



DATED

2022

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

AND

ALGECO UK LIMITED

**NEC4 ENGINEERING AND CONSTRUCTION CONTRACT
(AMENDED JANUARY 2019 AND OCTOBER 2020)
OPTION A (PRICED CONTRACT WITH ACTIVITY
SCHEDULE)**

**FOR THE PURCHASE OF MODULAR UNITS
(AWARDED UNDER CROWN COMMERCIAL SERVICE'S
"MODULAR BUILDING SOLUTIONS" FRAMEWORK: LOT
7)**



FORM OF AGREEMENT

THIS FORM OF AGREEMENT is made on the

2022

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ (the "**Client**", with such term including its successors in title and permitted assigns); and
- (2) **ALGECO UK LIMITED** (company number 00147207), whose registered office is at Manor Drive, Peterborough, PE4 7AP (the "**Contractor**").

BACKGROUND:

- (A) Pursuant to a public procurement process undertaken by CCS with OJEU Contract Notice reference 2018/S 224-512822, CCS has established the CCS Framework.
- (B) The *Contractor*:
 - (a) has been appointed to the CCS Framework following such public procurement process; and
 - (b) is a party to an ACA Framework Alliance Contract (FAC-1) (as amended) dated 2 April 2019 between (1) CCS and (2) the *Contractor* and other contractor parties (referred to therein as "Alliance Members") in relation to a lot forming part of the CCS Framework named "Lot 7: Other Sectors: Hire over £700k and Purchase over £3.5m" (the "**CCS Framework Agreement**").
- (C) For the purpose of the CCS Framework and the CCS Framework Agreement:
 - (a) the Client is an "Additional Client" that has submitted a "Registration Document" to and which has been accepted by CCS;
 - (b) CCS has notified the *Contractor* (and the other parties to the CCS Framework Agreement) that the *Client* is an "Additional Client"; and
 - (c) accordingly, the *Client* has the right to issue to the *Contractor* a "Project Contract" pursuant to and in accordance with the terms of the CCS Framework Agreement,with the terms "**Additional Client**", "**Registration Document**" and "**Project Contract**" having the meanings given to them in the CCS Framework Agreement for the purposes of this paragraph (C) only.
- (D) The *Client* wishes to procure the *works* to deliver the design and construction of modular new build rapid deployment cell prison facilities at the Sites (the "**Project**").
- (E) Following the completion of a "Competitive Award Procedure" undertaken in accordance with (and as such term is defined in) the CCS Framework Agreement, pursuant to which the *Client* requested that the *Contractor* (and other eligible parties to the CCS Framework Agreement) prepared and submitted tender submissions in connection with the *Client's* requirements in relation to the *works* that are the subject of this contract and which form part of the Project and in response to which the *Contractor* (and other such parties) did so:
 - (a) the *Client* now wishes to appoint the *Contractor* to carry and out and complete the *works*; and
 - (b) the *Contractor* has agreed to do so,



on the basis set out in this contract, which is a "**Project Contract**" for the purposes of (and as defined in) the CCS Framework Agreement.

IT IS AGREED:

1. The *Client* will pay to the *Contractor* the amount due and carry out its duties in accordance with this contract.
 2. The *Contractor* will Provide the Works and comply with its other obligations in connection with the *works* in accordance with this contract (and for an amount to be determined in accordance with the same).
 3. This "**contract**" is comprised of:
 - 3.1 this document entitled "Form of Agreement" (and referred to herein as the Form of Agreement);
 - 3.2 the "*conditions of contract*" of (and as such term is defined in) the standard form of NEC4 Engineering and Construction Contract (June 2017 Edition, amended January 2019 and October 2020) incorporating Option A – Priced contract with activity schedule (with such "*conditions of contract*" deemed to be incorporated into this contract by reference);
 - 3.3 Schedule 1: Contract Data;
 - 3.4 Schedule 1 – Appendix 1: Scope (including the Site Information);
 - 3.5 Schedule 1 – Appendix 2: the *additional conditions of contract*;
 - 3.6 Schedule 2: the Collateral Warranties & Third Party Rights Schedule;
 - 3.7 Schedule 3: the Parent Company Guarantee;
 - 3.8 Schedule 4: not used;
 - 3.9 Schedule 5: the Vesting Agreement;
 - 3.10 Schedule 6: the Data Protection Schedule;
 - 3.11 Schedule 7: Security Aspects Letter;
 - 3.12 Schedule 8: Site Delivery Notice;
 - 3.13 Schedule 9: Incentive Schedule;
 - 3.14 Schedule 10: Project Execution Plan; and
 - 3.15 any and all other documents annexed to and/or referred to in the Contract Data and/or any Site Delivery Notice,
- and all references to the "**contract**" in the *conditions of contract* (as amended by the *additional conditions of contract*) shall be construed accordingly.
4. If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of this contract (or that are referred to herein and/or are incorporated into this contract by reference), the priority of such documents is in accordance with the following sequence



- 4.1 this Form of Agreement;
- 4.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
- 4.3 Contract Data: Part One (forming part of the Contract Data referred to above);
- 4.4 Contract Data: Part Two (forming part of the Contract Data referred to above); and
- 4.5 all other documents annexed to or referred to in the above in the sequence stated.

If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between:

- (a) the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* shall take precedence; and
- (b) the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the relevant part(s) of Contract Data: Part Two.

5. The Parties acknowledge and agree that this contract may be executed:

- 5.1 in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument; and
- 5.2 by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature provided by a Party to the other Party).

6. This contract shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 6 and for the enforcement of any judgment, order or award given under English jurisdiction.

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



SIGNED AS A DEED by **THE SECRETARY OF STATE FOR JUSTICE** acting by affixing hereto its corporate seal and authenticated by:

Authenticated by (signature):

Authenticated by (printed name):

EXECUTED AS A DEED by **ALGECO UK LIMITED** acting by a director in the presence of a witness:

Director (signature):

Director (printed name):

Witness (signature):

Witness (printed name):

Witness address:

Witness occupation:



SCHEDULE 1

CONTRACT DATA

PART ONE – DATA PROVIDED BY THE *CLIENT*

1 General

- The **conditions of contract** are the core clauses and the clauses for the following Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract (June 2017, amended January 2019 and October 2020).
- The **main Option** is Option A.
- The **Option for resolving and avoiding disputes** is Option W2.
- The **Secondary Options** are Options X1 (Price Adjustment for Inflation), X2 (Changes in the law), X4 (Ultimate holding company guarantee), X8 (Undertakings to the *Client* or Others), X10 (Information modelling), X11 (Termination by the *Client*), X15 (The *Contractor's* design), X16 (Retention), X18 (Limitation of liability), Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996), Y(UK)3 (The Contract's (Rights of Third Parties) Act 1999) and Z (*additional conditions of contract*).
- The **works** are
 - (i) the design, supply and installation of 200 modular units and associated works and/or services and the incorporation of the Free Issue Materials in relation thereto as more particularly described in the Scope and the Activity Schedule; and
 - (ii) the design, supply and installation of up to 2000 modular units and associated works and/or services in relation thereto and the incorporation of the Free Issue Materials in relation thereto as more particularly described in the Scope and the Activity Schedule but only to the extent that the *Client* has given an instruction to change the *works* and expressly include such units and associated works and/or services.

The Parties agree for the avoidance of doubt that:

- (iii) the *Contractor* has no right to provide the modular units and any associated works and/or services in relation thereto referred to in limb (ii) prior to the *Client's* express instruction referred to above and the *Client* may decide to not instruct such part of the *works* pursuant to this contract and give such services to a third party;
- (iv) if the provision of the modular units and associated works and/or services in relation thereto referred to in limb (ii) is expressly instructed by the *Client* to form part of the *works*:
 - (a) all of the terms of this contract shall apply to the provision of those modular units and any associated works and/or services in relation thereto) as part of the *works*;
 - (b) such change shall not be treated as a compensation event pursuant to clause 60.1(1);
 - (c) the details in the Prices and the Activity Schedule in relation to the modular units and associated works and/or services in relation thereto shall apply; and
 - (d) the details in the Scope in relation to the relevant Completion Date, Key Date and any impact on the Accepted Programme for the additional



modular units and associated works and/or services shall apply.

- The **Project** is as described in Recital (D).
- The **Client** is:
Name: The Secretary of State for Justice, of the Ministry of Justice
Address for communications: FAO The Secretary of State for Justice, 102 Petty France, Westminster, London, SW1H 9AJ
Address for electronic communications: [Redacted]
- The **Project Manager** is:
Name: [Redacted] of Mace Limited
Address for communications: 155 Moorgate, London, EC2M 6XB
Address for electronic communications: [Redacted]
- The **Supervisor** is:
Name: Mace Limited
Address for communications: 155 Moorgate, London, EC2M 6XB
Address for electronic communications: [Redacted]
- The **Scope** is in Appendix 1 of the Contract Data.
- The **Sites** for those Sites which have been identified at the Contract Date are referred to in the Scope and for those Sites which have not been identified at the Contract Date are referred to in the Site Delivery Notices to be issued pursuant to clause 30.6.
- The **Site Information** for those Sites which have been identified at the Contract Date are referred to in the Scope and for those Sites which have not been identified at the Contract Date are referred to in the relevant Site Delivery Notices.
- The **Site Surveys** for those Sites which have been identified at the Contract Date are referred to in the Scope and for those Sites which have not been identified at the Contract Date are referred to in the relevant Site Delivery Notices.
- The **boundaries of the site** are set out in the relevant Site Information for each Site.
- The **language of the contract** is English.
- The **law of the contract** is the law of England and Wales.
- The **period for reply** is ten (10) Working Days.
- The following matters will be included in the Early Warning Register:
 - **None.**

1A General – supplemental

- The **Client Consultants** are:
 - Gleeds Advisory Limited (company number 06472422) of 95 New Cavendish Street, London, W1W 6XF as cost consultants;
 - Cushman & Wakefield (U.K.) Limited (company number 03607777) of 125 Old Broad Street, London, England, EC2N 1AR as planning consultants;
 - Mace Limited (company number 02410626) of 155 Moorgate, London, EC2M



- 6XB; and
- any other party (or parties) identified to the *Contractor* in writing by the *Project Manager* as being a "Client Consultant" from time to time.
- The **Other Contractors** are:
 - the Principal Works Contractor;
 - the FM Provider;
 - any other party (or parties) identified to the *Contractor* in writing by the *Project Manager* as being an "Other Contractor " from time to time.
- The **Principal Contractor** for each Site is the Principal Works Contractor.
- The **Principal Designer** for each Site is the Contractor up to the point of delivery to the relevant Site and then thereafter it shall be the Principal Works Contractor.
- The **Collateral Warranties & Third Party Rights Schedule** is set out at Schedule 2.
- The **Vesting Agreement** is set out at Schedule 5.
- The **Data Protection Schedule** is set out at Schedule 6.
- The **BIM Requirements** are the requirements set out at Annex 8 of the Scope.
- The **Consents Schedule** for each Site is set out in the Site Delivery Notice for that Site.
- The **Security Aspects Letter** is set out at Schedule 7 of this contract.
- There are no **Third Party Agreements** as at the Contract Date.

2 The Contractor's main responsibilities

- The **key dates** and **conditions** to be met for each Site (if any) are specified in the relevant Site Delivery Notice.

3 Time

- The **starting date** is 27 June 2022.
- The **access dates** for each Site are as set out in the Site Delivery Notice for that Site.
- The **Contractor submits revised programmes** at intervals no longer than twenty-eight (28) days.
- The **completion date** for the whole of the *works* is 30 September 2023.
- The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is 2 weeks.

4 Quality management

- The *Contractor* provides a **quality policy statement and quality plan** for



acceptance within twenty-eight (28) days of the Contract Date.

- The **requirements in respect of the quality management system** are set out in the Scope.
- The **defects date** is one hundred and four (104) weeks after the earlier of the following dates to occur:
 - Completion of the whole of the *works*;
 - the last date on which the *Contractor* completed an activity forming part of the *works*; or
 - the termination of the engagement of the *Contractor* under the contract.
- The **defect correction period** is twenty eight (28) days for Defects which are not Emergency Defects or 48 hours for Emergency Defects (or such shorter period as the *Client* or *Project Manager* may notify to the *Contractor* in respect of a notified Defect, acting reasonably and without undue delay and having due regard to the type, nature and severity of the Defect, as well as the potential impact of the Defect on the *works* and/or the Site if it is not corrected as a matter of urgency).

5 Payment

- The **currency of the contract** is pound sterling (£).
- The **assessment interval** is monthly on the final Working Day of the month.
- The **interest rate** is three per cent (3%) per annum above the base rate in force from time to time of the Bank of England.
- For the purpose of Option Y(UK)2, the **final date for payment** is fourteen (14) days after the later of the following dates to occur:
 - the date on which payment becomes due; and
 - the date of receipt by the *Client* of a Valid Invoice for the sums due.
- For the purposes of clause 53 (Final assessment) and Option Y(UK)2 in respect of the final assessment, the **date on which the final payment** becomes due is:
 - if the *Project Manager* makes an assessment after the issue of the Defects Certificate, five (5) weeks after the issue of the Defects Certificate;
 - if the *Project Manager* does not make an assessment after the issue of a Defects Certificate, one (1) week after the *Contractor* issues its assessment; or
 - if the *Project Manager* has issued a termination certificate, thirteen (13) weeks after the issue of the termination certificate.
- The **Purchase Order Number** will be confirmed by the Client after the Contract Date.
- The template form of **Valid Invoice** is set out in the Scope, provided that the *Project Manager* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Contractor*, with any such amendments applying as from the next **assessment date** after the *Project Manager* notification.

6 Compensation events

- Weather • The **place where weather is to be recorded** is for each Site the nearest meteorological office.



- The **weather measurements** to be recorded for each calendar month are:
 - the cumulative rainfall (millimetres);
 - the number of days with rainfall more than five (5) millimetres;
 - the number of days with minimum air temperature less than zero (0) degrees Celsius; and
 - the number of days with snow lying at 09.00 hours (Greenwich Mean Time).
- The **weather measurements** are supplied by The Meteorological Office.
- The **weather data** are the records of past **weather measurements** for each calendar month which were recorded at **place where weather is to be recorded** and which are available from the Meteorological Office.
- The **value engineering percentage** is 50%.

8 Liabilities and insurance

Client's liabilities • There are no **additional Client's liabilities**.

Insurance • In respect of the insurances that the *Contractor* is required to take out and maintain pursuant to and in accordance with this contract, the minimum amount of cover / limit of indemnity for these insurances is as follows:

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials.	A sum insured representing the reinstatement cost or replacement value of the <i>works</i> , Plant and Materials, from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to Equipment.	A sum insured representing the full replacement value or re-instatement cost of the relevant Equipment from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
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 (that is not an employee of the <i>Contractor</i>) caused by activity in connection with the contract.	[Redacted] in respect of any one (1) occurrence, the number of occurrences being unlimited in any one (1) annual policy period, but in the annual aggregate in respect of product liability or pollution liability (to the extent insured under the policy) from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the



	Defects Certificate.
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.	The greater of the amount required by applicable law or a limit of indemnity of not less than [Redacted] in respect of any one (1) occurrence inclusive of costs, the number of occurrences being unlimited in any annual policy period from the Contract Date and up to and including the <i>end of liability date</i> , from the Contract Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Claims made against the <i>Contractor</i> arising out of its failure to use the Standard of Care (professional indemnity insurance)	A limit of indemnity of not less than [Redacted] for each and every claim and in the annual aggregate against the <i>Contractor</i> in relation to the <i>works</i> renewable on an annual basis unless agreed otherwise by the <i>Client</i> and up to and including the <i>end of liability date</i> .

- The *Client* elects to "self-indemnify" the existing buildings and property at the site and in doing so accepts all of the *Client's* associated risks out of or in relation to such "self-indemnification" provided always that the Contractor shall exercise the Standard of Care referred to in this contract in carrying out any *works* and shall be responsible for any damage that may result from its negligence and/or wilful default. In accordance with the *Client's* decision to "self-insure", the *Client* does not require any additional premium / cost from the *Contractor* other than as set out above and/or referred to in the Insurance Table.

Resolving and avoiding disputes

- The *tribunal* is litigation in the courts of England.
- The *Senior Representatives* of the *Client* are:

Name:	[Redacted]
Address for communications:	for c/o The Secretary of State for Justice of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ
Address for electronic communications:	[Redacted]

Name:	[Redacted]
Address for communications:	for c/o The Secretary of State for Justice of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ
Address for electronic communications:	[Redacted]



- The **Adjudicator** is as nominated by the *Adjudicator nominating body*.
- The **Adjudicator nominating body** is The Technology and Construction Solicitors Association (TeCSA).

X1: Price adjustment for inflation

- The **Materials Schedule** is set out at Schedule 11.

X2: Changes in law

- The **Change in Law Base Date** is the Contract Date.

X4: Ultimate parent company guarantee

- The form of **Parent Company Guarantee** is set out at Schedule 3.
- The **Contractor's Parent Company** is the *Contractor's* ultimate holding company, being [Redacted]

X16: Retention

- The **retention free amount** is nil (£0).
- The **retention percentage** is three per cent (3%).

X18: Limitation on liability

- For the purposes of the Option X18, the Parties have agreed the following:
 - The *Contractor's* total aggregate liability to the *Client* for indirect or consequential loss is limited to the sum of 100% of the tendered total of the Prices (as adjusted in accordance with this contract) (**Option X18.1**).
 - For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to a sum equal to one hundred per cent (100%) of the tendered total of the Prices (as adjusted in accordance with this contract) (**Option X18.2**).
 - The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to a sum equal to one hundred per cent (100%) of the tendered total of the Prices (as adjusted in accordance with this contract) (**Option X18.3**).
 - The *Contractor's* total aggregate liability to the *Client* and any Beneficiary (or Beneficiaries) for all matters arising under or in connection with the contract (whether in contract, tort (including negligence) or any other basis of law) other than in respect of the excluded matters, is limited to a sum equal to one hundred per cent (100%) of the tendered total of the Prices (as adjusted in accordance with this contract) (**Option X18.4**).
- The **end of liability date** is the date falling twelve (12) years after the earlier of the following dates to occur:
 - Completion of the whole of the *works*; or
 - the date of the termination of the engagement of the *Contractor* under this contract.



X20: Key Performance Indicators

- The *incentive schedule* for Key Performance Indicators is in Schedule 9.
- A report of performance against each Key Performance Indicator is provided at intervals of 1 month.

Z: Additional conditions of contract

- The **additional conditions of contract** are set out in Appendix 2 of the Contract Data.



PART TWO – DATA PROVIDED BY THE CONTRACTOR

1 General

- The **Contractor** is
Name: Algeco UK Limited
Address: Manor Drive, Peterborough, PE4 7AP
Address for communications: FAO [Redacted], 8 Cliffe Park Way, Morley, Leeds LS27 0RY
Address for electronic communications: [Redacted]
- The **fee percentage** is fifteen per cent [Redacted].
- The **Working Areas (and "working areas")** for each Site will be specified in the Site Delivery Notice.
- The **key people** (each being a **key person**) are:

Name	[Redacted]
Job	[Redacted]
Responsibilities	[Redacted]
Experience	[Redacted]

Name	[Redacted]
Job	[Redacted]
Responsibilities	[Redacted]
Experience	[Redacted]

- The following matters will be included in the Early Warning Register: refer to tender stage risk register.

5 Payment

- The **activity schedule** is at Schedule 12.
- The **tendered total of the Prices** is £21,941,392

Resolving and avoiding disputes

- The **Senior Representatives** of the **Contractor** are:

Name:	[Redacted]
Address for communications:	for [Redacted]
Address for electronic communications:	[Redacted]

Name:	[Redacted]
--------------	------------



Address communications:	for [Redacted]
Address for electronic communications:	[Redacted]

Data for the Short Schedule of Cost Components

- The **people rates** are:

Category of person	Unit	Rate
CAD Technician/ Space Planner	Per Week	[Redacted]
Structural/Civil Engineer	Per Week	[Redacted]
Design Manager	Per Week	[Redacted]
Quantity Surveyor	Per Week	[Redacted]
Procurement Manager	Per Week	[Redacted]
Project Planner	Per Week	[Redacted]
Site Engineer	Per Week	[Redacted]
Site Manager	Per Week	[Redacted]

- The **published list of Equipment** is the edition current at the Contract Date of the list published by Civil Engineering Contractors Association (CECA).
- The **rates for other Equipment** are:

Equipment	Rate
Scissor Lift	[Redacted]
Tower Scaffold	[Redacted]
Generator Hire	[Redacted]

- The **rates for Defined Cost of manufacture and fabrication outside the Working Areas** by the *Contractor* are:

Category of person	Rate
Design Manager	[Redacted]
Project Manager	[Redacted]
Quantity Surveyor	[Redacted]
Procurement Manager	[Redacted]

- The **rates for Defined Cost of design outside the Working Areas** are

Category of person	Rate
--------------------	------



CAD Technician/ Space Planner	[Redacted]
Structural/Civil Engineer	[Redacted]
Design Manager	[Redacted]
Quantity Surveyor	[Redacted]
Procurement Manager	[Redacted]

- The categories of design people whose **travelling expenses to and from the Working Areas are included in the Defined Cost** are Architectural, Structural and Building Services.



APPENDIX 1

SCOPE

DRAFT



APPENDIX 2

ADDITIONAL CONDITIONS OF CONTRACT

1. AMENDMENTS TO CLAUSE 1 – GENERAL

1.1 At the end of clause 10.2, delete the full stop and insert the following:

", but without prejudice to the respective rights and obligations of the Parties".

