

2021

Deed of Agreement incorporating NEC4 Engineering and Construction  
Contract Option A: Priced Contract with Activity Schedule

Relating to the Cat D Prison Expansion Programme (HMP Sudbury)

The Lord Chancellor and Secretary of State for Justice <sup>(1)</sup> and  
Extraspace Modular (UK) Limited t/a ESS Modular <sup>(2)</sup>

# AGREEMENT

Dated

2021

## BETWEEN

- (1) The Lord Chancellor and Secretary of State for Justice of 102 Petty France, Westminster, London SW1H 9AJ, acting through the Ministry of Justice (MoJ) and its executive agencies (the **Client** which expression includes permitted assignees and successors in title)
- (2) Extraspace Modular (UK) Limited t/a ESS Modular (No. NI050211) whose registered office is 1<sup>st</sup> Floor, Unit 1, Belmont Office Park, 232 Belmont Road, Belfast, Northern Ireland, BT4 2AW (the **Contractor**)

## BACKGROUND

- (A) The *Client* wishes to appoint the *Contractor* to design, carry out and complete the *works* at the Site.
- (B) The *Contractor* has agreed to Provide the Works and perform its obligations in accordance with the terms of this contract.
- (C) The *Client* and the *Contractor* have agreed to incorporate and amend the NEC4 Engineering and Construction Contract Option A June 2017 (with amendments January 2019) as set out in this Agreement and contract.

## AGREED TERMS

1. This contract incorporates the NEC4 Engineering and Construction Contract Option A June 2017 (with amendments January 2019), except that:
  - 1.1. the Contract Data are replaced in their entirety by the Contract Data attached to this Agreement as updated if a notice to proceed is issued in accordance with clause X22.5;
  - 1.2. the core clauses are amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Annexes attached to this Agreement; and
  - 1.3. the clauses for Main and Secondary Options are as indicated in the Contract Data attached to this Agreement and amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Annexes attached to this Agreement.
2. In this contract, words and expressions have the same meanings as are respectively assigned to them in the NEC4 Engineering and Construction Contract Option A June 2017 (with amendments January 2019), as amended as provided in this Agreement, the Contract Data and the Option Z Schedule attached to this Agreement.
3. The following documents form part of this contract:
  - 3.1. this Agreement and the Contract Data, the Option Z Schedule and the Annexes attached to this Agreement;
  - 3.2. the NEC4 Engineering and Construction Contract Option A June 2017 (with amendments January 2019) as amended by this Agreement, the Contract Data, the Option Z Schedule and the Annexes attached to this Agreement
  - 3.3. the Scope;

3.4. the BIM Protocol; and

3.5. any other documents incorporated by or referred to in any of the above documents.

4. In consideration of the payments to be made by the *Client* to the *Contractor* as provided for in this contract, the *Contractor* hereby agrees with the *Client* to design, carry out and complete the *works* and perform its obligations under this contract, all in accordance with the terms of this contract.
5. The *Client* hereby agrees to pay the *Contractor* in consideration of the design, carrying out and completion of the *works* and performance of the *Contractor's* obligations under this contract, all in accordance with the terms of this contract, such amounts as become payable under the provisions of this contract at the times and in the manner prescribed by this contract.
6. This contract may be executed by the Parties in separate counterparts and any single counterpart or set of counterparts executed by the Parties constitutes a full and original contract for all purposes.

This contract has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The CORPORATE SEAL of the SECRETARY )  
OF STATE FOR JUSTICE herewith affixed and )  
authenticated )  
)

Authorised by the [REDACTED]  
Secretary of State

.....

Full name (Block [REDACTED]  
Capitals)

.....

Executed as a deed by

EXTRASPACE SOLUTIONS (UK) LIMITED t/a ESS MODULAR

acting by a director, in the presence of:

.....[REDACTED]

SIGNATURE OF DIRECTOR

.....[REDACTED]

SIGNATURE OF WITNESS

..[REDACTED]

NAME OF WITNESS (IN BLOCK CAPITALS)

....[REDACTED]

ADDRESS OF WITNESS

.....[REDACTED]

OCCUPATION OF WITNESS

## CONTRACT DATA

### PART ONE – DATA PROVIDED BY THE *CLIENT*

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

#### 1 General

	The <i>conditions of contract</i> are the core clauses, the clauses for main Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019) as amended by Option Z.
	Option for resolving and avoiding disputes Option W2
	<p>Secondary Options</p> <ul style="list-style-type: none"><li>• X2 Changes in the law</li><li>• X4 Ultimate holding company guarantee</li><li>• X5 Sectional Completion</li><li>• X7 Delay damages</li><li>• X10 Information modelling</li><li>• X11 Termination by the <i>Client</i></li><li>• X13 Performance Bond</li><li>• X14 Advanced Payment to the <i>Contractor</i></li><li>• X15 The Contractor's Design</li><li>• X16 Retention</li><li>• X20 Key Performance Indicators</li><li>• X21 Whole Life Cost</li><li>• X22 Early Contractor Involvement</li><li>• Y(UK)1 Project Bank Account</li><li>• Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996</li></ul> <p>• <b>Z Additional conditions of contract</b></p>
	The <i>works</i> are the design, construction and completion of Category D additional accommodation buildings and associated ancillary works and all work to be designed, carried out and completed and other things to be done or supplied by the <i>Contractor</i> as described in the contract (including without limitation any changes made to those works in accordance with this contract, all pre-construction work, any works for the provision of and diversion of services and all ancillary works carried out on or about the Site and/or in relation to the <i>works</i> ).
	The <i>Client</i> is Name: The Lord Chancellor and Secretary of State for Justice of 102 Petty France, Westminster, London SW1H 9AJ, acting through the Ministry of Justice Address for communications: FAO The Secretary of State for Justice of 102 Petty France, Westminster, London SW1H 9AJ
	The <i>Project Manager</i> is Name: [REDACTED] Address for communications: Mace Limited, 155 Moorgate, London, EC2M 6XB
	The <i>Supervisor</i> is Name: Mace Limited Address for communications: FAO [REDACTED], 155 Moorgate, London, EC2M 6XB

	The Scope is in Annex 2 of this contract
	The Site Information is in Annex 3 of this contract
	The <i>boundaries of the site</i> are shown in the Site Information
	The <i>language of the contract</i> is English
	The <i>law of the contract</i> is the law of England and Wales
	The <i>period for reply</i> is 10 Business Days.
	Early warning meetings are to be held at intervals no longer than 2 weeks.

## 2 The Contractor's main responsibilities

If the <i>Client</i> has identified work which is set to meet a stated <i>condition</i> by a <i>key date</i>	<p>The <i>key dates</i> and <i>conditions</i> to be met are for Stage One:-</p> <table> <tr> <td><i>condition</i> to be met</td><td><i>key date</i></td></tr> <tr> <td>(1) Submit planning application</td><td>27 April 2021</td></tr> <tr> <td>(2) Completion of RIBA Stage 3 design</td><td>4 May 2021</td></tr> <tr> <td>(3) Submission of design proposals for Stage Two</td><td>14 July 2021</td></tr> <tr> <td>(4) Full Business Case (<b>FBC</b>) approval</td><td>6 September 2021</td></tr> </table> <p>The <i>key dates</i> and <i>conditions</i> to be met in Stage Two are to be determined during Stage One.</p>	<i>condition</i> to be met	<i>key date</i>	(1) Submit planning application	27 April 2021	(2) Completion of RIBA Stage 3 design	4 May 2021	(3) Submission of design proposals for Stage Two	14 July 2021	(4) Full Business Case ( <b>FBC</b> ) approval	6 September 2021
<i>condition</i> to be met	<i>key date</i>										
(1) Submit planning application	27 April 2021										
(2) Completion of RIBA Stage 3 design	4 May 2021										
(3) Submission of design proposals for Stage Two	14 July 2021										
(4) Full Business Case ( <b>FBC</b> ) approval	6 September 2021										

## 3 Time

	The <i>starting date</i> is 12 April 2021
	<p>The <i>access dates</i> for Stage One are to be determined by the first submitted Accepted Programme.</p> <p>The <i>access dates</i> for Stage Two are to be determined during Stage One.</p>
	The <i>Contractor</i> submits revised programmes at intervals no longer than 1 month.
If the <i>Client</i> has decided the <i>completion date</i> for the whole of the <i>works</i>	The <i>completion date</i> for the whole of the <i>works</i> is to be determined during Stage One.
Taking over the <i>works</i> before the Completion Date	The <i>Client</i> is not willing to take over the <i>works</i> before the Completion Date.
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is 2 weeks.

## 4 Quality Management

	The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is 1 week.
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	The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is 24 months.
	The <i>defect correction period</i> is 28 days except that the <i>defect correction period</i> for Emergency Defects is 48 hours.

## 5 Payment

	<ul style="list-style-type: none"> <li>The <i>currency of the contract</i> is the British pound sterling (£)</li> <li>The <i>assessment interval</i> is monthly</li> <li>The <i>interest rate</i> is 3% per annum above the base rate of the Bank of England from time to time</li> </ul>
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## 6 Compensation events

	<p>The place where weather is to be recorded is: Uttroter Racecourse; 52.8917; -1.8473</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are:</p> <ul style="list-style-type: none"> <li>the cumulative rainfall (millimetres)</li> <li>the number of days with rainfall more than five (5) millimetres</li> <li>the number of days with minimum air temperature less than zero (0) degrees Celsius and</li> <li>the number of days with snow laying at 09:00 hours (Greenwich Mean Time)</li> </ul> <p>The <i>weather measurements</i> are to be supplied by the Meteorological Office.</p> <p>The <i>weather data</i> are records of past <i>weather measurements</i> for each calendar month which were recorded at the place where weather is to be recorded and which are available from the Meteorological Office.</p>
Where no recorded data are available	Not used
	The <i>value engineering percentage</i> is 50%
If there are additional compensation events	As may be agreed in Stage One.

## 8 Liabilities and insurance

Insurances the <i>Contractor</i> is required to take out and maintain	<p>The minimum amount of cover for insurance against loss of or damage to property (except the <i>works</i>, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor</i> Providing the Works is a limit of indemnity of not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but in the aggregate per annum in respect of product liability or pollution liability (to the extent insured under the policy) .</p> <p>The minimum amount of cover for insurance against death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with the contract for any one occurrence inclusive of costs is the greater of the amount required by applicable law or a limit of indemnity of [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.</p>
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	<b>Professional indemnity insurance</b> - a limit of indemnity of not less than [REDACTED] in respect of each and every claim and in the aggregate per annum.
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### Resolving and avoiding disputes

	The <i>tribunal</i> is arbitration.
If the <i>tribunal</i> is arbitration	<p>The <i>arbitration procedure</i> is the London Court of International Arbitration Rules.</p> <p>The place where arbitration is to be held is: London</p> <p>The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator is: Chartered Institute of Arbitrators.</p>
If Option W1 or W2 is used	<p>The <i>Senior Representatives</i> of the <i>Client</i> are</p> <p>Name (1): [REDACTED]</p> <p>Address for communications: 102 Petty France, London, SW1H 9AJ</p> <p>Name (2): [REDACTED]</p> <p>Address for communications: 102 Petty France, London, SW1H 9AJ</p> <p>The <i>Adjudicator</i> is nominated by the Adjudicator nominating body</p> <p>The <i>Adjudicator nominating body</i> is Royal Institution of Chartered Surveyors</p>
If Option W3 is used	Not used

### X1: Price adjustment for inflation

If Option X1 is used	Not used.
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### X3: Multiple currencies

If Option X3 is used	Not used
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### X5: Sectional Completion

	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is to be determined at Stage One
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### X6: Bonus for early Completion

If Option X6 is used without Option 5	Not used
If Option X6 is used with Option X5	Not used

### X7: Delay damages

	Delay damages for each <i>section</i> of the <i>works</i> are to be determined in Stage One.
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**X8: Undertakings to the *Client* or Others**

If Option X8 is used	Not used.
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**X10: Information modelling**

If Option X10 is used	<p>The minimum amount of insurance cover for claims made against the Contractor arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is [REDACTED] in respect of each and every claim and in the aggregate per annum.</p> <p>The period following Completion of the whole of the works or earlier termination for which the Contractor maintains insurance for claims made against it arising out of its failure to use skill and care is 12 (twelve) years.</p>
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**X12: Multiparty collaboration (not used with Option X20)**

	Not used
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**X13: Performance bond**

If Option X13 is used	10% of the Prices (the total aggregate of the Prices for Stage One and Stage Two).
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**X14: Advanced payment to the Contractor**

If Option X14 is used	<p>There is no advanced payment in Stage One. The amount (if any) of the advanced payment for Stage Two is to be determined as part of the Prices for Stage Two and agreement of the Stage Two Contract Data.</p> <p>The period after the Contract Date from which the <i>Contractor</i> repays the instalments in assessments is to be determined as part of the agreement of the Stage Two Contract Data.</p> <p>The instalments are to be determined as part of the agreement of the Stage Two Contract Data (either an amount or a percentage of the payment otherwise due).</p>
Advanced payment bond/Off site materials bond	Whether an advanced payment bond or off site materials bond in the form set out at Appendix J of the Scope is required is to be determined as part of the agreement of the Stage Two Contract Data.

