standard rate. The Employer will not account for the reverse charge.

Article 3: Architect/Contract Administrator

Further purposes of this Contract the Architect/Contract Administrator is REDACTED on behalf of the Secretary of State for Health and Social Care whose registered office is at Department of Health and Social Care, 39 Victoria Street, London, United Kingdom, SW1H 0EU or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 4: Principal Designed

The Principal designer for the purposes of the CDM Regulations is ~~Architect/Contract Administrator (or)~~ Overbury PLC or such replacement as the Employer at any time appoints to fulfil that role.

Article 5: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is Overbury PLC or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2.

Article 7: Arbitration

Where Article 7 applies, then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

Article 8: Legal proceedings

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract

Article 9: Schedule of Amendments

The Conditions of the JCT Minor Works with Contractor's Design Building Contract 2016 ("MW CD 2016") are intended to be and are hereby incorporated into and amended and supplemented by the Schedule of Amendments contained in Appendix 1 to this Contract and this Contract shall be read and construed accordingly. In the case of inconsistency between the Schedule of Amendments and any other term of this Contract, the Schedule of Amendments shall prevail.

CONTRACT PARTICULARS

(an asterisk* indicates text that is to be deleted as appropriate)

Clause etc	Subject	
Fourth Recital	Schedule of Rates / Pricing Schedule	As per Appendix 4
Fifth Recitals and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	
Fifth Recital and clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' is not a 'contractor' ; for the purposes of the CIS
Sixth Recital	CDM Regulations	The project is notifiable
Seventh Recital	Framework Agreement (if applicable) <i>(state date, title and parties)</i>	Procure Partnerships - Major Works framework agreement - Lot 11 (London Region) Start date – 19 November 2019 End date – 18 November 2023
Eighth Recital and Schedule 3	Supplemental Provisions <i>(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provisions applies.)</i>	
	Collaborative working	Supplemental Provision 1 applies
	Health and safety	Supplemental Provision 2 applies
	Costs savings and value improvements	Supplemental Provision 4 applies
	Sustainable development and environmental considerations	Supplemental Provision 4 applies
	Performance Indicators and monitoring	Supplemental Provision 5 applies /does not apply
	Notification and negotiations of disputes	Supplemental Provision 6 does not apply
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee N/A Contractor's nominee N/A

Clause etc	Subject	
		Or such replacement as each Party may notify to the other from time to time
Article 7	Arbitration <i>(if neither entry is deleted, Article 7 and Schedule 1 do not apply, if disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 7 and Schedule 1 apply.)</i>	Article 7 and Schedule 1 (Arbitration) do not apply
2.1.7		The Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Contractor referred to in clause 2.1.1 shall be limited to the amount of 2 times the Contract Sum but such limitation of amount shall not apply to or be affected by any liquidated damages under clause 2.9'
2.3	Works commencement date	28 February 2022
2.3	Date of Completion	05 May 2022 Or such later date for completion as is fixed under clause 2.7
2.8		A Coronavirus Event is not in the control of the Contractor See new definition at the end of this section For the avoidance of doubt, the Contractor will be granted an extension of time for a Specified Peril in all circumstances
2.9	Liquidated damages	At the rate of a maximum of 1% of the contract sum per week
2.11	Rectification Period <i>(The period is 3 months unless a different period is stated.)</i>	12 months from the date of practical completion