1.2 Replace the definition of "**Completion**" at clause 11.2(2) in its entirety with the following:

"**Completion** is when the *Contractor* has

- done all the work (and provided any documentation) which the Scope states it is to do by the Completion Date,
- delivered to the *Client* all of the Contractor Collateral Warranties, Subcontractor Collateral Warranties, Subsubcontractor Collateral Warranties and Subconsultant Collateral Warranties which the *Contractor* is obliged under the contract to provide and/or procure as at that date (provided that the *Client* has first notified the *Contractor* of the requirement for it to provide (or procure) the same within a period no shorter than the relevant period stated in Option X8 and
- corrected notified Defects save for any minor items of incomplete work or minor defects, the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the *works* by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Completion within which such "snagging" items are to be rectified by the *Contractor*.

If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work and there are no minor items of incomplete work or minor defects (whether notified to the *Contractor* or otherwise), the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the *works* by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Completion within which such "snagging" items are to be rectified by the *Contractor*."

1.3 Replace the definition of "**Contract Date**" at clause 11.2(4) with the following:

"The **Contract Date** is the date of the Form of Agreement."

1.4 Replace the definition of "**Corrupt Act**" at clause 11.2(5) with the following:

"**Corrupt Act** means any of the following offences or practices

- corruption, including offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of any person, whether an offence under the Bribery Act 2010 or otherwise,
- fraud, including any act, omission or misrepresentation, that knowingly or recklessly misleads (or attempts to mislead) any person to obtain a financial or other benefit or to avoid any obligation,
- the coercion of (including impairing or harming, or threatening to impair or harm, directly or indirectly) any person (or the property of any person) with the intent (or effect) of influencing the actions of any person,



- collusion and/or price fixing, including entering into any arrangement between two (2) or more persons or entities (including any other contractor or Subcontractor) designed to achieve an improper purpose, and including influencing improperly the actions of another person,
- the deliberate destruction, falsification, alteration or concealing of any evidence material to any investigation,
- the threatening, harassment or intimidation of any person with the effect or aim of preventing that (or any other) person from disclosing knowledge of matters relevant to any investigation or from pursuing any investigation,
- any act or omission intended to materially impede the exercise of any rights of audit or access to information (including any such rights of the Client) or the rights that any funder or any banking, regulatory or examining authority or other equivalent body may have in accordance with any applicable laws and/or
- money laundering,

in each case, in connection with this contract or any other contract between the Contractor and the Client and/or any other party."

- 1.5 Replace the definition of "**Defect**" at clause 11.2(6) with the following:

"A **Defect** is a part of the *works* (whether designed or treated as having been designed by the *Contractor* under the contract) which is not in accordance with

- the Scope,
- applicable law,
- the Consents or
- any other part of or requirement in the contract."

- 1.6 In the definition of "**Parties**" at clause 11.2(13):

- after the word "*Client*" insert "(which expression includes its successors in title and assigns)"; and
- insert "and the term "**Party**" means the *Client* or the *Contractor*, as the case may be" immediately before the full stop at the end of the clause.

- 1.7 In line 2 of the definition of "**To Provide the Works**" at clause 11.2(15):

- insert ", applicable law and statutory requirements" after the first instance of the word "contract" in the clause; and
- insert "and the expression "Providing the Works" shall be construed accordingly" immediately before the full stop at the end of the clause.

- 1.8 Replace the wording of clause 11.2(19) in its entirety with "Not used."

- 1.9 Insert new a clause 11.2(A) after clause 11.2 with the heading "**Additional identified and defined terms**" and accompanying new clauses (and associated numbering) as follows:

- (1) **4.20 Meeting** means the meeting attended by the *Client* and the *Contractor* and the relevant representatives from the establishment at each Site (for example the governor) to discuss and agree security and access issues in relation to the relevant Site and the *works*.



- (2) **4.20 Meeting Minutes** means the minutes of the 4.20 Meeting and any other 4.20 meeting attended by the Client and the relevant representatives from the establishment at each Site (for example the governor) to discuss and agree security and access issues in relation to the relevant Site and the *works*, as the same may be updated from time to time.
- (3) **Agreed Materials** means the materials, products and/or equipment identified as such in the Materials Schedule.
- (4) **Agreed Materials Costs** means the total price for each class of Agreed Materials as set out in the Materials Schedule.
- (5) **Agreed Materials Decrease** has the meaning given to such term in Option X1.2.
- (6) **Agreed Materials Increase** has the meaning given to such term in Option X1.2.
- (7) An **Affiliate**, in relation to a body corporate, is any other entity which
- directly or indirectly controls,
 - is controlled by or
 - is under direct or indirect common control of,
- that body corporate from time to time, with "controls" in this context meaning control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 (and with "controlled" being construed accordingly) and any subsidiary undertaking (as such term is defined in the Companies Act 2006) of that body corporate and/or any undertaking with a shareholding or that has an equivalent corporate relationship with any undertaking with a shareholding in that body corporate from time to time.
- (8) **applicable law** means
- any Act of Parliament or subordinate legislation, exercise of the Royal Prerogative and/or enforceable community right under the European Communities Act 1972,
 - any statute, directive, regulation, rule or order made under any statute or directive and having the force of law (including building and fire regulations),
 - any rule of equity or common law or the ruling, judgment or order of any Court and/or
 - any Consents and any other official request or requirement made by or of any Statutory Authority and all orders, rules, guidance notes, bye-laws, codes of practice and any other document with analogous and/or equivalent effect relating to any of the foregoing having binding effect.
- (9) **Background Materials** means all Materials
- owned by the Contractor before the Contract Date.
 - created by the Contractor independently of this contract and/or
 - created by the Contractor independently of the *works*,
- in each case which are or will be used by the Contractor on or after the Contract Date in connection with this contract and/or the Project.
- (10) **Benchmark Market Price** has the meaning given to such term in Option X1.1.



- (11) **Beneficiary** means
- in respect of a Contractor Collateral Warranty (and the Contractor Third Party Rights Schedule, as the context requires), any party with a direct operational and/or financial interest in the *works* and/or the Site as notified to the Contractor by or on behalf of the Client in writing from time to time and/or
 - in respect of a Subcontractor Collateral Warranty, a Subsubcontractor Collateral Warranty and/or a Subconsultant Collateral Warranty (and Subcontractor Third Party Rights Schedule, the Subsubcontractor Third Party Rights Schedule and/or the Subconsultant Third Party Rights Schedule, as the context requires), the *Client* and any party as notified to the Contractor by or on behalf of the Client in writing from time to time as having an interest in the *works* and/or the Site.
- (12) **BIM** means building information modelling.
- (13) **BIM Requirements** means the requirements for BIM identified as such in Contract Data: Part One.
- (14) **BMP Difference** has the meaning given to such term in the relevant section of Option X1.2 (as the context requires).
- (15) **BPSS** means the "Baseline Personnel Security Standard" as more particularly described in the Cabinet Office publication "HMG Personnel Security Controls (Version 2.0 – April 2014)" as may be amended, updated and/or replaced from time to time.
- (16) **Buy Back Notice:** means a notice issued by the *Client* to the *Contractor* requiring the *Contractor* to remove specified Installed Modular Units from a Site and pay the *Client* the Buy Back Price.
- (17) **Buy Back Price:** means the buy back price in respect of the Installed Modular Units specified in the Scope.
- (18) **CCS Framework** a framework with multiple "Alliance Member" entities across multiple lots which is known as the "Modular Building Solutions" framework (reference number RM6014).
- (19) **CCS Framework Agreement** has the meaning given to such term in paragraph (B) of the "Background" section of the Form of Agreement.
- (20) **CCS** means the Minister for the Cabinet Office as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP.
- (21) **CDM Regulations** means the Construction (Design and Management) Regulations 2015.
- (22) **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.

(23) **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 and
- all Personal Data which the Contractor obtains and/or becomes aware of due to its engagement 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.

(24) **Client Consent** means a Consent (if any) identified in the Consents Schedule as being a "Client Consent".

(25) **Client Consultant** means each party identified as such in Contract Data: Part One or as otherwise notified by the Client or the Project Manager to the Contractor from time to time in writing.

(26) **Client Consultant Appointment** means any appointment entered into by the Client with a Client Consultant as notified by the Client to the Contractor from time to time in writing.

(27) **Client Materials** means all Materials prepared by and/or on behalf of the Client and provided to the Contractor in connection with this contract and/or the Project (but excluding any Contractor Materials).

(28) **Client's Policies** the Client's policies to be found on the Ministry of Justice website (www.gov.uk/moj) and/or as referred to in the Scope and/or otherwise provided by the Client to the Contractor from time to time (and including but not limited to any policies detailed and identified in Contract Data: Part One);

(29) The **Collateral Warranties & Third Party Rights Schedule** is the document identified as such in Contract Data: Part One.

(30) **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) or such other software platform as the Project Manager may notify to the Contractor in writing from time to time.

(31) **Confidential Information** means the Client Confidential Information and/or the Contractor Confidential Information (as the context permits).

(32) **Consent** means any and all (as the context requires) approvals, agreements (including Statutory Agreements), consents, permits, licences, qualifications, filings, exemptions, certificates and permissions (including, without limitation, all planning permissions (whether outline or full) and consents and such other matters or authorisations whatsoever (including Planning Consents), including any conditions thereof (including Planning Conditions and



reserved matters) as are lawfully and necessarily required from any Statutory Authority or third party (including, without limitation, any landowner and any consents relative to any utilities and crossings of roads and/or cables (whether temporary and/or permanent)) in connection with the *works* and/or the performance of any obligation of the Contractor under and pursuant to this contract and all applicable laws.

- (33) **Consents Schedule** means the schedule (if any) identified as such in Contract Data: Part One.
- (34) **Contract Data: Part One** means the document identified as such and forming part of the Contract Data.
- (35) **Contract Data: Part Two** means the document identified as such and forming part of the Contract Data.
- (36) **Contractor Collateral Warranty** means a document substantially the same as the template form of such document as included in the Collateral Warranties & Third Party Rights Schedule.
- (37) **Contractor Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the same, 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).
- (38) **Contractor Materials** means the Background Materials and/or Foreground Materials (as the context permits).
- (39) **Contractor Third Party Rights Schedule** means the schedule identified as such and forming part of the Collateral Warranties & Third Party Rights Schedule.
- (40) **Contractor's Parent Company** means the entity identified as such in Contract Data: Part One.
- (41) **Controller** has the meaning given to such term in the DPA.
- (42) **Convictions** means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders, including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.
- (43) **Copyright** has the meaning given to such term in Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.
- (44) **COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.



- (45) **Current Market Price** has the meaning given to such term in the relevant section of Option X1.2 (as the context requires).
- (46) **Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this contract and/or actual or potential loss and/or destruction of such Personal Data, including any Personal Data Breach.
- (47) **Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
- (48) **Data Protection Laws** means the UK GDPR and the LED, the DPA (to the extent it relates to Processing of Personal Data and privacy) and all applicable laws about the Processing of Personal Data and privacy.
- (49) **Data Protection Officer** has the meaning given to such term in the DPA.
- (50) **Data Protection Schedule** means the document identified as such in Contract Data: Part One.
- (51) **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject under the Data Protection Laws to access its Personal Data.
- (52) **Data Subject** has the meaning given to such term in the DPA.
- (53) **Database Rights** means any rights in a "database" as such term is defined in Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.
- (54) **DBS Check** means a "standard", "enhanced" or "enhanced with lists" check (or any equivalent check required by the *Client* at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement or alternative organisation as may be established from time to time).
- (55) **Disclosure and Barring Service** means the body of the same name as established under the Protection of Freedoms Act 2012.
- (56) **DOTAS** means the "Disclosure of tax avoidance schemes rules" which require a promoter of tax schemes to notify Her Majesty's Revenue and Customs of notifiable arrangements or proposals and provide prescribed information on them within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.
- (57) **DPA** means the Data Protection Act 2018 as amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586).
- (58) **Emergency Defect** means a Defect which
- substantially adversely affects the performance and/or use of all or part of the



works and/or a 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 a Site (including its immediate surroundings) and/or to protect the health and safety of those occupying, using or visiting the works and/or a Site (including its immediate surroundings); and
- presents a security risk at a Site or is such that a failure to rectify it immediately would be materially detrimental to the security of any part(s) of a Site (including in relation to any Security Measures).

- (59) **Environmental Information Regulations** means is the Environmental Information Regulations 2004 and all associated guidance and/or codes of practice in relation to such regulations from time to time.
- (60) **Factory Acceptance Tests** means the tests carried out by the Contractor exercising the Standard of Care to ensure that the modular units have completed manufacture and are ready for delivery to Site(s) as the same may be further detailed in the Scope;
- (61) **FM Provider** means the person appointed by the Client to carry out maintenance and/or any other operation activities at a Site which in the northern region will be Amey Community Limited (company number 02564794) whose registered office address is Chancery Exchange, 10 Furnival Street, London, United Kingdom, EC4A 1AB and in the southern region will be Gov Facility Services Limited in each case including any assignee or successor in title or substitute thereof.
- (62) **FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner and/or the Department for Constitutional Affairs in relation to that Act from time to time.
- (63) A **Force Majeure Event** means any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event):
- war, hostilities (whether war is declared or not), invasion, act of foreign enemies;



- rebellion, revolution, insurrection, military or usurped power, or civil war;
 - acts of terrorism and action of the United Kingdom government in response to the threat of an act of terrorism,
 - riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving solely nor originating with the personnel or other employees of the Contractor or lower tier subcontractors or the employees or subcontractors of any group company associated with the Contractor;
 - munitions of war or explosive materials, ionizing radiation or contamination by radioactivity, except where attributable to the Contractor's use of such munitions or explosives; and
 - pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- (64) **Foreground Materials** means all Materials created by or on behalf of the Contractor specifically in connection with the *works* and/or this contract, but excluding any Background Materials.
- (65) **Form of Agreement** means the document entitled "Form of Agreement" as executed by the *Client* and the *Contractor* in connection with the *works* and to which these *additional conditions of contract* are annexed.
- (66) **Free Issue Inspection Period** – the period identified as such in the Scope
- (67) **Free Issue Materials** – any materials identified as such in the Scope.
- (68) **General Anti-Abuse Rules** means the legislation in Part 5 of the Finance Act 2013 and any future applicable laws in relation to the counteraction of tax advantages arising from abusive arrangements to avoid NICs.
- (69) **Government Buying Standards** – are the standards published here: www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs (as updated from time to time).
- (70) **Greening Government Commitments** means the Government's policy to reduce its effects on the environment, the details of which are published here: www.gov.uk/government/collections/greening-government-commitments (as updated from time to time).
- (71) **Halifax Abuse Principle** means the principle explained in the CJEU Case C-255/02 Halifax and others.
- (72) **HM Government Baseline Personnel Security Standard** means the personnel security standard published here: www.gov.uk/government/publications/government-baseline-personnel-security-standard (as may be updated from time to time).
- (73) **Insolvency Event** means where a Party is subject to one of the following or its equivalent (in any jurisdiction)



- if the Party is an individual, it has
 - presented an application for bankruptcy,
 - had a bankruptcy order made against it,
 - had a receiver appointed over its assets or
 - made an arrangement with its creditors or
 - if a Party is a company or partnership, it has
 - had a winding-up order made against it,
 - had a monitor appointed or any document is filed at court to obtain or apply for a moratorium or order is made for a moratorium to come into force,
 - had a provisional liquidator appointed to it,
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct),
 - had an administration order made against it or had an administrator appointed over it,
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its underlying or assets or
 - made an arrangement, compromise or composition with its creditors.
- (74) **Installed Modular Units** means the modular units installed by the *Contractor* at a Site as part of its work as more particularly described in the Scope.
- (75) **Intellectual Property Rights** means any and all
- Copyright, rights related to or affording protection similar to Copyright, Database Rights, design right, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs including BIM, know-how, trade secrets and other rights in Confidential Information,
 - applications for registration, and the right to apply for registration, for any of the rights referred to above that are capable of being registered in any country or jurisdiction and
 - all other rights having equivalent or similar effect in any country or jurisdiction.
- (76) **ITEPA** means the Income Tax (Earnings and Pensions) Act 2003.
- (77) **Latest Order Date** has the meaning given to such term in Option X1.1.
- (78) **LED** means the Law Enforcement Directive (Directive (EU) 2016/680).
- (79) **Materials** means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided that the same do not contain any Personal Data) (including relating to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations (except where the same relate to documents produced solely for the Contractor's own internal pricing purposes), photographs, brochures, reports, meeting notes, and any other materials, in any medium provided by or prepared on behalf of a Party (in each case as may be amended or replaced from time to time) in connection with the *works*, this contract and/or the Project.



- (80) **Materials Order** has the meaning given to such term in Option X1.2.
- (81) **Materials Schedule** means the schedule identified as such in Contract Data: Part One.
- (82) **Materials Supplier** means the supplier of any Agreed Materials.
- (83) **Maximum Increase Tolerance** has the meaning given to such term in Option X1.1.
- (84) **Maximum Reduction Tolerance** has the meaning given to such term in Option X1.1.
- (85) **MSA Offence** means an offence under the Modern Slavery Act 2015.
- (86) **Named Employee** has the meaning given to such term in clause 101.1.
- (87) **National Audit Office** means the body of the same name as established under the National Audit Act 1983.
- (88) **NICs** means national insurance contributions.
- (89) **Non-Client Personnel** means the *Contractor's* employees, sub-consultants and/or Subcontractors (and their respective employees) and all other individuals for whom they are responsible at any tier (other than the *Client's* personnel).
- (90) **Notice to Remove** means a notice from the *Client* to the *Contractor* requiring the *Contractor* to remove Installed Modular Units from a Site and install them at another location within the *Client's* estate.
- (91) **Occasion of Tax Non-Compliance** means any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which, on or after 1 April 2013
- is found to be incorrect as a result of
 - a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rules or the Halifax Abuse Principle or under any rules or applicable laws having equivalent or similar legal effect and/or
 - the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under DOTAS or any equivalent or similar regime and/or
 - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (92) **Parent Company Guarantee** is the document identified as such in Contract Data: Part One.
- (93) **Personal Data Breach** has the meaning given such term in the UK GDPR.
- (94) **Personal Data** has the meaning given to such term in the UK GDPR.



- (95) **Planning Conditions** any conditions relating to a Planning Consent as specified by the relevant Statutory Authority.
- (96) **Planning Consents** means any Consents in relation to planning approval for the *works*.
- (97) **Principal Contractor** is the party identified as such in Contract Data: Part One to fulfil such statutory role under and as defined in the CDM Regulations.
- (98) **Principal Designer** is the party identified as such in Contract Data: Part One to fulfil such statutory role under and as defined in the CDM Regulations.
- (99) **Principal Works Contractor** means in relation to each Site the contractor appointed by the Client to carry out the ground preparation works and/or any other enabling works prior to and/or after the installation of the modular units which entity shall for the avoidance of doubt also be the Principal Contractor on Site.
- (100) **Process** has the meaning given to such term under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly).
- (101) **Processor** has the meaning given to such term in the DPA.
- (102) **Prohibited Materials** means any material, good, equipment, product and/or plant (of any type and/or nature) which, in the context of its use or specification in connection with the *works* (whether alone or in combination with other materials, goods, products and/or plant)
- poses a hazard to the health and safety of any person who may come into contact with the *works*,
 - either by itself or as a result of its use in a particular situation or in combination with other materials, goods, equipment, products and/or plant (of any type and/or nature), it would or is likely to have the effect of reducing the normal life expectancy of any other materials, goods, products and/or plant or structures in which it is incorporated or to which it is affixed,
 - poses a threat to the structural stability or performance or the physical integrity of any part of the *works* or any part or component of any materials, goods, equipment, products and/or plant forming part of the *works*,
 - has been prohibited for use in or otherwise does not comply with the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,
 - does not conform with British or European Standards (where appropriate) or industry codes of practice (or where no such standard exists, does not conform with a British Board of Agrément Certificate),
 - is generally known in the construction industry to be deleterious, in the particular circumstances it is specified for use, to health and safety and/or durability of buildings or structures and/or
 - is specifically prohibited by this contract.
- (103) **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 objective of achieving value for money, innovation and education, the exchange of information, and the integration, adaptation and standardisation of roles, expertise and



responsibilities in connection with the *works* and/or the wider Project.

- (104) **Project** has the meaning given to such term in Contract Data: Part One.
- (105) **Protective Measures** means all appropriate technical and organisational measures ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in the Data Protection Schedule.
- (106) **Purchase Order Number** means the number identified as such in Contract Data: Part One.
- (107) **Reasonable Rates and Terms** has the meaning given to such term in clause 84.4.
- (108) **Relevant Policies** means the policies identified as such in Contract Data: Part One.
- (109) **Relevant Requirements** means all applicable laws relating to fraud, anti-bribery and anti-corruption, including (but not limited to) the Bribery Act 2010 and section 117 of the Local Government Act 1972.
- (110) **Relevant Tax Authority** means Her Majesty's Revenue and Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
- (111) **Relevant Terms** has the meaning given to such term at clause 104.2.
- (112) **Request for Information** means any request for information under the FOIA or the Environmental Information Regulations.
- (113) **Security Aspects Letter** means the document identified as such in Contract Data: Part One.
- (114) **Security Management Plan** means the security management plan prepared pursuant to paragraph 1.5.3 of the Security Aspects Letter, an outline of which is set out in Annex 1 of the Security Aspects Letter.
- (115) **Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to
- maintain the safety of persons and public and personal property,
 - prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm,
 - prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire),
 - maintain political, national and/or international security,
 - prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties and/or



- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with applicable laws,

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.

(116) **Site Assumptions** means the assumptions in relation to the Sites referred to in section 110 of the Scope.

