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Pre-Construction Services Agreement (General Contractor), 2016 Edition

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(General Contractor) 2016

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PRE-CONSTRUCTION SERVICES AGREEMENT

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Pre-Construction Services Agreement (General Conlractor), 2016 Edition

Pre-Construction Services Agreement (General Contractor) (PCSA)

Appropriate

* for the supply of pre-construction services by a Contractor selected under a two-stage tendering procedure; and

#### where the main contract is to be the JCT Standard Building Contract, Design and Bu Id Contract, Major Project Construction Contract, Intermediate Building Contract or Intermediate Building Contract with contractor s design, 2016 Edition.

Can be used:

* whether or not the Contractor is to be responsible for any design work,
* where there is to be novation to the Contractor of any specialist sub-contract(s) or supply contract(s) or (in the case of a Design and Build Contract or Major Project Construction Contract) any consultancy agreement(s) ;
* by both private and local authority employers; and
* (with minor adaptation) in a JCT Construction Management procurement, for the provision of pre-construction services by prospective Trade Contractors.

Not suitable for use:

* between the Employer and specialist sub-contractors (except as prospective Trade Contractors in a JCT Construction Management procurement - but see also paragraph 7 of the Guidance Notes);
* between a Contractor and a sub-contractor; or
* in conjunction with the JCT Management Building Contract.

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For details of 2016 Edition changes, see the Guidance Notes and the Tracked Change Document. [www.jctltd.co.uk](http://www.jctltd.co.uk/)

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Pre-Construction Services Agreement

This Agreement

is made the ! ! “ o^^-'“

## BeMeen

### The Employer

###### North Bristol NHS Trust

of Southmead Hospital, Southmead Road, Westbury-on-Trym, Bristol, BS10 SNB

And

### The Contractor

Darwin Group Limited

###### Place of incorporation: England and Wales

(Company No. 05395228)"'

whose registered office is at London House, Shawbury Business Park, Shrewsbury Shropshire, SY4 4EA

1. Where the Employee or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of anolher country, delele the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

As to execution by foreign companies and matters of jurisdiction, see the Guidance Notes.

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# Recitals

## Whereas

##### First

the Employer wishes to have the following work carried out:

Design and Construction of an Elective Centre on the Southmead Hospital site.

##### at

Southmead Hospital Southmead Road Westbury-on-Trym Bristol

BS10 SNB (’the Project’),

as described in greater detail in the document(s) identified in the Particulars, that work to be carried out under a main contract (’the Main Contract’) provisional details of which are also given or referred to in the Particulars ;

###### Second

the Employer’s Agent for the pre-construction phase of the Project (’the Pre-Construction Period’) is WT Partnership

of

2nd Floor, The Barwick, Barwick Street, Birmingham B3 2NT

or such other person as the Employer shall nominate and notify to the Contractor,

Third

###### The Principal Designer for the purposes of the CDM Regulations is"’

Darwin Group Limited

of

###### London House Shawbury Business Park, Shrewsbury SY4 4EA

or such replacement *as* the EmpJoyer at any time appoints to fuJfil that role.

Foudh

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

1. ]nSert the name of the Principal Designer in the Third Recital and that of the Principal Contractor in Ihe fourth Recital (if thai is to be a person other than Ihe Contractor) if appointed or, where appropriate, amend to stale whom the Employer intends to appoint.

Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement jo appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. The appointmenls must be made as soon as is practicable, and, in any event, before the construction phase begins. For these purposes, the term ’contractor’ is broadly defined by lhe regulations and treats the Contractor’s sub-contractors as separate contractors.

#### Fifth

###### prior to the execution of this Agreement, the Contractor has submitted to the Employer a first stage tender identified in the Particulars”’, on the Dasis of which the Employer has requested that, for the fee specified in Annex A (’the Fee’) and other payments in accordance with this Agreement, the Contractor should during the Pre-Construction Period provide the pre-construction services listed in Annex B;

Sixth

###### it is intended that work on the Construction Phase of the Project shall commence on site on July 2023 (’the Date of Possession’) with a duration initially estimated at 46 weeks weeks and that for the purposes of the Main Contract, not later than 16 weeks weeks prior to the Date of Possession:

the Contractor should submit his Second Stage Tender and, where applicable, Contractor’s Proposals, and

the Contract Sum should be agreed between the Parties

###### in conformity with the requirements (the ’Second Stage Tender Requirements’) identified in the Particulars;

1. Delete as appropriate.

Now it is hereby agreed as follows

Section 1

Definitions and Interpretation

#### Definitions

###### In addition to the capitalised terms defined above, the following expressions shall unless the context otherwise requires have the meanings stated or referred to below:

Additional Payments: see clause 6.1.3

**Additional** Services: see clause 5.1.

###### BIM Protocol: (where applicable) the document identified as such in the Particulars (against the reference to clause 1.1).

