**SCHEDULE 1 - Z clauses**

*The* *additional conditions of contract* are as follows:

**Z1**  **Assignment**

Z1.1 The *Client* may assign, charge or transfer his interest in this contract or any rights arising under it at any time without the consent of the *Consultant*.

Z1.2 The *Consultant* does not assign, charge or transfer any right or obligation under this contract to any other person.

**Z2 Records and Account**

Z2.1 The *Consultant* keeps records, measurements and accounts in a form as reasonable required by the *Client* and provides such other information and explanations as the *Client* may reasonable require. The *Consultant* gives the *Client* all reasonable facilities for the inspection and verification of all such records measurements and accounts.

**Z3 Compliance with legislation**

Z3 The *Consultant* provides the Servicesin compliance with all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *services* or performance of any obligations under this contract and any regulation, permission, consent or byelaw of any local authority or statutory undertaker which has any jurisdiction with regard to the Works*.*

**Z4 Third party agreements**

Z4.1 The *Consultant* is responsible for the co-ordination of the *services* with any services to be carried out by others in respect of the Works and supplies any information required by others in respect of the Works and otherwise performs its obligations under this contract so as not to delay or disrupt the others in relation to the work to be carried out by such others.

Z4.2 The *Client* may enter into agreements with third parties in respect of the project. Subject to the *Consultant* having received copies of such agreements as are relevant, the *Consultant* shall provide the Services in such manner and at such times so that no act or omission of the *Consultant* shall contribute to any breach by the *Client* of any such agreements. Compliance with this clause by the *Consultant* shall not be a compensation event.

**Z5 Third Party Rights**

Z5 *Save* in respect of the rights of the *Client’s* Group Companies referred to in clause Z6 the Parties do not intend that any person who is not a party to this contract should have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this contract. 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

**Z6 Employees of the Consultant**

Z6 The *Consultant* shall indemnify the *Client* to be capped to liabilities and insurance in Section 8 of Contract Data and the *Client’s* Group Companies against any losses, liabilities, damages or costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the *Client* or any of the *Client’s* Group Companies as a result of claims resulting from the labour provided by the *Consultant* in connection with national insurance contributions, graduated or auto-enrolment pension contributions or as a result of any non-conformance with any Acts of Parliament including, but without prejudice to the generality of the foregoing, the relevant Working Rule Agreements, the Equality Act 2010, the relevant Pensions Acts and any health & safety regulations.

**Z7 The Core Clauses and Option Clauses**

Insert new definitions in clause 11.2 as follows:

|  |  |
| --- | --- |
| ‘Applicable Laws | 1. are any statutes, regulations, rules, orders, bylaws, notices, proclamations, delegated or subordinated legislation, and any planning or building permission or regulations or other official consents, requests or requirements made by any body of competent jurisdiction in respect of which the *Client* or *Consultant* has a legal obligation to comply, each as is in force from time to time. |
| BBSRC | 1. the Biotechnology & Biological Sciences Research Council of Polaris House, North Star Avenue, Swindon, SN2 1UH. |
| CDM Regulations | 1. are the Construction (Design and Management) Regulations 2015. |
| Consultant's Documents | 1. are the documents comprising the Scope provided by the *Consultant* and the documents, drawings, details, plans, sketches, manuals, models, estimates, analyses, budgets, calculations, computer programs, software, graphical and non-graphical information and other similar documents and information (including items created and stored on discs, tapes and other electronically readable media) prepared or provided by or on behalf of the *Consultant* in relation to the *Consultant’s* design or this contract. |
| **Group Companies** | 1. are any subsidiary or subsidiaries (of any tier) or holding company or companies (of any tier) or any subsidiary (of any tier) of any such holding company or companies and “subsidiary” shall bear the meanings given to it in section 1159 Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a). |
| Funder | 1. is a party (acting for itself and, where it leads for a syndicate of persons, as agent and trustee for them) who agrees to provide or is providing finance for the carrying out of the Project or on the security of the completed Project. |
| Purchaser | 1. is any purchaser of the whole or any part of the site upon which the Project is situated whether by way of freehold or long leasehold interest. |
| Project | 1. is the construction and engineering project or works to which the *service* provided by the *Consultant* relates. |
| Tenant | 1. is any tenant of the whole or any part of the site upon which the Project is situated. |
| Force Majeure Event | 1. is any of the following events (and any circumstance arising as a direct consequence of any of the following events):    1. war, invasion, civil war, rebellion, revolution, insurrection, military or usurped power or similar action,    2. natural catastrophes and acts of God including but not limited to fire, lightning, flood, earthquake, windstorm or other natural disaster,    3. the use or threat of terrorism or the activities of the relevant authorities in dealing with the use or threat of terrorism, |