(117) **Site Completion** is when the *Contractor* has

- done all the work (and provided any documentation) which the Scope states it is to do by the Site Completion Date;
- delivered to the *Client* all of the Contractor Collateral Warranties, Subcontractor Collateral Warranties, Subsubcontractor Collateral Warranties and Subconsultant Collateral Warranties which the *Contractor* is obliged under the contract to provide and/or procure as at that date (provided that the *Client* has first notified the *Contractor* of the requirement for it to provide (or procure) the same within a period no shorter than the relevant period stated in Option X8;
- delivered a completed Site Handover Checklist that has been accepted by the *Project Manager*;
- corrected notified Defects save for any minor items of incomplete work or minor defects, the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the *works* by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Site Completion within which such "snagging" items are to be rectified by the *Contractor*.

If the work which the *Contractor* is to do by the Site Completion Date is not stated in the Scope, Site Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work and there are no minor items of incomplete work or minor defects (whether notified to the *Contractor* or otherwise), the existence, completion and/or rectification of which in the reasonable opinion of the *Project Manager* would not prevent or interfere with the use (or the fitting out for use) of the *works* by the *Client* or Others and are identified by the *Project Manager* as "snagging" items, with the *Project Manager* notifying the *Contractor* of the reasonable period following Site Completion within which such "snagging" items are to be rectified by the *Contractor*."

(118) **Site Completion Date** means for each Site the site completion date specified in the relevant Site Delivery Notice issued by the Client pursuant to clause 30.6 unless later changed in accordance with the contract.

(119) **Sites (and "Site" and "site")** means the sites for the *works* as identified in Contract Data: Part One.

(120) **Site Delivery Notice** means a notice from the *Client* to the *Contractor* confirming the availability of a Site for delivery by the *Contractor* in the form at Schedule 11.

(121) **Site Handover Checklist** means the checklist to be completed by the Contractor confirming that it has carried out all of the activities it is required to carry out prior to completion of the *works* at the relevant Site which shall include the completion of a Unit Handover Checklist



for each unit on the Site as further described in the Scope.

- (122) **Site Surveys** means the site surveys as identified in Contract Data: Part One.
- (123) **SSCBA** means the Social Security Contributions and Benefits Act 1992.
- (124) **Standard of Care** means all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional designer that is experienced in the carrying out of such activities for projects of a similar size, scope, value, character and complexity to the *works* in the context of the Project.
- (125) **Statutory Agreement** means each and every agreement with a Statutory Authority, including any agreement(s) pursuant to section 38 and/or section 278 of the Highways Act 1980 and/or pursuant to section 104 of the Water Industry Act 1991 and/or pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972.
- (126) **Statutory Authority** includes (without limitation) any
- authority or other agency empowered by applicable laws, including planning authorities, local authorities, the Environment Agency, police, fire, health and safety agencies,
 - national or local government or governmental department or legislative minister or commission, board, body, bureau, agency (whether state or supranational or a national park),
 - authority, Court or other judicial or administrative body (be it central or local) and/or
 - statutory undertaker and utility providers (to the extent that such utility provider is required to and/or is engaged by a Party to perform any works and/or services in connection with the *works*,
- having jurisdiction over any part of the Project, the *works* and/or the performance of any other obligations of the Parties under this contract, with "**statutory body**" or "**utility**" being construed accordingly (as the context permits).
- (127) **Subconsultant Collateral Warranty** means a document substantially the same as the template form of such document as included in the Collateral Warranties & Third Party Rights Schedule.
- (128) **Subconsultant Third Party Rights Schedule** means the schedule identified as such and forming part of the Collateral Warranties & Third Party Rights Schedule.
- (129) **Subcontractor Collateral Warranty** means a document substantially the same as the template form of such document as included in the Collateral Warranties & Third Party Rights Schedule.
- (130) **Subcontractor Third Party Rights Schedule** means the schedule identified as such and forming part of the Collateral Warranties & Third Party Rights Schedule.
- (131) **Sub-Processor** means any third party appointed to Process any Personal Data on behalf of the Contractor in connection with this contract.



- (132) **Subsubcontractor Collateral Warranty** means a document substantially the same as the template form of such document as included in the Collateral Warranties & Third Party Rights Schedule.
- (133) **Third Party Agreement** has the meaning given to such term in clause 28C.1.
- (134) **Third Party** has the meaning given to such term in clause 28C.1.
- (135) **Third Party Rights Schedule** means the schedule identified as such in Contract Data: Part One.
- (136) **UK GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK law under the UK European Union (Withdrawal) Act 2018), and amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586).
- (137) **Unit Handover Checklist** means the checklist to be completed by the Contractor confirming that it has carried out all of the activities it is required to carry out prior to completion of the *works* for a modular unit at a Site as further described in the Scope.
- (138) **Valid Invoice** means an invoice in the form identified as such in Contract Data: Part One.
- (139) **VAT** means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it.
- (140) **Vesting Agreement** means a vesting agreement in the form identified as such in Contract Data: Part One.
- (141) **Working Day** means any day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

1.10 Replace the wording of clause 12.1 with the following:

"In this contract, unless the context indicates otherwise

- words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders,
- any reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking,
- any references to any enactment, code of practice or applicable law is to be construed as a reference to such enactment, code of practice or applicable law or such provision as the same may have been or may from time to time hereafter be amended, consolidated, replaced and/or re-enacted,
- where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date (provided that where the relevant period includes Christmas Day, Good Friday or a day which is a bank holiday, that day is excluded),
- a "week" is a continuous period of seven (7) days.
- a general expression shall not be limited by any more specific expression preceding or following it and references to "includes" or "including" (or any analogous terms) shall be



construed without limitation in relation to any foregoing wording,

- the term "inform" or "informs" means in writing,
- unless otherwise stated, a reference to a "clause" means a clause forming part of this contract,
- unless otherwise stated, references to recitals, paragraphs, annexes or schedules are to recitals, paragraphs, annexures and schedules to this contract (and shall form part of the operative provisions of this contract),
- the headings to the sections, clauses and sub-clauses are for convenience only and do not affect the construction or interpretation of this contract or any document referred to in or forming part of this contract."

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

"and shall be construed in accordance with".

1.12 Replace the wording of clause 12.4 with the following:

"The Parties acknowledge and agree that

- the contract supersedes any previous agreement, arrangement and/or understanding between the *Client* and the *Contractor* in relation to the matters referred to herein and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings as between the *Client* and the *Contractor*, whether written or oral, relating to the same,
- the terms and conditions of the contract apply to the exclusion of any other terms that the *Contractor* may seek to impose or incorporate, or which are implied by any trade, custom, practice or course of dealing in connection with the subject matter (or any individual element) of the same,
- the contract represents the entire understanding and agreement as between the *Client* and the *Contractor* in relation to the matters referred to herein and
- the *Contractor* has not relied upon any prior representation by the *Client* in entering into the contract,

provided always that nothing in this clause 12.4 shall exclude or limit any liability of the *Client* or the *Contractor* for fraud."

1.13 Insert a new clause 12.5 as follows:

"In this contract

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

1.14 Insert a new clause 12.6 as follows:

"In the event that

- any provision or condition of the contract is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of the contract



shall continue in full force and effect as if the contract had been executed without the provision or condition in question and/or

- a court holds any provision or condition to be invalid, illegal and/or unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the contract then,

the *Client* and the *Contractor* shall immediately commence negotiations in good faith to ensure that the purpose of the contract is achieved in the absence of the provision or condition in question."

1.15 Insert a new clause 12.7 as follows:

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

1.16 Insert a new clause 12.8 as follows:

"In this contract

- the rights and remedies of a Party may be waived only by way of written notice by the Party giving such waiver (and any such waiver expressed as being provided by the *Client* shall not be valid if provided by or issued in the name of the *Project Manager*) and in a manner that expressly states that a waiver is intended,
- any failure by a Party at any time to enforce any provision of this contract and/or to require performance by the other Party of any of the provisions of this contract is not construed as a waiver of any such provision and does not affect the validity of this contract (or any part of it) and/or create any estoppel or in any other way affect the right of such Party to enforce any provision of this contract in accordance with its terms and
- unless otherwise provided in this contract, the rights and remedies of each Party are cumulative and do not exclude any rights or remedies provided by applicable, in equity or otherwise."

1.17 Replace the wording of clause 13.1 with the following:

"Unless otherwise notified by the *Client* or the *Project Manager* to the *Contractor* from time to time and in writing (but subject always to clause 13.2A)

- all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions, certificates, submissions, proposals, records, acceptances, notifications, replies and other communications between the Parties 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 maintain at its own cost any software licensing 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 contract from time to time, who shall be responsible for maintaining at their own cost any similar or equivalent software packages that they choose to use in connection with this contract from time to time and
- copies of communications that are issued via the Communications Software may also be issued by a sender to the relevant recipient(s) by
 - hand delivery,
 - first class inland (or recorded delivery) post and/or
 - electronic mail."



1.18 Replace the wording of clause 13.2 with the following:

"Subject always to clause 13.2A

- a communication issued via the Communications Software shall have effect when it is communicated by the sender to the recipient in accordance with the Communications Software, provided that any communication sent after 17:00 shall be treated as having been received at 09:00 on the first (1st) Working Day after its transmission and
- any other communication shall have effect on the following basis
 - any communication sent by hand is deemed to be received upon delivery to the address of the recipient as set out in the Form of Agreement (or as notified by a Party to the other Party from time to time and in writing),
 - any communication sent by first (1st) 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) Working Days following the date of posting,
 - any communication sent by electronic mail on a Working Day 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 or on a day that is not a Working Day, in which case it is treated as having been received at 09:00 on the first (1st) Working Day after its transmission, provided that the recipient has previously confirmed to the sender its electronic mail address in writing and
 - any other communication sent by electronic means instead of electronic mail shall be deemed to have been received when, in addition to the issue or uploading of the original communication itself, confirmation of the same is provided by the sender to the relevant recipients by one of the above-mentioned means (and in accordance with the rules of receipt referred to therein)."

1.19 Insert a new clause 13.2A as follows:

"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 the engagement 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 and/or
- any agreement between the Parties amending the provisions of this contract,

with each such communication needing to be provided in writing and issued by hand delivery or first (1st) class inland post and/or recorded delivery post to the address of the relevant recipient (as referred to in clause 13.2), provided that a duplicate copy of any such communication may also be sent to the receiving Party by electronic mail (or other electronic means) for information only."

1.20 Insert a new clause 13.9 as follows:

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

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

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



1.22 Insert a new clause 14.5 with the following wording:

"Without prejudice to the generality of clause 14.3, the *Contractor* acknowledges and agrees that the *Project Manager* may give an instruction to the *Contractor* which changes the Scope to remove or omit

- all or part of the works described in limb (i) of the definition of *works* where the *Contractor* is in breach of its obligations under this contract and/or suffering an Insolvency Event and/or the parties are unable to agree the contents of the relevant Site Delivery Notice pursuant to clause 30.5; and/or
- all or part of the works described in limb (ii) of the definition of *works* at any time and for any reason,

and the *Client* may instruct Others including any other contractor appointed pursuant to the CCS Framework and the Competitive Award Procedure referred to at Recital (E) to carry out such omitted work, in which case

- the tendered total of the Prices shall be reduced to reflect such removal or omission, calculated by reference to the *Client's* reasonable determination of the value attributable to such omitted part(s) or by such other sum as otherwise agreed between the Parties,
- the *Client* shall have no liability whatsoever to the *Contractor* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), and such reduction or omission shall not give rise to any entitlement for the *Contractor* to claim for abortive costs, actual or expected loss of payment or profit, loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses of any type or for any other amount under the contract and
- the *Contractor* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Project Manager* pursuant to this clause 14.5,

provided always that nothing in this clause 14.5 shall affect, in respect of any works and/or services forming part of an activity that is subject to such an omission instruction, the *Contractor's* entitlement to payment (or reimbursement) in respect of

- any works and/or services forming part of that activity that have been properly performed by the *Contractor* as at the effective date of the relevant omission instruction but which cannot, by reason of the omission, be completed, the value of which shall be determined by the *Project Manager*, acting reasonably, on a pro rata basis by reference to the value of the relevant works and/or services as against the total of the Prices for the relevant activity,
- the *Contractor's* reasonably and properly incurred direct demobilisation costs (as disclosed to the *Project Manager* for review and approval on an open book basis) in relation to the omitted works and/or services only,
- the cost of any Plant and Materials that the *Contractor* has itself manufactured in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the site that and provided that the *Contractor* has used reasonable endeavours to mitigate such costs, either whole or in part (including by using such Plant and Materials as part of the wider delivery of the *works*) and
- any direct costs that the *Contractor* is contractually committed to pay to any third party (including its Subcontractors) that relate to such omitted works and/or services only (such as cancellation costs and the cost of Plant and Materials that have been manufactured by a third party in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the site) and to the extent that which the *Contractor* is unable, using reasonable endeavours and exercising the terms of the relevant contract with such third party (but without having to incur further costs to such third party in doing so) to mitigate such costs, either whole or in part (including by using any Plant and Materials, Equipment and/or other physical items that the *Contractor* is contractually committed to purchase as part of the wider delivery of the *works*).



Where any sums are to be paid to the *Contractor* under the third and fourth bulleted items above in respect of Plant and Materials, Equipment and/or other physical items referred to in such bulleted items, it shall be a precondition to the *Contractor's* entitlement to payment in respect of the same under this clause 14.5 that

- (save in relation to Plant and Materials and/or Equipment that is hired by the *Contractor* and/or its Subcontractors) ownership and title in such Plant and Materials, Equipment and/or other physical items transfers to the *Client* and
- the *Contractor* delivers the same to a location to be agreed between the Parties in advance, no later than the date on which the *Contractor* receives payment from the *Client* in connection with the relevant Plant and Materials, Equipment and/or other physical items under this clause 14.5."

1.23 Insert a new clause 14.6 as follows:

"No communication from the *Client*, the *Project Manager* or the *Supervisor* given in accordance with the provisions of the contract, including but not limited to comments on the *Contractor's* design, drawings, specifications and method statements, instructions, acceptances, notices or approvals removes, amends or varies any of the *Contractor's* obligations, responsibilities or liabilities under the contract, including (without limitation) its responsibility to Provide the Works and its liability for Defects and defective design."

1.24 In clause 15.1:

- in the third bulleted item, replace "or" with ",";
- in the fourth bulleted item, replace the full stop with "," and insert the following new bulleted items:
 - affect the procuring and/or discharge of any Consents,
 - change the Accepted Programme,
 - affect the work of the *Client*, a *Client's* contractor (including any Other Contractor), the FM Provider or another consultant or adversely affect the *Client* (including, without limitation, by increasing the monies payable by the *Client* to Others),
 - constitute a Defect,
 - constitute a compensation event which has not been previously notified,
 - result in a breach of the contract or
 - cause a breach of any applicable law or statutory requirements."; and
- at the end of the final paragraph of clause 15.1 insert the following:

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

1.25 In clause 15.2:

- insert "(1)" after "one" and "(2)" after "two";
- delete "either" and replace "or *Contractor* instructs the other" in the first bulleted item of clause 15.2 with "instructs the *Contractor*";
- replace "or *Contractor* may instruct" in the penultimate paragraph of clause 15.2 with "may instruct"; and
- replace "other" on the final line in the penultimate paragraph with "*Contractor*".

1.26 In clause 15.4, insert "(1)" after "one".



- 1.27 Insert a new clause 15.5 as follows:

"The Parties acknowledge and agree that the issuing and/or revision of any 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."

- 1.28 Insert a new clause 15.6 as follows:

"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 *conditions of contract*. Unless otherwise stated in the *conditions of contract*, the Prices, the Completion Date and the Key Dates are not to be changed for any risks entered into the 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 *conditions of contract*."

- 1.29 In clause 16.2:

- insert "(4)" after "four"; and
- insert "(or such other longer period as may be agreed between the *Contractor* and the *Project Manager*, acting reasonably)," after "proposal" on the first line of clause 16.2.

- 1.30 Insert a new clause 16.4 as follows:

"The *Contractor* shall comply with the Project Execution Plan and advise the *Client* during the *works* if any items in the Project Execution Plan may need to be adjusted and such adjustments shall only be made with the written agreement of the *Client*."

- 1.31 Replace the wording of clause 17.1 in its entirety with the following:

"The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the contract. Subject to paragraph 4 of the Form of Agreement, the *Project Manager* gives an instruction resolving the error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict. Notwithstanding any other provision of the contract, any such error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict, or any instruction issued under this clause 17.1 in respect of the same, does not give rise to nor constitute a compensation event."

- 1.32 Replace the wording of clause 17.2 in its entirety with the following:

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



1.33 Insert a new clause 17.3 as follows:

"Without prejudice to clause 21.1, the *Contractor*

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

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

- the Scope which does not relate to design, the *Contractor* notifies the *Project Manager* who gives an instruction resolving the same and any such instruction is not a compensation event and/or
- any design of the *works* (including any designs contained in and/or referred to in the Scope), the *Contractor* submits its proposals for the correction of such mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency or omission in the same way as it submits particulars of its design to the *Project Manager* for acceptance and any such correction or instruction of the *Project Manager* in relation to the same is not a compensation event."

1.34 Replace the wording of and marginal heading for clause 18 with the following:

"18 **Basis of engagement and non-exclusivity**

18.1 The *Contractor* acknowledges and agrees that

- it is appointed by the *Client* under this contract solely to provide the *works* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any works and/or services on behalf of the *Client* in connection with the Project and the *Client* may, at its sole discretion, instruct any other party to carry out works and/or services which are the same as or are similar to those to be undertaken by the *Contractor* under this contract,
- the *Client* makes no guarantee to the *Contractor* that the *Contractor* will be appointed to undertake any further construction (and associated design) works and/or services in connection with the Project and the *Contractor* shall have no entitlement to perform the same; and
- the *Contractor* shall have no entitlement to make any claim against the *Client* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being appointed to undertake any further works and/or services in connection with the Project."

1.35 Replace the wording of clause 19 with "Not used".



DRAFT



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

2.1 Replace the wording of clause 20.1 with the following:

"20.1 The *Contractor*

- Provides the Works in accordance with the Scope, the applicable laws (and (to the extent that the *Contractor* can control the same) so that the product of the *works* complies with all applicable laws), the other parts of and requirements of the contract and in a good and workmanlike manner and
- in Providing the Works, uses only materials which are new (unless the contract states otherwise or as otherwise agreed with the *Client* in writing), and are sound and of good quality and which are consistent with the intended use of the *works* as stated in the contract or reasonably to be inferred given the nature of the *works*."

2.2 Insert a new clause 20.2 with the following wording:

"The *works* when completed by the *Contractor* shall comply with all appropriate requirements of any relevant local or other relevant authority and all relevant statutory requirements."

2.3 Insert a new clause 20.3 as follows:

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

2.4 Replace the wording of clause 21.1 in its entirety with the following:

"Exercising the Standard of Care, the *Contractor* designs the parts of the *works* which the Scope states the *Contractor* is to design and designs such parts of the *works* in accordance with the requirements stated in the Scope and the other requirements of the contract.

Whether the *Contractor* designs the whole or part of the *works*, the *Contractor* accepts the entire responsibility for the design of the whole of the *works* and adopts the same as its own (whether or not such design has been prepared by or on behalf of the *Contractor*) including any designs contained in and/or referred to in the Scope."

2.5 Delete the second sentence in clause 21.2 and replace with the following:

"A reason for not accepting the *Contractor's* design is that it does not comply with the contract or the applicable law."

2.6 Insert a new clause 21.4 as follows:

"Without prejudice to the generality of Option X15, the Parties acknowledge and agree that nothing in the contract, whether express or implied, shall impose a fitness for purpose obligation on the *Contractor* in relation to the *works*."

2.7 Insert a new clause 21.5 as follows:

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



- 2.8 Delete clause 22 and replace with "Not Used".
- 2.9 In clause 24.2, insert "(1)" after "one".
- 2.10 Insert new a clause 24.3 to clause 24.7 (inclusive) as follows:
- "24.3 If the *Contractor* wishes to replace any *key person* or appoint a new key person, the *Contractor*
- (save in the event of illness or termination of employment without prior notice being given to the relevant *key person*) gives at least 1 (one) month's written notice to the *Project Manager*,
 - seeks the *Project Manager's* acceptance to and consults with the *Project Manager* concerning the proposed *key person* and
 - if requested provides the *Project Manager* with the curriculum vitae of the proposed *key person*.
- 24.4 The *Client* or the *Project Manager* may interview any proposed *key person*.
- 24.5 The *Project Manager* (acting reasonably) notifies the *Contractor* in writing of any objections to a proposed *key person* within two (2) weeks of receipt of the *Contractor's* notice given under clause 24.3 failing which the *Project Manager's* acceptance will be deemed to have been given. If the *Project Manager* notifies the *Contractor* of objections the *Contractor* does not engage the proposed *key person* and put forwards a different proposed *key person* for the acceptance of the *Project Manager*.
- 24.6 The *Contractor*
- uses reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any *key persons* to ensure continuity in Providing the Works and
 - ensures that, where possible in the circumstances, there is a handover period of not less than four (4) weeks from the outgoing *key person* to the incoming one.
- 24.7 The *Contractor*, at all relevant times, engages an adequate number of competent, suitably qualified and experienced personnel to Provide the Works."
- 2.11 Replace the wording of clause 25.3 in its entirety with the following:
- "If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Client* incurs additional costs, losses and/or expenses either
- in carrying out work or
 - by paying an additional amount to Others in carrying out work (including the costs of acceleration measures under other contracts),
- on the same project, the additional costs, losses and/or expenses which the *Client* has paid, incurred or will incur are paid by the *Contractor* or may be deducted from any sum due to the *Contractor*. The *Project Manager* assesses the additional costs, losses or expenses within four (4) weeks of the date when the Condition for the Key Date is met."
- 2.12 In clause 26.1:
- after the word "work" in the first line insert the words "(including design)"; and
 - delete the full stop at the end of the clause and insert the following:
"and the *Contractor* accordingly is and remains responsible for the acts and omissions (including tortious acts and omissions) of its Subcontractors and their employees and any acts or omissions by its Subcontractor and their employees shall be treated as if they were



the acts or omissions of the *Contractor*."