**X15: The Contractor's design**

If Option X15 is used	The <i>period for retention</i> following Completion of the whole of the <i>works</i> or earlier termination is 12 years.
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**X16: Retention**

If Option X16 is used	<p>The <i>retention free</i> amount is nil</p> <p>The <i>retention percentage</i> is 3%</p>
Retention bond	The Contractor may not give the <i>Client</i> a retention bond.

**X17: Low performance damages**

	Not Used
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**X18: Limitation of liability**

If Option X18 is used	<p>The <i>Contractor's</i> liability to the <i>Client</i> for indirect or consequential loss excluding any delay damages is limited to [REDACTED].</p> <p>For any one event, the <i>Contractor's</i> liability to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to [REDACTED] of the tendered total of the Prices for each and every claim.</p> <p>The <i>Contractor's</i> liability for Defects due to its design which are not listed on the Defects Certificate is limited to [REDACTED] of the tendered total of the tendered total of the Prices for each and every claim.</p> <p>The <i>Contractor's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than excluded matters, is limited to [REDACTED] of the tendered total of Prices.</p> <p>The <i>end of liability date</i> is 12 years after the Completion of the whole of the <i>works</i>.</p>
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**X20: Key Performance Indicators**

	<p>The <i>incentive schedule</i> for Key Performance Indicators is to be determined during Stage One and will include the categories set out in the Scope.</p> <p>A report of performance against each Key Performance Indicator is provided at monthly intervals.</p>
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**X22: Early Contractor Involvement**

If Option X22 is used	The Pricing Information is in the Scope and Annex 1 of this contract.
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**Y(UK)1: Project Bank Account**

Charges made and interest paid by the <i>project bank</i>	<p>The <b>Trust Deed</b> is set out at Appendix L of the Scope.</p> <p>The <b>Joining Deed</b> is set out at Appendix L of the Scope.</p> <p>The named suppliers are:-</p> <ol style="list-style-type: none"> <li>1. [REDACTED]</li> </ol>
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**Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996**

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due	The final date for payment is 21 days after the date on which payment becomes due.
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**Y(UK)3: The Contracts (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used	Not used
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**Z: Additional conditions of contract**

If Option Z is used	The <i>additional conditions of contract</i> are as set out in the Option Z Schedule attached to this Agreement.
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## CONTRACT DATA

### PART TWO – DATA PROVIDED BY THE *CONTRACTOR*

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

#### 1 General

	The <i>Contractor</i> is Name: Extraspace Modular (UK) Limited t/a ESS Modular Address for communications: Suite 25, Lowry Mill, Lees Street, Swinton, M27 6DB
	The <i>fee percentage</i> is [REDACTED]
	The <i>working areas</i> are as set out in the Site Information
	<p>The key persons are</p> <p>Name (1): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p> <p>Name (2): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p> <p>Name (3): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p> <p>Name (4): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p> <p>Name (5): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p> <p>Name (6): [REDACTED] Job: [REDACTED] Responsibilities: [REDACTED] Qualifications: [REDACTED] Experience: [REDACTED]</p>
	The matters to be included in the Early Warning Register will be agreed during Stage One in accordance with Clause X22.

#### 2 The *Contractor's* main responsibilities

If the <i>Contractor</i> is to provide Scope for its design	The Scope provided by the <i>Contractor</i> for its design for the Accommodation Blocks is in Annex 2 of this contract.
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#### 5 Payment

	<p>The <i>activity schedule</i> for Stage One is in Annex 1 of this contract.</p> <p>The <i>activity schedule</i> for Stage Two is to be determined during Stage One in accordance with Clause X22.</p>
	<p>The tendered total of the Prices is:-</p> <p>(a) for Stage One [REDACTED]; plus</p> <p>(b) the amount to be determined for Stage Two during Stage One in accordance with Clause X22.</p>

#### Resolving and avoiding disputes

If Option W1 or W2 is used	<p>The <i>Senior Representatives</i> of the <i>Contractor</i> are</p> <p>Name (1): [REDACTED]</p> <p>Address for communications: Crag Avenue Business Park, Clondalkin Ind Estate, Clondalkin, Dublin, D22 YK07</p> <p>Name (2): [REDACTED]</p> <p>Address for communications: Crag Avenue Business Park, Clondalkin Ind Estate, Clondalkin, Dublin, D22 YK07</p>
If Option W3 is used and the number of members of the Dispute Avoidance Board is three	Not used

#### X10: Information modelling

If Option X10 is used	
If an information execution plan is to be identified in the Contract Data	The <i>information execution plan</i> identified in the Contract Data is to be provided by the Contractor no later than two weeks after the date of this contract to build upon the pre-contract BEP included at Annex 5 of this contract.

#### Data for the Short Schedule of Cost Components

	The <i>people rates</i> are
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	<b>Architect</b>		
	category of person	Unit	Rate
	Director	Hour	[REDACTED]
	Partner	Hour	[REDACTED]
	Chartered Senior	Hour	[REDACTED]
	Junior	Hour	[REDACTED]
	<b>Structural Engineer</b>		
	category of person	Unit	Rate
	Director	Hour	[REDACTED]
	Partner	Hour	[REDACTED]
	Chartered Senior	Hour	[REDACTED]
	CAD	Hour	[REDACTED]
	Junior	Hour	[REDACTED]
	<b>M&amp;E</b>		
	category of person	Unit	Rate
	Director	Hour	[REDACTED]
	Partner	Hour	[REDACTED]
	Chartered Senior	Hour	[REDACTED]
	Junior	Hour	[REDACTED]
	The published list of Equipment is the edition current at the Contact Date of the list published by CECA.		
	The percentage for adjustment for Equipment in the published list is [REDACTED] (state plus or minus).		
	The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the <i>Contractor</i> are to be agreed during Stage One in accordance with Clause X22.		
	The rates for Defined Cost of design outside the Working Areas are		
	category of person	Unit	Rate
	Senior Architect	Hour	[REDACTED]
	Architectural Technician	Hour	[REDACTED]
	Senior Engineer	Hour	[REDACTED]
	Engineer	Hour	[REDACTED]
	Senior Steel Detailer	Hour	[REDACTED]
	Steel Detailer	Hour	[REDACTED]
	Design Manager	Hour	[REDACTED]
	The categories of design people whose traveling expenses to and from the Working Areas are included in Defined Cost are all the categories listed above.		

## OPTION Z SCHEDULE

### OPTION Z – ADDITIONAL CONDITIONS OF CONTRACT

#### AMENDMENTS AND ADDITIONS TO EXISTING CLAUSES

##### Core Clauses

The core clauses are amended as follows:

Clause 11	Identified and defined terms
11.2(2)	<p>In the first bullet point after "Completion Date" insert "and complied with all obligations which this contract states are to be complied with by the Completion Date".</p> <p>In the paragraph after the second bullet point, before "do their work" insert "and the <i>Contractor</i> has complied with all obligations which this contract states are to be complied with by the Completion Date".</p>
11.2(4)	Delete and insert: "The Contract Date is the date of the Agreement."
11.2(5)	Delete.
11.2(6)	<p>In the first bullet after "Scope" insert "or this contract". In the second bullet point delete "designed by the <i>Contractor</i>", and delete the full stop and insert " or". Insert a new third bullet point:</p> <ul style="list-style-type: none"><li>• "any error, omission or discrepancy in the design by the <i>Contractor</i> or for which the <i>Contractor</i> is responsible".</li></ul>
11.2(12)	After "Dispute Avoidance Board," insert "any Statutory Body,".
11.2(15)	After "with the contract" insert "and Applicable Laws,".
11.2(23)	<p>At the end of the definition insert:</p> <p>Defined Cost excludes cost which:</p> <ul style="list-style-type: none"><li>• results from an act, error, omission, negligence, breach or default by the <i>Contractor</i> or any Subcontractor</li><li>• is a <i>Contractor's</i> liability under clause 81</li><li>• is incurred in or in preparing for the conduct of any disputes resolution procedure</li><li>• is not justified by the <i>Contractor's</i> accounts and records</li><li>• should not have been paid to a Subcontractor in accordance with its contract or</li><li>• was incurred only because the <i>Contractor</i> did not follow an acceptance or procurement procedure stated in the Scope</li></ul> <p>and excludes the cost of correcting a Defect.</p>

Insert new clauses:

11.2(33)	<b>Agreement</b> is the attached document entitled "Agreement" and executed as a deed by the Parties.
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- 11.2(34) **Applicable Laws** are any statutes, statutory instruments, regulations, rules, orders, bylaws, directives, 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 *Contractor* has a legal obligation to comply and /or which affects the *works* or the performance of any obligations under this contract each as is in force from time to time.
- 11.2(35) **BIM Requirement** means as set out in Appendix B of the Scope.
- 11.2(36) **BIM Protocol** means the CIC BIM Protocol 2nd Edition 2018 as included in the Scope and issued to the *Contractor*.
- 11.2(37) **Business Day** means any day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
- 11.2(38) **CDM Regulations** means the Construction (Design and Management) Regulations 2015.
- 11.2(39) **Central Government Body** means a body listed in one of the following sub-categories of the "Central Government Classification of the Public Sector Classification Guide", as published and amended from time to time by the UK Office for National Statistics
- Government department;
  - non-departmental public body or Welsh Government sponsored body (advisory, executive or tribunal);
  - non-ministerial department; or
  - executive agency.
- 11.2(40) **Client Confidential Information** means:
- this contract and anything referred to herein;
  - all information disclosed by the *Client* to the *Contractor* in connection with this contract, the *works* and/or the Project;
  - any information concerning the business and/or financial affairs of the *Client* which the *Contractor* learns due to its relationship with the *Client* under this contract;
  - all Personal Data which the *Contractor* obtains and/or becomes aware of due to being appointed under this contract;
  - in each case of any type and in any medium, communicated directly or indirectly, and whether disclosed before, on or after the Contract Date.
- 11.2(41) **Client Materials** means all Materials prepared by and/or on behalf of the *Client* and provided to the *Contractor* in connection with the Project (but excluding any Contractor Materials).
- 11.2(42) **Communications Software** means the cloud-based software application known as "CEMAR", as developed and maintained by Client Managers Toolkit Limited (company number 05430351, whose registered office is at Welland House, meteor Court, Barnett Way, Barnwood, Gloucester, England, GL4 3GG.)



- 11.2(43) **Confidential Information** shall mean any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the *service*, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA 2018).
- 11.2(44) **Consultants** means the consultants identified in clauses Z3.1 and Z.3.3 of the contract.
- 11.2(45) **Contractor Background Materials** means all materials owned by the *Contractor* before the Contract Date and/or created by the *Contractor* independently of this contract and/or the *works* and/or the Project, in each case which are or will be used by the *Contractor* on or after the Contract Date with this contract and/or the Project.
- 11.2(46) **Contractor Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the *Contractor*, including Intellectual Property Rights, together with all information deriving from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential (including commercially sensitive information).
- 11.2(47) **Contractor Materials** means all Contractor Background and/or Foreground Materials (as the context permits).
- 11.2(48) **Controller** has the meaning given to it in the UK GDPR and the meaning given to "data controller" in the DPA 2018.
- 11.2(49) **Conviction** means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders, including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.
- 11.2(50) **COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organisation.
- 11.2(51) **COVID-19 Event** means any of the following matters occurring after the Contract Date which result, directly or indirectly, from COVID-19:-
- the implementation of any public health measures mandated by the United Kingdom government (including Public Health England) in relation to COVID-19, which are not in place nor reasonably foreseeable at the Contract Date, including any
    - preventative measures intended to minimise the transmission of COVID-19 which result in shortages of labour and/or supervision in relation to the *works* (including self-isolation and the restricted use of public transport), and
    - measures to contain COVID-19 resulting in the mandatory closure of the site of the *works*, restricted access to that site

and/or amended working hours and/or methods in connection with the *works*;

- the exercise by the United Kingdom government after the Contract Date of any statutory power in connection with COVID-19 that is not occasioned by a default of the *Contractor* or any person for whom the *Contractor* is responsible; and

11.2(52)

**COVID-19 Management Plan** is the document set out at Annex 6 of this contract (or in such other form as the Parties may agree from time to time in writing, acting reasonably) that, amongst other things, sets out:-

- the *Contractor's* policies in respect of:
  - attempting to minimise the impact of COVID-19 on the delivery of the *works* (including at supply chain level) and
  - how it is implementing and will continue to implement any public health measures in relation to COVID-19 in connection with the *works*, including in relation to any preventative measures intended to minimise the transmission of COVID-19 and measures to contain COVID-19;
- the *Contractor's* plans for ensuring that its personnel engaged (and personnel engaged at any tier) in connection with the *works* comply with the above-mentioned policies at all times;
- the *Contractor's* business continuity and absence management programme in relation to the management and mitigation of the impact of COVID-19 on the delivery of the *works* (including at supply chain level);
- the reporting requirements agreed as between the *Client* and the *Contractor* in relation to COVID-19 in connection with the *works*; and
- the template form of COVID-19 Management Report.