4.3	Interim payments – Interim Valuation Dates <i>(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.2) and thereafter at monthly intervals.)</i>	The first Interim Valuation Date is Monday 28 March 2022 and thereafter at intervals of 1 month
4.3	Payment due prior to practical completion – percentage of the total value of work etc. <i>(The percentage is 95 percent unless a different rate is stated.)</i>	95 per cent
4.3	Payment becoming due on or after practical completion – percentage of the total amount to be paid to the Contractor <i>The percentage is 97.5 per cent unless a different rate is stated.)</i>	per cent
4.3 and 4.8	Fluctuations provision <i>(Unless another provision or entry is selected, Schedule 2 applies.)</i>	*Schedule 2 (Contribution, levy and tax changes applies*/No fluctuations provision applies/*the following fluctuations provision applies
4.3 and 4.8	Percentage addition for Schedule 2 (paragraph 13) (if applicable)	per cent
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is 3 months unless a different period is stated.)</i>	months from the date of practical completion
5.3	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	for any one occurrence or series of occurrences arising out of one event
5.4A, 5.4B and 5.4C	Insurance of the Works etc. – alternative provisions	*Clause 5.4A (Works insurance by Contractor BUT employer does not need to name contractor on building insurance) applies
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15 Per cent

5.4C	Insurance arrangements – details of the required policy or policies	Are set out in the following document(s)
7.2	<p>Adjudication</p> <p>Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)</p> <p><i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i></p>	<p>The Adjudicator is</p> <p>*Royal Institute of British Architects</p> <p>* The Royal Institution of Chartered Surveyors</p> <p>*constructionadjudication.com</p> <p>*Association of Independent Construction Adjudicators</p> <p>*Chartered Institute of Arbitrators</p>
9.2		Sums to be withheld are only sums yet to be paid, not already paid
Schedule 1 (paragraph 2.1)	<p>Arbitration – appointor of Arbitrator (and of any replacement)</p> <p><i>(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)</i></p>	<p>President or a Vice-President:</p> <p>*Royal Institute of British Architects</p> <p>*The Royal Institution of Chartered Surveyors</p> <p>*Chartered Institute of Arbitrators</p>

New Definitions

Coronavirus the virus strain known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and the disease known as coronavirus disease 2019 (COVID-19) including, in both instances, any mutations thereof.

Coronavirus Event: An event occurring which impacts the Works or the Contractor's ability to carry out and/or complete the Works or any Section which directly or indirectly arises from or is otherwise connected with Coronavirus and/or the consequences of Coronavirus and/or any action, decision or exercise of power taken due to or in connection with Coronavirus including but not limited to:

- any event which has an impact (whether in terms of scarcity, quarantine requirements, self-isolation, controls and restrictions on import or export, increase in prices or otherwise) on the availability or supply of labour, plant, goods or materials required in relation to the Works;
- any change in law occurring after the Base Date;
- any delays to or change in the process for obtaining, or change to the nature of, any consent or approval or certificate required in relation to the Works, which occurs after the Base Date; and/or
- any closure or restriction of access to the site or the surrounding area.

in all cases whether such event occurs in the country in which the site is located or otherwise

Delays arising due to the non-availability of materials & labour, Statutory Approvals, additional restrictions advised in Site Operation Procedures from the current version 7, closure of the site or Statutory Changes arising due to covid-19 are delays beyond the Contractor's control.

AS WITNESS

The hands of the Parties
or their authorised representatives

Signed on or on behalf of

the Employer

In the presence of

witness' signature

witness' name

witness' address

Signed by or on behalf of

The Contractor

In the presence of

witness' signature

witness' name

witness' address

APPENDIX 1 – SCHEDULE OF AMENDMENTS

Clause 1 Definitions

Insert new definition as follows:

"Data Protection Law" the Data Protection Act 1998 and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including, on and from 25 May 2018, the GDPR, and the LED together with all legally binding guidance and codes of practice issued or adopted by a regulator (or group of regulators) with jurisdiction over the data processing arrangements contemplated in this Contract

"GDPR" the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the 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

"Interested Party" any person who has an interest in all or part of the Works

"Landlord" any person who owns the freehold or the long leasehold of the land in title number [], being that land on which the Works are being carried out

"LED" Law Enforcement Directive (Directive (EU) 2016/680)

"Personal Data" personal data as defined in the Data Protection Law which is supplied to the Contractor by the Employer or obtained by the Contractor in the course of performing the Works

"Prohibited Material" any materials or equipment that are generally accepted or suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person, or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing or possibly reducing, the normal life expectancy of the Works or any part or component of the Works, or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or the guidance contained in the document "good practice in the selection of construction materials" (current version).