2.13 In clause 26.2:

- In the third line of clause 26.2, after the words "Provide the Works", insert: "and/or the *Client* has reasonable grounds for concern in relation to the Subcontractor's experience, performance on other projects, financial stability, insurance cover or status"; and
- insert the following as a new paragraph at the end of the clause: "No sum due under a subcontract is eligible for treatment as the Price for Work Done to Date under the contract if and for so long as the requirements of this clause 26.2 are not satisfied in relation to that subcontract."

2.14 Replace the wording of clause 26.3 in its entirety with the following:

"The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that (save where one or more of the requirements below is waived in respect of a specific subcontract by way of advance written approval of the *Project Manager* only)

- the *Contractor* has not complied with the requirements of clause 26.2,
- the appointment of the proposed Subcontractor and/or the proposed conditions of contract will not allow the *Contractor* to Provide the Works,
- there are compulsory grounds for excluding the Subcontractor under regulation 57 of the Public Contracts Regulations 2015,
- the terms of the proposed conditions of contract do not, in the *Project Manager's* reasonable opinion, adequately reflect the terms of the contract or are inconsistent with this contract,
- the proposed conditions of contract do not include provisions
 - requiring the Subcontractor to grant a licence in favour of the *Client* in relation to the materials produced by or on behalf of the Subcontractor equivalent to that granted by the *Contractor* to the *Client* pursuant to clause 113,
 - requiring the Subcontractor to provide any Subcontractor Collateral Warranty (or Subconsultant Collateral Warranty, as applicable) or procure in favour of any Beneficiary a Subsubcontractor Collateral Warranty and
 - imposing equivalent obligations of confidentiality on the proposed Subcontractor to those required by the contract,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation and/or
- the period for payment of the amount due to the Subcontractor stated in the conditions is greater than twenty-one (21) days after the due date in this contract or the date on which the Subcontractor issues a valid VAT invoice to the *Contractor* in accordance with the terms of the subcontract, if later.

The *Contractor* will have no entitlement to any sums under the contract that related to work that has been subcontracted and has been (or will be) undertaken by a Subcontractor as part of the Price for Work Done to Date under the contract if and for so long as the requirements of this clause 26.3 are not satisfied in relation to that subcontract."

2.15 Insert a new clause 26.4 to clause 26.6 (inclusive) as follows:

"26.4 Without prejudice to the generality of clause 26.3, the *Contractor*, in relation to any



subletting of any portion of the *works* (or the design of them)

- procures that each subcontract contains such obligations as necessary to ensure that it is, in all respects, compatible with the terms of the contract and without limitation, replicates the obligation to use the Standard of Care specified in clause 21.1 and requires collateral warranties to be provided in favour of any Beneficiary in the form of the Subcontractor Collateral Warranty and/or Subsubcontractor Collateral Warranty (as the context requires, in each case with any such amendments that the *Client* may agree, acting reasonably),
- procures that all subcontracts are executed and delivered as deeds,
- warrants each Subcontractor's compliance with any provisions referred to herein that are expressed as applying to Subcontractors of the *Contractor*,
- warrants that all Subcontractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations,
- provides to the *Project Manager* a certified copy of any subcontract (provided that any pricing, commercially sensitive and/or personal information may be redacted),
- ensures that the period for payment of any amount due to a Subcontractor under a subcontract is not greater than five (5) days after the final date for payment in this contract,
- does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015,
- notifies the *Client* of the name, contact details and legal representatives of each Subcontractor before appointing the *Subcontractor* and
- the *Contractor* shall ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract and a reason for the *Project Manager* not accepting any form and/or terms of subcontract proposed by the *Contractor* is that they are unduly disadvantageous to the *Subcontractor*.

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

- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed,
- the Subcontractor assesses the amount due to a subsubcontractor in any subsubcontract in a timely fashion without taking into account any amount paid to the Subcontractor by the *Contractor* under this contract and
- any contract awarded by the Subcontractor or supplier for work included in the contract includes provisions to the same effect as the provisions referred to in clause 26.4 and this clause 26.5 (unless otherwise agreed by the *Client*, acting reasonably), provided that the period for payment referred to in clause 26.4 shall not be greater than nine (9) days after the final date for payment in this contract.

26.6 The *Contractor* does not vary the terms of any subcontract or terminate the engagement of any Subcontractor or supplier without the prior written consent of the *Client* (such consent not to be unreasonably withheld or delayed). Any such consent by or on behalf of the *Client* does not give rise to any liability (whether it contract, tort (including negligence) or under any other legal theory) on the part of the *Client* under, in connection with or pursuant to the contract or otherwise (save to the extent that such liability cannot be limited or excluded by Applicable Law)."



2.16 In clause 27.1, replace "The *Contractor*" with "Without prejudice to the generality of clause 28B, the *Contractor*".

2.17 Insert a new clause 27.5 as follows:

"The *Contractor* warrants to the *Client* that it

- has complied and will comply with the requirements of the CDM Regulations in connection with the *works* and in the performance of its duties and obligations generally under this contract,
- is competent to discharge under the CDM Regulations and shall undertake the role(s) of, if identified as such in Contract Data: Part One as being the *Contractor*, the Principal Designer in connection with the *works*,
- (subject to the second bulleted item of this clause 27.5) to the extent that the *works* involve the preparation, review and/or validation of any designs in connection with the *works*, it shall be a "designer" in respect of the same as such term is defined in the CDM Regulations,
- will notify each of its Subcontractors of their obligations under the CDM Regulations and ensure that each is fully competent and are adequately resourced to meet those obligations and
- will allocate adequate resources in relation to health and safety in relation to the works to enable it to perform its duties and obligations under the CDM Regulations."

2.18 Insert a new clause 27.6 as follows:

"The *Contractor*

- at all times Provides the Works preventing public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker and assists the *Client* in defending any action or proceedings which may be instituted in relation thereto and
- the *Contractor* is responsible for and indemnifies the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, save only where such nuisance or interference is the consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using all reasonable and practical means,

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

2.19 Insert a new clause 27.7 as follows:

"The *Contractor* ensures that in Providing the Works there is no trespass on or over any adjoining or neighbouring property. If Providing the Works is likely to necessitate any interference (including, without limitation, the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Client*, obtains the prior written agreement of such owners or occupiers thereto, and such agreement is subject to the reasonable approval of the *Client* before execution (such approval not to be unreasonably withheld or delayed). The *Contractor* complies with any conditions contained in any such agreement."

2.20 Insert a new clause 27.8 and clause 27.9 as follows:



- "27.8 Using the Standard of Care, the *Contractor* shall not specify for use, approve for use and/or accept any materials, goods, equipment, products and/or plant (of any type and/or nature) in connection with the *works* which, at the time that the works are being provided and/or undertaken by the *Contractor*, are generally accepted or reasonably suspected of
- being Prohibited Materials in themselves,
 - becoming Prohibited Materials when used in a particular situation and/or in combination with other materials, goods, equipment, products and/or plant (of any type and/or nature),
 - becoming Prohibited Materials with the passage of time,
 - becoming Prohibited Materials without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction or to be constructed by the *Contractor* as part of the *works* and/or
 - being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 27.9 If, in the performance of its duties under the contract, the *Contractor* becomes aware that it or any person engaged in connection with the works (including its Subcontractors and other subcontractors at any tier) has specified, approved or used any materials, goods, equipment, products and/or plant of the type and/or nature specified in (or are analogous to those referred to in) clause 27.8, the *Contractor* shall immediately notify the *Project Manager* of the same in writing."
- 2.21 Insert a new clause 27.10 as follows:
- "The *Contractor* Provides the Works in accordance with the Client's Policies. If the *Contractor* is unable to Provide the Works in accordance with the Client's Policies, the *Contractor* notifies the *Project Manager* and the *Client* stating the reason(s) for its inability to comply and the Parties discuss whether the *Contractor* should be obliged to so comply."
- 2.22 Replace the wording of clause 28.1 in its entirety with the following:
- "The *Contractor* does not assign, transfer, charge or otherwise deal with the contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Client*."
- 2.23 Insert a new clause 28.2 as follows:
- "The *Client* may assign in whole or in part any benefit or right under the contract at any time to any person."
- 2.24 Insert a new clause 28A with the heading "**Planning and Consents**" as follows:
- "28A **Planning and Consents**
- 28A.1 Save in respect of the Client Consents only, the *Contractor* shall
- (save as stated in the third bulleted item of this clause 28A.1) obtain, enter into and maintain (as the context permits) and discharge the requirements of each and every Consent required by applicable law for it to design and construct and/or provide any works and/or services in connection with the *works* and/or to remedy any defects in the *works* and otherwise perform its obligations under the contract,
 - give all notices and submit all applications as may be required in order to discharge its obligations in the above-mentioned bulleted item and
 - pay (at its own cost) any and all costs, taxes, duties, fees and otherwise satisfy



and/or discharge any financial and/or security requirements in connection with each Consent as may be required, save only where

- the Consents Schedule expressly specifies that the *Client* is responsible for making specific types of payment to an identified third party in connection with a Consent (and identifies the nature, type and, where known, value of any such payment) and/or
- due to the nature of the Consent, the counterparty to the Consent confirms in writing to the *Contractor* and the *Client* that certain sums payable under or in connection with the Consent can only be paid directly by the *Client* in which case, to the extent that the Activity Schedule includes any sums in connection with such Consent on the assumption that the *Contractor* is responsible for paying it directly under this clause 28A.1, the Prices will be reduced following a written notice of the *Project Manager* to the *Contractor*, without constituting a compensation event, in an amount equal to the sums paid by the *Client* to such third party where it is identified that the *Contractor* is unable to make such payment directly, provided that where the amount to be paid to such third party is greater than the sum allowed for by the *Contractor* in the Activity Schedule, the surplus will be borne by the *Client*.

28A.2 The *Contractor* shall indemnify the *Client* against the *Client's* reasonably foreseeable and properly incurred and mitigated expenses, liabilities, losses, claims and proceedings whatsoever arising out of or in connection with a failure by the *Contractor* to comply with the requirements of this clause 28A, save only where such failure is the direct consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using reasonable and practical means.

28A.3 The *Contractor* shall provide to the *Client* such

- advice and information as may be reasonably required and
- additional assistance (including providing confirmations to third parties and Statutory Authorities) as may be reasonably required,

including the provision of information and of documents (including methodologies, specifications, plans and drawings), as and when reasonably requested by the *Client* and/or the *Project Manager* from time to time in connection with the *works* and/or the obtaining, maintenance and discharge by the *Client* of the Client Consents and/or any payments that are to be made by the *Client* in connection with a Consent pursuant to clause 28A.1 (and at such times, in such form and content and with such level of detail reasonably required or approved by the *Client*).

28A.4 If and insofar as discharge of any condition of any Consent is part of the *works* and/or services in connection with the *works* (or necessary to create and/or complete the same), the *Contractor* shall discharge the same in accordance with (and by the date(s), if any, required by) the Consent.

28A.5 The *Contractor* hereby agrees that it shall

- ensure that the *works* comply with, and its performance of its obligations under the contract are in compliance with the Consents,
- ensure that the *works* (as designed, constructed, commissioned and completed in accordance with the contract) are capable of operation in accordance with the applicable laws and Consents applicable to the *works* and/or to the *Client* and
- as otherwise necessary or appropriate for the proper carrying out of the *works*, be responsible for the removal and/or re-routing of any temporary cables, utilities and/or pipelines which are present on the Site,



provided that nothing in this clause 28A.5 shall

- have the effect of preventing or limiting the operation of Option X2 and/or
- impose upon the *Contractor* a higher standard of care in respect of the preparation of the design of such part(s) of the *works* as may be referred to in and/or specified by any Consents than the Standard of Care.

28A.6 The *Contractor* shall be responsible, at its own cost, for liaising with all appropriate Statutory Authorities to locate and connect water and electricity, where required in relation to the *works*, and for obtaining and installing all necessary apparatus for the metering and consumption of such consumables and will pay the cost for all electricity and water consumed at the Site(s) by or on behalf of the *Contractor* (including its Subcontractors) until the date of Completion.

28A.7 The *Contractor* shall carry out and complete the works and/or services it is required to perform for the *works* in accordance with all Statutory Agreements, which shall include paying all sums, fees and/or fines required pursuant to the Statutory Agreements in order to perform such works and/or services."

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

"28B **Third Party Agreements**

28B.1 The *Contractor* acknowledges that the *Client* has and will from time to time enter into agreements with third parties and be bound by decisions, consents and approvals of relevant authorities which may relate to the *Contractor's* obligations hereunder (each a "**Third Party Agreement**" and each counter-party to such Third Party Agreement being a "**Third Party**"). The details of any Third Party Agreement entered into by the *Client* before the Contract Date are referred to in Contract Data: Part One.

28B.2 The *Contractor* complies with and performs its obligations under and arising out of the contract so that no negligent act, omission or default on its part (or on the part of any Subcontractors engaged by it or other subcontractors of any tier engaged in connection with the *works*)

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

under any Third Party Agreement, save to the extent that the *Contractor* has not been provided with a copy of such Third Party Agreement.

28B.3 The *Contractor* shall indemnify the *Client* against the *Client's* reasonably foreseeable and properly incurred and mitigated expenses, liabilities, losses, claims and proceedings whatsoever arising out of or in connection with a failure by the *Contractor* to comply with the requirements of this clause 28B, save only where such failure is the direct consequence of an instruction of the *Project Manager* (which is not itself the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor) and could not have been avoided by the *Contractor* using reasonable and practical means.

28B.4 In the event the *Client* enters into any Third Party Agreement after the Contract Date that was not disclosed to the *Contractor* and/or referred to in Contract Data: Part One as at the Contract Date (including any amendment agreement to a Third Party Agreement entered into before the Contract Date) the same shall constitute a change to the Scope and be treated as a compensation event under clause 60.1(1).

28B.5 The *Contractor* provides the *Project Manager* with copies of all correspondence and communications between the *Contractor* and any Third Party in relation to any actual or potential Third Party Agreements."



2.26 Insert a new clause 28C with the heading "**COVID-19**" as follows:

"28C.1 For the purposes of this clause 28C, the term "impact of COVID-19" includes but is not limited to the following events:

- the infection or suspected infection of any person engaged by the *Contractor* or any of its Subcontractors and/or sub-consultants in connection with the *works* by COVID-19;
- the implementation by the *Contractor* (or any of its Subcontractors and/or sub-consultants) of any public health measures mandated by the United Kingdom government (including Public Health England) in relation to COVID-19, including any:
 - preventative measures intended to minimise the transmission of COVID-19 which result in shortages of labour and/or supervision in relation to the *works* (including pursuant to any self-isolation measures and the restricted use of public transport); and
 - measures to contain COVID-19 resulting in the mandatory closure of the Site and/or any of the Working Areas and/or any office(s) of the *Contractor* and/or any of its sub-contractors and/or sub-consultants, restricted access to such site(s) and/or offices and/or amended working hours and/or methods that impact the delivery of the *works* and the performance by the *Contractor* of its duties and obligations under this contract;
- the exercise by the United Kingdom government of any statutory power in connection with COVID-19 that is not occasioned by a default of the *Contractor* or any person for whom the *Contractor* is responsible; and
- the shortage of equipment, plant and/or materials intended for use by the *Contractor* in connection with the *works* due to a delay in their manufacture, importation and/or transportation as a consequence of COVID-19.

28C.2 Without prejudice to any other provision of this contract, the *Contractor* acknowledges and agrees that it:

- has complied (and will comply) with any requirements set out in the Scope (or specified by the *Client* in writing from time to time, acting reasonably) in connection with the management of and/or reporting by the *Contractor* in connection with the management and mitigation of the potential and actual impact of COVID-19 on the delivery of the *works* (and the performance of the *Contractor's* duties and obligations under this contract),
- has and will maintain at all times during the performance of the *works* suitable business continuity and absence management programmes in relation to the management and mitigation of the impact of COVID-19 on the delivery of the *works* (and the performance of the *Contractor's* duties and obligations under this contract),
- (without prejudice to the generality of clause 15) will notify the *Client* as soon as reasonably practicable upon the *Contractor* becoming aware of any potential and/or actual adverse impact on the delivery of the *works* (and the performance of the *Contractor's* duties and obligations under this contract) attributable to the impact of COVID-19,



- shall at all times take any actions and measures which are necessary to mitigate the impact of COVID-19 on the delivery of the *works* (and the performance of the *Contractor's* duties and obligations under this contract), and
- shall, if requested by the *Client* from time to time (acting reasonably), confirm in writing what measures the *Contractor* has (and its Subcontractors and/or sub-consultants have) in place (or proposes to put in place) in order to so manage and mitigate the impact of COVID-19 on the delivery of the *works* (and the performance of the *Contractor's* duties and obligations under this contract).

The *Contractor* shall ensure that all subcontracts with its Subcontractors and/or sub-consultants reflect the requirements of this clause 28C on a mutatis mutandis basis."

2.27 Replace the wording of clause 29 in its entirety with "Not used."



3. AMENDMENTS TO CLAUSE 3 – TIME

3.1 Replace the wording of clause 30.1 in its entirety with the following:

"Subject to any modification to the Completion Date and/or any Key Date in pursuant to and in accordance with clause 60 to clause 66 (inclusive), the *Contractor* starts work on the *starting date*. The *Contractor* does not start work on a Site until the relevant *access date* for that Site as notified to the *Contractor* in the relevant Site Delivery Notice pursuant to clause 30.4. The *Contractor* proceeds with its work regularly and diligently in accordance with the Accepted Programme and the contract so that

- (if identified in Contract Data: Part One) the Condition stated for each Key Date is met on or before the Key Date;
- Completion is on or before the Completion Date;
- Site Completion for each Site is on or before the Site Completion Date specified in the relevant Site Delivery Notice."

3.2 In clause 30.2, replace "one week" with "two (2) weeks".

Add a new sentence as follows:

"The *Project Manager* decides the date of Site Completion and certifies it within one week of the date."

3.3 Delete clause 30.3 in its entirety.

3.4 Insert a new clause 30.4 as follows:

"Notwithstanding any other provision of this contract the *Contractor* does not start work on a Site or deliver any Plant and Materials to a Site prior to the *Client* issuing a Site Delivery Notice for that Site in accordance with clause 30.6. When a Site has been identified for delivery, the *Client* shall issue the *Contractor* its specific requirements for that Site including:

- the description of the relevant Site (including a red line boundary plan showing the relevant part of the prison);
- the number and type of modular units including the configuration and layout;
- the proposed *access date*;
- the proposed Site Completion Date;
- the relevant Consents Schedule;
- the Site Information;
- the details for any relevant 4.20 Meeting(s) that the *Contractor* may need to attend and any 4.20 Meeting Minutes;
- any other date(s) for the *Contractor* to attend Site to carry out a physical inspection; and
- any other relevant requirements of the *Client*

together the "**Employer's Site Requirements**".

3.5 Insert a new clause 30.5 as follows:

"The *Contractor* shall within ten (10) Working Days or such other shorter period as the *Client* may reasonably require return its proposals to the *Client* including

- confirming that it is able to meet the Employer's Site Requirements and/or advising of any



proposed amendments in particular flagging any concerns with completion of the relevant *works* by the proposed Site Completion Date as soon as reasonably practicable;

- where the *Contractor* has been invited to attend Site by the *Client* confirming that it is able to attend the 4.20 Meeting and any other dates that may have been specified for a physical inspection of the Site;
- confirming that the Factory Acceptance Tests in relation to the relevant units have been passed (together with evidence of the same) or confirming when they will be passed (with confirmation on when the relevant evidence can be provided);
- confirming the application of the Site Assumptions;
- any revisions to the Accepted Programme;
- any updates to the Project Execution Plan;
- its logistical plan for carrying out the relevant *works* as referred to in the Scope;
- the amount payable in relation to such *works* taking into account the agreed Prices in the Activity Schedule

(together the “**Contractor’s Site Proposals**”).

The *Contractor* shall make itself available to meet with the *Client* as required to discuss the Employer’s Site Requirements and the Contractor’s Site Proposals so that both Parties can agree the terms of the relevant Site Delivery Notice as soon as reasonably practicable. The *Client* may reissue its Employer’s Site Requirements and/or request that the *Contractor* resubmits its Contractor’s Site Proposals and Accepted Programme to take into account such discussions and/or any revised requirements. If the Parties cannot agree the contents of the Site Delivery Notice the Client shall make a fair and reasonable determination of what the Site Delivery Notice will contain or the *Client* may omit the relevant scope from this contract and request Others to carry out such work pursuant to clause 14.5.”

3.6 Insert a new clause 30.6 as follows:

“Following agreement by the Parties pursuant to clause 30.5 of the Employer’s Site Requirements and the Contractor’s Site Proposals or determination by the *Client* (as the case may be) the *Client* shall issue to the *Contractor* a Site Delivery Notice pursuant to this clause 30.6.”

3.7 Insert a new clause 30.7 as follows:

“After a Site Delivery Notice has been issued the *Contractor* shall deliver the relevant modular units to the Site on or after the relevant *access date* specified in the Site Delivery Notice and in accordance with the contract, the Accepted Programme and the Scope.”