11.2(53)

**COVID-19 Management Report** means the report set out at Annex 6 of this contract (or in such other form as may otherwise be agreed by the Project Manager in writing from time to time);

11.2(54)

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

11.2(55)

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

11.2(56)

**Data Protection Law** means (i) the UK GDPR; (ii) the LED; (iii) the DPA 2018; (iv) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003; (v) all Applicable Laws about the processing of Personal Data and privacy; (vi) any laws which implement such laws; and (vii) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

11.2(57)

**Data Protection Officer** has the meaning given to it in the UK GDPR and DPA 2018.

- 11.2(58) **Data Protection Schedule** means the schedule set out in Appendix C of the Scope.
- 11.2(59) **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Law to access their Personal Data.
- 11.2(60) **Data Subject** has the meaning given to it in the DPA 2018 and UK GDPR.
- 11.2(61) **Deleterious Materials** are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the *Contractor's* trade and/or the construction industry:
- to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
  - to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the *works* or any part thereof and/or to other structures, finishes, plant and/or machinery;
  - to reduce or possibly reduce the normal life expectancy of works of a type comparable to the *works*;
  - to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the *works*;
  - not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
  - to be supplied or placed on the market in breach of Regulation (EU) No 305/2011 and the Construction Products Regulations 2013 (SI 2013/1387) and any similar or equivalent legislation, regulations or standards.
- 11.2(62) **Disclosure and Barring Services** means the body of the same name as established under the Protection of Freedoms Act 2012.
- 11.2(63) **Documents** are and include all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or other documents or materials produced or prepared by or on behalf of the *Contractor* in relation to and/or connection with the *works* and/or the Site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the *works* and/or the Site.
- 11.2(64) **DOTAS** means the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions

by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.2(65)

**DPA 2018** means Data Protection Act 2018.

11.2(66)

**Emergency Defect** means a Defect which

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

11.2(67)

**Environmental Information Regulations** means the Environmental Information Regulations 2004.

11.2(68)

**Facilities Management Provider** means any facilities management provider for the final facility being built on the Site as part of the *works*.

11.2(69)

**FOIA** means Freedom of Information Act 2000.

11.2(70)

**Foreground Materials** means all Materials created by or on behalf of the *Contractor* specifically in connection with the Project and/or this contract, but excluding the Contractor Background Materials.

11.2(71)

**Force Majeure Event** has the meaning set out in clause 19.

11.2(72)

**Funder** is any person providing finance for the *works* or the Site or any part thereof and/or any person having or acquiring a mortgage or charge over the *works* or the Site or any part thereof.

11.2(73)

not used.

- 11.2(74) **General Anti-Abuse Rules** means
- the legislation in Part 5 of the Finance Act 2013 and
  - any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
- 11.2(75) **Good Industry Practice** is, in relation to the *Contractor* and any circumstances, the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking within the construction industry, operating within all Applicable Laws, regulations, rules or orders of any authority and taking due account of any guidance, codes of practice or other advice from any authority.
- 11.2(76) **Government Buying Standards** are the standards published here <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs> (as updated from time to time).
- 11.2(77) **Greening Government Commitments** means the Government's policy to reduce its effects on the environment the details of which are published here <https://www.gov.uk/government/collections/greening-government-commitments> (as updated from time to time).
- 11.2(78) **Halifax Abuse Principle** means the principle explained in the CJEU Case C-255/02 Halifax and others.
- 11.2(79) **ITEPA** means the Income Tax (Earnings and Pensions) Act 2003.
- 11.2(80) Not used.
- 11.2(81) **Intellectual Property Rights** means any and all patents, trademarks, service marks, copyright, moral rights, design rights and all or any other intellectual or industrial property rights whether or not registered and whether subsisting in the United Kingdom or any other part of the world.
- 11.2(82) **Interested Party** means any party with a direct operational and/or financial interest in the *works* and/or Site and/or the Project as notified by the *Project Manager* to the *Contractor* from time to time in writing.
- 11.2(83) **LED** means Law Enforcement Directive (*Directive (EU) 2016/680*).
- 11.2(84) **Materials** means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided the same do not contain any Personal Data (including relating to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations (except where the same relate to documents produced solely for the *Contractor's* own internal purposes to determine the Prices), photographs, brochures, reports, meeting notes, and any other materials, in any medium provided by or prepared on behalf of a party (in each case as may be amended or replaced from time to time) in connection with the *works*, this contract and/or the Project.
- 11.2(85) **MSA Offence** means an offence under the Modern Slavery Act 2015.
- 11.2(86) **NICs** means National Insurance Contributions.
- 11.2(87) **Occasion of Tax Non-Compliance** means:

- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rules or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or
  - the failure of an avoidance scheme which the *Contractor* was involved in and which was, or should have been, notified to the Relevant Tax Authority under DOTAS or any equivalent or similar regime; and
- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

11.2(88) **Operator** means the operator of the final facility being built on the Site as part of the *works*.

11.2(89) **Personal Data** has the meaning given to it in the DPA 2018 and UK GDPR and where used in this contract refers to any such Personal Data processed by the *Contractor* on behalf of the *Client* under this contract.

11.2(90) **Personal Data Breach** has the meaning given such term in the UK GDPR.

11.2(91) **Process** has the meaning given to such term under the Data Protection Laws (and "Processed" and "Processing" shall be construed accordingly).

11.2(92) **Processor** has the meaning given to it in the DPA 2018 and UK GDPR.

11.2(93) **Prohibited Act** is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or any other public body a financial or other advantage to:
  - induce that person to perform improperly a relevant function or activity; or
  - reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; and /or
- committing any offence:
  - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - under legislation or common law concerning fraudulent acts;
  - defrauding, attempting to defraud or conspiring to defraud the *Client*; or
  - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been

carried out in the UK.

- 11.2(94) **Project** means the category D estate project to provide 400 additional places and maintain an existing 1,085 places at HMP North Sea Camp, HMP Stanford Hill, HMP Ford, HMP Leyhill, HMP Springhill and HMP Hatfield through the refurbishment of existing 'ex-officer accommodation' and the construction of new accommodation.
- 11.2(95) **Project Appointment** means any appointment entered into by the *Client* with a Project Team member as notified by the *Client* to the *Contractor* from time to time.
- 11.2(96) **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the Project which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money.
- 11.2(97) **Project Team** means any consultant, contractor, sub-contractor or supplier appointed in respect of the Project.
- 11.2(98) **Protective Measures** means appropriate technical and organisational measures ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in the Data Protection Schedule.
- 11.2(99) **Purchaser** is any purchaser of the *works* or the Site or any part thereof (including any person having or acquiring a freehold interest in the *works* or the Site or any part thereof, and which includes a purchaser for capital of a leasehold interest).
- 11.2(100) **Relevant Policies** means the *Client's* ethics, anti-bribery and anti-corruption policies as found on the Ministry of Justice website ([www.gov.uk/moj](http://www.gov.uk/moj)), as included in Appendix N of the Scope or as otherwise provided by the *Client* to the *Contractor* from time to time.
- 11.2(101) **Relevant Requirements** means all applicable laws, statutes, regulations and codes relating to anti-bribery, anti-corruption and fraud, including (but not limited to) the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010 and section 117 of the Local Government Act 1972.
- 11.2(102) **Relevant Tax Authority** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.
- 11.2(103) **Request for Information** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.
- 11.2(104) **Security Aspects Letter** means the document so entitled at Appendix C of the Scope as may be modified from time to time upon reasonable notice from the *Client* to the *Contractor*.
- 11.2(105) **Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, counter-measures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to:
- maintain the safety of persons and public and personal property;

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

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

- 11.2(106) **SSCBA** means Social Security Contributions and Benefits Act 1992.
- 11.2(107) **Statutory Agreement** is an agreement entered into or to be entered into by the *Client* with a Statutory Body where details of the agreement are provided to the *Contractor* in the Scope.
- 11.2(108) **Statutory Body** includes a local highways authority, a statutory undertaker, a public utility and any person, body or organisation formed or exercising powers pursuant to statute.
- 11.2(109) **Sub-Processor** means any third party appointed to process Personal Data on behalf of the *Contractor* related to this contract.
- 11.2(110) **Tenant** is any tenant of the *works* or the Site or any part thereof (including any person having or acquiring a leasehold interest in the *works* or the Site or any part thereof, other than a Purchaser).
- 11.2(111) **Transition Period Expiration Date** means the date on which the "transition period" as defined in Article 2(e) of and referred to in Article 126 of the "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community" (2019/C 3841/01) or any such equivalent or extended period as may be agreed between the Government of the United Kingdom and the European Union on or after the Contract Date in relation to the date on which any transitional arrangement(s) arising out of or in connection with the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community expires.
- 11.2(112) **UK GDPR** is the UK General Data Protection Regulation, the retained EU law version of the *General Data Protection Regulation ((EU) 2016/679)* (EU GDPR) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of *section 3* of the European Union (Withdrawal) Act 2018 and as amended by *Schedule 1* to the *Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419)*.

## **Clause 12 Interpretation and the Law**



12.2 Delete and insert: "This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the *law of the contract*."

The Parties irrevocably submit to the exclusive jurisdiction of the *tribunal* which shall have jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim which may arise out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims)."

Insert new clauses:

"12.5 References to a person include any corporate or unincorporated body and vice versa.

12.6 Unless otherwise specified, a reference to a statutory provision or code of practice is a reference to that provision or code of practice as amended, consolidated, extended, replaced or re-enacted from time to time (whether before or after the date of this contract) and to any subordinate legislation or codes made under it.

12.7 The terms "including", "include", "in particular" or any similar expression are construed as illustrative and do not limit the sense of the words preceding those terms."

### **Clause 13                      Communications**

13.1 Delete and replace as follows:-

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

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

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

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

13.2 Delete and replace as follows:-

"Subject always to clause 13.2A:

- a communication issued via the Communications Software shall have effect when it is communicated by the sender to the recipient in accordance with the Communications Software, provided that any

communication set after 17:00 shall be treated as having been received at 09:00 on the first (1<sup>st</sup>) Business Day after its transmission and

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

Insert new clause after clause 13.2

"13.2A

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

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

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

13.4

At the end of clause insert "or that the submission is not in accordance with this contract".

Insert new clause:

"13.9

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

#### **Clause 14**

#### **The *Project Manager* and the *Supervisor***

14.1

Delete clause 14.1, and insert:

"No communication (including instructions, the Defects Certificate and/or any other certificates), no acceptance of a communication from the *Contractor*, and no acceptance and/or approval of the *Contractor's* work, by the *Project Manager* or the *Supervisor* changes the *Contractor's* liability under this contract (including the *Contractor's* responsibility to Provide the Works, its liability for Defects and/or its liability for its design)."

## Clause 15

### Early warning

15.1 In the third bullet point delete "or". In the fourth bullet point delete the full stop. Insert the following new bullet point:

- "adversely affect the performance, maintenance and/or operation of the provision of the *works*."

15.2 Delete the fourth sentence (lines 9 and 10) and insert "The *Project Manager* may invite other people to attend an early warning meeting. The *Contractor* may request the *Project Manager* to invite other attendees to an early warning meeting (but such invitation or attendance is at the *Project Manager's* discretion)."

Insert new clauses:-

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

15.6 The risks identified in the Early Warning Register from time to time shall not affect the risk allocation between the Parties as set out in the contract. Unless otherwise stated in the contract, the Prices, the Completion Date and the Key Dates are not to be changed for any risks entered into the Early Warning Register or for any matter notified as an early warning. The *Client* has no liability to the *Contractor* for any risks entered into the Early Warning Register or for any matter notified as an early warning unless the risks are carried by the *Client* as stated in the contract."