CDM Regulations: the Construction (Design and Management) Regulations 2015.

###### Contractor's Information: Information supplied or to be supplied by the Contractor under this Agreement whether under the BIM Protocol or otherwise.

Contractor’s Key Personnel: the persons identified as such in the Particulars (against the reference to clause 2.1.2) or any replacements appointed in accordance with clause 4.2.2.

Contractor’s Project **Staff:** the Contractor’s Representative, the Contractor’s Key Personnel and his other staff engaged on the Project, as identified in paragraph 3 of Annex A.

###### Contractor's Representative: the person identified as such in the Particulars (against the reference to clause 2.1.2) or any replacement appointed in accordance with clause 4.2.2.

Cost Plan: the plan identified as such in the Particulars (against the reference to clause 2.1), as amended/revised from time to time.

**Employ** er's Requirements: the document identified as such in the Particulars (against the reference to **clause** 2.1).

###### Information: all information, including designs, drawings, specifications, programmes, schedules and other material supplied or to be supplied by or on behalf of any member of the Project Team for the purposes of the Project, whether n hard copy form or stored in any electronic or other medium.

Interest Rate: a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Agreement Decomes overdue.

Joint Fire Code: the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, pubI shed by Construction Industry Publications Ltd and the Fire Protection Association, as amended/revised from time to time.

**Local or Public Authority: a** body that is a ’contracting authority’ as defined by the PC Regulations. Party: the Employer or the Contractor.

**PC Regulations:** the Public Contracts Regulations 2015.

#### Pre-Construction Services: the services listed in Annex B and any Additional Services instructed under clause 5.1.

Programme: the document identified as such in the **Particulars** (against the reference to clause 2.1), as amended/revised from time to time.

###### Project Team: the Contractor and the other persons listed in the Particulars (against the reference to clause 2.1), together with any other members from time to time nominated by the Employer.

Reimbursable Expenses: see Annex A.

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#### Scheme: Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Project or with whose systems the Project is to be connected.

Third Party Agreements: any agreement or licence between the Employer and any person other than members of the Project Team that relates to the Project, the Project site or the use of it and of which the relevant details have been given to the Contractor (including, without limitation, agreements with actual or prospective purchasers, tenants and funders and those relating to planning, highways, rights of way, light, oversailing or other easements) as listed in or by the Particulars (by reference to clause 2.1).

VAT: Value Added Tax.

* 1. Headings, references to persons, legislation etc.
		1. Nothing in the documents identified in the Particulars shall override or modify the other provisions of this Agreement.
		2. In this Agreement, unless the context otherwise requires:
			1. the headings, notes and tootnotes are included for convenience only and shall not affect the interpretation of this Agreement;
			2. the singular includes the plural and vice versa,
	2. 2.3 a gender includes any other gender;
		+ 1. a reference to a ’person’ includes any individual, firm, partnership, company and

#### any other body corporate;

* + - 1. a reference to a statute, statutory instrument or other subordinate legislation (’legislation’) is to such legislation as amended and in force from time to time, including any legislation which re-en acts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom , and
			2. references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information under this Agreement, be deemed to include information in a form or medium conforming to that protocol.
	1. Contracts (Rights of Third Parties) Act 1999

Nothing in this Agreement confers or is intended to confer any right to en force any of its terms on any petson who is not a party to it.

#### Notices and other communications

* + 1. Any notice or instruction under this Agreement shall be in writing.

14.2 Any notice required to be given in accordance with this clause 1.4.2 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post, in which case it shall be deemed to be given on delivery.

1.4.3 Any other communications may be sent by such other means as the Parties shall agree from time to time.

##### Applicable law

This Agreement shall be governed by and construed in accordance with the law of England."’

1. Where the Parties do not wish the law applicable (o this Agreement to be the law of England appropriate amendments should be made.

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re-Construclion Services Agreement (General Contractor), 2016 Edition

# Section 2 Contractor’s General Obligations

* 1. Perform ing the Services

The Contractor shall perform the Pre-Construction Services in accordance with the Employer’s Requirements, the Statutory Requirements and the Programme and with due regard to the Cost Plan and any Third Party Agreements. In performing those services the Contractor shall.