3.8 Insert a new clause 30.8 as follows:

“If the *Client* is not ready to accept delivery of any modular units for a Site by the agreed *access date* in accordance with the Site Delivery Notice the Project Manager shall instruct the *Contractor* to store the relevant modular units at its premises in a secure location until the Client notifies that it is ready to accept delivery. Any such instruction shall be treated as a change to the Scope for the purposes of clause 60.1(1) and the amount payable for the purposes of clause 63 shall be the agreed rate specified in the Prices for storage 30 days after the agreed *access date* for any Site stated in a Site Delivery Notice provided always that no amount shall be payable by the Client in relation to the 30 day period following the agreed *access date*.”

3.9 Insert a new clause 30.9 as follows:

- (i) The *Contractor* shall be deemed to have inspected and examined each Site and its surroundings and to have satisfied itself before delivering the modular units to a Site or commencing any *works* at a Site (whichever is the earlier) as to the nature of the ground,



the form and nature of the Site, the existing structures, the extent, nature and difficulty of the work and materials necessary for the completion of the works, the means of communication with and restrictions of access to the Site, the accommodation it may require, and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the *works* at that Site.

- (ii) Notwithstanding any other provision of this contract, the *Contractor* shall not be entitled to any compensation on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the *Contractor* be released from any of the risks accepted or obligations undertaken by it under this contract on the ground that it did not or could not have foreseen any matter which might affect or have affected the execution of the *works*.
- (iii) Without prejudice to the generality of clause 30.9(i) and clause 30.9(ii), in its inspection of the Site and prior to commencing any *works*, the *Contractor* will be deemed to have determined the position of any obstructions and all underground and over-ground services and drainage and service/utility connection points and no adjustment to the Prices or extension to the Site Completion Date and/or Completion Date shall be made in relation to any diversions of the underground and over-ground services and/or drainage or the costs of the *Contractor's* operations in the vicinity of any such services (unless otherwise provided for in the Scope and/or a Site Delivery Notice).
- (iv) The *Client* gives no warranty or representation as to:
 - (1) the condition of the Site or any adjoining property or any services in or under the Site; and/or
 - (2) the accuracy or sufficiency of any surveys, tests or investigations and/or any data contained in any document made available to the *Contractor* by or on behalf of the *Client* and/or any recommendations or conclusions made or reached in any such document.
- (v) So far as documents provided by or on behalf the *Client* to the *Contractor* contain any survey, ground report or other report of any kind in respect of the Site, these are included for information purposes only, the *Contractor* shall not and shall not be entitled to rely upon them and the *Client* shall have no responsibility for and gives no representation or warranty as to the accuracy or completeness of any such documents or the information contained within them and the *Contractor* shall remain fully responsible for ascertaining the ground and the form and nature of the Site."

3.10 In clause 31.2, insert a new bulleted item after the first bulleted item with the following wording:
"any time period(s) during which the *Contractor* is aware that Other Works that may impact the *works* will be undertaken by Other Contractors at the Site,".
In the final sentence of clause 31.2, replace "in the Scope" with "in Contract Data: Part One".

3.11 In clause 31.3:

- insert "(2)" after "two"; and
- insert "(1)" after "one".

3.12 In clause 32.1, insert a new bulleted item after the first bulleted item with the following wording:
"the effects of implemented compensation events,"

3.13 In clause 33.1:



- replace the words "The *Client* allows access to and use of each part of the Site to the *Contractor*" with "The *Client* allows non-exclusive access to and use of each part of the Site to the *Contractor*" and
- insert the following as a new sentence at the end of the clause:

"The *Contractor* acknowledges and agrees that the *Client* and all persons authorised by the *Client* shall at all times have access to the Site and the non-exclusive access that it is entitled to under this clause 33.1 takes effect as a non-exclusive licence only for the purpose of Providing the Works and performing the *Contractor's* other obligations under the contract, and such non-exclusive licence shall not give rise to any other rights or entitlements in favour of the *Contractor* over or in connection with the Site and/or the Site's use."

3.14 Insert a new clause 33.2 as follows:

"The *Contractor* acknowledges and agrees that

- the Other Contractors are (or will be) engaged by the *Client* to undertake works and/or services at or around the Site (the "**Other Works**") at or around the same time that the *Contractor* is engaged to undertake and complete the *works* in accordance with this contract,
- the *Contractor* shall permit the execution of such Other Works by each Other Contractor and shall manage the interface of its own *works* with such Other Works,
- to the extent that the *Contractor* (acting reasonably) considers that the *works* are or may be impacted by the Other Contractor(s) undertaking Other Works at the Site from time to time, the *Contractor* shall notify the *Project Manager* of this in writing as soon as reasonably practicable upon becoming aware of the same and shall, in any event, use reasonable endeavours to agree, as soon as reasonably practicable, an interfacing plan with the *Project Manager* and the relevant Other Contractor(s) in writing that enables
 - the Other Contractor(s) to undertake and complete the relevant Other Works at the Site within any timescales specified in the *Client's* contract(s) with such Other Contractor(s) and
 - the *Contractor* to undertake and complete the *works* by the Completion Date,in parallel and by reference to any specific access times and other requirements that may be so specified in the interface plan,
- the *Contractor* shall comply with each such interfacing plan following its agreement and notify the *Project Manager* where any Other Contractor fails to do so,
- it shall use reasonable endeavours not to interfere with and/or impede the progress of such Other Works and shall observe all reasonable requirements of any Other Contractor as it may be advised in relation to the carrying out of such Other Works,
- without prejudice to the generality of the foregoing, the *Contractor* shall co-operate with any Other Contractor in connection with all matters relating to health and safety and comply with all instructions of any Other Contractor where that Other Contractor is acting as the principal contractor pursuant to the CDM Regulations in connection with any Other Works, and
- it shall be a condition precedent to any entitlement to an adjustment to the Prices and/or the Completion Date that the *Contractor* may otherwise be entitled to claim in the circumstances stated at clause 60.1(5) that the *Contractor* is able to demonstrate to the satisfaction of the *Project Manager* (acting reasonably) that it has first complied with the requirements of this clause 33.2."

3.15 Insert a new clause 33.3 as follows:

"(1) Without prejudice to any other provision of this contract, the *Contractor* shall, at its own cost, consult and cooperate with the *Client*, the *Project Manager*, the Principal Works Contractor and the FM Provider from time to time as may reasonably be necessary and/or appropriate when performing its obligations under this contract generally and in respect of the *works* specifically which affect or



are likely to affect the Principal Works Contractor's and/or FM Provider's performance in respect of the Site and/or the Principal Works Contractor's and/or FM Provider's obligations under its contract with the *Client*.

(2) Without prejudice to any other provision of this contract, the *Contractor* agrees, for the purposes referred to in this clause 33.3, to promptly supply to the *Client* and/or the Principal Works Contractor and/or the FM Provider (at the *Contractor's* own cost) all information and documentation that is reasonably requested by the *Client*, the Principal Works Contractor and/or the FM Provider, insofar as the same is:

- within the *Contractor's* possession or control;
- not subject to disclosure and/or confidentiality restrictions by statute or pursuant to this contract; and
- is reasonably required by the Principal Works Contractor and/or FM Provider to properly perform its obligations in respect of the Site and/or to the *Client*.

(3) The *Contractor* shall:

- comply with and perform its obligations under this contract so as to avoid or (where avoidance is not practicable) mitigate causing the Principal Works Contractor and/or FM Provider any additional cost, delay or disruption in or about the performance by the Principal Works Contractor and/or FM Provider of the Principal Works Contractor and/or FM Provider's obligations under and in accordance with this contract;
- (and shall procure that its personnel (of any type) and/or its Subcontractors and/or its sub-consultants and/or their respective personnel shall) otherwise not:
 1. delay, impede, inhibit, disrupt and/or hinder the Principal Works Contractor and/or FM Provider in the carrying out of their obligations in relation to the Site;
 2. act in a manner that might reasonably be expected to cause the Principal Works Contractor and/or FM Provider to be in breach of their obligations in relation to a Site and/or otherwise to suffer and/or incur any loss, delay, disruption, and/or inconvenience in performance of such obligations.

(4) Nothing in this clause 33.3 shall:

- be construed as having the effect of reducing, varying and/or waiving the obligations and/or liabilities of the *Contractor* under this contract;
- relieve the *Contractor* from any obligation to make a payment to the *Client* under this contract; and/or
- limit the ability of the *Client* to make any deductions from any payments falling due to the *Contractor* under this contract."

3.16 In the second bulleted item of clause 34.1, insert "pursuant to and in accordance with clause 14.5" after "remove the work from the Scope".

3.17 Delete clause 35.1 and substitute:



"The *Client* shall take over the *works* at each Site (as described in a Site Delivery Notice) after Site Completion."

3.18 In clause 35.3, replace "one week" with "two (2) weeks".

3.19 Insert new clause 35.4 as follows:

"The *Contractor* acknowledges that following Site Completion the Client and Other Contractors will need to carry out works to the modular units to ensure they are fully operational and integrated with the systems at the relevant Site as more particularly described in the Scope."

3.20 In clause 36.1, insert "(3)" after both instances of "three".



4. **AMENDMENTS TO CLAUSE 4 – TESTING AND DEFECTS**

- 4.1 In clause 40.1, replace "in the Scope" with "in Contract Data: Part One".
- 4.2 In clause 41.3, insert at the end of the second sentence before the bulleted item:
"and if the *Contractor* fails to so notify, the *Contractor* repeats (at its own cost) the test or inspection and gives notification as required in this clause".
- 4.3 Insert a new clause 42.2 as follows:
"The *Contractor* allows or procures (as appropriate) access for the *Project Manager* and/or *Supervisor* for the purposes of testing and/or inspection to any premises at which Plant and/or Materials are manufactured and/or stored."
- 4.4 In clause 43.1, insert "opening-up," before "uncovering" in the first bulleted item of the clause.
- 4.5 In clause 44.1, replace "The *Contractor*" with "Subject to clause 45, the *Contractor*".
- 4.6 Replace the wording of clause 44.2 in its entirety with the following:
"Subject to clause 45, for a Defect notified
- before Completion, the *Contractor* corrects the Defect before Completion and
 - on or after Completion, the *Contractor* corrects the Defect before the end of the *defect correction period* which begins when the Defect is notified."
- 4.7 In clause 44.3, replace "earlier of" with "the later of the following dates to occur".
- 4.8 Insert a new clause 44.5 as follows:
"The *Project Manager* arranges for the *Client* to give the *Contractor* the access to those parts of the Site which the *Contractor* needs to correct a Defect which it is required to correct under the contract, after the *Client* has taken over any part of the works. In this case the *defect correction period* begins when the necessary access has been provided."
- 4.9 Insert a new paragraph at the end of clause 45.1 as follows:
"Without prejudice to the foregoing, the *Project Manager* may also notify the *Contractor* in writing at any time that
- the *Client* wishes to instruct undertake and complete any works and/or services (or engage a third party to do so) that would otherwise be necessary to correct the Defect (and/or any future Defects) under this contract and
 - the Scope will be changed to that any such Defect does not have to be corrected by the *Contractor*."
- 4.10 Insert a new paragraph at the end of clause 45.2 as follows:
"Where the *Project Manager* has notified the *Contractor* that the *Client* wishes to undertake and complete any works and/or services (or engage a third party to do so) that would otherwise be necessary to correct an identified and/or any future Defect(s) under this contract, the *Project Manager* assesses the cost to the *Client* of doing so in connection with each such Defect and the *Contractor* pays this amount."



4.11 Insert a new clause 46.3 as follows:

"The provisions of clauses 43 to 45 (inclusive) are without prejudice to any other rights or remedies the *Client* may have whether in contract, by statute, in tort or otherwise at law (including negligence) and the *Contractor* remains liable for Defects after

- the *defects date* and
- the termination of the *Contractor's* obligation to Provide the Works for any reason, up to and including the *end of liability date*."



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

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

"The *Contractor* acknowledges and agrees that

- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 53 (inclusive) and Option Y(UK)2 in respect of an application for payment submitted by or on behalf of the *Contractor* that the application for payment is a Valid Invoice (provided always that the *Project Manager* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice),
- where an invoice submitted by the *Contractor* to the *Project Manager* pursuant to clause 50.2 is not a Valid Invoice, the *Client* shall notify the *Contractor* of this in writing and the *Contractor* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant application for payment as part of the invoice that it issues to the *Client* at the next assessment date and no earlier,
- clause 50 to clause 53 (inclusive) and Option Y(UK)2 shall be construed accordingly,
- it shall not make any application for payment that relates to the completion of manufacturing activities unless and until the Project Manager has accepted a copy of the relevant Factory Acceptance Tests;
- it shall not make any application for payment that relates to Site Completion unless and until the Project Manager has certified Site Completion in accordance with clause 30.2;
- in relation to mobilisation and manufacture activities applications for payment may be consolidated and refer to more than one Site;
- in relation to delivery and installation activities applications for payment cannot be consolidated without the Client's written consent pursuant to this clause 50.1 such that separate applications for payment must be made for each Site."

5.2 In clause 50.2, replace "stated in the Scope" with "of a Valid Invoice".

5.3 In clause 50.3:

- replace "If the *Contractor* submits an application for payment before the assessment date, the" with "The"; and
- in the second bulleted item of the clause, insert "(which includes any VAT that may be payable on the amount due)" after "paid to the *Contractor*".

5.4 Replace the wording of clause 50.4 in its entirety with "Not used."

5.5 Insert a new clause 50.7 as follows:

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

- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
 - the *Contractor* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Client*, and
 - the *Client* will pay to the *Contractor* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of



the supply for which the *Contractor* is liable to account, and

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

5.6 Insert a new clause 50.7 as follows:

"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 Project Manager has accepted 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 the Project Manager has accepted that they have passed 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 *Project Manager* has accepted that they are adequately insured in the joint names of the Parties."

5.7 In clause 51.1, replace "one week" with "seven (7) days".

5.8 In clause 51.2:

- replace "within three weeks" until the end of the clause with "by the final date for payment as referred to in Option Y2.2" and
- insert the following as a new sentence at the end of the clause:

"If the *Client* pays the *Contractor* any sums under or in connection with the contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Contractor* on account and shall be deductible from the next payment to be made to the *Contractor* under the contract."

5.9 In clause 51.4 replace "compounded annually" with "simple interest".

5.10 Insert a new clause 51.6 as follows:

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

5.11 Insert a new clause 51.7 as follows:



"Notwithstanding clause 51.3, where a Party notifies the other Party that it has made an overpayment to that Party in connection with the contract, the payee shall repay such overpaid amount to the payer within twenty-eight (28) days of the date of the notification of the overpayment and the amount of such sum, if not so repaid, shall be recoverable on demand by the payer as a debt. The Parties agree that this clause 51.7 shall not apply in relation to any overpaid amounts that are, as at the time of the notification, the subject of any dispute which has been referred to an *Adjudicator* and/or a *tribunal* to be resolved. The Parties further acknowledge and agree that neither shall exercise the rights afforded under this clause 51.7 in a manner which is inconsistent with Part II of the Housing Grants Construction and Regeneration Act 1996 (as amended)."

5.12 Insert a new clause 51.8 as follows:

"The *Contractor* shall make all payments due to the *Client* under or in connection with the contract without any deduction (whether by set-off, counterclaim, abatement or otherwise) unless the *Contractor* has a valid adjudication, judgment (or equivalent) or court order requiring an amount equal to such deduction to be paid to the *Contractor*."

5.13 In clause 53.1:

- insert "(4)" after "four";
- insert "(13)" after "thirteen"; and
- insert "(2)" after "two" and
- replace the final sentence of clause 53.1 with the following:

"Where an amount is due to the *Client*, the final payment is made within three (3) weeks after the end of the relevant period described in the bullet points above, as applicable. Where an amount is due to the *Contractor*, the final payment is made within three (3) weeks of the later of the following to occur:

- the end of the relevant period described in the bullet points above, as applicable and
- the date of receipt by the *Client* of a Valid Invoice from the *Contractor* in respect of the amount due."

5.14 Replace the final sentence of clause 53.2 with the following:

"If the *Client* agrees with this assessment, then

- where an amount is due to the *Client*, a final payment is made within three (3) weeks of the assessment,
- where an amount is due to the *Contractor*, a final payment is made within three (3) weeks of the later of the following to occur
 - the assessment and
 - the date of receipt by the *Client* of a Valid Invoice from the *Contractor* in respect of the amount due."

5.15 In clause 53.3:

- insert "(3)" after each instance of "three"; and
- insert "(4)" after each instance of "four".

5.16 In clause 53.4, insert "(4)" after "four".

5.17 Add a new clause 55.5 as follows:



"The Parties acknowledge that as at the Contract Date the Parties have not been able to agree the total amount of the Prices to be included in the Activity Schedule as the amount of some of the persons and equipment that may be required at some of the Sites still needs to be calculated as at the Contract Date. Such amounts will be calculated by reference to the *Contractor's* tendered rates for such persons and equipment and as soon as they are known the Activity Schedule will be updated with the Project Manager's agreement to reflect the agreed amount of the Prices."

5.18 Insert a new clause 57 as follows:

"The *Client* confirms that it is an end user in respect of the *works* to be supplied to it by the *Contractor* under this contract for the purposes of paragraph 8(1)(b) of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 and accordingly the *Contractor* agrees that the reverse charge on such *works* will not apply to supplies under this contract."



6. **AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS**

6.1 Replace the first sentence of clause 60.1 with the following:

"The following are compensation events, but only to the extent that they

- are not due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by the *Contractor* or due to any acts and omissions (including tortious acts and omissions) of its Subcontractors and its employees,
- are not attributable or related to any works and/or services undertaken (or to be undertaken) by or on behalf of the *Contractor* as part of any Pre-Construction Services and/or the Pre-Construction Works as referred to in Contract Data: Part One, whether due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the relevant contract (in each case, by act or omission) or due to any acts or omissions of its subcontractors and/or its employees in respect of the same and/or
- do not otherwise arise as a consequence of (or are related to) the presence at the Site of the *Contractor* pursuant to and in connection with any Pre-Construction Works as referred to in Contract Data: Part One."

6.2 In clause 60.1(1):

- delete the words "for its design" in the second bulleted item of the clause; and
- replace the "or" at the end of the first bulleted item with "," and the full stop at the end of the second bulleted item with "," and insert the following as new bulleted items:
 - "• (subject to Option X2, where selected in Contract Data: Part One) a change made in order to deal with an illegal or impossible requirement in the Scope,
 - a change made to resolve a conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of the contract,
 - a change to deal with any mistake, inaccuracy, inadequacy, discrepancy, ambiguity, inconsistency or omission in the Scope (including in any designs contained in and/or referred to in the Scope, whether the same has been prepared by or on behalf of the *Client*, the *Contractor* or otherwise), or
 - a change required as a result of an event or matter which is the *Contractor's* liability or at the *Contractor's* risk or which is the *Contractor's* responsibility pursuant to the contract or which is expressly stated in the contract not to give rise to a compensation event."

6.3 At the beginning of clause 60.1(5), replace "The" with "Subject to clause 33.2 and save in respect of any Consents and/or any works undertaken (or to be undertaken) by a Statutory Authority in its capacity as a statutory undertaker and/or utility provider, the".

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

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

- where the Consent is not a Client Consent, the *Contractor* demonstrates to the *Project Manager* (acting reasonably) that the *Contractor*
 - has used reasonable endeavours to secure (or, as the context requires, facilitate) such issuance, entering into and/or approval in accordance with clause 28B by the



date shown on the Accepted Programme and

- (save where attributable to the acts or omissions of such Statutory Authority or third party) is not in breach of its obligations under clause 28B or
- where the Consent is a Client Consent, such failure is not attributable to any failure by or on behalf of the *Contractor* to comply with the requirements of clause 28B."

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

"A Statutory Authority, acting in the capacity of a statutory undertaker or utility provider and pursuant to a Consent fails to undertake the works and/or services that it is required to undertake and complete under that Consent within any period(s) identified in the Accepted Programme for such works and/or services, provided that where such works are to be undertaken pursuant to

- a Consent other than a Client Consent, the *Contractor*
 - has first supplied such information required, placed any necessary orders and otherwise performed its obligations under the contract in respect of such work as soon as reasonably practicable after the Contract Date so as not to delay or disrupt such Statutory Authority in undertaking and completing such work and/or services and/or
 - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B and/or under the relevant Consent or
- a Client Consent (and without prejudice to the generality of clause 28B), the *Contractor*
 - has first supplied to the *Client* such information required, assisting the *Client* with the placing of any necessary orders and otherwise performed its obligations under the contract in respect of such work as soon as reasonably practicable after the Contract Date so as not to cause the *Client* to delay or disrupt such Statutory Authority in relation to such work and
 - (save where attributable to the acts or omissions of such Statutory Authority) is not in breach of its obligations under clause 28B."

6.6 Replace the wording of clause 60.1(7) in its entirety with "Not used."

6.7 At clause 60.1(10), at the end of the clause after the words "obstructing a required test or inspection" but before the full stop, insert the words "or unless it was reasonable for the *Project Manager* to instruct the *Contractor* to search, having regard to previous instances of non-compliant work in Providing the Works".

6.8 Replace the wording of clause 60.1(12) in its entirety with:

"The *Contractor* encounters site conditions which are not in accordance with the Site Assumptions and such conditions are detrimental to the carrying out of the *works* but only to the extent that such site conditions would not have been apparent to a contractor exercising the Standard of Care (i) at the time the Contractor's Site Proposals were submitted pursuant to clause 30.5 taking into account the relevant Employer's Site Requirements and/or (ii) at the physical inspection of the Site pursuant to clause 30.9 or (iii) at any other time prior to delivery."

6.9 Replace the wording of clause 60.1(18) in its entirety with the following:

"A breach of contract or other act of prevention by the *Client* which is not one of the other compensation events in the contract."