15A Insert a new clause 15A with the heading "**Early warning: COVID-19 Management Report**" as follows:

### "15A COVID-19 Management Report

15A.1 Without prejudice to the generality of clause 15, the *Contractor* will

- submit to the *Client* on a weekly basis a completed COVID-19 Management Report in connection with the *works*; and
- as part of such COVID-19 Management Report:
  - provide details of how the *Contractor* is complying (and will continue to comply) with the COVID-19 Management Plan; and

- notify the *Client* if it becomes aware that a specific COVID-19 Event could increase the total of the Prices and/or delay Completion.

The submission of the COVID-19 Management Report shall be deemed to satisfy the early warning requirements of Clause 15 in relation to the actual or potential impact of a COVID-19 Event in respect of the *works*."

## **Clause 16 Contractor's proposals**

16.3 Before the first bullet point, insert a new bullet point:

- "not at the *Client's* disposal".

## **Clause 17 Requirements for Instructions**

17.1 At the end of clause 17.1, insert:

"If there is any ambiguity or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following descending order of priority:

- the *additional conditions of contract*
- the Agreement
- Contract Data Part 1
- the Annexes
- the other *conditions of contract*
- Contract Data Part 2
- the BIM Protocol
- any other document forming part of this contract."

## **Clause 18 Corrupt Acts**

Delete and replace with:-

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

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

18.2 The *Contractor* shall:

- not commit a Prohibited Act;
- comply with the Relevant Policies;
- comply with the Relevant Requirements;
- have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and to prevent the occurrence of a Prohibited Act and shall enforce them as appropriate;
- provide reasonable evidence to demonstrate the *Contractor's* compliance with the provisions of this clause 18 as the *Client* may reasonably request from time to time;
- ensure that any person associated with the *Contractor* who is performing services in connection with this contract (including any Subcontractor) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Contractor* in this clause 18 (the "**Relevant Terms**") and the *Contractor* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *Client* for any breach by such persons of any of the Relevant Terms; and
- not act in a manner, in relation to the performance of this contract, which the *Client* reasonably considers to be inconsistent with the relevant "UK Construction Industry Competition Law Code of Conduct" or in breach of Chapters I and/or II of the Competition Act 1998 or any other applicable law that is equivalent in intent.

18.3

The *Contractor* shall immediately notify the *Client* in writing if it becomes aware of any breach of this clause 18 or if it has reason to believe that it has or any person associated with the *Contractor* has:

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

18.4

For the purpose of this clause 18, the meaning of "adequate procedures" and whether a person is "associated" with another person shall be determined in accordance with (as the context permits):

- section 7(2) of the Bribery Act 2010 and any guidance issued under section 9, section 6(5), section 6(6) and section 8 of the Bribery Act 2010 (as applicable); and

- the definition of "associated person" in section 44(4) of the Criminal Finances Act 2017,

and, for the purposes of this clause 18, a person associated with the *Contractor* includes any Subcontractor.

18.5 Any dispute, difference and/or question arising in respect of the interpretation of this clause 18 shall be decided by the *Client* (acting reasonably), whose decision, in the absence of manifest error, shall be final and conclusive.

## **Clause 19 Prevention**

19.1 Delete and insert:

**"A Force Majeure Event** is an exceptional event neither Party is able to prevent, which is caused by the forces of nature or by other circumstances not confined in their causes or effects wholly or mainly to the Parties, to any Subcontractor (or sub-subcontractor of any tier), to any Plant or Materials, to the Site or to the *works*, and which event is not weather conditions or a COVID-19 Event or COVID-19 other event against which either Party is required to insure, the happening of which:

- stops the *Contractor* from completing the whole of the *works* or
- stops the *Contractor* from completing the whole of the *works* by the Completion Date,

and which an experienced contractor would have judged at the Contract Date to have had such a small chance of happening that it would have been unreasonable to have allowed for it and which is not substantially attributable to the other Party.

If the happening of any Force Majeure Event comes to the notice of the *Contractor* or the *Project Manager* that Party informs the other and the *Project Manager* may give instructions to the *Contractor* as to how the *Contractor* is to deal with the event. The *Project Manager* may first instruct the *Contractor* to submit proposals as to how the *Contractor* should deal with the event and may postpone any instructions until the *Contractor's* proposals are received."

**Clause 19A** Insert a new clause 19A with the heading "**Admittance to Site**" as follows:

## **"Clause 19A Admittance to Site**

19A.1 The *Contractor* submits to the *Project Manager* details of people who are to be employed by it and its subcontractors in Providing the Works. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Project Manager*.

19A.2 The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to the Site.

19A.3 Employees of the *Contractor* and its Subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Site identified in the Scope.

19A.4 The *Contractor* submits to the *Project Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Project Manager* issues the passes to the *Contractor*. Each pass is returned to the *Project Manager*

when the person no longer requires access to that part of the Site or after the *Project Manager* has given notice that the person is not to be admitted to the Site.

19A.5 The *Contractor* does not take photographs of the Site or of work carried out in connection with the *works* unless it has obtained the acceptance of the *Project Manager*.

19A.6 The *Contractor* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs. "

## **Clause 20 Providing the Works**

20.1 After "Scope" insert "and this contract, and in a proper and workmanlike manner with new good quality materials which are reasonably suitable for their purposes and in accordance with Good Industry Practice".

Insert new clauses:

"20.2 The *Contractor* does not use and/or permit the use of and/or specify for use in or in connection with the *works* any Deleterious Materials. The *Contractor* immediately informs the *Client* if it becomes aware of any such use, permission or specification or failure to comply with this clause.

20.3 The *Contractor* carries out the *works* in accordance with and so that the *works* comply with Applicable Laws.

20.4 The *Contractor* does not infringe any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the Site where details are made known to the *Contractor*.

20.5 The *Contractor* fully and faithfully observes and performs all of its functions and duties under and in accordance with the CDM Regulations.

Without prejudice to the above:

- where the *Contractor* is the principal contractor, it fully and faithfully observes and performs all the functions and duties of the principal contractor under and in accordance with the CDM Regulations. Where the *Contractor* is not the principal contractor, it co-operates with and provides all the information and assistance that the principal contractor reasonably requires and
- where the *Contractor* is the principal designer, it fully and faithfully observes and performs all the functions and duties of the principal designer under and in accordance with the CDM Regulations. Where the *Contractor* is not the principal designer, it co-operates with and provides all the information and assistance that the principal designer reasonably requires.

20.6 If before the *defects date* errors are discovered in the drawings, documents or information supplied by the *Contractor under this Contract*, or if as the result of any corrections carried out during the course of rectifying defects such drawings, documents or information no longer show or describe the *works* as required above, then the *Contractor* as soon as reasonably practicable corrects or amends those drawings, documents and information."

20.7 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1947 apply to this contract. The *Contractor* notifies its employees and its Subcontractors of their duties under the Acts set out in this clause 20.7. "

## Clause 21

### The *Contractor's* design

21.1 Delete clause 21.1 and insert: "The *Contractor* has examined the Scope and accepts and adopts full responsibility for all designs contained in and/or referred to in the Scope as being its own, and the *Contractor* is equally responsible for such designs as it is for the designs which it carries out or has carried out on its behalf in accordance with this contract. The *Contractor* designs those parts of the *works* which the Scope states that it is to design."

21.2 In line 3, delete "either" and after "law", insert

"or other applicable provisions of the contract, or has not been prepared using the skill and care normally to be expected of a suitably qualified and experienced professional designer."

## Clause 22

### Using the *Contractor's* design

22.1 Delete and insert:

"22.1 The Intellectual Property Rights in all Documents provided in connection with the *works* shall remain vested in the Contractor, but the Contractor grants to the *Client* and its nominees with full title guarantee an irrevocable, royalty- free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce the Documents for any purpose whatsoever, including but not limited to in connection with the *works*, the Site and the Project (and any other project of the *Client*) and in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the *works*, the Site and the Project (and any other project of the *Client*).

22.2 The licence granted under clause 22.1, carries the right for the *Client* to grant sub-licences (including, but not limited to, any contractor(s) responsible for the design, construction, execution, operation and/or maintenance of the *works*, the Site and/or the Project), is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiry of this contract or termination (for any reason) of the *Contractor's* employment under this contract. The right to assign, novate, transfer or otherwise deal with the licence given under clause 22.1 shall include the right for the *Client* to use such means to grant the licence to a Central Government Body or to any body (including any private sector body) which performs or carries on any of the functions and/or activities that have previously been performed and/or carried on by the *Client*.

22.3 Any change in the legal status of the *Client* which means that it ceases to be a Central Government Body, shall not affect the validity of the licence granted in clause 22.1. If the *Client* ceases to be a Central Government Body, the successor body to the *Client* shall be entitled to the benefit of the licence granted in clause 22.1.

If a licence granted under clause 22.1 is novated under clause 22.2 or there is a change in the *Client's* status pursuant to this clause 22.3, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the *Client*.

22.4 The *Contractor* unconditionally and irrevocably agrees to waive, in respect of any Documents in which it has granted a licence under clause 22.1 above, all moral rights to which the *Contractor* may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other applicable law in respect of the Documents, with this waiver being made in



favour of the *Client* and extended to (as the context permits) the *Client's* sub-licensees, assignees, transferees and successors in title.

- 22.5 The Intellectual Property Rights in all Client Materials shall remain vested in the *Client* but the *Client* shall grant to the *Contractor* and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Client Materials for any purpose in connection with the *works*, provided always that such licence shall automatically terminate upon the termination of this contract.
- 22.6 The *Contractor* warrants and undertakes to the *Client* that
- all Documents are and will continue to be its own original work (or the original work of its Subcontractors, where appropriate)
  - the licence granted in any Documents pursuant to clause 22.1 does not and will not at any time infringe the rights of any third party
  - it has not and will not infringe the rights of the *Client* or any other third party in the use of any Client Materials to which the licence provided by the *Client* to the *Contractor* pursuant to clause 22.5 applies; and
  - it has obtained (and shall maintain at all times) all of the necessary licenses and consents in relation to the Intellectual Property Rights that are used or may be used by the *Contractor* or licenced to and/or by the *Contractor* under or in connection with this contract and will provide evidence of the same on the written request of the *Client*.
- 22.7 The *Contractor* shall not be liable for any such use by the *Client*, its nominees or any other third parties (including any beneficiary) of any Documents for any purpose other than that for which such Documents were prepared by or on its behalf, with it being acknowledged and agreed by the Parties that this "purpose" is the design and construction of the *works* at the Site.
- 22.8 The *Client* shall have no liability whatsoever to the *Contractor* or any third party whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of and/or reliance by the *Contractor* on any Client Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the Contractor pursuant to clause 22.5.
- 22.9 The *Contractor* shall indemnify the *Client* and its sub-licensees, assignees, transferees and successors in title against, without limitation, all payments, losses, demands, claims, damages, actions, costs, legal fees, fines, financial penalties and expenses that are paid, made or incurred by the *Client* as a consequence of and in relation to any actual and/or alleged infringement of Intellectual Property Rights arising out of or in connection with the Documents and/or the *Contractor's* use of the Client Materials.
- 22.10 The *Contractor* agrees at the *Contractor's* expense:
- on request at any time (after reasonable written prior notice) to give the *Client* or those authorised by the *Client* access to the Documents and to provide copies of such Documents (including electronic copies) and
  - to provide the *Client* with a set of all such Documents on or before Completion of the *works*.
- 22.11 After termination or conclusion of the *Contractor's* employment hereunder, the *Contractor* supplies the *Project Manager* with copies and/or computer discs of such of the Documents as the *Project Manager* may from time to time request and the *Client* pays the *Contractor's* reasonable costs for producing such copies or discs.

**Clause 23****Design of Equipment**

- 23.1 In the first bullet point, delete "Scope" and insert "contract".
- 23.2 Insert a new clause: "No such approval or review by the *Project Manager* pursuant to this clause 23 and no omission to inspect or review or disapprove negates or diminishes any duty or liability on the *Contractor's* part under or in connection with this contract."

**Clause 25****Working with the *Client* and Others**

- 25.3 Delete the last sentence of the clause. After "met" (line 7), insert "or by such later date as it is practicable for the *Project Manager* to complete the assessment. The *Project Manager* assesses and the *Contractor* pays any other cost or loss incurred or to be incurred by the *Client* because of any failure of the work to meet the Condition stated for a Key Date by that date".