2. exercise the level of skill, care and diligence reasonably to be expecteo of a contractor experienced in projects of similar size, scope and complexity;

* + 1. ensure that, unless otherwise agreed with the Employer, Contractor s Key Personnel shall fulfil their identified roles and that they and the Contractor’s Representative (or competent deputies) are at all reasonable times available for communication and consultation with the Employer and Project Team; and
		2. duly consult with members of his supply chain and, at the Employer’s request, endeavour so far as practicable to ensure the attendance at relevant Project meetings of those suppliers whose attendance is necessary or desirable.
	1. Compliance with instructions

The Contractor shall comply with all lawful instructions from the Employer or Employer’s Agent as to all m atters within the scope of the Pre-Construction Services and the Contractor’s competence. For these purposes:

* + 1. instructions given to the Contractor’s Representative shall be deemed to have been issued to the Contractor;
		2. if the Contractor considers that, irrespective of any additional time or financial adjustment under section 5, an instruction would compromise or materially and adversely affect the Project, performance of the Pre-Construction Services or compliance with the Statutory Requirements, he shall notify the Employer in write ng and the Parties shall promptly meet with a view to immediate resolution of the m atter, consulting as necessary with other relevant members of the Project Team.
	1. Co-operation and supply of Information

The Contractor shall liaise and co-operate fully with other members of the Project Team, both directly and through Project Team meetings, and in accordance both with any identified framework agreements and with such procedures as the Employer may establish from time to time. In particular (but without limitation) the Contractor shall

* + 1. supply in accordance with the Programme all the Contractor’s Information required as part of the Pre-Construction Services, together with any other Information reasonably requested by the Employer or Project Team;
		2. notify other members of the Project Team in due time of any requirements that the Contractor may have for Information from them that is not provided for in the Programme or other agreed information release schedule;
		3. promptly notify the Employer’s Agent of any inconsistency or divergence (actual or prospective) of which he becomes aware in relation to the Employer's Requirements or other documents referred to in clause 2.1 and of any delay or impediment in performing the Pre-Construction Services; and
		4. promptly notify those to whom the Contractor has supplied Contractor’s Information of any changes to it, and of any inaccuracies or inconsistencies in it of which he becomes aware, together with any necessary corrections, and similarly notify those from whom he has received Information if he becomes aware of inaccuracies or inconsistencies in the items received.

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* 1. Specification of materials

###### Unless required by this Agreement or otherwise authorised in writing by the Employer, the Contractor will not select or recommend the use of materials for the Project other than in accordance with the guidelines contained in the edition of ’Good Practice in the Selection of Construction Materials’ (British Council for Offices) current at the date of this Agreement.

* 1. Joint Fire Code

Insofar as the Pre-Construction Services concern m atters within the Joint Fire Code, the Contractor

###### shall observe its provisions.

* 1. Sub•contracting

The Contractor shall not sub-contract the performance of any of the Pre-Construction Services without the Employer’s prior consent. The Contractor shall remain fully responsible for any work sub- contracted.

* 1. Second Stage Tender

#### The Contractor shall duly prepare and submit his Second Stage Tender in accordance with the Second Stage Tender Requirements and (unless otherwise agreed) within the time speckled in the Sixth Recital.

###### The Employer is under no obligation to accept any Second Stage Tender and, unless the Parties otherwise agree in writing, no binding contract in respect of the 6onstruction Phase of the Project shall come into existence unless and until the Parties execute and deliver the Main Contract.

* 1. Liability for design work's’

Mere the Pre-Construction Services include des'9n work, the Contractor shall unless otherwise specifically provided in Annex B have no Jiability of any kind to the Employer under this Agreement for that design work, whether in contract, negligence, breach of duty or otherwise (other than any personal injury or death arising from that work), unless and until the Main Contract is entered into by the Parties, upon entry into which the Contractor’s obligations and liability in respect of that design work shall be the same as if it formed part of the design work undertaken by him under the Main Contract and shall be sub ect to any relevant exclusions or limitations of liability contained in that contract.

1. See the Guidance Notes.

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# Section 3 Employer’s General Obligations

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* 1. Supply of Employer information etc.