6.10 Replace the wording of clause 60.1(19) with the following:



"The occurrence of a Force Majeure Event which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme."

6.11 Replace the wording of clause 60.1(21) with "Not used."

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

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

6.14 Insert new clause 60.4 as follows:

"For the purpose of clauses 60 to 66 (inclusive) unless stated as the whole of the *works*, each reference and clause relevant to

- Completion and
- Completion Date

applies, as the case may be, to Site Completion and the Site Completion Date."

6.15 In clause 61.3, insert "(8)" after "eight".

6.16 In clause 61.4:

- replace "one week" in the first bulleted item of the clause with "the *period for reply*";
- insert "(acting reasonably)" after "has agreed" in the second bulleted item of the clause;
- replace the words "arises from a fault of the *Contractor*" with "arises from any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by or on behalf of the *Contractor* or from any acts or omissions (including tortious acts and omissions) of its Subcontractors or suppliers or their respective employees, subcontractors or agents," in the first bulleted item of the second bulleted list;
- insert "(2)" after "two"; and
- in the final sentence, insert after "submit quotations" the following:
"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to reply and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.17 In clause 61.6, insert "the *Project Manager* decides that" before "the effects".

6.18 Insert a new clause 61.8 as follows:

"Notwithstanding any other provision of the contract, where the compensation event notified by the *Contractor* to the *Project Manager* is a Force Majeure Event pursuant to clause 60.1(19), the *Contractor* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and the Completion Date only."

6.19 Delete clause 62.2 and replace with the following:

"Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of its



assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations in its quotation."

6.20 In clause 62.3:

- insert "(3)" after "three" and
- insert "(2)" after "two".

6.21 At clause 62.4:

- after the words "revised quotation", in the second sentence insert "as soon as possible, and in any event"; and
- insert "(3)" after "three".

6.22 In clause 62.6:

- insert "(2)" after "two"; and
- insert the following after "quotation" at the end of the clause:
"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to reply and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.23 Replace the wording of clause 63.5 in its entirety with the following:

"A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme in place on the date the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations."

6.24 Replace the wording of clause 63.6 in its entirety with the following:

"The rights of the *Client* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event. The *Client* has no other liability under the contract or in law to the *Contractor* for a compensation event."

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

6.26 In clause 64.4:

- insert "(2)" after "two"; and
- insert the following after "the quotation " at the end of the clause:
"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.27 In clause 65.2:

- insert "(3)" after "three"; and



- insert the following after "quotation is not accepted " at the end of the clause:
"(provided always that the *Contractor* has first notified the *Project Manager* a further time in writing of its failure to accept the quotation and the *Project Manager* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

DRAFT



7. AMENDMENTS TO CLAUSE 7 – TITLE

7.1 Replace the wording of clause 70.1 in its entirety with "Not used".

7.2 Replace the wording of clause 70.2 in its entirety with the following:

"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. Each item of Plant and Materials becomes the property of the *Client* at whichever is the earlier of the following circumstances to occur

- when it is brought within the Working Areas or
- (whether or not the item has been brought within the Working Areas), the date when the *Contractor* receives payment from the *Client* for the item in question.

Where, prior to delivery to the Working Areas, the title to Plant and Materials passes to the *Client*, the *Contractor* sets such item of Plant and Materials aside and marks it clearly and visibly as the *Client's* property and identifies its destination as the Working Areas.

It is a precondition to payment for any Plant and Materials that the *Contractor* marks and stores such Plant and Materials in accordance with the contract (including the Scope) and, unless otherwise agreed in advance and in writing by the *Project Manager*, provides a properly executed Vesting Agreement in favour of the *Client* in respect of such Plant and Materials in the form referred to in the Contract Data (with such amendments as the *Project Manager* may approve in advance, acting reasonably) or in such alternative form as is acceptable to the *Project Manager*, acting reasonably).

Upon request, the *Contractor* provides reasonable proof to the *Client* (in a form to be agreed in writing in advance with the *Project Manager*) that the relevant item of Plant and Materials has been so set aside and marked (including procuring access for the *Client* and/or the *Supervisor* and/or the *Project Manager* to inspect the item of Plant and Materials at the relevant place of storage). The *Contractor* does not remove the relevant item from its place of storage without the prior written consent of the *Project Manager* (unless it is delivered to the Site)."

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

"Title to Plant and Materials that the *Client* has not paid for under this contract passes back to the *Contractor* if they are removed from the Working Areas. If the Plant and Materials have been paid for by the *Client* under this contract, the title in such Plant and Materials remains with the *Client* even if they are removed from the Working Areas and the *Contractor* complies with the requirements of clause 70.2 as to the marking and storage of such removed Plant and Materials. No Plant and Materials within the Working Areas may be removed from the Working Areas without the *Project Manager's* prior written permission."

7.4 At clause 73.1, at the end of the first sentence after "Site" but before the full stop insert the words:
"and the *Contractor* acknowledges and agrees that title in any such object vests in the *Client*"

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

7.6 Replace the wording of clause 74.1 in its entirety with "Not used."

7.7 Insert new clause 75 as follows:

"Where the Scope specifies that the *Client* will provide Free Issue Materials to the *Contractor* in connection with the works:

- the *Contractor* agrees and acknowledges that it is familiar with the specification of the Free-



Issue Materials and has no objection to the incorporation of such items in the *works*;

- the *Client* shall supply to the *Contractor*, free of charge, the Free Issue Materials in accordance with the Programme, so as not to prevent, hinder and/or delay the *Contractor* complying with its obligations under this contract;
- unless otherwise agreed between the *Client* and the *Contractor*, such Free Issue Materials may be supplied in one of the following ways (at the sole discretion of the *Client*):
 - the *Contractor* may be required to collect the Free Issue Materials from a location specified in advance and in writing by the *Client*; or
 - the *Client* may deliver (or arrange the delivery of) the Free Issue Materials to the *Contractor*'s premises or a Site;
- when attending a location specified by the *Client* to collect the Free Issue Materials or taking receipt of the Free Issue Materials (as the context permits):
 - the *Contractor* shall inspect the Free Issue Materials within the Free Issue Inspection Period to determine their suitability for use in the *works* (as assessed by reference to the *Contractor*'s own duties and obligations relating to the provision of goods and materials under or in connection with this contract) provided always that the *Contractor* cannot object to their suitability if such items are in accordance with the Scope or otherwise made known to the *Contractor* in advance of delivery;
 - the *Contractor* shall give notice to the *Client* (or the party delivering the Free Issue Materials to the *Contractor*, if not the *Client*) of any shortage and/or defect in the Free Issue Materials identified by such inspection (and in the context of Free Issue Materials delivered by a party other than the *Client*, comply with any requirements of that party in relation to the inspection and notification of shortages and/or defects in the Free Issue Materials as may be specified in any accompanying delivery note or as notified to the *Contractor* as at the time of such delivery, including within a time period shorter than the Free Issue Inspection Period where so specified, with the Free Issue Inspection Period being deemed to be adjusted to reflect such time period);
- the *Client* (acting reasonably) shall rectify any notified shortage and/or arrange for any defective Free Issue Materials to be replaced as soon as reasonably practicable upon being notified of the same and the provisions of this clause 75 shall apply mutatis mutandis to such replacement Free Issue Materials; and
- following the expiration of the Free Issue Inspection Period (or following the inspection of any shorter period specified by a party other than the *Client* where that party has delivered the Free Issue Materials), risk in the Free Issue Materials shall come under the care, custody and control of the *Contractor* (save in respect of any defective or missing Free Issue Materials that have been properly notified by the *Contractor* in accordance with this clause 75 in which case the defective and/or missing Free Issue Materials so notified shall come under the care, custody and control of the *Contractor* once replaced, inspected and free from any further shortage or defect in accordance with this clause 75)."



8. **AMENDMENTS TO CLAUSE 8 – RISKS AND INSURANCE**

8.1 In the first bulleted item of clause 80.1:

- after the words "use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*" in its first sub-bulleted item insert "(save where the relevant claims, proceedings, compensation and/or costs arise from a risk and/or liability borne by the *Contractor* pursuant to this contract (including where the *Contractor* breaches clause 27.5 and/or clause 27.6)"; and
- at the end of its second sub-bullet point, insert "and except any such negligence, breach of statutory duty or interference in respect of any design or any other documentation or information provided and/or prepared by or on behalf of the *Client* for which the *Contractor* is responsible pursuant to the terms of this contract."

8.2 At the end of the second bulleted item of clause 80.1, insert the following:

"and except any fault in any design or any other documentation or information provided and/or prepared by or on behalf of the *Client* for which the *Contractor* is responsible pursuant to the terms of this contract."

8.3 Delete the third bulleted item of clause 80.1 in its entirety.

8.4 Delete the fifth bulleted item of clause 80.1 in its entirety.

8.5 In the sixth bulleted item of clause 80.1, delete the first sub-bulleted item (which starts with the words "a Defect").

8.6 Delete the ninth bulleted item of clause 80.1 in its entirety.

8.7 Replace the wording of clause 81.1 in its entirety with the following:

"From the starting date until the Defects Certificate has been issued, the risks which are not carried by the *Client* are carried by the *Contractor*."

8.8 At the beginning of clause 82.1, replace "Any cost" with "Without prejudice to the *Contractor's* indemnities in this contract and its other liabilities pursuant to the contract, any cost".

8.9 Replace the wording of clause 83.1 in its entirety with "Not used."

8.10 In clause 83.3:

- in the second sentence before the full stop, insert ", subject always to clause 84.4"; and
- add the following two rows to the Insurance Table:

Insurance against	Minimum amount of cover or minimum limit of indemnity
All sums which the <i>Contractor</i> may become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the <i>Contractor</i> during the period of insurance by reason of any act, error	The amount stated in Contract Data: Part One.



and/or omission arising from or in connection with professional services, advice, design and specification in relation to the contract (with such insurance being known as "**professional indemnity insurance**").

8.11 In clause 84.1, replace "and if the insurer's commercial position" with "and/or if the insurer's commercial position".

8.12 After clause 86, insert a new clause 86A with the heading "**Joint Fire Code**" as follows:

"In Providing the Works and performing its other obligations pursuant to the contract, the *Contractor* complies with the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association (as the same may be updated from time to time)."

9. AMENDMENTS TO CLAUSE 9 – TERMINATION

9.1 Replace the first row of the Termination Table in clause 90.2 (for "The *Client*") with the following:

TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1 – R15 (including 5A)	P1, P2, P3 and P5	A1 and A3
	R17 or R20	P1, P4 and P5	A1 and A2
	R21	P1, P3 and P5	A1 and A2

9.2 In the "Procedure" column for each of the "P1 and P4" entries in the row for "The *Contractor*", insert "(and P5)".

9.3 Replace the wording of clause 91.1 in its entirety with the following:

"Subject to clause 91.1A below, either Party may terminate the contract immediately if the other Party is subject to or has suffered an Insolvency Event (R1 to R10 (inclusive))."

9.4 Insert a new clause 91.1A as follows:

"The *Contractor's* right to terminate under clause 91.1 where the *Client* is subject to or suffers an Insolvency Event will not arise where the Insolvency Event involves the *Client*

- having a winding-up order made against it,
- having a monitor appointed or any document is filed at court to obtain or apply for a moratorium or order is made for a moratorium to come into force,
- having a provisional liquidator appointed to it,
- passing a resolution for winding-up (other than in order to amalgamate or reconstruct),
- having an administration order made against it or had an administrator appointed over it,
- having an administrative receiver appointed over the whole or a substantial part of its underlying or assets,



- making an arrangement, compromise or composition with its creditors, where a voluntary arrangement approved under Part 1 of the Insolvency Act 1986 takes effect in relation to the *Client* or after a court order is made under section 901C(1) of the Companies Act 2006 in relation to the *Client*,

(in each case, a "**relevant insolvency procedure**") unless and to the extent that

- in a case where the *Client* has entered administration, an administrative receiver of the company has been appointed (otherwise than in succession to another administrative receiver), gone into liquidation and/or a provisional liquidator of the *Client* is appointed (otherwise than in succession to another provisional liquidator), the office-holder consents to the termination,
- in any other case, the *Client* consents to the termination,
- the court is satisfied that the continuation would cause the *Contractor* hardship and grants permission for the termination or
- the termination is otherwise permitted pursuant to Section 233B of the Insolvency Act 1986 (as amended and in force from time to time)."

9.5 In clause 91.2, insert "(4)" after "four".

9.6 In clause 91.3, insert "(4)" after "four".

9.7 In clause 91.4, insert "(13)" after "thirteen".

9.8 In clause 91.5, insert "applicable" before "law".

9.9 In clause 91.6:

- insert "(13)" after "thirteen"; and
- insert "(pursuant to clause 14.5 or otherwise)" after "from the Scope".

9.10 In clause 91.7:

- insert "(13)" after "thirteen"; and
- replace "Contract Date" with "Contract Date".

9.11 Replace the wording of clause 91.8 in its entirety with the following:

"The *Client* may immediately terminate the *Contractor's* obligation to Provide the Works if the *Contractor* is in breach of

- clause 103,
- clause 104 and/or
- clause 105

(R22)."

9.12 Insert a new clause 91.9 as follows:

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

If the *Client* terminates under the provisions of regulation 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the



procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with his obligations (R11).

If the *Client* otherwise terminates under the provisions of regulation 73(1)(a) or regulation 73(1)(c) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of the contract (R17)."

- 9.13 Insert a new clause 91.10 as follows:

"The *Contractor's* termination rights under clauses 91.4, 91.5 and 91.6 may not be exercised while the *Client* is and remains subject to a relevant insolvency procedure unless such exercise is expressly permitted and/or is not prohibited by the provisions of Section 233B of the Insolvency Act 1986 (as amended and in force from time to time)."

- 9.14 In the "P4" entry of clause 92.2, replace "Working Areas" with "Site".

- 9.15 After the "P4" entry of clause 92.2, insert the following as a new paragraph:

"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 Plant and Materials and other items of any kind whatsoever relating to the 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*."

- 9.16 In the "A4" entry of clause 93.2, replace "Contract Date" with "Contract Date".



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

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

10.2 Insert a new clause 101 as follows:

"101 **Convictions**

101.1 Unless agreed in writing in advance by the *Project Manager*, the *Contractor* shall procure that, in respect of all potential persons performing any part of the works, whether an employee of the *Contractor* or any Subcontractor (each a "**Named Employee**"), before a Named Employee begins to attend the Site in connection with the contract

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

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

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

101.4 Without prejudice to clause 101.1 to clause 101.3 (inclusive), where the *Client* or the *Project Manager* 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, which may include (without limitation)

- asking any person acting for or on behalf of the *Contractor* in connection with the contract for the details of any Convictions, obtaining an enhanced Disclosure and Barring Service 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* and the *Project Manager* in writing."

10.3 Insert a new clause 102 as follows:

"102 **Equality legislation**

102.1 Notwithstanding any other provision of the contract, the *Contractor* shall (and ensure that its personnel and its Subcontractors)

- perform its duties and obligations under the contract in accordance with
 - any applicable law in relation to non-discrimination and equality (whether in



relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise) and

- any other requirements and instructions which the *Client* or the *Project Manager* (on the instruction of the *Client*) reasonably notifies to the *Contractor* from time to time in writing in connection with any non-discrimination and/or equality-related obligations imposed on the *Client* at any time under any applicable law and
- take all necessary steps, and inform the *Client* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor or equivalent replacement organisation to the same)."

10.4 Insert a new clause 103 as follows:

"103 **Modern slavery**

103.1 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 it 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 103) 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 (including its Subcontractors) that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

103.2 The *Contractor* shall notify the *Client* and *Project Manager* 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 103.1 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 103.1.

103.3 If the *Contractor* is in breach of this clause 103, the *Client* may terminate the *Contractor's* engagement under the contract at its sole discretion immediately on written notice."

10.5 Insert a new clause 104 as follows:

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

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

- committed a Corrupt Act and/or have been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt 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 in connection with a Corrupt Act and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the contract and/or otherwise suspects



that any person directly or indirectly connected with the contract has committed or attempted to commit a Corrupt Act.

- 104.2 The *Contractor* represents and warrants to the *Client* on a continuing basis that it shall
- not commit any Corrupt Act,
 - comply with the Relevant Policies,
 - comply with the Relevant Requirements,
 - have and shall continue to maintain 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 Corrupt Act and shall enforce them as appropriate,
 - provide reasonable evidence to demonstrate the *Contractor's* compliance with the provisions of this clause 104 as the *Client* may reasonably request from time to time,
 - ensure that any person associated with the *Contractor* who is performing services in connection with the contract (including any Subcontractor) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Contractor* in this clause 104 (the "**Relevant Terms**") and the *Contractor* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *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 the contract, which the *Client* reasonably considers to be inconsistent with the Competition Act 1998 and/or the Treaty on the Functioning of the European Union (2012/C 326/01) and/or any other applicable law that is equivalent in intent.
- 104.3 The *Contractor* shall immediately notify the *Client* and the *Project Manager* in writing if it becomes aware of any breach of this clause 104 or if it has reason to believe that it has or any person associated with the *Contractor* has
- been subject to an investigation or prosecution which relates to an alleged Corrupt 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 in connection with a Corrupt Act and/or
 - received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the contract or otherwise suspects that any person directly or indirectly connected with the contract has committed or attempted to commit a Corrupt Act.
- 104.4 For the purpose of this clause 104, the meaning of "adequate procedures" and whether a person is "associated" with another person shall be determined in accordance with (as the context permits)
- section 7(2) of the Bribery Act 2010 and any guidance issued under section 8 and section 9 of the Bribery Act 2010 (as applicable) and/or
 - the definition of "associated person" in section 44(4) of the Criminal Finances Act 2017,
- with, for the purposes of this clause 104, a person associated with the *Contractor* including any Subcontractor.
- 104.5 Any dispute, difference and/or question arising in respect of the interpretation of this clause 104 shall be decided by the *Client* (acting reasonably), whose decision, in the absence of manifest error, shall be final and conclusive.



- 104.6 If the *Contractor* is in breach of this clause 104, the *Client* may terminate the *Contractor's* engagement under the contract at its sole discretion immediately on written notice."
- 10.6 Insert a new clause 105 as follows:
- "105 **Conflicts of interest**
- 105.1 The *Contractor* shall
- take all appropriate steps to ensure that neither it nor any person engaged by or on behalf of it (including its Subcontractors and/or any Affiliates) is or is placed in a position where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary, professional and/or personal interests of the *Contractor* (including its Subcontractors and/or any Affiliates) and the duties owed by the *Contractor* to the *Client* in connection with the contract and/or the Project and
 - notify the *Client* immediately, giving full particulars of any such conflict of interest, which the *Contractor* becomes aware of or becomes aware may arise.
- 105.2 If the *Contractor* is in breach of this clause 105, the *Client* may terminate the *Contractor's* engagement under the contract at its sole discretion immediately on written notice."
- 10.7 Insert a new clause 106 as follows:
- "106 **Whistleblowing**
- The *Contractor* shall ensure that staff engaged by it in connection with the contract and/or the Project (and use reasonable endeavours to ensure that any staff engaged by any Subcontractor) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that such *Contractor* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998."
- 10.8 Insert a new clause 107 as follows:
- "107 **Tax compliance**
- 107.1 If, at any time during the *Contractor's* engagement under the contract, it becomes aware that it is subject to an Occasion of Tax Non-Compliance, the *Contractor* shall notify the *Client* and the *Project Manager* in writing of the same within seven (7) days of its occurrence and promptly give the *Client* and the *Project Manager*
- 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* and/or the *Project Manager* may reasonably require.
- 107.2 If the *Contractor* or any persons engaged by it (directly or indirectly and at any tier) from time to time are liable to be taxed in the United Kingdom and/or to pay NICs in respect of consideration received under or pursuant to this contract, the *Contractor* shall:
- at all times comply with ITEPA and all other law 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 (including secondary contributions), apprenticeship levies, social security contributions and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties and/or expenses thereon) arising from or made in connection with



the provision of the *works* and/or any other activities performed under this contract by the *Contractor* or any persons engaged by it, including where the *Client* is required to pay or account for to the relevant taxing authority any sums (of whatever type and nature) due to the engagement by the *Contractor* of any individual(s) engaged through a limited company or partnership which meets the conditions specified in sections 61O or 61P of ITEPA.

- 107.3 The *Client* and the *Contractor* agree that, as between them for the purposes of the off-payroll working rules known as "IR35", the *Contractor* agrees that it is the "client" and shall be responsible for issuing all status determinations in respect of all persons engaged directly by the *Contractor* or indirectly through its supply chain and/or through a limited company or other entity."

- 10.9 Insert a new clause 108 as follows:

"108 **Audit**

The *Contractor* shall

- keep and maintain until the *end of liability date*, full and accurate records in connection with its engagement under the contract, covering the works 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 the contract,
- make available to the *Client*, without charge and on request, copies of audit reports obtained by the *Contractor* in relation to the works and/or the contract,
- 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 the contract and provide such copies and any oral and/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."