**Clause 26****Subcontracting**

- 26.1 At the end of the clause insert "The *Contractor* is as responsible for the acts and omissions of Subcontractors as if they were the acts and omissions of the *Contractor*."
- 26.3 Delete the first bullet point. 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 this contract
  - the proposed subcontract documents are not consistent with this contract
  - the Subcontractor is not required to provide deeds of collateral warranty fully in accordance with the provisions of clause 24 of this contract
  - (in the case of any subcontracting of the design of the *works* or any part of the *works*) the Subcontractor is not required to throughout the duration of the *works* and for a period of 12 (twelve) years following the date of Completion of the whole of the *works* maintain professional indemnity insurance cover with reputable insurers with a limit of indemnity of not less than an appropriate amount (to be stated in the relevant subcontract) in respect of any claims made against the Subcontractor in relation to the design of the *works* or any part of the *works* or
  - the proposed subcontract documents are not executed as a deed."

**Clause 27****Regulatory Requirements**

Insert new clauses:

- "27.5 Subject to any provisions of the Scope and save where the *Client* only is legally empowered to obtain and maintain, the *Contractor* obtains and maintains all approvals, licences, permissions (including planning permissions) and consents required from any public or statutory body, utility undertaker or adjoining owner or occupier and complies with their lawful requirements, for or in connection with Providing the Works.
- 27.6 If the *Client* only is legally empowered to obtain and maintain any approval, licence, permission or consent referred to in clause 27.5 above the *Contractor* will provide all reasonable assistance to the *Client* in connection with the same, which may include (without limitation) the *Contractor* being a joint party to such approval, licence, permission or consent."

<b>Clause 28</b>	<b>Assignment</b>
28.1	Delete and insert:
"28.1	The <i>Contractor</i> does not assign transfer or charge any benefit arising under or out of this contract without the prior written consent of the <i>Client</i> (at its absolute discretion).
28.2	<p>The <i>Client</i> may without the <i>Contractor's</i> consent assign transfer and/or charge the benefit of all or any of the <i>Contractor's</i> obligations under this contract and/or any benefit arising under or out of this contract:</p> <ul style="list-style-type: none"> <li>• as security to any Funder (and such rights may be re-assigned on redemption)</li> <li>• by absolute assignment to any government department and</li> <li>• by absolute assignment on two other occasions only."</li> </ul>
<b>Clause 30</b>	<b>Starting, Completion and Key Dates</b>
30.5	Insert a new clause: "The <i>Contractor</i> proceeds with the <i>works</i> regularly and diligently and performs the <i>works</i> as set out in the contract and having regard to the Key Dates."
<b>Clause 33</b>	<b>Access to and use of the Site</b>
33.1	After " <i>Client</i> allows" insert "non-exclusive".
33.3	<p>Insert a new clause:</p> <p>"If in the provision of the <i>works</i> any personnel of a Party, affiliate, visits the Site, then the <i>Contractor</i> is responsible for:</p> <ul style="list-style-type: none"> <li>• the provision of a safe working environment including the provision of safety, health and environmental information regarding the Site, equipment and processes on which such personnel are to work and</li> <li>• advising such personnel of the rules and regulations applying to the Site."</li> </ul>
<b>Clause 40</b>	<b>Quality management system</b>
40.2	At the end of second sentence (line 4), before the full stop insert ", does not comply with the contract, is inadequately prepared or is not practicable or does not represent a realistic approach for the <i>works</i> ".
40.4	Insert a new clause: "Any Subcontractor appointed by the <i>Contractor</i> operates a quality management system enabling it to comply with the <i>Contractor's</i> quality management system."
<b>Clause 41</b>	<b>Tests and inspections</b>
41.6	After " <i>Client</i> " insert "in monitoring work to correct Defects and/or".
41.7	Insert a new clause: "The <i>Contractor</i> allows the <i>Client</i> any person authorised by it and their respective representatives to inspect the <i>works</i> at any reasonable time, provided they give the <i>Contractor</i> reasonable notice prior to any such inspection."
<b>Clause 42</b>	<b>Testing and inspection before delivery</b>

42.2 Insert a new clause: "The *Contractor* allows or procures (as appropriate) access for the *Supervisor* for the purposes of testing and/or inspection to any premises at which Plant and/or Materials are manufactured and/or stored."

#### **Clause 46**                      **Uncorrected Defects**

46.1 After the word "people" delete to the end of the clause and insert "(if the *Client* decides to do so) and the *Contractor* pays this amount. The *Contractor* pays the *Client* the amount of any other cost, loss, liability or damage incurred by the *Client* by reason of the Defect."

#### **Clause 50**                      **Assessing the amount due**

50.2 In line 1, after "Project Manager" insert "on or not more than 5 days."

In the last line, amend "before" to "on or not more than 5 days before".

50.3 After "payment" in line 1, insert "on or not more than 5 days"

Insert new clause:

"50.3A Amounts to be paid by or retained from the *Contractor* under clause 50.3 include, without limitation, the reinstatement cost of loss of or damage to the *works*, Plant and Materials, unless caused by any of the *Client's* liabilities in clause 80.1."

50.4 After "payment" in line 1 and after "application" in line 4, insert "on or not more than 5 days".

Insert new clauses:

"50.7 The amount due does not include the value of any unfixed Plant and Materials which would otherwise be eligible for inclusion:

- if such Plant and Materials are procured by the *Contractor* or any Subcontractor prematurely, until such time as it would have been reasonable to procure them, having regard to the progress of the *works*
- unless the *Contractor* has satisfied the *Project Manager* that the *Contractor* is competent to pass title in the Plant and Materials to the *Client* in accordance with clause 70
- unless they are adequately protected
- unless they have satisfied any test or inspection required by the Scope or applicable law
- if outside the Working Areas unless they are set apart and clearly marked to identify their destination and interest of the *Client* and
- unless the *Contractor* has satisfied the *Project Manager* that they are adequately insured in the joint names of the Parties (other than where it is the *Client's* responsibility to procure such insurance). "

#### **Clause 51**                      **Payment**

51.1 Delete the first sentence of clause 51.1 and insert: "The *Project Manager* certifies a payment on or before the due date for payment (the date on which a payment becomes due)."

51.2 Delete the first sentence of clause 51.2 and insert: "Each certified payment is made on or before the final date for payment."

Insert a new clauses:

51.6 "The *Contractor* agrees that interest paid under this clause 51 is a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998."

51.7 All sums payable by or to the *Client* or the *Contractor* are exclusive of Value Added Tax (VAT). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.

## Clause 53 Final assessment

53.1 Delete and insert

"Unless there has been a termination under clause 9 (Termination):

- the due date for the amount of the final payment is 42 days after the Defects Certificate Due date
- the final date for payment of that amount is 14 days (or any different period stated in the Contract Data) after the due date and
- the *Contractor* submits an application for the final payment to the *Project Manager* within the 14 day period after the Defects Certificate Due Date, which shows the basis on which the final payment has been calculated.

The *Project Manager* makes an assessment of the final amount due and certifies the final payment no later than 42 days after the Defects Certificate Due Date. The certificate includes details of how the amount due has been calculated.

If there has been a Termination the relevant provisions of clause 9 apply.

53.2 Delete and insert "The certified final payment (notified sum) is paid on or before the final date for payment

53.3 Delete and insert "The assessment of the final amount due (as above under the procedures on termination) issued within the time stated in the contract (**final assessment**) is conclusive evidence of:

- the finally adjusted amount due to the *Contractor* under and in connection with the contract, net of amounts to be paid by the *Contractor* in accordance with clause 50.3 and
- (if stated in the assessment) the total of previous payments made to or by the *Contractor* which are required to be taken into account to ascertain the amount of the final payment,

except that the final assessment has not such evidential effect:

- if the Parties otherwise agree or
- in proceedings commenced within 6 months after the issue of the final assessment as to any matter in respect of which in such proceedings are commenced or
- in subsequent proceedings in the *tribunal*, so far as they are for the re-determination of that matter as decided by an adjudicator,

where **proceedings** means an adjudication or proceedings in the *tribunal*.

53.4 Delete

## Clause 55 The Activity Schedule

55.5 Insert a new clause: "Any errors, inconsistencies, omissions and/or ambiguity in the Activity Schedule are the *Contractor's* risk."

**Clause 56** Insert a new clause 56 with the heading "**Fair Payment**" as follows:

**"Clause 56 Fair Payment**

56.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*.

56.2 The *Contractor* includes in the contract with each Subcontractor:

- a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor.

**Clause 60 Compensation events**

60.1(7) Delete.

60.1(10) Delete "only" (line 2) and insert at the end "or because a known Defect suggests the likely presence of a similar or related Defect elsewhere in the *works*".

60.1(14) Replace "An event which" with "An event (other than relating to a COVID-19 Event or COVID-19) which"

60.1(19) Delete and insert "An event which is a Force Majeure Event which is not a compensation event under any other provision of the contract"

Insert a new clause:

"60.1(22) "The *Contractor's* ability to undertake the works (or part thereof) is directly affected by a COVID-19 Event."

Insert new clauses:-

60.4 "Without prejudice to the generality of clause 61.2, it shall be a precondition to the *Contractor's* entitlement to any adjustment to the Prices and/or the Completion Date arising out of or in connection with a compensation event under clause 60.1(22) that the *Contractor* has first:

- complied with the requirements of the COVID-19 Management Plan;
- complied with the requirements of clause 15A;
- identified the potential or actual occurrence of the relevant COVID-19 Event in a previous COVID-19 Management Report (insofar as possible in advance of its specific occurrence); and

- used reasonable endeavours to mitigate the impact of the relevant COVID-19 Event on the delivery of the *works* (and demonstrates to the satisfaction of the *Project Manager*, acting reasonably, that it has done so by reference to any costed breakdowns previously provided to the *Project Manager* in relation to the potential impact of a COVID-19 Event on the *works*)

provided always that, in respect of the first three bulleted items above, the *Project Manager* has first accepted the *Contractor's* quotation in relation to reporting on the actual and/or potential impact of COVID-19 pursuant to clause 15A.2."

60.5 "The *Contractor* does not have any right to an increase in the Prices on the occurrence of the compensation event referred to in clauses 60.1(19), but it may be granted a delay to the Completion Date and/or any Key Dates on the occurrence of those compensation events subject to the remaining provisions of this contract."

#### **Clause 61                      Notifying compensation events**

61.3 In line 5 delete "eight" and insert "four".

In line 6, after "event has happened" insert "or of the date when the *Contractor* ought reasonably to have become aware of the event".

61.4 Insert after the first paragraph:

"Subject to paragraph 3 below, if an event notified by the *Contractor* causes a delay to the *works* which is concurrent to a delay due to a compensation event, the *Project Manager* notifies the *Contractor* of his decision that the Completion Date and Key Dates are to be changed but the Prices are not to be changed (and the provisions of clauses 62 to 65 shall apply in relation to the proposed delay to the Completion Date).

If an event notified by the *Contractor* has not arisen due to a compensation event, the delay to the *works* shall be considered to be concurrent where:-

(a) both events are at the same time and the effects of which are felt at the same time; and

(b) both events are an effective cause of delay to the Completion Date."

Delete the third bullet point (line 5) and insert: "arises by reason of any act, error, omission, negligence, breach or default of the *Contractor* or Subcontractors or any of their employees or agents,".

#### **Clause 62                      Quotations for compensation events**

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

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

- disclose on an open book basis the extent, value and nature of any financial support and/or relief that it (or any person and/or Subcontractor engaged by the *Contractor* that is affected by that COVID-19 Event) has received (or is in the process of claiming or is expected to receive) from any third party in connection with that COVID-19 Event, including (without limitation) any grants, rebates, rates and taxation deferrals or holidays and/or relief packages ("**COVID-19 Relief**") and

- confirm in writing that, to its knowledge, it has not received (or claimed or expected to receive) or entitled to claim any COVID-19 Relief other than that disclosed (if any) in connection with the COVID-19 Event."

## Clause 63

### Assessing compensation events

63.5

Delete third paragraph and insert: "The assessment takes into account:

- any delay caused by the compensation event already in the Accepted Programme and
- events which have happened between the date of the Accepted Programme and the dividing date."

63.10

Delete and replace with:-

"Any assessment in respect of a COVID-19 Event shall take into consideration any COVID-19 Relief that the *Contractor* has disclosed in its initial (or in any updated) quotation (and/or that the *Client* has otherwise become aware of as at the date of the assessment), as well as any pricing and/or time allowances allowed for by the *Contractor* in its COVID-19 Management Report and/or COVID-19 Management Plan current as at the date of the assessment and previously accepted by the *Project Manager*. The *Contractor's* entitlement to an adjustment to the Prices or the rates shall be adjusted to take into account any such COVID-19 Relief and pricing and/or time allowance. Without prejudice to the generality of clause 62.1, the Contractor must disclose any COVID-19 Event after the date of any assessment in respect of that COVID-19 Event and the *Client* may, at its reasonable discretion, adjust the Prices and rates as previously assessed accordingly to take into account such COVID-19 Relief."