The Employer shalJ in relation to the Pre-Construction Services duly comply with applicable CDM Regulations and provide the Contractor with such information in his possession or control as is relevant to the Pre-Construction Services and compliance with the Statutory Requirements, that information to be supplied in accordance with the Programme or promptly upon the Contractor’s reasonable request. In addition the Employer shall promptly notify the Contractor of

* + 1. additions to or other changes in the Project Team, and
		2. any necessary updates or corrections to any information supplied under this clause 3.1.
	1. Decisions, approvals and instructions

Decisions, approvals and instructions reasonably required by the Contractor shall be made or given by the Employer or by the Employer’s Agent within a reasonaole time of the Contractor’s request.

* 1. Project Team - delay or default

If the Contractor is at any time materially delayed or hindered in performing the Pre-Construction Services by any delay or default on the part of any other member of the Project Team and notifies the Employer with relevant particulars , the Employer shall exercise his powers to ensure, as far as is reasonably practicable, that the delay or default is promptly corrected.

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**Section 4 Representatives and Contractor's Key Personnel**

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* 1. Employer’s Agent

The Employer's Agent shall be the authorised recipient for all notices to and other communications with the Employer under this Agreement and, subject onIy to any limits on his authority as are from time to time notified in writing to the C ontractor, shall otherwise have full power and authority to represent the Employer. If at any time the appointee ceases to hold the post, the Employer shall promptly appoint a replacement and notify the Contractor.

* 1. Contractor's Representative and Contractor's Key Personnel - changes
		1. The Contractor shall not remove the Contractor’s Representative or any of the Contractor’s Key Personnel from their post or replace such person without the Employer’s prior approval of the removal or of the replacement appointee. Where practicable , the Contractor shall arrange an appropriate handover period. The Employer shall not unreasonably withhold *or* delay his approval.
		2. I f the Contractor’s Representative or any of the Contractor’s Key Personnel ceases for any reason to hold their post, the Contractor shall, subject to such approval, promptly appoint a replacement.

#### Removal and replacement of Contractor appointees

After consultation with the Contractor, the Employer m ay require the removal of the Contractor’s Representative, of any of the Contractor’s Key Personnel or of any other person engaged in the Pre- Construction Services if, in the Employer’s reasonable opinion, their performance or conduct is or has been unsatisfactory.

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**Section 5 Additional Services, Fee Adjustment etc.**

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* 1. Additional Services

The Employer may instruct the Contractor to perform services which are additional to or represent an a|teration in the Pre-Construction Services as then specified (including advice in relation to any changes to the definitive design) (’Additional Services’) to the extent that they are within the scope of the Project and the Contractor’s competence. The Contractor shall promptly notify the Employer of any Additional Service that he considers necessary or desirable.

* 1. C**hanges, delaying** events etc.

The Fee and/or other amounts pay able under this Agreement shall be adjusted for additional work and for any additional costs that the Contractor incurs as a result of:

* + 1. instructions for any Additional Services that cannot readily be undertaken by the Contractor’s Project Staff in the ordinary course and within the Programme timetable, or
		2. any event or cause related to the Project that is beyond the Contractor’s control and materially alters, delays, prolongs or disrupts the performance of the Pre-Construction Services, including delay in finalisation of the Employer’s design or any default on the part of the Employer or any member of the Project Team.
	1. Notification by the Contractor

If the Contractor wishes to claim an adjustment of the Fee and/or any addit onaI payment or reimbursement in respect of any Additional Services or of any event or cause within clause 5.2 and/or to claim any additional time, he shall promptly notify the Employer to that effect either upon receipt of the instruction (and before implementing it, except in the case of an emergency) or upon the occurrence of the relevant event or cause, as the case may be. Such notification shall include an estimate of any additional time required, cost and/or (where appropriate) loss and/or expense, which, in the case of cost, shall be consistent with any rates set out in Annex A, so far as properly applicable.

#### Adjustment of Fee or additional payment and time

Where following notification by the Contractor under clause 5.3 the Employer confirms his instruction for any Additional Services or the Contractor is able to demonstrate loss and/or expense arising from an event or cause within clause 5.2.2, the addition to the Fee or other payment shall be such amount as is agreed between the Parties or, in default of such agreement, fairly valued by or on behalf of the Employer, based in the case of Additional Services on the net additional time spent in performing them and on any rele vant rates given in Annex A. Where relevant a fair adjustment of time shall be made.