- 10.10 Insert a new clause 109 as follows:

"109 **Confidentiality**

- 109.1. The *Contractor* shall treat all Client Confidential Information as confidential and safeguard it accordingly and not disclose the Client Confidential Information to any other person without the *Client's* prior written consent.
- 109.2. Subject always to clause 109.7, the *Contractor's* obligations in relation to Client Confidential Information pursuant to clause 109.1 do not apply where
- the disclosure is a requirement of applicable law placed upon the *Contractor*, including any requirements for disclosure under the FOIA or the Environmental Information Regulations,
 - the information was in the possession of the *Contractor* without obligation of confidentiality prior to its disclosure by the *Client*,
 - the information was obtained from a third party without any obligation of



- confidentiality being owed to such third party,
- the information was already in the public domain at the time of disclosure otherwise than by a breach of the contract and/or
 - it is independently developed without access to the Client Confidential Information.
- 109.3. The *Contractor* shall only disclose the Client Confidential Information relevant to the carrying out and completion of the works to its personnel (of any type) and Subcontractors who are directly involved in carrying out and completing the works, and shall ensure that such persons are aware of and comply with their obligations in respect of Client Confidential Information under the contract.
- 109.4. The *Contractor* shall not, and shall procure that its personnel (of any type) and Subcontractors do not use any of the Client Confidential Information received otherwise than for the purposes of the contract.
- 109.5. 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 that reflect (as a minimum) the requirements of this clause 109 prior to commencing any works and/or services in connection with the contract.
- 109.6. Nothing in the 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 any *Contractor* Confidential Information
- to any Crown body or any other public body on the understanding that they are entitled to further disclose the *Contractor* 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 contract and/or the Project or any person conducting a review of the same (subject to any commercial redactions as may be reasonably appropriate so as not to disclose any commercially sensitive financial information of the *Contractor* to a competitor organisation);
 - for the purpose of the examination and certification of the *Client's* accounts and/or
 - for any examination pursuant to the National Audit Act 1983.
- 109.7. Notwithstanding clause 109.1 to clause 109.6 (inclusive)
- the *Contractor* shall ensure that it, 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 Project without the prior written approval of the *Client* and
 - this general prohibition shall not apply to such disclosure by the *Contractor* (on a limited basis) in connection with any tender and/or procurement processes undertaken by the *Contractor* in connection with the works and/or the Project that is approved in writing by the *Client* in advance subject to the *Contractor* first complying with any reasonable requirements of the *Client* concerning the confidentiality, data security and/or the non-disclosure of the Foreground Materials and/or Client Materials relating to the Security Measures that may be relevant to such process.
- 109.8. Notwithstanding any other term of the contract, the *Contractor*:
- consents that the *Client* can publish the contract in its entirety and any details in respect of the contract, including from time to time agreed changes to the



contract, to the general public and

- 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,

provided that, 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, pricing (and other commercially sensitive) information of the *Contractor* and/or the prevention of a Corrupt Act."

10.11 Insert a new clause 110 as follows:

"110 **Announcements and publication**

Subject to clause 111, the *Contractor* shall not

- make any press announcements regarding and/or publicise the contract and/or its engagement under the contract in connection with the Project in any way and/or
- use the *Client's* name or branding in any promotion or marketing or announcement in connection with the same,

without the prior written approval of the *Client*, not to be unreasonably withheld or delayed."

10.12 Insert a new clause 111 as follows:

"111 **Marketing**

111.1 The *Contractor* shall obtain the *Client's* written approval prior to publishing any content in relation to the contract using any media, including on any electronic medium, and the *Contractor* will ensure that such content is regularly maintained and updated.

111.2 In the event that the *Contractor* fails to maintain and/or update the content referred to in clause 111.1, the *Client* may give the *Contractor* notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the *Client* within thirty (30) days of the *Contractor's* receipt of such notice, the *Client* shall have the right to remove such content itself or require that the *Contractor* immediately arranges the removal of such content (as the context requires)."

10.13 Insert a new clause 112 as follows:

"112 **Freedom of information**

112.1 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* and the *Project Manager* (at its own expense) to enable it to comply with these requirements.

112.2 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 it requires 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 *Project Manager* and/or the *Client* for such information and
- all necessary assistance as is reasonably requested by the *Project Manager* and/or 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 112.2 by the *Contractor* and/or its personnel (of any type) and/or its Subcontractors

112.3 If the *Contractor* considers that all or any information provided to the *Client* under clause 112.2 is a "trade secret" in accordance with section 43(1) of the FOIA, or that 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 *Project Manager* and *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 of "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.

112.4 In no event shall the *Contractor* (or shall any *Contractor* allow its personnel (of any type) and/or its Subcontractors to) respond directly to any Request for Information from members of the public unless expressly authorised to do so by the *Client* or the *Project Manager* and/or any other third party.

112.5 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 affected *Contractor(s)* and/or following consultation with such *Contractor(s)* and having considered their views."

10.14 Insert a new clause 113 as follows:

"113 **Intellectual Property Rights**

113.1 The Intellectual Property Rights in all Contractor Materials 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 its Contractor Materials for any purpose whatsoever, including but not limited to in connection with 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 any part of the Project (and any other project of the *Client*).

113.2 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 this contract, provided always that such licence shall automatically terminate upon the termination of the *Contractor's* engagement under the contract.

113.3 The licence granted to the *Client* under clause 113.1, carries the right for the *Client* to grant sub-licences, 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* engagement under the whole or part of this contract.

113.4 The right given to the *Client* to assign, novate, transfer and/or otherwise deal with the licence given under clause 113.1, pursuant to clause 113.3 or otherwise, shall include the right for the *Client* to use such means to grant the licence to a Central Government Body or to any body which carries on any of the functions and/or activities that have previously been performed and/or carried on by the *Client* at any time.



- 113.5 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 favour of the *Client* under clause 113.1 and 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 113.1.
- 113.6 If a licence granted in favour of the *Client* under clause 113.1 is novated as permitted by this clause 113 or there is a change in the *Client's* status pursuant to clause 113.5, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the *Client*.
- 113.7 The *Contractor* unconditionally and irrevocably agrees to waive, in respect of any Contractor Materials in respect of which it has granted a licence in favour of the *Client* under clause 113.1, all moral rights to which the *Contractor* may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other applicable law in respect of the Contractor Materials, with this waiver being made in favour of the *Client* and extended to (as the context permits) the sub-licensees, assignees, transferees and successors in title of the *Client*.
- 113.8 The *Contractor* warrants and undertakes to the *Client* that
- all Contractor Materials are and will continue to be its own original work (or the original work of its Subcontractors, as appropriate),
 - the licence granted in any Contractor Materials pursuant to clause 113.1 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* pursuant to clause 113.2 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*.
- 113.9 The *Contractor* shall not be liable for any such use by the *Client* or its nominees of any Contractor Materials for any purpose other than that for which such Contractor Materials were prepared by or on its behalf.
- 113.10 The *Client* shall have no liability whatsoever to any *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 113.2.
- 113.11 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 its Contractor Materials and/or the *Contractor's* use of the Client Materials."
- 10.15 Insert a new clause 114 as follows:
- "114 **Data protection**
- 114.1 Each of the Parties including the personnel (which term for the purposes of this clause shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) of each Party will comply with all applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission,



place the other Party in breach, or potential breach of Data Protection Legislation. This clause 114.1 is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Laws.

- 114.2 The Parties each acknowledge that they may need to Process Personal Data relating to the other Party's personnel (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the *works*; (b) request and receive the *works*; (c) request or grant access to sites, including security and background checks where required; (e) compile, dispatch and manage the payment of invoices relating to the *works*; (f) manage the contract and resolve any disputes relating to it; (g) respond and/or raise general queries relating to the *works*; and (h) comply with their respective obligations under the contract (the "**Permitted Purposes**").
- 114.3 Each Party shall Process such Personal Data relating to each Party's personnel for the Permitted Purposes in accordance with their own fair processing notices (which each Party shall make available to the other). The Parties acknowledge that they may be required to share Personal Data with the Client Consultants, Other Consultants, in the case of the *Contractor* its group companies, and other relevant parties in order to carry out the activities listed in clause 114.2 and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.
- 114.4 Each Party shall ensure that all fair processing notices have been given to (and as applicable consents obtained from) the relevant Data Subjects and are sufficient in scope to allow the other Party to Process the Personal Data as anticipated by clauses 114.2 and 114.3.
- 114.5 Without limiting the foregoing, the Contractor shall:
- only Process the Personal Data for the Permitted Purposes;
 - make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Laws), including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation;
 - maintain complete and accurate records and information to demonstrate its compliance with this clause 114. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:
 - the *Client* determines that the Processing is not occasional;
 - the *Client* determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - the *Client* determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects;
 - prepare and/or support the *Client* (as applicable) in preparing, any Data Protection Impact Assessment prior to commencing any Processing;
 - ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the *Client* may reasonably reject (but failure to reject shall not amount to approval by the *Client* 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;
 - not transfer Personal Data outside the United Kingdom unless the prior written



consent of the *Client* has been obtained and the following conditions are fulfilled:

- the *Contractor* has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Originating Controller;
- the Data Subject has enforceable rights and effective legal remedies;
- the *Contractor* complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- the *Contractor* complies with any reasonable instructions notified to it in advance by the Originating Controller with respect to the Processing of the Personal Data;
- at the written direction of the *Client*, delete or return Personal Data (and any copies of it) to the *Client* on termination of the *Contractor's* engagement under the contract unless the *Contractor* is required by applicable law to retain the Personal Data;
- notify the *Client* immediately if it:
 - receives a Data Subject Request (or purported Data Subject 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's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Laws) in connection with Personal Data 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 Law; or
 - becomes aware of a Data Loss Event;
- following notification to the *Client* as noted above and the *Client's* determination and confirmation to the *Contractor* as to whether it or the *Contractor* shall be the primary point of contact and responder to the request, complaint or communication received (and the Parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects) then where the *Client*:
 - designates the *Contractor* as the primary point of contact, provide updates and further information to the *Client*, including (where directed by the *Client*) allowing the *Client* to have final oversight and approval of any response, prior to such response being released to the relevant party; or
 - designates itself as the primary point of contact, provide all support as necessary within the timescales directed by the *Client*, including providing all Personal Data held by the *Contractor* in respect of the request, complaint or communication received to the *Client* as soon as practicable and in any event within five (5) days, or as otherwise agreed by the Parties acting reasonably and in good faith;
- further to the *Contractor's* obligation to notify set out above, provide further information to the *Client* in phases, as details become available. The *Contractor* shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the *Contractor* shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event; and (b) the *Contractor* and the *Client* shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the Data Loss



Event;

- provide such assistance as is reasonably requested by the *Client* within such timescales as requested by the *Client* in relation to any Data Subject Request received by the *Client*, Data Loss Event suffered by the *Client* or any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office in relation to any Personal Data shared by the *Contractor* with the *Client*;
- take reasonable steps to ensure the reliability of and adequate training of, any Personnel who have access to the Personal Data;
- hold the information contained in the Personal Data confidentially;
- not do anything which shall damage the reputation of its (if applicable) or the *Client's* or any third party from whom the Personal Data may originate (being consultants, contractors and subcontractors) relationship with the Data Subjects; and
- allow for audits of its Processing activity by the *Client* or the *Client's* designated auditor.

114.6 Before allowing any Sub-Processor to Process any Personal Data received from the *Client* or the *Client* Personnel related to the contract, the *Contractor* must

- notify the *Client* in writing of the intended Sub-Processor and Processing,
- obtain the written consent of the *Client*,
- enter into a written agreement with the Sub-Processor which give effect to the terms set out in Articles 28 of the UK GDPR and to enable the *Contractor* to meet its obligations under this clause 114; and
- provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.

114.12 The *Contractor* shall remain fully liable for all acts or omissions of any of its Sub-Processors.

114.13 The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause 114 by replacing it with any applicable "Controller" to "Controller" standard clauses or similar terms forming part of an applicable certification scheme (which shall be deemed to apply to the contract when received by the *Contractor*).

114.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office from time to time in connection with the storage and/or Processing of Personal Data.

114.15 The *Client* may on not less than thirty (30) Working Days' notice to the *Contractor* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

114.16 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 114 by the *Contractor* and/or its Personnel (of any type) and/or its Subcontractors."

10.16 Not Used.

10.17 Insert a new clause 116 as follows:

"116 **Co-operation**

116.1 The *Contractor* shall



- cooperate with and interface in the performance of the works with the Client Consultants in connection with the Project as may be reasonably required,
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Contractor* and the Client Consultants and
- proactively consult with the Client Consultants when seeking to make decisions in relation to the works,

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

116.2 The *Contractor* shall work with the Client Consultants so far as reasonably practicable, using the Standard of Care, to

- to the extent reasonably within the *Contractor's* control, assist the Client Consultants in performing their obligations under their respective Client Consultant 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 Project and
- share best practice in connection with the Project,

on a Project Focused basis.

116.3 The *Contractor* acknowledges and agrees, for the purposes referred to in this clause 116, to promptly supply or allow each Client Consultant access to all information and documentation in its possession or control that is reasonably requested by that Client Consultant in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions by applicable law and/or the contract,
- reasonably required by the *Contractor* to properly perform its obligations under the contract and/or
- reasonably required by a Client Consultant to properly perform its obligations under its Client Consultant Appointment.

116.4 The *Contractor* shall, in complying with its obligations under this clause 116, consult with the *Contractor*, each Client Consultant, the *Project Manager* and the *Client* and attend such meetings as and when reasonably requested by the *Client* or the *Project Manager* to discuss any matters arising under the contract and/or in relation to the Project.

116.5 Nothing in this clause 116 shall require the *Contractor* to perform tasks and/or duties which are the responsibility of any Client Consultant under its Client Consultant Appointment."

10.18 Insert a new clause 117 as follows:

"117 **Security Aspects Letter and 4.20 Meeting Minutes**

(1) The *Contractor* warrants and undertakes to the *Client* that the *Contractor* shall comply with (and procure that its Subcontractors, subconsultants and agents shall comply with):

- the requirements of the Security Aspects Letter;
- the Security Management Plan produced pursuant to the Security Aspects Letter; and
- the requirements set out in or referred to by the 4.20 Meeting Minutes

at all times in the performance of the *Contractor's* duties and obligations under the contract and in connection with the *works* and/or the correction of any Defect.



(2) The *Contractor* acknowledges that the Security Aspects Letter is a standard template and as such cannot be directly amended and agrees that it shall be interpreted as follows for the purposes of this contract:

- any references to "MOJ" shall be construed as the *Client* as appropriate.

(3) The Parties also agree that if there are any requirements in the Security Aspects Letter that the *Contractor* believes, exercising the Standard of Care, are not relevant to the *works* and/or the performance of this *contract* the *Contractor* shall notify the *Client* as soon as reasonably practicable and the *Client* shall confirm whether or not such requirements are applicable or not."

10.19 Insert a new clause 118 as follows:

"118 **Sustainability**

The *Contractor* shall

- comply with the applicable Government Buying Standards,
- provide, from time to time, in a format reasonably required by the *Project Manager*, 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 the 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."

10.20 Not Used.

10.21 Not Used.

10.22 Not Used.

10.23 Not Used.

10.24 Insert a new clause 123 as follows:

"123 **Security and vetting**

- (i) The provisions of clause 123(i) to clause 123(xvii) (inclusive) are subject always to the requirements of the *Client* notified to the *Contractor* pursuant to clause 123(xviii).
- (ii) Where Non-Client Personnel who are required to have a pass for admission to the Site are identified by the *Contractor* to the *Client* (provided always that the *Contractor* first notifies the *Client* in writing of such Non-Client Personnel within a reasonable period ahead of their scheduled attendance(s) at the Site), the *Client*, subject to its satisfactory completion of its own approval procedures in respect of such admission by Non-Client Personnel, shall



arrange for passes to be issued. Non-Client Personnel who cannot produce a proper pass when required to do so by any of the *Client's* personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Site or required to leave the Site if already there.

- (iii) The *Contractor* shall promptly return any pass issued to any Non-Client Personnel pursuant to clause 123(i) if at any time the *Client* so requires or if the person to whom the pass was issued ceases to be involved in Providing the Works. The *Contractor* shall promptly return such passes on Completion or earlier termination of their appointment under this contract.
- (iv) Non-Client Personnel attending the Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Client* under the same rules and conditions applying to the *Client's* Personnel. The *Contractor* is deemed to be familiar with and comply with (and shall procure that the Non-Client Personnel are familiar with and comply with) the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 in this regard.
- (v) The *Client*, whose decision is final and conclusive, reserves the right to refuse to admit to, or to withdraw permission to remain on, the Site or any premises occupied by or on behalf of the *Client* any Non-Client Personnel whose admission or continued presence is, in the opinion of the *Client*, undesirable. The *Project Manager* may instruct the *Contractor* to take measures to prevent any unauthorised persons being admitted to the Site. None of the matters referred to in this clause 123(vi) shall give rise to a compensation event.
- (vi) If and when directed by the *Client*, the *Contractor* shall provide a list of the names and addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the contract to the Site, Working Areas or any premises occupied by or on behalf of the *Client*, specifying the capacities in which they are concerned with the *works* and giving such other particulars as the *Client* may reasonably desire.
- (vii) The *Contractor* shall ensure that its Non-Client Personnel undertaking works and/or services within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Non-Client Personnel when at that establishment and when outside that establishment.
- (viii) If the *Contractor* fails to comply with clause 123(ii) and/or clause 123(v) the *Client*, (whose decision shall be final and conclusive in the matter) may decide that such failure is prejudicial to the interests of the Crown and if the *Contractor* does not comply with the *Client's* reasonable requests within two (2) months of the date of a written notice from the *Client* so to do, then the *Client* may terminate the *Contractor's* obligation to Provide the Works as if it were for a reason under R1-15, R18 or R22 (as the context permits) of this contract, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Client*.
- (ix) The *Contractor* shall bear the costs of complying with the requirements notices, instructions or decisions received from the *Client* in relation to their obligations in respect of information relating to Non-Client Personnel pursuant to this clause 123.
- (x) The *Contractor* shall not employ any person where the *Contractor* knows, or by reason of the circumstances which might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the *Contractor*. The *Contractor* shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in



the nature of social security fraud, evasion of tax or otherwise.

- (xi) The *Contractor* shall comply with the *Client's* procedures for the vetting of Non-Client Personnel in respect of all persons to be employed or engaged to Provide the Works. The *Contractor* shall confirm that all persons employed or engaged by the *Contractor* or that will be employed or engaged by the *Contractor* in relation to the contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedures.

- (xii) The *Contractor* shall procure that, in respect of all potential individuals and parties to be engaged by the *Contractor* in connection with this contract, before attending the Site to perform any obligations of the *Contractor* under and in connection with this contract:

- is questioned as to whether they have any Convictions;
- a DBS Check is obtained for each person (of a type to be agreed with the *Client*); and
- save to the extent prohibited by applicable law, a copy of the results of such DBS Check are notified to the *Client*,

and the *Contractor* shall ensure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a DBS Check undertaken pursuant to this clause 123(xii) or otherwise is engaged in connection with this contract without the prior written approval of the *Client*. Save to the extent prohibited by applicable law, the *Contractor* shall procure that the *Client* is informed if any individual or party provides any works and/or services in connection with this contract, subsequent to the Contract Date, receives a Conviction or whose previous Conviction(s) become known to the *Contractor*.

- (xiii) Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Client* deems it necessary, the *Contractor* shall provide a list of Non-Client Personnel who are to Provide the Works that are vetted by the Disclosure and Barring Service. The *Client* may in its sole discretion refuse access to the Site by any Non-Client Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme under the Safeguarding Vulnerable Groups Act 2006.

- (xiv) Whilst on the Site, the *Contractor* must ensure that its Non-Client Personnel comply with all Security Measures implemented by the *Client* in respect of staff and other persons attending the Site. The *Client* shall provide copies of its written security procedure to the *Contractor* on request. The *Contractor* and all their Non-Client Personnel shall be prohibited from taking any photographs on the Site unless the *Client* has given prior written consent and a representative of the *Client* is present so as to have full control over the subject matter of each photograph to be taken. The *Contractor* takes the measures needed to prevent its and its *Subcontractors'* people taking, publishing or otherwise circulating such photographs.

- (xv) The *Contractor* shall co-operate with any investigation relating to security which is carried out by the *Client* or by any person who is responsible to the *Client* for security matters, and when required by the *Client*:

- take all reasonable measures to make any Non-Client Personnel identified by the *Client* available to be interviewed by the *Client*, or by a person who is responsible to the *Client* for security matters, for the purposes of the investigation (and all Non-Client Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the *Client*); and



- subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the *Client* or by a person who is responsible to the *Client* for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the *Contractor* from Providing the Works (and the *Client* has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the *Contractor* with a copy of any material retained).
- (xvi) The *Contractor* shall:-
- comply (and procure that its Subcontractors comply) with the Official Secrets Acts 1911 to 1989 and section 2 of the Finance Act 1989 (the “**Official Secrets Acts**”) in the performance of its obligations and duties under or in connection with this contract;
 - take all reasonable steps to ensure that each of its Non-Client Personnel:-
 1. are aware that the Official Secrets Acts apply to it and will continue to apply to it after the expiry or earlier termination of this Partnering Contract; and
 2. comply with the Official Secrets Acts in the performance of its obligations and duties under or in connection with this Partnering Contract;
 - if requested by the *Client* in writing from time to time, ensure that any of its Non-Client Personnel sign a statement acknowledging that, both during the term of this contract and after its expiry or termination, it is bound by the Official Secrets Acts.
- (xvii) The *Contractor* acknowledges that at all times during its engagement under this contract:-
- it shall comply in all respects with the Security Measures, the Security Aspects Letter and the 4.20 Meeting Minutes;
 - the *Client* may, without prior notice, search any persons or vehicles engaged or used by the *Contractor* or its Non-Client Personnel at any of the Sites from time to time and at its sole discretion;
 - at the written request of the *Client*, the *Contractor* shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all individuals who may require admission to a Site, specifying the capacities in which such individuals are engaged by the *Contractor* in connection with the *works* and provide such further information and details as may be reasonably requested by the *Client*; and
 - the *Contractor* shall ensure that it and all its Non-Client Personnel who have access to a Site, a Client System or Client Data have been cleared and authorised to access the same pursuant to and in accordance with the BPSS.
- (xviii) Without prejudice to the generality of clause 123(i) to clause 123(xvii) (inclusive), the *Contractor* acknowledges and agrees that it shall comply with and shall ensure that its Non-Client Parties comply with any security, safeguarding and/or vetting requirements and/or instructions:-
- as specified in the Client's Policies;



- that the *Client* notifies them of in writing from time to time in connection with their attendance at the Site; and/or
- as may be specified and/or referred to elsewhere in the contract (provided always where any such requirements in the contract are less onerous than those specified in clause 123(i) to clause 123(xvi) and/or those specified in the Client's Policies, the *Contractor* shall notify the *Client* of this and the *Client* (at its sole discretion) shall advise the *Contractor* in writing, as soon as reasonably practicable upon receiving the notice, which requirements shall take precedence and the *Contractor* shall comply with the same without any entitlement to any additional payment and/or an adjustment to the Completion Date and/or the Prices.

- (xix) Without prejudice to the generality of clause 123(i) to clause 123(xviii) (inclusive), the *Client* shall provide to the *Contractor*, upon receipt of a written request from the *Contractor* for the same, a written copy of its security policies and procedures current as at the time of the request."

10.25 Insert a new clause 124 as follows:

"The Parties acknowledge that the *Client* may at any time following Completion instruct the Contractor to remove an Installed Modular Unit at a Site and transport it to another site specified by the Client for installation. Any such instruction shall be treated as a change to the Scope for the purposes of clause 60.1(1) and such event shall be assessed for the purposes of clause 63 taking into account the relevant rates agreed for removal, transportation and installation agreed in the Prices."

10.26 Insert a new clause 125 as follows:

"The *Client* may at any time following Completion issue to the *Contractor* a Buy Back Notice in respect of any Installed Modular Units at a Site. Following a Buy Back Notice being issued by the *Client* the *Contractor* shall:

- remove the specified Installed Modular Units from the Site; and
- pay the *Client* the Buy Back Price in respect of the specified Installed Modular Units,

in accordance with the contract, the Scope, the Activity Schedule and the requirements of the Buy Back Notice (including any dates and requirements in respect of access to the Site)."



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

- 11.1 In Option W2.1(2), insert "(1)" after "one".
- 11.2 In Option W2.1(3), insert "(3)" after "three".
- 11.3 In Option W2.2(5), insert "(4)" after "four".
- 11.4 In Option W2.3(1), insert "(3)" after both instances of "three".
- 11.5 In Option W2.3(2):
- insert "(7)" after "seven"; and
 - insert "(14)" after "fourteen".
- 11.6 After Option W2.3(4), insert a new Option W2.3(4A) with the following wording:
- "The *Adjudicator* has the power to determine more than one dispute under the contract at the same time and, if requested to do so by either Party, determines any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as the *Adjudicator* determines any other matter referred to him."
- 11.7 In Option W2.3(7), insert "(7)" after "seven".
- 11.8 In Option W2.3(8):
- insert "(28)" after "twenty-eight"; and
 - insert "(14)" after "fourteen".
- 11.9 In Option W2.3(12), insert "(5)" after "five".
- 11.10 Replace the wording of Option W2.4(1) in its entirety with the following:
- "A Party may refer any dispute under or in connection with the contract to the *tribunal*."
- 11.11 In Option W2.4(2), insert "(4)" after "four".



12. AMENDMENTS TO SECONDARY OPTION CLAUSES

12.1 Replace the wording of Option X1 in its entirety with the following:

"X1 THE AGREED MATERIALS

X1.1 As at the Contract Date

- the Prices include, as fixed costs, the Agreed Materials Costs for the Agreed Materials that will form part of the *works* (and the *Contractor* has clearly identified, in relation to its Agreed Materials Costs, any profit and/or overhead elements forming part of the same in the Materials Schedule),
- in addition to setting out the Agreed Materials Costs for the Agreed Materials, the Materials Schedule also identifies
 - the market price (excluding any profit and/or overheads of the relevant Materials Supplier and the *Contractor*) for each class of Agreed Materials as at the Contract Date (identified in the Materials Schedule as the "Benchmark Market Price"),
 - the latest date(s) by which the *Contractor* will place an order for each class of Agreed Materials (including full details of where multiple orders will be placed in relation to the same class of Agreed Materials at different dates and their respective latest order dates) with each Materials Supplier (the "Latest Order Date"),
 - what pricing fluctuation tolerance (expressed as a percentage) the *Contractor* has allowed for in its Agreed Materials Costs for each class of Agreed Materials to account for any
 - increases to the Benchmark Market Price for such Agreed Materials on or after the Contract Date (the "Maximum Increase Tolerance") and
 - decreases to the Benchmark Market Price for such Agreed Materials on or after the Contract Date (the "Maximum Reduction Tolerance").

X1.2 If, on or after the Contract Date, and subject always to clause 108 (Audit) the *Contractor* can demonstrate to the Project Manager on an open-book basis that as at the date that the *Contractor* has placed an order with the relevant Materials Supplier for any Agreed Materials in connection with the *works* (a "Materials Order")

- the order to be entered into with the Materials Supplier including the terms and conditions, specification, basis of pricing and programme is reasonable and has been approved in advance by the Project Manager acting reasonably;
- the *Contractor* has first secured quotations from at least three (3) potential Materials Suppliers (not within the same group of companies) for the Agreed Materials, unless the *Contractor* can demonstrate to the satisfaction of the Project Manager (acting reasonably) that
 - fewer than three (3) potential Materials Suppliers are able to provide the Agreed Materials in the then current market, before placing the order with that relevant Materials Supplier and
 - placing the order with that Materials Supplier represents the best value for money for the *Client* and the *works* in the prevailing market for the Agreed Materials as at the date of the Materials Order,

provided always that the *Contractor* shall secure further quotations from other Material Supplier(s) as required by the Project Manager if the Project Manager



acting reasonably believes that a price representing better value for money in the prevailing market and/or a better order including terms and conditions, specification, basis of pricing and/or programme may be capable of being secured from another Material Supplier(s),

- the price in the Materials Order (excluding any profit and/or overheads of the relevant Materials Supplier and the *Contractor*) for that class of Agreed Materials (the "Current Market Price") exceeded the Benchmark Market Price for such Agreed Materials,
- the Current Market Price represents best value for money for the Client taking into account the prevailing market for the Agreed Materials as at the date of the Materials Order,
- the *Contractor* paid the Materials Supplier for the Agreed Materials at the same time as it placed the Materials Order,
- the difference between the then Current Market Price and the Benchmark Market Price paid (or payable) by the *Contractor* to the Materials Supplier for the Agreed Materials exceeded (or exceeds) the Maximum Increase Tolerance (the "BMP Difference"),
- the Materials Order was placed no later than the Latest Order Date for the relevant Agreed Materials (or, if it was not placed by such date, the *Contractor* can demonstrate that the failure was not attributable to any act, omission or default of the *Contractor*),
- the *Contractor* can demonstrate to the Project Manager (acting reasonably) that the *Contractor* has experienced (or is experiencing) similar cost increases on other projects in relation to materials of a same and/or similar type as the Agreed Materials, and
- the *Contractor* used reasonable endeavours to mitigate the impact of the BMP Difference where, based on its on-going assessment of the historic market price(s) (excluding any profit and/or overheads of the relevant Materials Supplier and the *Contractor*) of the Agreed Materials as from the Contract Date, it would have been reasonable foreseeable to a contractor exercising the Standard of Care that, on or before the Latest Order Date for the Agreed Materials, the difference between the then Current Market Price and the Benchmark Market Price would exceed the Maximum Increase Tolerance, including by
 - placing the Materials Order earlier than the Latest Order Date; and
 - (subject to clause 2.3) in advance of placing the relevant Materials Order, where, insofar as is reasonable practicable in the circumstances, proposing to the Project Manager to substitute the relevant Agreed Materials for alternative materials at the same cost or at a lower cost as was allowed for in the Prices for the Agreed Materials as at the Contract Date,

then

- the *Contractor* shall be entitled to an adjustment to the Agreed Materials Costs for the Agreed Materials that are the subject of the Materials Orders to reflect the BMP Difference for which the *Contractor* has been required to pay to the Materials Supplier only (the "Agreed Materials Increase") and
- the Prices will be adjusted accordingly to reflect the Agreed Materials Increase, in each case with such adjustment being assessed and determined by the Project Manager, acting reasonably (and the *Contractor* acknowledges and agrees that, in making such determination, a nil adjustment may be made by the Project Manager where it is not satisfied that the *Contractor* is able to demonstrate that the above preconditions have been satisfied in full).
- If, following the submission of any proposals by the *Contractor* to the Project Manager pursuant to clause 2.2.7(b), the *Client* accepts all or part of the *Contractor's* proposal, the Project Manager shall issue an instruction to the *Contractor* changing the Scope pursuant to clause 60.1(1) instructing the implementation of the accepted element(s) of the



proposal and the *Contractor* acknowledges and agrees that

- if the proposal as implemented (on the basis proposed by the *Contractor*) results in a cost saving when comparing the amount allowed for in the Activity Schedule and/or the Prices for the original Agreed Materials against the alternative materials (as approved), the Prices shall be reduced to reflect this difference and
- if the proposal as implemented (on the basis proposed by the *Contractor*) results in a cost increase when comparing the amount allowed for in the Activity Schedule and/or the Prices for the original Agreed Materials against the alternative materials (as approved), the Prices shall be increased to reflect the difference,

with the *Contractor* not being entitled to any other adjustment to the Prices, the Completion Date and/or any Key Dates arising out of or in connection with the instruction.

X1.3 If, on or after the Contract Date, and as the date that the *Contractor* has placed a Materials Order

- the price in the Materials Order (excluding any profit and/or overheads of the relevant Materials Supplier and the *Contractor*) for that class of Agreed Materials (the "Current Market Price") was less than the Benchmark Market Price for such Agreed Materials,
- the difference between the then Current Market Price and the Benchmark Market Price paid (or payable) by the *Contractor* to the Materials Supplier for the Agreed Materials exceeded (or exceeds) Maximum Reduction Tolerance (the "BMP Difference"),
then
- the Agreed Materials Costs for the Agreed Materials that are the subject of the Materials Orders shall be adjusted to reflect the BMP Difference for which the *Contractor* has been required to pay to the Materials Supplier only (the "Agreed Materials Reduction") and
- the Prices will be adjusted accordingly to reflect the Agreed Materials Reduction,
in each case with such adjustment being assessed and determined by the Project Manager, acting reasonably.

X1.4 The *Contractor* acknowledges and agrees that, notwithstanding any other provision of this contract, the application of any Agreed Materials Increase to the Agreed Materials Costs (and the Prices) pursuant to this Option X1 shall represent the *Contractor's* sole and exclusive entitlement in respect of any adjustment to the Agreed Materials Costs for the relevant Agreed Materials for the reasons stated in this Option X1 and the *Contractor* shall have no entitlement to any another adjustment to the Prices, the Completion Date and/or any Key Date arising out of or in connection with the same (or otherwise in connection with any Agreed Materials Reduction)."

12.2 **Option X2 – Changes in the law**

Replace the wording of Option X2 in its entirety with the following:

"Option X2 – Changes in the applicable law

A change in the applicable law of the country in which the Site is located is a compensation event if it occurs after the Contract Date and except where

- the change would have been reasonably foreseeable at the Change in Law Base Date to a contractor exercising the Standard of Care and
- the change would not affect the supply and/or provision of works and/or services by the *Contractor* to another customer in connection with the design and construction of a project of a similar size, scope, nature and complexity to the *works*,



provided that a change in the applicable law is treated as occurring before the Change in Law Base Date if it is stated in a statute or statutory instrument before but comes into force after the Change in Law Base Date.

If the effect of a compensation event which is a change in the law is to reduce the total of the Defined Cost, the Prices are reduced."

12.3 **Option X4 – Ultimate holding parent company guarantee**

Replace the wording of Option X4 in its entirety with the following:

"Option X4 – Parent Company Guarantee

- X4.1 Where the Contract Data states that Option X4 applies to the contract, at the same time as entering into the contract the *Contractor* provides to the *Client* the Parent Company Guarantee executed by the Contractor's Parent Company.
- X4.2 The *Contractor's* compliance with Option X4.1 is a condition precedent to any obligation on the part of the *Client* to make any payment that might otherwise be due under this contract, and the *Contractor* acknowledges that it has no entitlement to receive payment under this contract unless and until the *Contractor* has provided a Parent Company Guarantee in accordance with Option X4.1 (where Contract Data: Part One states that Option X4 applies)."

12.4 **Option X8 – Undertakings to the Client or Others**

Replace the wording of Option X8 in its entirety with the following:

"Option X8 – Collateral Warranties

- X8.1 Within twenty-one (21) days of receiving a written request from the *Project Manager*, the *Contractor* enters into a deed or deeds of Contractor Collateral Warranty in favour of any Beneficiary (excluding the *Client*), up to a maximum of six (6) Contractor Collateral Warranties in the aggregate. The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.1 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.
- X8.2 Within five (5) days of entering into a subcontract with a Subcontractor, the *Contractor* shall notify the *Project Manager* of the same. The *Contractor* shall then procure that the relevant Subcontractor executes a Subcontractor Collateral Warranty or a Subconsultant Collateral Warranty (as applicable) (with any such amendments that the *Client* may agree in advance and in writing, acting reasonably) in favour of
- the *Client*,
 - each Beneficiary previously notified to the *Contractor* by the *Project Manager* in writing as having an interest in the subcontracts for the works and
 - any Beneficiary thereafter notified to the *Contractor* by the *Project Manager* in writing (following its receipt of the *Contractor's* notification) as having an interest in the subcontracts for the works,
- (up to a maximum of seven (7) Subcontractor Collateral Warranties in the aggregate for any one (1) Subcontractor) within
- in the case of the *Client*, twenty-one (21) days of the date of the relevant subcontract,
 - in the case of each Beneficiary falling within the class of previously-notified Beneficiaries covered by the second bulleted item above, twenty-one (21) days of the date of the relevant subcontract and
 - in the case of each Beneficiary falling within the class of newly-notified



Beneficiaries covered by the third bulleted item above, twenty-one (21) days of the date of the *Project Manager's* notification.

The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.2 within the time required, the *Client* is entitled to give the *Contractor* written notice specifying such failure. If such failure 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..

X8.3 Within five (5) days of becoming aware of a Subcontractor entering into a subsubcontract with a subsubcontractor in connection with the *works*, the *Contractor* shall notify the *Project Manager* of the same. The *Contractor* shall then procure that the relevant Subcontractor procures that that subsubcontractor executes a Subsubcontractor Collateral Warranty (with any such amendments that the *Client* may agree in advance and in writing, acting reasonably) in favour of

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

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

- in the case of the *Client*, thirty (30) days of the date of the relevant subsubcontract,
- in the case of each Beneficiary falling within the class of previously-notified Beneficiaries covered by the second bulleted item above, thirty (30) days of the date of the relevant subsubcontract and
- in the case of each Beneficiary falling within the class of newly-notified Beneficiaries covered by the third bulleted item above, thirty (30) days of the date of the *Project Manager's* notification.

The *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver any such collateral warranty under this Option X8.3 within the time required, the *Client* is entitled to give the *Contractor* written notice specifying such failure. If such failure 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.

X8.4 In the event that the *Contractor* has not procured or provided (as the context requires) one or more of any Contractor Collateral Warranty, Subcontractor Collateral Warranty, Subconsultant Collateral Warranty and/or Subsubcontractor Collateral Warranty that are required to be provided (or procured) by the *Contractor* pursuant to Option X8.1 to Option X8.3 (inclusive) within twenty-five (25) Working Days of a notification from the *Project Manager* of such failure

- the *Client* (or the *Project Manager* on its behalf) or another Beneficiary may, but is not obliged to, by written notice to the relevant party (the "**relevant party**" being the *Contractor* or the relevant Subcontractor (including a subconsultant) or subsubcontractor) in the form set out in the Third Party Rights Schedule (or in such equivalent form as may be set out in the relevant subcontract or subsubcontract) and
- such notice shall confirm the granting of the rights referred to in the part of the Third Party Rights Schedule appropriate to that relevant party (or such equivalent rights as may be set out in the relevant subcontract or subsubcontractor) by the



relevant party to the relevant Beneficiary,
provided always that

- the relevant Beneficiary does not already have the benefit of a Contractor Collateral Warranty, Subcontractor Collateral Warranty, Subconsultant Collateral Warranty or Subsubcontractor Collateral Warranty (as the context permits) from that relevant party,
- where a notice is issued to a Subcontractor or a Subsubcontractor, the *Client* or the *Project Manager* shall notify the *Contractor* of the same as soon as reasonably practicable after its issue (and in any event within ten (10) Working Days of that date) for its records (provided that the provision of such notice shall not be a precondition to the effectiveness of the relevant notice) and
- the issue of any notice under this Option X8.4 shall be subject to the limitations on the number of (as applicable) Contractor Collateral Warranties, Subcontractor Collateral Warranties and Subsubcontractor Collateral Warranties referred to in Option X8.1 to Option X8.3 (inclusive) and be treated as counting towards the total number of any such applicable class of document for the purposes of determining this number.

Any notice issued pursuant to this Option X8.4 shall take effect on the date of the notice and state the name of the Beneficiary to whom the rights stated in that notice are granted and their interest in the *works*.

In order to give effect to the intention of this Option X8.4, the *Contractor* shall ensure that

- any subcontract (including consultant appointment) that it enters into with a Subcontractor (including a subconsultant) includes an equivalent right for a Beneficiary (or a party acting on its behalf) to serve a written notice on such relevant on the basis described above and
- any subsubcontracts entered into by a Subcontractor (excluding subconsultants) in connection with the *works* also includes an equivalent right in favour of any Beneficiary,

in materially in the same form and manner as prescribed above.

12.5 **Option X10 – Information Modelling**

Replace the wording of Option X10 in its entirety with the following:

"Option X10 – Information Modelling

X10.1 The *Contractor* shall comply with the BIM Requirements at all times in the provision of the *works*."

12.6 **Option X11 – Termination by the Client**

In Option X11.2:

- replace "P1 and P2" with "P1, P2 and P5"; and
- replace "A1, A2 and A4" with "A1 and A2".

12.7 **Option X15 – The Contractor's design**

In Option X15:

- replace the wording of Option X15.1 in its entirety with the following:
"The *Contractor* is not liable for Defects in the *works* due to its design (including the preparation by it of any specifications and the selection by the *Contractor* of any Plant and



Materials and including design for which it is responsible pursuant to the contract), unless it failed to carry out that design using the Standard of Care.";

- replace the wording of Option X15.3 in its entirety with "Not used.";
- replace the wording of Option X15.4 in its entirety with the following:
"The *Contractor* retains copies of the Contractor Materials until the *end of liability date*."; and
- in Option X15.5 delete "skill and care normally used by professionals designing works similar to the *works*" and substitute "Standard of Care".

12.8 **Option X16 – Retention**

Replace the wording of Option X16.3 in its entirety with the following:

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

12.9 **Option X18 – Limitation of liability**

In Option X18.5, insert the following bulleted items before the bullet point starting "loss of or damage to":

- personal injury or death,
- interest on any debt or damages,
- fraud or wilful default,
- costs in any proceeding,
- any amount in respect of which the *Contractor* is entitled to recovery under the terms of insurances required to be maintained by the *Contractor* under the contract up to the relevant amount stated as the minimum amount of cover or minimum limit of indemnity required by the contract (or which would have been so recoverable but for any act, omission or default of the *Contractor* rendering such insurances void, voidable or unenforceable whether in whole or in part)."

12.10 **Option X20 – Key Performance Indicators**

In Option X20:

- Delete X20.4
- Delete X20.5.

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

In Option Y(UK)2:

- in the first sentence of Option Y2.2, insert "(7)" after "(seven)";
- replace the second sentence of Option Y2.2 with "The date on which the final payment becomes due is as set out in Contract Data: Part One";
- replace the third sentence of Option Y2.2 with "The final date for payment is the date as specified in Contract Data: Part One";
- in Option Y2.4, insert "(or pursuant to Option X11)" after "R22"; and
- in Option Y2.4, insert "(including R5A)" after "R10".



12.12 **Option Y(UK)3 – The Contracts (Rights of Third Parties) Act 1999**

Replace the wording of Option Y(UK)3 in its entirety with the following:

"Option Y(UK)3 – The Contracts (Rights of Third Parties) Act 1999

- Y3.1 The *Client* may, at any time prior to Completion of the whole of the *works*, novate the contract to any person taking over the whole of the *Client's* interest in the *works*.
- Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the contract are not subject to the consent of any other person.
- Y3.3 Other than as granted pursuant to this Option Y(UK)3, a person who is not a party to the contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified."



SCHEDULE 2

COLLATERAL WARRANTIES & THIRD PARTY RIGHTS SCHEDULE

DRAFT



SCHEDULE 3

PARENT COMPANY GUARANTEE

DRAFT



SCHEDULE 4

NOT USED

DRAFT



SCHEDULE 5
VESTING AGREEMENT

DRAFT



SCHEDULE 6

DATA PROTECTION SCHEDULE

DRAFT



SCHEDULE 7

SECURITY ASPECTS LETTER

DRAFT



SCHEDULE 8

SITE DELIVERY NOTICE

DRAFT



SCHEDULE 9

INCENTIVE SCHEDULE

DRAFT



SCHEDULE 10
PROJECT EXECUTION PLAN

DRAFT



SCHEDULE 11
MATERIALS SCHEDULE

DRAFT



SCHEDULE 12

ACTIVITY SCHEDULE

DRAFT