"Purchaser" any person to whom the Employer transfers or agrees to transfer his interest in all or part of the works

"Tenant" any person to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works

Clause 2.1.4 Contractor's obligations

Insert new clause 2.1.4 as follows:

"Notwithstanding any other obligation on the Contractor set out above, the Contractor will not use, specify for use or permit the use of Prohibited Materials in the Works."

Clause 2.7 Extensions of time

Delete the first sentence of clause 2.7 and replace with the following:

"If and whenever it becomes reasonably apparent and/or whenever information comes to the attention of the Contractor which indicates that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall as soon as reasonably practicable give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay and provide a narrative explaining in reasonable detail the circumstances of the event and documentary evidence supporting any extension of time claimed."

Insert a new clause 2.13 as follows

"2.13 Data Protection

2.13.1 General

- 2.13.1.1 *Unless the context otherwise requires, the terms "controller", "data processor" and "data controller" have the meanings given in Data Protection Law.*
- 2.13.1.2 *The Parties agree in relation to all Personal Data, the Contractor shall process Personal Data as an independent controller in its own right. Nothing in this Contract or the arrangements contemplated by it is intended to construe either party as joint data controllers with one another, with respect to the Personal Data.*
- 2.13.1.3 *The Parties acknowledge that for the purposes of Data Protection Law, the Contractor is a data controller and it is the data processor of Personal Data in accordance with its obligations pursuant to carrying out the Works and that it is not anticipated that it will act as a data processor for the Employer under the terms of this Contract.*
- 2.13.1.4 *The Contractor will at all times comply with the Data Protection Law as a data controller, if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Law covering the data processing to be performed by it in connection with the Works.*
- 2.13.1.5 *The Contractor will, and it will procure that any sub-contractor whose services it uses in order to perform the Works, only undertake such processing of Personal Data as is reasonably required in connection with the Works and it will, and it will procure that any sub-contractor will, at all times comply with Data Protection Law in relation to its, and their, in the case of any sub-contractors, obligations as data processors.*

2.13.2 No Disclosure

- 2.13.2.1 *The Contractor shall not disclose Personal Data to any third parties other than:*
 - (a) *to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works; or*
 - (b) *to the extent required under a court order,*

provided that disclosure under clause 2.13.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 2.13.2.1 and that the Contractor shall give notice in writing to the Employer of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under clause 2.13.2.1(b) immediately upon becoming aware of such a requirement.

- 2.13.2.2 *The Contractor shall bring into effect and maintain all adequate and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, theft, use or disclosure of Personal Data and shall protect against any anticipated threats or hazards to the security or integrity of the Personal Data, and detect and prevent unauthorised processing of, or unauthorised access to the Personal Data, including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.*
- 2.13.2.3 *The Employer may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor. Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Employer can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Law.*

2.13.3 Indemnity by the Contractor

The Contractor shall indemnify and keep indemnified the Employer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 2.13 or failure to comply with Data Protection Law by the Contractor and/or any sub-contractor of the Contractor.

Clause 3.6 Variations

Insert new clause 3.6.1 as follows:

"The parties will complete the "Variation Order" contained in Appendix 2."

Clause 4.3 Interim payments – dates and certificates

Delete "14" and replace with "28"

Section 8 Special Conditions

Clause 8.1 Employer's Policies

Insert new clause 8.1 as follows:

"The Contractor shall carry out the Works in accordance with all applicable Employer's Policies as set out in Appendix 3."

Clause 8.2

Insert the following as new clause 8.2:

"8.2.1 Where the Works are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Contractor:

8.2.1.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

8.2.1.2 warrants that at all times it has and will have no reason to believe that any member of staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and

8.2.1.3 shall ensure that no person is employed or otherwise engaged in carrying out the Works if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.