**Z8** Clause 12.4: Delete and replace with:

‘Except where expressly provided in this contract, this contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this contract.’

**Z9** Insert a new clauses 12.5 - 12.8 as follows:

12.5 ‘The invalidity, illegality or unenforceability in whole or in part of any of the terms of this contract does not affect the validity of any other term or the remainder of any affected term.

12.6 References to a document include any revision made to it in accordance with this contract.

12.7 The expression the *Client* shall include its successors in title and permitted assigns.

12.8 The invalidity, illegality or unenforceability in whole or in part of any of the terms of this contract does not affect the validity of any other term or the remainder of any affected term.’

**Z10** Clause 13.7:

At the start of the clause delete ‘A’ and replace with: ‘Save in respect of notification and instruction under clauses 61.1 and 61.2, a’

**Z11** Insert a new clause 13.9 as follows:

‘13.9 A communication sent by email will be treated as validly sent, unless the Parties agree otherwise in writing.’

**Z12** Delete clause 16.1 are replace with the following:

‘16.1 (a) The *Client* gives no warranty as to the accuracy, consistency, sufficiency, legality or feasibility of any information contained within the documents which are part of this contract.

(b) The *Consultant* shall examine each part of the documents which are part of this contract and shall have satisfied themselves that there are no inconsistencies, discrepancies or conflicts within or between the documents which are part of this contract.

(c) In the event of any inconsistencies, discrepancies or conflicts being discovered within or between the documents which are part of this contract, the *Client* shall decide and direct the *Consultant* as to which inconsistent, discrepant or conflicting provision is to prevail.

(d) The *Consultant* shall comply with whichever provision the *Client* directs shall prevail and shall be excused from complying with any provisions which they are directed are to be disregarded.

(e) Notwithstanding any other provision of this contract, an instruction given by the *Client* under clause 16.1(c) will not be a Compensation Event under clause 60.’

**Z13** Clause 17: Delete and replace with:

17.1 The *Consultant* shall and shall procure that any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it shall:

(a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption (and for this purpose the UK’s Bribery Act 2010 (the Bribery Act) shall be deemed to apply (**Relevant Laws**));

(b) comply with the *Client’*s Code of Conduct for Business Ethics (annexed at Appendix 3) as the Client may update it from time to time (the **Policy**);

(c) not do, or omit to do, any act that will cause or lead the Client to be in breach of any of the Relevant Laws or the Policy;

(d) have and shall maintain in place throughout the term of this contract its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Relevant Laws and the Policy, and will enforce them where appropriate;

(e) promptly report to the *Client* (in writing) any breach of the Relevant Laws or the Policy by it or any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it;

(f) promptly report to the *Client* (in writing) any request or demand for any undue financial or other advantage of any kind received by the *Consultant* (or any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it) in connection with the performance of this contract; and

(g) if requested, provide the *Client* with any reasonable assistance, at the *Client*’s reasonable cost, to enable the *Client* to perform any activity required for the purpose of compliance with any of the Relevant Laws or the Policy.

17.2 The *Consultant* shall indemnify the *Client* against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the *Client* as a result of any breach of this clause 17 by the *Consultant* or any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it.

17.3 The *Consultant* warrants and represents to the *Client* that neither the *Consultant* nor any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it:

(a) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

(b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; or

(c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

17.4 The *Consultant* shall promptly notify the *Client* if, at any time during the term of this contract, its circumstances, knowledge or awareness or that of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it, changes such that it (or they) would not be able to repeat the warranties set out in clause 17.3 at the relevant time.

17.5 If the *Client* terminates this contract under clause 91.8, the *Consultant* shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

**Z14** Clause 18: Delete clause and replace with:

‘If a Force Majeure Event occurs the *Service Manager* gives an instruction to the *Consultant* stating how it is to deal with the event.’

**Z15** Insert a new clause 20A as follows:

‘20A.1 In relation to the Consultant’s Documents the *Consultant* grants (or if such a grant cannot legally take place until a later date, agrees to grant) to the *Client* with effect from the date of this contract or, in the case of Consultant’s Documents not yet in existence, with effect from the date they are created, a royalty-free, non-exclusive, irrevocable licence (such licence to remain in full force and effect notwithstanding termination of this contract or the determination of the employment of the *Consultant* under it or the abandonment or completion of the whole of the *service* or any dispute under the contract) to use and reproduce all Consultant’s Documents for any purpose whatsoever connected with the *service* and such other purposes as are reasonably foreseeable (including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the *service*). Such licence carries the right to grant sub-licences and is transferable to third parties.

20A.2 The *Client* does not hold the *Consultant* liable for any use it may make of the Consultant’s Documents for any purpose other than that for which they were originally provided unless the *Consultant* authorises such use and confirms that the Consultant’s Documents are suitable for it.

20A.3 The *Consultant* irrevocably waives, and procures that each of its Subcontractors and suppliers irrevocably waives, any rights it or they may have under Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Consultant’s Documents.

20A.4 The *Consultant* agrees on reasonable request at any time and following reasonable prior written notice to give to the *Client* or those authorised by the *Client* access to the Consultant’s Documents and to provide up to three (3) copies of each of the Consultant’s Documents (including copy negatives and CAD disks) thereof at the *Consultant’s* expense.’

**Z16** Insert a new clause 21.4 as follows:

‘21.4 Acceptance by the *Client* of any *key person* does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Contractor* of his duties or obligations under this contract.’

**Z17** In clause 23.1: Delete ‘or’ from the end of the penultimate bullet point, and insert at the end of the clause:

‘the proposed Subcontractor has not been procured in accordance with the Scope,

the proposed subcontract conditions are not consistent with the Scope,

the proposed subcontract service represents too large a proportion of the total *service*, or

the proposed subcontract does not include an obligation on the Subcontractor to novate or otherwise transfer the subcontract to the *Client* if required to do so in accordance with the contract.’

**Z18** Insert a new clause 24.3 as follows:

‘24.3 The *Consultant* carries out and completes the *service* in a proper and workmanlike manner, and performs its obligations under this contract in accordance with all Applicable Laws.’

**Z19** Insert a new clause 24.4:

‘24.4 The *Consultant* does not use or specify for use in relation to the *service* and does not authorise or approve the specification or use by Others of any products or materials not in conformity (or which incorporate substances which are not in conformity) with relevant British Standards or Codes of Practice or which at the time of specification or use are widely known to builders or designers of the relevant discipline within the construction industry to be dangerous or hazardous to health and safety or deleterious to the integrity or durability of buildings and/or for other structures and/or finishes in the particular circumstances in which they are used or which are otherwise not in accordance with Applicable Laws and/or the guidelines contained in the edition of the publication ‘Good Practice in the Selection of Construction Materials’ published by The British Council for Offices current at the date of this contract.

If in the performance of its duties under this contract, the *Consultant* becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by Others of, any such products or materials, the *Consultant* notifies the *Client* in writing forthwith. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by this contract.’

**Z20**  Insert new clause 24.5:

‘24.5.1 The *Consultant*:

complies with its statutory duties under the CDM Regulations,

to the extent that it is in control of the Site or any part of it within the meaning of section 4 of the Health and Safety at Work etc Act 1974 keeps the Site, the access thereto and the egress therefrom safe and without risk to the health of persons using it, and

co-operates at all times, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site for the effective discharge of those responsibilities.’

24.5.2 The *Consultant* to the extent that it is in control of the Site or any part of it within the meaning of section 4 of the Health and Safety at Work etc Act 1974 keeps the Site, the access thereto and the egress therefrom safe and without risk to the health of persons using it.’

**Z21** Add a new clauses 25.4 -25.6 as follows:

‘25.4The Subconsultant’s appointment is executed as a deed in the terms of NEC4 Professional Services Contract, with such modifications as the *Consultant* or Subconsultant shall propose and the *Client* shall approve, including such modifications as may be required to enable the use of NEC4 Professional Services Contract as an appointment between a consultant and sub-consultant prior to the Subconsultant commencing its services.