# Section 6 Payment

**6,1 Amounts payable**

The Employer shall in accordance with Annex A and the following provisions of this section pay the Contractor:

6.1.1 the Fee;

6.1.2 Reimbursable Expenses;

6.1.3 any additional amounts payable pursuant to section 5 that are not included by way of adjustment of the Fee ('Additional Payments'),

together with any VAT properly payable in respect of such sums.

#### Contractor's payment applications

The Contractor may make payment applications as at the application dates or stages/milestones specified in Annex A. Each such application shall state the sum the Contractor considers due to him at that date or stage/milestone, including the amount of any Reimbursable Expenses paid or incurred in the period preceding the specified date or stage/milestone and the amount of any Additional Payment, so far as it relates to that period and is then due and payable, and shall set out the basis on which that sum has been calculated. The application shall be accompanied by such documents, vouchers and receipts as are specified in paragraph 6 of Annex A or are otherwise reasonably required by the Employer.

#### Due date and final date for payment

* + 1. The due date for payment of any amount payable under section 6 shall be the application date or stage/milestone or, if later, the date of receipt of the Contractor's payment application by the Employer.
		2. The final date for payment shall be 14 days from the due date.

#### Payment - amount and notices

* + 1. Not later than 5 days after the due date the Employer shall give a payment notice to the Contractor, stating the sum he considers to be due from him calculated in accordance with clause 6.1 and the basis on which that sum has been calculated.
		2. Subject to any notice given under clause 6.4.3, the Employer shall no later than the final date for payment pay the Contractor the amount specified in the payment notice under clause 6.4.1 or, if that notice is not given in accordance with that clause, the amount stated as due in the Contractor's payment application.
		3. If the Employer intends to pay less than the sum stated as due from him in his payment notice or, where applicable, in the Contractor's payment application, he shall not later than 5 days before the final date for payment give notice to the Contractor of that intention stating the sum that he considers to be due to the Contractor at the date he gives notice under this clause 6.4.3 and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
		4. A notice to be given by the Employer under clause 6.4.1 or 6.4.3 may be given on his behalf by the Employer's Agent or by any other person who the Employer notifies the Contractor as being authorised to do so.
		5. In relation to the requirements for the giving of notices under this clause 6.4, it is immaterial that the amount then considered to be due may be zero.

#### Interest

If the Employer fails to pay a sum, or any part of it, due to the Contractor under this Agreement by its

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final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Any such unpaid amount and any interest under this clause 6.5 shall be recoverable as a debt.

#### Contractor's right of suspension

* + 1. If the Employer fails to pay a sum payable to the Contractor in accordance with clause 6.4 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of the Pre-Construction Services and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full. Where payment is made in full the Contractor shall notify the Employer of the resumption of those services.
		2. Where the Contractor exercises his right of suspension under clause 6.6.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
		3. Applications in respect of any such costs and expenses shall be made to the Employer's Agent and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

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# Section 7 Insurance

#### Professional Indemnity and Public Liability insurance

Where stated as required in the Particulars, the Contractor shall during the Pre-Construction Period maintain with reputable insurers that have a place of business in the United Kingdom:

7.1.1 Professional Indemnity insurance with limits of indemnity of the types and in amounts not less than those stated in the Particulars; and

7.1.2 Public Liability insurance in respect of death and personal injury and injury or damage to property in a sum not less than the amount stated in the Particulars for any one occurrence or series of occurrences arising out of one event,

provided in the case of any renewal of Professional Indemnity insurance that it remains available at commercially reasonable rates.

#### Evidence of insurance

When reasonably requested by the Employer, the Contractor shall send to the Employer appropriate documentary evidence that such insurances have been effected and/or are being maintained.

#### Non-availability of Professional Indemnity insurance

If Professional Indemnity insurance is required but as at renewal has ceased to be available at commercially reasonable rates, the Contractor shall promptly notify the Employer in order that they may discuss the means of best protecting their respective positions.

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# Section 8 Use of Contractor's Information, Confidentiality etc.