## Clause 70

### The *Client's* title to Plant and Materials

70.1

Delete and insert: "Payment for Plant and Materials outside the Site or Working Areas is only to be on the express agreement of the *Client* at its sole discretion. The ownership of Plant and Materials shall pass to the *Client* at whichever is the earlier of (a) upon delivery to the Site or the Working Areas or (b) if Plant and Materials are outside the Site or the Working Areas and the *Supervisor* has marked it as for this contract and (c) when the *Contractor* becomes entitled to payment in respect of such Plant and materials and such payment has been made. The Contractor shall insert such provisions in subcontracts as will causes this to happen"

70.2

In line 3 after "Working Areas", insert "(other than removal from one to the other)".

Insert new clauses:

"70.3

Whenever ownership of any Plant and Materials passes to the *Client* prior to delivery to the Site or the Working Areas, the *Contractor* shall arrange for the Plant and Materials to be marked as the *Client's* property and shall ensure they are stored and handled separately from other materials.

70.4

It is a precondition to payment for Plant and Materials outside the Site or Working Areas that the *Contractor* complies with clause 70.3 and any requirements for marking and storage in the Scope and, unless otherwise agreed in advance and in writing with the Project Manager, provides an executed Vesting Agreement in favour of the Client in the form at Appendix F of the Scope (with such amendments as the Project Manager may approve in advance, acting reasonably)."



**Clause 74                      The Contractor's use of material**

74.1                      At the end of the clause insert: "The *Client* does not warrant or represent the accuracy, reliability, sufficiency or completeness of any such material, and the *Client* is not liable for any use of such material, which shall be used by the Contractor and Subcontractors at their own risk."

**Clause 80                      Client's liabilities**

80.1                      Delete (lines 4 and 5): "use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works* or".

Delete (lines 10, 11 and 12): "A fault in the design contained in  
- the Scope provided by the *Client* or  
- an instruction from the *Project Manager* changing the Scope."

Delete (line 17): "strikes, riots and civil commotion not confined to the *Contractor's* employees or".

**Clause 81A                      Indemnity**

Insert new clauses 81A.1 to 81A.3:

"81A.1                      The *Contractor* at all times takes all reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights or activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under or in connection with this contract (including clause 44) and assists the *Client* in defending any relevant action or proceedings which may be instituted in relation thereto howsoever such action may arise.

81A.2                      The *Contractor* is responsible for and liable to the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from a breach of clause 81A.1 above, except only where such trespass, nuisance or interference is the consequence of an instruction of the *Client* (which is itself not the result of any act, error, omission, negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using all reasonable and practical means.

81A.3                      The *Client* issues to the *Contractor* such reasonable instructions in relation to the *works* as it considers necessary if any injunction is granted or court order is made in consequence of any such trespass, nuisance or interference, but (except as described above) the *Contractor* is not entitled to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to a compensation event by reason of any such instruction where it results in a breach of clause 81A.1 above."

**Clause 82                      Recovery of costs**

82.4                      Insert a new clause:

"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."

### **Clause 83 Insurance cover**

83.3 After "Parties" (line 1) insert: "and such persons as the *Client* may reasonably require (including any Interested Party),".

In line 3 after "Defects Certificate" insert ",or such other period as set out in the Contract Data".

In line 4 before the full stop insert: "except in the case of professional indemnity insurance which need not be in the joint names of the Parties and where cover runs for the period set out in clause 87.1".

### **Clause 84 Insurance policies**

84.1 After "until the *defects date*," insert "or as and when reasonably required by the *Client*".

Insert new clauses:

"84.4 The *Client* and the *Contractor* notify the other in writing of any claims which they receive in respect of any injury, loss or damage referred to in clauses 83 and 84. Notification by the *Contractor* is given to the *Project Manager* immediately.

84.5 The *Contractor* does not permit any variation of insurance cover without the prior written approval of the *Project Manager* and immediately notifies the *Project Manager* of any endorsements or other amendments to the relevant policies received from the insurers.

84.6 The *Contractor* does not do or permit or suffer to be done any act or thing which may vitiate any policy or policies of insurance effected and/or maintained or to be effected and/or maintained by the *Contractor* under this contract or (insofar as they have been notified to the *Contractor*) any policy or policies of insurance effected and/or maintained by the *Client* and/or any Purchaser, Tenant or Funder."

Clause 87 Insert a new clause:

### **"Clause 87 Professional indemnity insurance**

87.1 The *Contractor* maintains professional indemnity insurance:

- upon customary and usual terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the United Kingdom
- with a limit of indemnity of not less than the amount stated in the Contract Data for any one occurrence or series of occurrences arising out of any one event
- for a period beginning not later than the Contract Date and ending 12 (twelve) years after Completion of the whole of the *works*

provided that such insurance is available generally in the market at commercially reasonable rates.

87.2 Such terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

87.3 For the purposes of this clause 87, "**commercially reasonable rates**" means such level of premium rates at which other contractors of a similar size and financial standing as the *Contractor* at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the *Contractor's* own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the *Contractor* are deemed to be within commercially reasonable rates.

The *Contractor* immediately informs the *Client* if such insurance ceases to be available at commercially reasonable rates so that the *Contractor* and the *Client* can discuss means of best protecting the respective positions of the *Client* and the *Contractor* in respect of the *works*.

87.4 Before the starting date and on each renewal of the insurance policy until the defects date, the *Contractor* submits to the *Project Manager* for acceptance a certificate which states that the insurance required by this clause is in force.

87.5 After the *defects date* and on each renewal of the insurance policy until the end of the period stated in clause 87.1 for which insurance is to be maintained, the *Contractor* submits to the *Client* for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the *Contractor's* insurer or insurance broker.

87.6 The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of this contract (for any reason).

## **Clause 90 Termination**

90.2 In the Termination Table:

- insert "R10A, R15A, R15B" after "R1 – R15" in the "Reason" column for the *Client*, and
- insert "(and P5)" against each entry in the "Procedure" column for both the *Client* and the *Contractor*, and
- insert a new row for the *Client* as follows:-

Reason	Procedure	Amount due
R23	P1, P4 and P5	A5a or A5b

## **Clause 91 Reasons for Termination**

91.1 Insert "and/or has entered administration" after "had an administration order made against it" in the bulleted item for "(R8)".

At the end of the penultimate bullet point, delete "or" and insert a full stop.

Delete the final bullet point and insert "commenced negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a

proposal for or enters into any compromise or arrangement with any of its creditors (R10), or".

Insert the following new bullet point:

"applied to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986 (R10A)."

Insert new clauses:

"91.3A           The *Client* may terminate with thirty (30) days' prior written notice the *Contractor's* obligation to Provide the Works if the *Contractor* is in breach of clause 18 – Corrupt Acts (R15A)

91.3B           During Stage One the *Client* may terminate with fourteen (14) days' prior written notice the *Contractor's* obligation to Provide the Works (R15B)"

91.7           Delete and insert:

"The *Client* may terminate if the *Project Manager* certifies that a Force Majeure Event that is preventing the *Contractor* from or is delaying the *Contractor* in Providing the Works has caused or will cause Completion to be delayed by not less than 13 weeks (R21)."

Delete and insert:

"91.8           The *Client* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply (R23).

If the *Client* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with his obligations as set out in A1 and A3 (A5a).

If the *Client* otherwise terminates under the provisions of 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the reason for termination was R17 (A5b)."

## **Clause 92                           Procedure on Termination**

92.2           Insert the following as a new paragraph under "P4":

"P5           The *Contractor* provides for such reasonable period as required by the *Client* following termination to answer any queries raised by the *Client* and supply any information required by the *Client* in connection with the works and co-operates with the *Client*. The *Contractor*, upon notification from the *Client*, delivers to the *Client* all Material and other items of any kind whatsoever relating to this contract and/or in respect of the *works* which is in the *Contractor's* control, custody or possession, including those in the control, custody or possession of the Subcontractors. The *Contractor* transfers title in all Plant and Materials to the *Client* for which the *Client* has paid or discharged payment and delivers such Plant and Materials to the Site or such location as instructed by the *Client*."

## **Clause 93                           Payment on termination**

- 93.1 Delete the fourth subparagraph (line 5), and insert: "to which the *Client* has title, and which the *Contractor* delivers to the Working Areas or to another location reasonably instructed by the *Project Manager*,".
- 93.2 Delete A3 and insert:
- "A3 a deduction by or payment to the *Client* of the additional cost to the *Client* of Providing the Works other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the *Client* resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the *Contractor*."

## Secondary Option Clauses

### OPTION X2

#### CHANGES IN THE LAW

- X2.1 After "Contract Date" at the end of the first sentence insert "and except where the change would have been reasonably foreseeable at the Contract Date to a contractor exercising the standard of care provided for in clause X15.1. The *Project Manager* may notify the *Contractor* of a compensation event for a change in the law and instruct him to submit quotations."

### OPTION X4

#### ULTIMATE HOLDING COMPANY GUARANTEE

- X4.1 Delete "the Scope" and insert "Appendix D of the Scope (with only such amendments as the *Client* may approve and/or reasonably require)."
- Delete the second sentence and insert "The guarantee is given to the *Client* on or before the Contract Date."
- At the end of the clause insert "For the purposes of this Option X4.1 the ultimate holding company of the *Contractor* is Kardomagh Holdings Limited (a company registered in the Republic of Ireland with company number 545043) whose registered office is Crag Avenue Business Park, Clondalkin Industrial estate, Clondalkin, Dublin, D22 YK07. "
- Insert new clauses:
- X4.3 With the ultimate holding company guarantee, the *Contractor* supplies a certified copy of a resolution of the board of the ultimate holding company of the *Contractor* in the form set out in Appendix D of the Scope (with only such amendments as the *Client* may approve and/or reasonably require)."
- X4.4 No payment becomes due to the *Contractor* under this contract while the *Contractor* remains in default of this Option X4. Any amount unpaid to the *Contractor* under this Option X4 becomes due for release to the *Contractor* only when such ultimate holding company guarantee is provided (or, if none is provided, on the date on which an ultimate holding company guarantee in the form set out in D of the Scope would have lapsed had it been provided, less any amounts which the *Client* may have been entitled to claim under the ultimate holding company guarantee had such ultimate holding company guarantee been provided)."

### OPTION X10

#### INFORMATION MODELLING

- X10.1(4) Before "requirements" insert "employer's information".
- X10.4(4) After "Project Information" insert " and The Information Model".

X10.6 After "Information Model" in line 1 insert "and any Intellectual Property Rights in the Information Model".

Delete "except as stated otherwise in the Information Model Requirements".

In line 3 after "information" insert "and models".

At the end of the clause insert "within 14 days of Completion."

X10.7(1) Delete .

#### **OPTION X13 PERFORMANCE BOND**

X13.1 Delete from "by the Contract Date" in line 4 until the end of the paragraph and insert "the date of a notice to proceed to Stage Two issued pursuant to clause X22.5, it is given to the *Client* within 14 days of the date of a notice to proceed to Stage Two issued pursuant to clause X22.5".

X13.2 Insert new clause:

"Until a performance bond is provided as required by clause X13.1 the *Client* shall retain out of monies becoming due to the *Contractor* a sum equal to 10 per cent of the *Prices*".

#### **OPTION X14 ADVANCED PAYMENT TO THE CONTRACTOR**

X14.1 Insert "or off site materials bond" in lines 3 and 4 after "advanced payment bond".

X14.2 Insert "or off site materials bond" in line 1 after "advanced payment bond".

X14.3 Delete "The" at the beginning of the clause and inserted "If stated in the Contract Data, the".

#### **OPTION X15 THE CONTRACTOR'S DESIGN**

X15.1 Delete and replace with:-

"In respect of all designs which the *Contractor* carries out and those for which it is responsible under this contract, the *Contractor* warrants to the *Client* that there has been exercised and will be exercised all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified engineer, or architect or, if relevant, other appropriately qualified designer experienced in exercising such responsibilities in relation to work of the same type, complexity, value and timescale as the *works*. "

X15.2 Delete.

X15.5 Delete.

#### **OPTION X16 RETENTION**

X16.4 Insert a new clause: "The *Client* is under no fiduciary obligation with regard to any retained amounts and is under no obligation to set aside in a separate account any amount representing the retained amounts. The *Client* is entitled to the full beneficial interest in any interest accruing on the retained amounts and is under no obligation to account to the *Contractor* for any such interest."

#### **OPTION X20 KEY PERFORMANCE INDICATORS**

X20.4 Delete and replace with "The *Client* may add a Key Performance Indicator to the Incentive Schedule from time to time with approval from the *Contractor* (such approval not to be unreasonably withheld or delayed)."

X20.5 Delete.

## **OPTION X22**

## **EARLY CONTRACTOR INVOLVEMENT**

X22.1(1) Delete definition.

X22.1(2) Delete "the items included in the Budget" and replace with "Stage One and Stage Two".

X22.1(5) Insert new definitions:-

"Stage Two Contract Data is the contract data which is specified as to be determined during Stage One."

X22.1(6) "Fixed Price Items are the items identified as such in Annex 1 of this contract."

X22.2 Delete.

X22.3(9) Delete "If the main Option is C the" and replace with "The".

X22.3(3) Insert a new bullet: "it is not in accordance with the Pricing Information."

X22.3(5) Insert at the end of the sentence "and the Prices for Stage Two shall be calculated so that prices for the Fixed Price Items in revised Activity Schedules shall not exceed the relevant amounts or rates set out in Annex 1 of this contract."

X22.5(1) At the beginning of the clause insert "The *Contractor* shall not be entitled to proceed with Stage Two unless and until a notice to proceed is issued in accordance with this clause X22.5."

X22.5(1) In bullet 2 replace "Budget" with "Project Cost".

Insert new bullet between existing bullets 3 and 4:-

- "the *Project Manager* and the *Contractor* have agreed the Stage Two Contract Data in writing"

X22.5(1A) Insert new clause:-

If a notice to proceed to Stage Two is issued the agreed Stage Two Contract Data shall replace the relevant parts of the Contract Data for the purposes of the contract."

X22.5(3) Insert new bullet:-

- "the *Project Manager* and the *Contractor* have not agreed the Stage Two Contract Data or"

X22.6 Delete.

X22.7 Delete.

Insert new clause X22.8

X22.8 "The cost of any work that is not included in the Activity Schedule for Stage One is not included in the Price for Work Done to Date."

#### OPTION Y(UK)1 PROJECT BANK ACCOUNT

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

Y1.1 In this Option Y(UK)1

- The **Authorisation** is a document authorising the project bank to make payments to the *Contractor* and Named Suppliers.
- A **Joining Deed** is an agreement between the *Client*, the *Contractor* and a Named Supplier that was not originally a party to the Trust Deed which contains provisions for administering the Project Bank Account in accordance with the Trust Deed.
- **Named Suppliers** are *named suppliers* that are a party to the Trust Deed or any Joining Deed unless later changed in accordance with this contract.
- **Project Bank Account** is the account used to receive payments from the *Client* and make payments to the *Contractor* and Named Suppliers.
- A **Supplier** is a person or organisation who has a contract to:
  - construct or install part of the *works*;
  - provide a service necessary to Provide the Works; or
  - supply Plant and Materials for the *works*.
- **Trust Deed** is an agreement between the *Client*, the *Contractor* and Named Suppliers which contains provisions for administering the Project Bank Account.

Y1.2 The Contractor establishes the Project Bank Account with the project bank within one (1) week of the Contract Date.

Y1.3 Unless stated otherwise in the Contract Data, the *Contractor* pays any charges and is paid any interest made by the project bank.

Y1.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the project bank in connection with the Project Bank Account.

Y1.5 The *Contractor* includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

Y1.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the *Project Manager* for acceptance. A reason for not accepting it is that the addition of the Supplier does not comply with the Scope. The *Client*, the



*Contractor* and the Supplier sign the Joining Deed after acceptance (where applicable).

- Y1.7 On or before each assessment date, the *Contractor* submits to the *Project Manager* an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.
- Y1.8 No later than one (1) week before the final date for payment, the *Client* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.
- Y1.9 The *Contractor* makes payment to the Project Bank Account of:
- any amount not paid by the *Client*; and
  - any amount required to make payment in full to Named Suppliers.
- Y1.10 The Contractor prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the certified payment. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* for signature by the *Client* and submission to the Project Bank Account.
- Y1.11 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
- Y1.12 A payment which is due from the *Contractor* to the *Client* is not made through the Project Bank Account.
- Y1.13 Payments made from the Project Bank Account are treated as payments from the *Client* to the *Contractor* in accordance with this contract or from the Contractor or Subcontractor to Named Suppliers in accordance with their contracts as applicable.
- Y1.14 The *Client*, the *Contractor* and Named Suppliers sign the Trust Deed before the first assessment date.
- Y1.15 If the *Project Manager* issues a termination certificate, no further payments are made into the Project Bank Account.

Insert the following further *additional conditions of contract*:

## **Z2 Contractor's warranty**

- Z2.1 The *Contractor* promptly executes and delivers a deed or deeds of warranty in favour of any Interested Party in the terms of the draft Contractor's warranty set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires) when required by the Client (up to a maximum of six (6) Contractor warranties in the aggregate).
- Z2.2 Notwithstanding any other terms of this contract, if the *Contractor* fails to execute and deliver any such deed pursuant to clause Z2.1 above, within seven days of the *Client's* request, the *Client* is entitled to give the *Contractor* written notice of such failure. If such failure is not rectified by the *Contractor* within seven days after service of such notice, then no further payment is due to the *Contractor* hereunder while such failure remains to be rectified.

## **Z3**

### **Consultants**

Z3.1 On the date of this contract, the *Contractor* appoints the following consultants (or such other consultants as the *Client* approves) for the purposes of the *works*:

[REDACTED]

Z3.2 The Consultants' appointments are to be by deed in the form of the respective draft appointments set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires (such approval not to be unreasonably withheld or delayed)).

Z3.3 In addition to the Consultants identified in clause Z3.1, the *Contractor* may appoint additional consultants for the purposes of the *works* whose appointments are by deed in the form of the respective draft appointments set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires) or on terms previously approved by the *Client* (such approval not to be unreasonably withheld).

Z3.4 Within seven days after the appointment of each Consultant the *Contractor* supplies to the *Client* a complete copy of the Consultant's deed of appointment.

Z3.5 The *Contractor* ensures that each Consultant immediately upon their appointment executes and delivers a deed of warranty in favour of the *Client* in the form of the draft deed set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires (such approval not to be unreasonably withheld or delayed)). If requisite the *Contractor* itself executes and delivers such deed of warranty immediately upon the *Client's* request.

Z3.6 Whenever the *Client* from time to time requires, the *Contractor* ensures that each Consultant promptly executes and delivers a deed or deeds of warranty in favour of any Interested Party in the form of the draft deed set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires (such approval not to be unreasonably withheld or delayed)). The *Contractor* shall provide up to a maximum of seven (7) Consultant warranties in the aggregate from each Consultant under this Clause Z3.6 and Clause Z3.5. If requisite the *Contractor* itself executes and delivers such deed or deeds of warranty immediately upon the *Client's* request.

Z3.7 The *Contractor* does not dismiss any Consultant nor suspend or terminate the employment of any Consultant nor vary the terms of their appointment without the written approval of the *Client* (such approval not to be unreasonably withheld or delayed).

Z3.8 If the *Contractor* breaches any provision of this clause Z3 or if any collateral warranty is not executed and delivered in accordance with this clause Z3, the *Client* is entitled to give the *Contractor* written notice specifying the breach or non-compliance with this clause Z3. If such breach or non-compliance is not rectified by the *Contractor* within 14 days after service of such notice, then the *Client* is not liable to pay any amount in respect of the elements of the *works* to which the default relates while such breach or non-compliance remains to be rectified.

Z3.9 If the employment of any Consultant is terminated before the completion of the services allocated to them, the *Contractor* as soon as is practicable but on seven days' notice from the *Client* appoints another Consultant to complete those services (save any Contractor to whom the *Client* makes reasonable objection in writing). The foregoing provisions of this clause Z3 apply to such replacement Consultant, mutatis mutandis.

## **Z4 Subcontractors**

Z4.1 In this clause Z4 "**Subcontractors**" means:

[REDACTED]

or any other sub-contractor or supplier with a material design responsibility, and includes any replacement of such subcontractors and/or suppliers.

Z4.2 Each of the Subcontractors is appointed by deed prior to them carrying out any design works or services in relation to the *works* in a form approved by the *Client* in accordance with clause 26 of the contract and within fourteen days after the appointment of each Subcontractor the *Contractor* supplies to the *Client* a complete copy of the deed of subcontract.

Z4.3 The *Contractor* ensures that each Subcontractor immediately upon their appointment executes and delivers a deed of warranty in favour of the *Client* in the form of the draft deed set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires). If requisite the *Contractor* itself executes and delivers such deed of warranty immediately upon the *Client's* request.

Z4.4 Whenever the *Client* from time to time requires, the *Contractor* ensures that each Subcontractor promptly executes and delivers a deed or deeds of warranty in favour of any Interested Party in the form of the draft set out in Appendix H of the Scope (with only such amendments as the *Client* approves and/or reasonably requires). The *Contractor* shall provide up to a maximum of seven (7) Subcontractor warranties in the aggregate from each Subcontractor under this Clause Z4.4 and Clause Z4.3. If requisite the *Contractor* itself executes and delivers such deed or deeds of warranty immediately upon the *Client's* request.

Z4.5 The *Contractor* does not dismiss any Subcontractor nor suspend or terminate the employment of any Subcontractor nor vary the terms of their subcontract without the written approval of the *Client*.

Z4.6 If the *Contractor* breaches any provision of this clause Z4 or if any collateral warranty is not executed and delivered in accordance with this clause Z4, the *Client* is entitled to give the *Contractor* written notice specifying the breach or non-compliance with this clause Z4. If such breach or non-compliance is not rectified by the *Contractor* within 14 days after service of such notice, then the *Client* is not liable to pay any amount in respect of the elements of the *works* to which the default relates while such breach or non-compliance remains to be rectified.

Z4.7 If the employment of any Subcontractor is terminated before the completion of the *works* and services allocated to them, the *Contractor* as soon as is practicable but on fourteen days' notice from the *Client* appoints another subcontractor to complete those works and services (save any subcontractor to whom the *Client* makes reasonable objection in writing). The foregoing provisions of this clause Z4 apply to such replacement Subcontractor, mutatis mutandis.

## **Z5 Guarantees**

Z5.1 The *Contractor* shall obtain manufacturer's guarantees in favour of or assignable to the *Client* and all manuals, drawings and other information in respect of all items of Plant and Materials which are included in the *works* as may be reasonably requested by the *Client*.

Z5.2 Should the guarantees, manuals, drawings or other information to be provided pursuant to this clause Z5, not be delivered to the *Client* within fourteen days of

a written request from the *Client* then the *Client* will be entitled to withhold all future payments to the *Contractor* in respect of the relevant item of Plant and Materials until such time as the guarantee, manual, drawing or other information has been delivered.”

**Z6 Approvals**

Z6.1 No inspection, testing, approval or review nor any omission to inspect, test, approve or review by or on behalf of the *Client* diminishes any duty or liability of the *Contractor* under the contract.

**Z7 Set off**

Nothing contained in this contract (other than as to giving notices) ousts or limits any right of the *Client* under any statute or rule of law or of equity in the nature of set-off or abatement of price.

**Z8 Existing public rights of way, footpaths, wayleaves and easements**

The *Contractor*:

- maintains the routes of all existing public rights of way, roads, footpaths, way leaves and easements within the Site and
- obtains necessary consents and discharges the conditions of such consents to enable the *works* to be completed in accordance with the contract.

**Z9 Compliance with Statutory Agreements**

The *Contractor*:

- complies with the requirements of any Statutory Body under any Statutory Agreement in Providing the Works including but not limited to the standard or quality of any part or parts of the *works* necessary to secure adoption of those *works* and
- is responsible for obtaining all approvals, licences and consents necessary from any relevant Statutory Body and any written consents or certificates to show that the *works* have achieved Completion.

**Z10 Recovery of sums due from the Contractor**

Where any sum of money is recoverable from or payable by the *Contractor* under this contract, such sum is assessed by the *Project Manager* and deducted from the Price for Work Done to Date. Where the assessment exceeds any payment due to the *Contractor* under this contract, the sum assessed may be deducted from any sum falling due to the *Contractor* under any other contract with the *Client* whether before or after the date of this contract. The right to exercise this clause remains at the *Client*'s discretion.

**Z11 Named key persons**

Acceptance by the *Client* of key persons stated in the Contract Data does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Contractor* of its duties or obligations under this contract.