25.5 The Subconsultant’s appointment provides that the Subconsultant provides the Deeds of Collateral Warranty required by clause X8.

25.6 The *Consultant* provides a certified copy of such completed subconsultant appointment to the *Client* within fourteen (14) days of its execution, together with evidence of the Subconsultant’s professional indemnity insurance (where the Subconsultant is responsible for any part of the design).’

**Z22** Clause 29: Delete and replace with:

’The *Consultant* does not without the prior written approval of the *Client* divulge to any third party nor (except for the purposes of the *service*) make use of any confidential information relating to the *Client*, the *service* or otherwise (including, without limitation, information relating to methods and techniques of construction proposed by the *Client*, any financial information relating to the *service* and the contents of any drawings, details, documents or other information prepared by or on behalf of the *Client*) and does not release to any third party any information relating to the *service* and does not take or authorise the taking of any photographs of the *service* or publish or authorise the publication of any articles, photographs or other illustrations of the *service*.’

**Z23** Clause 30.1:

At the end of the clause add: ‘The *Consultant* carries out the service regularly and diligently and without delay.’

**Z24** In clause 31.3 after ‘Scope’ in bullet 4 insert ‘or other requirement of the contract’.

**Z25** Insert a new clauses 50.7 and 50.8 as follows*:*

‘50.7 Where in each case a confidentiality agreement, parent company guarantee, novation agreement, collateral warranty and/or bond (of any nature) form required under this contract to be executed and returned by the *Consultant* within the respective period stated in this contract remains to be so executed and delivered at the end of such period, the C*lient* shall be entitled to retain all sums due until the *Consultant* has executed and delivered the relevant documents to the *Client*.

50.8 In the event of the *Consultant* becoming insolvent (as defined within section 113 of the Housing Grants, Construction and Regeneration Act 1996), no further sum shall become due to the *Consultant* under this contract other than any amount that may become due to him under clause 93 and the *Client* need not pay any sum that has already become due either:

(a) insofar as the *Consultant* has given or gives a pay less notice under clause Y2.3; or

(b) if the *Consultant*, after the last date upon which such notice could have been given by the Client in respect of that sum, has become insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996.’

**Z26** At the end of clause 51.4, insert the following:

‘The parties acknowledge that payment of such interest shall constitute a ‘substantial remedy’ for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).’

**Z27** Clause 60.1(12): Delete and replace with:

‘An event which is a Force Majeure Event.’

**Z28** Insert a new clause 60.4:

‘Notwithstanding the remaining terms of this contract the *Consultant’s* entitlement to a compensation event which is a Force Majeure Event or which is the direct result of a Force Majeure Event is limited to changes to the Key Dates and the Completion Date. The *Service Manager* does not change the Prices in the assessment of the effect of a Force Majeure Event.’

**Z29** Add a new clause 82.4:

‘Each Party notifies the other Party as soon as reasonably practicable after its receipt of any formal written claim in respect of a matter which it is required to reimburse the other Party, and:

does not settle or compromise any claim without the prior agreement of the other Party (such agreement not to be unreasonably withheld or delayed) and

takes reasonable steps to mitigate any loss or damage’

**Z30** Clause 83.1: Limited to maximum levels listed in the Insurance Table provided in clause 83.1, the first paragraph under the heading of “Insurance against” is deemed to be amended to read as follows:

‘Liability of the *Consultant* for claims made against him arising out of his failure to use the skill, care and diligence required by this contract in Providing the Services’.

**Z31** At the beginning of clause 84.1 delete ‘Before’ and insert ‘Save in relation to professional indemnity insurance for liability for claims made against it arising out of the *Consultant*’s failure to use the skill and care normally used by professionals providing services similar to the *service*, before’

Add a new clause 84.4:

‘The *Consultant* maintains professional indemnity insurance cover with a reputable insurance company with a limit of indemnity of not less than that stated in the Contract Data Part One for each and every claim and without any unusual exclusions or limitations, from the commencement of the performance of the *service* until 12 years from Completion of the whole of the *service* (provided that such insurance is generally available in the market at commercially reasonable rates). Such insurance shall cover the *Consultant’s* liabilities and obligations in connection with the design of the *service* undertaken by the *Consultant*. As and when required to do so by the *Client*, the *Consultant* shall produce for inspection documentary evidence that the insurance required is being properly maintained. The *Consultant* shall immediately notify the *Client* in writing if it ceases to carry the insurance cover required by this clause 83.4 so that the parties may discuss the best ways and means of protecting their respective interests.’