* 1. **Use of the Contractor's Information**
		1. Unless otherwise agreed in writing in relation to any specific items, all rights including (without limitation) copyright in the Contractor's Information shall remain vested in the Contractor.
		2. Subject to all monies due and payable under this Agreement to the Contractor having been paid, the Contractor grants to the Employer an irrevocable royalty-free licence to copy and use the Contractor's Information and to reproduce that information for the execution and completion of the Project and the subsequent maintenance, letting, occupation, management, sale, advertisement, alteration, refurbishment, reinstatement and repair of it.
		3. The licence referred to in clause 8.1.2:
			1. shall enable the Employer to copy and use the Contractor's Information for an extension of the Project, but not to reproduce any designs comprised in that information for any such extension;
			2. includes the right to grant sub-licences; and
			3. shall continue in force notwithstanding the expiry or termination of the Contractor's employment under this Agreement.
		4. The Contractor's liability for the consequences of any use of the Contractor's Information by the Employer or any other person shall be subject to clause 2.8 and he shall not in any event be liable for any use for any purpose other than that for which that information was prepared.
	2. **Confidentiality and publicity**

The Contractor shall during the continuance of the Project keep confidential and use or disclose only as necessary for the purposes of the Project any information supplied to him that relates to the Employer or the Project. That obligation shall not apply to any information that is in or comes into the public domain (other than as a result of the Contractor's breach) or prevent any disclosure required by law. The Employer's consent shall be required to any publication relating to the Project, but shall not be unreasonably withheld.

* 1. **Transparency**

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Agreement is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Agreement:

* + 1. the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
		2. the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Agreement.

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# Section 9 Assignment and Novation

#### Restrictions on assignment

Neither the Employer nor the Contractor shall without the written consent of the other assign this Agreement or any rights thereunder.

#### Novation

It is nevertheless agreed that:

* + 1. where the Main Contract is a JCT Design and Build Contract or Major Project Construction Contract 2016 and this clause 9.2 applies in respect of the consultancy agreement or appointment for the Project of any member of the Consultant Team identified by name in the Particulars; or
		2. (in the case of any form of Main Contract) where this clause 9.2 applies in respect of a contract or order placed with any specialist or supplier identified by name in the Particulars, or one with whom it is otherwise agreed in writing by the Parties that a contract or order should be placed in advance of the Main Contract, and where the material terms of the contract or order and its intended novation under this clause 9.2 have been agreed by the Parties,

the Contractor, on or after execution and delivery of the Main Contract, shall promptly on notice from the Employer given in accordance with clause 1.4.2 enter into a novation agreement with such consultant, specialist or supplier substantially in the form (or appropriate form) of Novation Agreement specified in the Particulars or otherwise agreed.161

**[6)** As to forms of Novation Agreement, see the Guidance Notes.

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# Section 10 Suspension by the Employer, Termination, Adjudication and the PC Regulations

#### Suspension by the Employer

The Employer may at any time on not less than 14 days' notice to the Contractor given in accordance with clause 1.4.2 require him to suspend performance of the whole or any part of the Pre-Construction Services. Following the issue of a notice under this clause 10.1, the Employer shall pay the Contractor in accordance with section 6:

* + 1. any accrued instalments of the Fee and of any Additional Payment then unpaid;
		2. a fair proportion of the next instalment in each case, having regard to the services performed (or to be performed to the effective date of suspension) since the last instalment fell due;
		3. all Reimbursable Expenses accrued; and
		4. any demobilisation costs properly and necessarily incurred by the Contractor in complying with the notice,

together with any VAT properly payable.

#### Remobilisation

The Employer may at any time within 6 months (or such other period as is specified in the Particulars) following the notice under clause 10.1 instruct the Contractor to recommence the performance of the suspended services. The Contractor shall comply with any such instruction as soon as reasonably practicable and the Employer shall pay the Contractor any remobilisation costs properly and necessarily incurred by him as a result.

#### Notification of costs

The Contractor shall:

* + 1. promptly notify the Employer of the amount of any demobilisation and remobilisation costs which he intends to claim;
		2. provide the Employer with such supporting documents as he may reasonably require to verify the amount claimed; and
		3. use all reasonable endeavours to minimise those costs.

#### Extended suspension - termination by the Contractor

In the case of a suspension by the Employer of all or a substantial proportion of the Pre-Construction Services for any reason, where the Employer has not within the period referred to in clause 10.2 instructed the Contractor to recommence the performance of all or substantially all those services that remain to be performed, the Contractor, after giving to the Employer not less than 14 days' prior notice of his intention to do so, may give notice to the Employer terminating the Contractor's employment under this Agreement. Each notice under this clause 10.4 shall be given in accordance with clause

1.4.2 and, if notice of termination is given, clause 10.6 shall apply.

#### Termination at will or for default/insolvency or under regulation 73(1) of the PC Regulations

10.5.1

10.5.2

10.5.3

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The Employer may at any time give the Contractor not less than 14 days' notice terminating his employment.

If either Party is insolvent, the other may give notice to that Party terminating the Contractor's employment with immediate effect.