8.2.2 The Contractor shall ensure that the Employer is kept advised at all times of any member of staff who subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Contractor or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Contractor shall only be entitled to continue to engage or employ such member of staff with the Employer's written consent and with such safeguards being put in place as the Employer may reasonably request. Should the Employer withhold consent the Contractor shall remove such member of Staff from being employed or otherwise engaged in carrying out the Works forthwith.

8.2.3 The Contractor shall immediately provide to the Employer any information that the Employer requests to enable the Employer to satisfy itself that the obligations set out in this Clause 10 have been met.

8.2.4 The Employer may at any time request that the Contractor remove and replace any member of Staff from carrying out the Works, provided always that the Employer will act reasonably in making such a request. Prior to making any such request the Employer shall raise with the Contractor the Employer's concerns regarding the member of staff in question with the aim of seeking a mutually agreeable resolution. The Employer shall be under no obligation to have such prior discussion should the Employer have concerns regarding patient or service user safety."

Section 9 Collateral Warranties

Clause 9.1

"9.1.1 The Contractor shall execute and deliver to the Employer within 15 Business Days of a request to do so by or on behalf of the Employer from time to time a collateral warranty in favour of the following parties:

- .1 the Landlord;*
- .2 the Purchaser;*
- .3 the Tenant; or*
- .4 any other Interested Party.*

Such collateral warranties shall be in the form set out at by the Employer at the stage of procurement with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

- 9.1.2 *If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled to withhold all sums which would otherwise be due and payable under this Contract."*

Clause 9.2

- "9.2.1 *The Contractor shall procure that each and every Key Sub-contractor and Sub-Consultant shall execute and deliver to the Employer within 15 Business Days of a request to do so by or on behalf of the Employer from time to time a collateral warranty or warranties in favour of the following parties:*

- .1 the Employer;*
- .2 the Landlord;*
- .3 the Purchaser;*
- .3 the Tenant; or*
- .4 any other Interested Party.*

Such collateral warranties shall be in the appropriate form set out by the Employer at the stage of procurement with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

- 9.2.2 *If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled to withhold any sums relating to the works or services carried out by the Key Sub-contractor or Sub-Consultant then in default and which would otherwise be due and payable under this Contract. Such retained amounts shall become due and payable following provision of the relevant warranties to the Employer.*

- 9.2.3 *The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of:*

- 9.2.3.1 *the completed appointment between the Contractor and each Sub-Consultant; and*

- 9.2.3.2 *each sub-contract between the Contractor and every Key Sub-contractor provided that the Contractor shall be entitled to delete the sub-contract sum and any commercially sensitive information from the certified copy of the sub-contract documentation to be provided in accordance with this clause."*

APPENDIX 2 – VARIATION ORDER

Contract reference:

Date:

Parties:

Secretary of State for Health and Social Care whose registered office is at Department of Health and Social Care, 39 Victoria Street, London, United Kingdom, SW1H 0EU (Employer) (for correspondence address see clause 4 below);

and

[] (Contractor).

Variation Number:

Detail of Variation:

Reason for Variation:

Value associated with Variation:

Risk associated with the variation not being implemented:

Variation requested by:

Has the variation been approved by all parties to the Contract?: **YES/NO** (Please delete as appropriate)

Capitalised words and phrases in this Variation Order have the meanings given to them in the Contract referred to above.

Signed by:

.....

[INSERT AUTHORISED SIGNATORY'S NAME]

.....

for and on behalf of [Employer/Contractor]

.....

Signed by:

.....

[INSERT AUTHORISED SIGNATORY'S NAME]

.....

APPENDIX 3 – EMPLOYER'S POLICIES

Not used

APPENDIX 4 – SCHEDULE OF RATES

REDACTED