**Z32 Clause 87:**

87.1: Delete and replace with ‘Not used’.

87.2: Delete and replace with ‘Not used’.

**Z33** Clause 91.1:

In R10, after ‘arrangement’, insert ‘compromise or composition in satisfaction of its debts (including but not limited to any restructuring plan)’

At the end of the clause, delete ‘.’ and replace with ‘,’

Add to the end of the clause:

become subject to a moratorium under Part A1 of the Insolvency Act 1986, including but not limited to where a monitor is appointed or any document filed at court to obtain or apply for a moratorium or an order is made for a moratorium to come into force (R10A),

**Z34** Add a new clause 91.1A as follows:

The *Consultant*’s right to terminate for reasons R1–R10A does not arise unless and to the extent that:

in the case where the *Client* has entered administration, an administrative receiver of the company has been appointed (otherwise than in succession to another administrative receiver), has gone into liquidation and/or a provisional liquidator of the *Client* is appointed (other than in succession to another provisional liquidator), the administrator, receiver or liquidator (as relevant) consents to the termination,

in any other case, the *Client* consents to the termination,

the court is satisfied that the continuation would cause the *Consultant* hardship and grants permission for the termination, or

the termination is otherwise permitted pursuant to s. 233B of the Insolvency Act 1986 as amended by the Corporate Insolvency and Governance Act 2020.’

**Z35** Clause 91.7: Delete and replace with:

‘The *Client* may terminate if a Force Majeure Event occurs (R21).’

**Z36 Clause 91.8 Delete and replace with:**

**‘**The *Client* may terminate with immediate effect upon written notice to the *Consultant* if at any time after entry into this contract the Consultant or any of its officers, employees, agents, advisers, suppliers, service providers or other persons associated with it:

(a) breaches clause 17.1;

(b) is unable to repeat the warranties set out in clause 17.3;

(c) pleads guilty to or is convicted of any offence involving bribery or corruption, fraud or dishonesty;

(d) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; and/or

(e) is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts **(R22)’**

**Z37** Add new clauses 91.9 – 91.10 as follows:

‘91.9 The *Client* may terminate the contract at will at any time by giving written notice to the *Consultant*. Any such termination will not give rise to a Compensation Event, claims for loss of profit or any indirect costs. The *Consultant* shall only be entitled to its reasonable proven direct costs of Providing the Services before the date of termination.

91.10 The *Consultant*’s right to terminate for reasons R16, R17, R19 or R20 does not arise where the *Client* is subject to any of the events listed in R1–R10 on or before the date the termination takes effect and the right to terminate had arisen before the *Client* is insolvent, in each case unless the exceptions in 91.1A apply’

**Z38**X8: Delete and replace with the following:

X8.1 The *Consultant* shall, as a condition precedent to any obligation on the part of the *Client* to make any payment (or further payment) under this contract, within 14 days of a written request from the *Client* so to do, enter into collateral warranties under seal with:

(a) BBSRC; and/or

(b) any organisation providing finance in connection with the Works (or any part thereof);

in each case in the form of the warranty annexed at Appendix 1 with only such amendments as the *Client* may approve.

X8.2 The *Consultant* shall procure that each Subconsultant appointed with material design responsibility shall, upon request from the *Client*, enter into a collateral warranty with

(a) BBSRC;

(b) the *Client*; and/or

(c) any organisation providing finance in connection with the Works (or any part thereof);

in each case in the form of the warranty annexed at Appendix 2 with only such amendments as the *Client* may approve.’

**Z39** Y2.2: Delete paragraph 3 of Y2.2 and replace with the following:

‘A *Consultant’s* invoice which is submitted after its assessment date is deemed to have been received by the *Client* on the next assessment date.’