If either Party ('the defaulting Party') commits a material breach of his obligations, the other Party may give notice to the defaulting Party specifying the breach and requiring its remedy. If the defaulting Party fails to comply with the notice within 7 days, the other Party

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may give notice to the defaulting Party terminating the Contractor's employment with immediate effect.

* + 1. Where this Agreement is one to which regulation 73(1) of the PC Regulations applies and the circumstances set out in regulation 73(1)(a}, 73(1)(b) or 73(1}(c) of those regulations apply, the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment.
		2. Each notice referred to in this clause 10.5 shall be given in accordance with clause 1.4.2.

#### Consequences of termination

* + 1. Following the issue of a notice of termination under clause 10.4 or 10.5:
			1. the Parties shall consult and take all reasonable steps to bring the Pre­ Construction Services to an orderly close; and
			2. the Contractor shall within 14 days deliver to the Employer copies of the Contractor's Information (including any material prepared prior to the date of termination and not previously delivered to the Employer}, provided that in the case of termination under clause 10.4 or by the Employer under clause 10.5.4 (regulation 73(1)(a) or 73(1)(c)) or where the Contractor terminates under clause 10.5, the Contractor shall be obliged to do so only against the Employer's payment of any amount due under clause 10.6.2.
		2. The amount due on termination from the Employer to the Contractor or (if a negative amount) from the Contractor to the Employer shall be the aggregate of:
			1. an appropriate proportion of the Fee, determined in accordance with Annex A, and of any Additional Payments;
			2. any Reimbursable Expenses; and
			3. (where the termination is not due to the Contractor's insolvency or material breach or under clause 10.5.4 (regulation 73(1)(b))) any demobilisation and other costs reasonably and properly incurred by the Contractor as a result of the termination,

less amounts previously paid to the Contractor and less (where the termination is due to the Contractor's insolvency or material breach or under clause 10.5.4 (regulation 73(1)(b))) any additional costs reasonably and properly incurred by the Employer in procuring the completion of the Pre-Construction Services by others, but together in each case with any VAT properly payable.

* + 1. The final date for payment of the amount properly due on termination shall be 28 days from the date of submission of the Contractor's invoice or (where an amount is due to the Employer) the Employer's statement.
		2. Except as set out in clause 10.6.2, neither Party shall be liable to the other for any loss of profit, loss of contracts, or any other losses, costs or expenses that arise out of the termination.
		3. Termination of the Contractor's employment shall not affect the accrued rights or remedies of either Party.

#### Adjudication

If a dispute or difference arises under this Agreement which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Particulars.

#### The Public Contracts Regulations 2015

Where the Employer is a Local or Public Authority and this Agreement is subject to the PC RegulationsC7J:

1. An explanatory summary of those provisions in the PC Regulations that are reflected in this Agreement is contained in the Guidance Notes.

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* + 1. where regulation 113 of the PC Regulations applies to this Agreement, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
		2. the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
			1. to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
			2. to include in any sub-subcontract he in turn enters into provisions to the same

*effect* as required under clause 10.8.2.1;

* + - 1. the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
			2. in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

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# The Particulars

***Note: An asterisk* • *indicates where selection has been or should have been made.***

## Documents and Listings

The following terms used in the Agreement refer to (or are defined by) the following documents and listings (as altered and updated from time to time in accordance with this Agreement). *(Where the relevant document(s) or listing(s) form an Annex to this Agreement insert a reference to that Annex; in other cases, give the document title, reference number and date or other identifier (or, where convenient and practicable, insert details here).)*

**First Recital**

Project

*(detailed description)*

Bid Pack

Attachment 3 - Statement of Requirements

Contract Reference: CCBO22A01 Provision of Modular Building for the Elective Care Project

Main Contract

*(type. conditions. amendments and other details of the proposed contract)*

DB 2016 JCT: Design and Build Contract 2016

**Fifth Recital**

First stage tender

Bid Pack

Attachment 1 - About the Procurement

Contract Reference: CCBO22A01 Provision of Modular Building for the Elective Care Project

**Sixth Recital**

Second Stage Tender Requirements

*(Identify the Instructions to renderers and/or other relevant document(s).)*

Bid Pack Attachment 3 - Statement of Requirements

Contract Reference: CCBO22A01 Provision of Modular Building for the Elective Care Project

#### 1.1

**BIM** Protocol

*(Not applicable unless it is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated. and the identified protocol is included in the Employer's Requirements.)*