**Z12 Convictions**

- Z12.1 Unless agreed in writing in advance by the *Client*, the *Contractor* shall procure that, in respect of all potential persons performing any of the *works*, whether an employee of the *Contractor* or any Subcontractor (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *works* are being or are to be carried out in connection with this contract:
- each Named Employee is questioned as to whether they have any Convictions;
  - a Disclosure and Barring Services check is undertaken in respect of each Named Employee; and
  - save to the extent prohibited by law, a copy of the results of such check are notified to the *Client*.
- Z12.2 The *Contractor* shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Services check is employed without the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).
- Z12.3 Save to the extent prohibited by applicable law, the *Contractor* shall procure that the *Client* is informed if any member of staff of the *Contractor* (or any employee of a Subcontractor), whether a Named Employee or otherwise, involved in the provision of the *works* who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the *Contractor*.
- Z12.4 Without prejudice to clause Z12.1 to clause Z12.3 (inclusive), where the *Client* notifies the *Contractor* that the *Contractor* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Client*, the *Contractor* shall comply at its own cost with the *Client's* requirements to the extent relevant to the delivery of the *works* to the *Client*, which may include (without limitation):
- asking any person acting for or on behalf of the Contractor in connection with this contract for details of any Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check; and/or
  - complying with the HM Government Baseline Personnel Security Standard or similar standard,
- and the results of such disclosures shall be shared with the *Client* in writing."

## **Z13 Modern Slavery**

- Z13.1 The *Contractor* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Client* that neither the *Contractor* nor any of its employees, agents and/or Subcontractors (as far as the *Contractor* is aware, having made reasonable enquiries of each Subcontractor prior to the date of their subcontracts and having also included wording in their subcontracts that is no less onerous than this clause Z13) has:
- committed an MSA Offence
  - been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015 and/or
  - is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

Z13.2 The *Contractor* shall notify the *Client* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Subcontractors have, breached or potentially breached any of the *Contractor's* obligations under clause Z13.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Contractor's* obligations under clause Z13.1.

#### **Z14 Whistle blowing**

Z14.1 The *Contractor* shall ensure that staff engaged by the *Contractor* in connection with any of the *work* (and use reasonable endeavours to ensure that any staff engaged by an Subcontractor, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Contractor* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998.

#### **Z15 Audit**

Z15.1 The Contractor shall:

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

#### **Z16 Conflicts of interest**

Z16.1 The Contractor shall:

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

#### **Z17 Tax compliance**

Z17.1 If, during the *Contractor's* engagement under this contract, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall notify the *Client* in writing of such occasion within seven (7) days of its occurrence and promptly give the *Client*:

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

Z17.2 If the *Contractor* or any persons engaged by it from time to time are liable to be taxed in the UK and/or to pay NICs in respect of consideration received under this contract, the *Contractor* shall:

- at all times comply with ITEPA and all other statutes and regulations relating to income tax, SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration and
- indemnify the *Client* against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the *works* by the *Contractor* or any persons engaged by it.

## **Z18 Data Protection**

Z18.1 The Parties acknowledge that:

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

Z18.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.

Z18.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include:

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

Z18.4 The Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this contract:

- Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by applicable law (provided that if it is so required, the Processor shall

promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law)

- ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
  - nature of the data to be protected
  - harm that might result from a Data Loss Event
  - state of technological development and
  - cost of implementing any measures and
- ensure that:
  - the Processor Personnel do not Process any Personal Data except in accordance with this contract (and in particular the Data Protection Schedule) and
  - it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - are aware of and comply with the Processor's duties under this clause Z18
    - are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor
    - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this contract and
    - have undergone adequate training in the use, care, protection and handling of Personal Data;
- it does not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled
  - the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK GDPR or Article 37 of the LED) as determined by the Controller
  - the Data Subject has enforceable rights and effective legal remedies
  - the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations)
  - the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data and
  - at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by applicable law to retain the Personal Data.

Z18.5

Subject to clause Z18.6, the Processor shall notify the Controller immediately if it:



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

Z18.6 The Processor's notification obligation under clause Z18.5 includes the provision of further information to the Controller in phases, as details become available.

Z18.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause Z18.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- the Controller with full details and copies of the complaint, communication or request
- such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws
- the Controller, at its request, with any Personal Data it holds in relation to a Data Subject
- assistance as requested by the Controller following any Data Loss Event and
- assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

Z18.8 Unless the Processor employs fewer than two-hundred and fifty (250) staff, the Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z18 unless the Controller determines that:

- the Processing is not occasional;
- the Processing includes special categories of data under the UK GDPR and DPA 2018, or Personal Data concerning criminal convictions and offences under the UK GDPR and DPA 2018; and/or
- the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z18.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

Z18.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Law.

Z18.11 Before allowing any Sub-Processor to Process any Personal Data related to this contract, the Processor must:

- notify the Controller in writing of the intended Sub-Processor and Processing
- obtain the written consent of the Controller

- enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause Z18 such that they apply to the Sub-Processor and
- provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.

Z18.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.

Z18.13 The Controller may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).

Z19.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Business Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Z18.15 The Contractor shall be liable for and hereby indemnifies the *Client* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Client* where and to the extent that the same arises in connection with any breach of this clause Z18 by the *Contractor* and/or its personnel (of any type) and/or its Subcontractors."

## **Z19 Confidentiality**

Z19.1 Except where expressly stated otherwise in this contract, the *Contractor* shall treat all Confidential Information as confidential and safeguard it accordingly and not disclose Confidential Information to any other person without the owner's prior written consent.

Z19.2 Subject always to clause Z19.7, the *Contractor's* obligations in relation to Confidential Information pursuant to clause Z19.1 do not apply to the extent that (and nothing shall prevent the *Client* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law or that apply to the *Client* in its capacity as a Crown body) disclosing the Contractor Confidential Information where)

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

Z19.3 The *Contractor* shall only disclose the Client Confidential Information relevant to the carrying out and completion of the *works* and/or the Project to its personnel (of any type) and Subcontractors who are directly involved in carrying out and completing the Project, and shall ensure that such persons are aware of and comply with their obligations in respect of Confidential Information.

- Z19.4 The *Contractor* shall not, and shall procure that its personnel (of any type) and Subcontractors do not, use of any of the Client Confidential Information received otherwise than for the purposes of this contract.
- Z19.5 At the written request of the *Client*, the *Contractor* shall procure that its personnel (of any type) and/or Subcontractors identified in the *Client's* notice sign a confidentiality undertaking on similar terms to this contract prior to commencing any work in accordance with this contract.
- Z19.6 Nothing in this contract shall prevent the *Client* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law or that apply to the Client in its capacity as a Crown body) disclosing the Contractor Confidential Information
- to any Crown body or any other public body on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or other public bodies on the basis that the information is to be treated as confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body
  - to any party engaged by the *Client* in connection with the Project or any person conducting a review of the Project (subject to any commercial redactions as may be reasonably appropriate so as not to disclose any commercially sensitive financial information of the Contractor's to a competitor organisation)
  - for the purpose of the examination and certification of the *Client's* accounts and/or
  - for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.
- Z19.7 The Contractor warrants and undertakes to the Client to comply with the requirements of the Security Aspects Letter at all times in the performance of the works.
- Notwithstanding clause Z19.1 to clause Z19.6 (inclusive), the *Contractor* warrants and undertakes to the *Client* that it shall not (and shall ensure that its personnel (of any type) and its Subcontractors shall not) use and/or disclose to any third party any Foreground Materials and/or Client Materials relating to any Security Measures in respect of the *works* and/or the Site and/or the Project without the prior written approval of the *Client* (not to be unreasonably withheld or delayed).
- The Parties acknowledge and agree that this general prohibition shall not apply to such disclosure (on a limited basis) in connection with any tender and/or procurement processes undertaken by the *Contractor* in connection with the *works* provided that the *Contractor* shall ensure that any recipient(s) of the relevant Foreground Materials and/or Client Materials complies fully with all data security and/or disclosure policies at Appendix L of the Scope (including, for the avoidance of doubt, the Security Aspects Letter) or as otherwise issued by the *Client* to the *Contractor* from time to time in writing in connection with such disclosure.
- Z19.8 Notwithstanding any other term of this contract
- the *Contractor* consents that the *Client* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public

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

## **Z20**

### **Freedom of Information**

Z20.1 The *Contractor* acknowledges that the *Client* is subject to the requirements of the FOIA and the Environmental Information Regulations and the *Contractor* shall assist and co-operate with the *Client* (at its own expense) to enable it to comply with these information disclosure requirements.

Z20.2 The *Contractor* shall and shall ensure that its Subcontractors shall provide

- the *Client* with a copy of all information in its possession, power or control in the form that they require within five (5) days (or such other period as the *Client*, as the context permits, may notify to the *Contractor*) of receiving a written request from the *Client* for such information and
- all necessary assistance as is reasonably requested by the *Client* to enable them to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations, and the *Contractor* shall be liable for and hereby indemnifies the *Client* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Client* where and to the extent that the same arises in connection with any breach of this clause Z20.2 by the *Contractor* and/or its personnel (of any type) and/or its Subcontractors.

Z20.3 If the *Contractor* considers that all or any information provided to the *Client* under clause Z20.2 is a "trade secret" in accordance with section 43(1) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA

- it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the *Client* and
- notwithstanding any such identification, the *Client* (as the context permits) shall be solely responsible for determining at its absolute discretion whether such information and / or any other information is exempt from disclosure in accordance with the provisions of the current version "Freedom of Information Code of Practice" (as published by the Cabinet Office, or any successor body, at the relevant time), the FOIA and/or the Environmental Information Regulations or is to be disclosed in response to a Request for Information.

Z20.4 In no event shall the *Contractor* (or shall the *Contractor* allow its personnel (of any type) and/or its Subcontractors to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the *Client*.

Z20.5 The *Contractor* acknowledges that the *Client* may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information without consulting with the *Contractor* and/or following consultation with that *Contractor* and having considered its views.

## **Z21 Equality legislation**

Z21.1 Notwithstanding any other provision of this contract, the *Contractor* shall comply with and use all reasonable endeavours to ensure its personnel (of any type) and/or its Subcontractor comply at all times with the Human Rights Act 1998, the Employment Rights Act 1996, the Equality Act 2010 and all other applicable laws relating to non-discrimination and equality.

## **Z22 Sustainability**

Z22.1 The Contractor shall

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

## **Z23 Co-operation**

Z23.1 The *Contractor* shall, using the standard of skill and care required in clause X15.1:-

- promote collaborative behaviours throughout its organisation and its supply chain in connection with the *works* and the Project and act collaboratively with the Project Team at all times
- comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Project Team in connection with the *works* and the Project
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Contractor* and the Project Team and
- proactively consult the Project Team when seeking to make decisions in relation to the *works*, in each case so far as reasonably practicable on a Project Focused basis.

Z23.2 The *Contractor* shall work with the Project Team so far as reasonably practicable, using the standard of skill and care required by clause X15.1, to

- to the extent reasonably within the *Contractor's* control, assist the Project Team in performing their obligations under their respective Project Appointments in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Contractor* in connection with the *works*
- share best practice in connection with the *works* and the Project; and

- collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the *works*, on a Project Focused basis.

Z23.3

The *Contractor* agrees, for the purposes referred to in this clause Z23, to promptly supply or allow each Project Team member access to all information and documentation in its possession or control that is reasonably requested by each Project Team member in connection with the Project, insofar as the same is

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

Z23.4

The *Contractor* shall, in complying with its obligations under this clause Z23, consult with each Project Team and the *Client* and attend such meetings as and when reasonably requested by the *Client* to discuss any matters arising under this contract, any Project Appointment and/or in relation to the Project.

Z23.5

Nothing in this clause Z23 shall require the *Contractor* to perform tasks and/or duties which are the responsibility of a Project Team member under its Project Appointment."

**Z24**

#### **Rights of Third Parties**

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause Z24 shall not affect or prevent any assignees who take the benefit of this contract pursuant to clause Z24 or successors in title to the *Client* from enforcing the provisions of this contract.

**Z25**

#### **Building Information Modelling**

Z25.1

Without prejudice and subject always to clause X15.1, the *Contractor* shall comply with the BIM Requirements at all times in the provision of the *works*.

## ANNEXES 1 – 6

### TECHNICAL DOCUMENTS

The USB stick / CD attached to this page is Annex 1 (Pricing Schedule and Fixed Price Items), Annex 2 (Scope), Annex 3 (Site Information), Annex 4 (Key Performance Indicators), Annex 5 (Pre-Contract BEP) and Annex 6 (COVID-19 Management Plan and Report).

By signing below each of the *Contractor* and the *Client* agrees and acknowledges that the USB stick / CD is an accurate electronic representation of the paper files comprising Annexes 1 – 6 of this contract.

.....[REDACTED].....

(Signed by the *Client*)

.....[REDACTED].....

(Signed by the *Contractor*)