\* does not apply

**2.1**

Cost Plan

CCB022A01 Attachment 4 Pricing V1.2

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Employer's Requirements

BDP Drawings as Appendix A

Programme

WT Programme as Appendix B

Project Team

*{Name} [Function]*

WT Partnership Hoare Lea Alder King

Third Party Agreements

Not applicable

PM EA& QS

MEP Peer Review & BREEAM Planning Advice

### 2.1.2

Contractor's Key Personnel

*[Name] [Function]*

As per Darwin Organogram Appendix C

Contractor's Representative

*(as at the date of this Agreement)*

 **REDACTED TEXT under FOIA Section 0, Personal Information**

As per Darwin Organogram Appendix C

## Insurances

### 7.1.1

Professional Indemnity insurance - level of cover

*(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)*

Amount of indemnity required

* is the aggregate amount for any one period of insurance

*(If no amount is stated, insurance under clause* 7.*1.1 shall not be required.)*

and is

£10,000,000

Professional Indemnity insurance - cover for pollution and contamination claims

*(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)*

* is not required

### 7.1.2

Public Liability insurance

*(If neither entry is deleted or cover level is not stated, such insurance is not required.)*

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* is required, with a limit of indemnity of

£10,000,000

## Novation

**9.2.1**

Consultant Team members to whom clause 9.2 applies

*[Name] [Date of Appointment/Consultancy Agreement]*

**9.2.2**

Sub-Contractors/Suppliers to whom clause 9.2 applies

*[Name] [Particulars of (Sub-)Contract/Order]*

**9.2 {hanging paragraph)**

Where clause 9.2 applies, the form(s) of Novation Agreement and additional terms (if any) applicable to such novation(s)181

*(Identify the form(s) and terms or the document(s) in which these are set out.)*

* are
* are set out in

## Suspension

**10.2**

Period

*(if other than 6 months)*

## Adjudication

**10.7**

Adjudication191

Nominating body - where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)l1•1

1. Where the relevant form(s) are included as an Annex to this Agreement (as is recommended), it is sufficient to refer to that Annex.
2. The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body.

The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

**(1OJ** Delete all but one of the nominating bodies asterisked.

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*(Where an Adjudicator is not named and* a *nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)*

* The Royal Institution of Chartered Surveyors

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**Attestation**

*Execution under* hand111

**As witness**

the hands of the Parties

or their duly authorised representatives

Signed by or on behalf of the Employer **REDACTED TEXT under FOIA Section 40, Personal Information**

in the presence of **REDACTED TEXT under FOIA Section 40, Personal Information**

Signed by or on behalf of the Contractor **REDACTED TEXT under FOIA Section 40, Personal Information**

in the presence of:

 **REDACTED TEXT under FOIA Section 40, Personal Information**

**(11]** This Agreement for the reasons given in the Guidance Notes only provides for execution under hand.

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**Annex A Fee, Rates, Additional Payments and Reimbursable Expenses**

***Note: An asterisk* • *indicates where selection has been or should have been made.***

#### The Fee

\* The Fee is the fixed sum of £811,115

#### Payment of Fee etc.

The Fee shall become due and payable in accordance with section 6 at the following dates or stages/ milestones and in the following amounts or percentages1121:

*[Application date or stage/milestone at which due]*

*[Percentage of Fee or amount]*

#### Contractor's Project Staff - Applicable rates

The \*daily/weekly all-in rate for any necessary extension of Pre-Construction Services work (and for the purposes of any apportionment under clause 10.6.2.1) is

£ --- based on the Contractor's Project Staff of

*[No.] [Person(s)/Grade] [Rate per hour/day]*

As Per Darwin Pricing Appendix D

As Per Darwin Pricing Appendix D

£As Per Darwin Pricing Appendix D per As Per Darwin Pricing Appendix D

#### Additional Services

The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed (or events or causes within clause 5.2).

#### Reimbursable Expenses

Subject to their being properly and necessarily incurred for the purposes of the Project, the following expenses/disbursements of the Contractor shall be reimbursable by the Employer up to any maximum amount or rate specified below or as otherwise agreed in writing from time to time:

*[Type] [Maximum amount/rate]*

Not applicable Not applicable

Save as otherwise agreed in writing, all other expenses and disbursements shall be deemed to be included in the Fee.

#### Supporting documents

Each application that includes any of the following types of charge or expenditure should be accompanied by the following documents: