**RM6014 – MODULAR BUILDING SOLUTIONS**

**PROJECT CONTRACT**

**MODULAR BUILDINGS HIRE AGREEMENT**

**INTRODUCTION**

This Modular BuildingsHire Agreement (**Project Contract**) is made pursuant to and incorporates the Crown Commercial Services Framework Agreement RM6014 and consists of the following in the following order of priority in the event of conflict:

* The Order Form
* Hire Terms and Conditions (**Hire Terms**) as modified by both Parties and set out in the Schedule below
* The Crown Commercial Services Framework Agreement RM6014
* Annex A – Additional Client Requirements
* Annex B – Pricing Document
* Annex C – [Quotation] together with the [Drawings]

**ORDER FORM**

Capitalised terms used in this Order Form have the meaning given in the Hire Terms.

ORDER REFERENCE: **[REDACTED]**

DATE OF ORDER: **2 April 2020**

THE ADDITIONAL CLIENT: **The Minister for the Cabinet Office, as part of the Crown, acting through the Civil Contingency Secretariat**

THE ADDITIONAL CLIENT CONTACT **[REDACTED]**

INVOICE CONTACT **[REDACTED]**

THE SUPPLIER ALLIANCE MEMBER: **[REDACTED]**

MEMBER ADDRESS: **[REDACTED]**

SUPPLIER ALLIANCE MEMBER

ACCOUNT MANAGER: **[REDACTED]**

## THE DELIVERABLES

Modular Buildings for use as temporary mortuaries

|  |  |  |
| --- | --- | --- |
|  | Description | No. of Units |
|  |  |  |
|  | 40 foot refrigerated unit | 60 |
|  |  |  |

All refrigerated units provided with agreed refrigeration, Racking, racking plates and access ramps.

Services: As set out in Annex A – RM6014 Additional Client Requirements

Delivery Place: To be advised by the Additional Client

Time and Date of Delivery To be advised by the Additional Client

HIRE PERIOD

The Project Contract commences from the date of signature of the Order Form by the Parties. The Hire Period for the purposes of the Hire Charges, shall be the period from the actual delivery date until such Hire Period is terminated in accordance with the Hire Terms.

Any extension to the Hire Period to be agreed between the Additional Client and the Supplier Alliance Member.

PRICE AND PAYMENT

Hire Payment payable by the Additional Client

As set out at Annex B – Pricing Document

Additional Charges for Services (Services Charge)

As set out in Annex B

Invoicing and payment process;

Supplier Alliance Member will issue an invoice for the initial Upfront Charge ([REDACTED] of total Upfront Charge) immediately after the Order Form is signed. This invoice is due immediately and the Additional Client will use its best endeavours to pay the invoice in full within three (3) working days of receipt of invoice.

The remaining [REDACTED] of Upfront Charges will be invoiced, as set out in Annex B, on completion of production of the last Modular Building for each delivery phase (as confirmed in writing by the Supplier Alliance Member) and before delivery occurs; with payment due not later than fifteen (15) days after the date of the invoice.

Hire Charges are due from the actual date of delivery and will be invoiced monthly in arrears from delivery, and payable within thirty (30) days of the date of invoice.

Charges for basic delivery and collection are included as part of the upfront payment– this is set out in Annex B

Additional charges for any enhanced delivery and collection (such as weekend deliveries or collections) to be charged at evidenced cost plus [REDACTED] margin and shall be invoiced and paid within thirty (30) days from date of invoice.

Additional charges for groundworks, installation and dismantling not included in the basic scope of work shall be charged on a delivery place specific basis and shall be invoiced and paid within thirty (30) days from date of invoice.

The Supplier Alliance Member shall issue invoices for the Hire Charges monthly and the Additional Client shall pay the Supplier Alliance Member within thirty (30) days of the date of a valid invoice, submitted in accordance with this Order Form and the provisions of the Project Contract.

While the payment schedule at Annex B represents the Hire Charges for delivery of ~~80~~ 60 Modular Buildings, to the extent that the full number of Modular Building are not delivered to the Additional Client in accordance with the Project Contract, or to the extent that the Additional Client requests additional Modular Buildings and this is agreed by the Supplier Alliance Member, the Additional Client shall pay the Hire Charges for the actual number of Modular Buildings which are delivered.

SPECIAL TERMS

## BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER ALLIANCE MEMBER AGREES that they have read the Hire Terms and by signing below agree to be bound by the terms.

## For and on behalf of the Additional Client:

**THE MINISTER FOR THE CABINET OFFICE, AS PART OF THE CROWN, ACTING THROUGH THE CIVIL CONTINGENCY SECRETARIAT**

|  |  |
| --- | --- |
| Name and Title | [REDACTED] |
| Signature |  |
| Date | 02 April 2020 |

**For and on behalf of the Supplier Alliance Member:**

[REDACTED]

|  |  |
| --- | --- |
| Name and Title |  |
| Signature |  |
| Date | 02 April 2020 |

**SCHEDULE - PROJECT CONTRACT HIRE TERMS**

1. **Introduction**
   1. If the Additional Client has decided to hire Modular Buildings under the Modular Buildings Framework Alliance Contract RM6014 and has stated their requirement in the Project Brief, they must use these Hire Terms.

## Definitions

* 1. In this Schedule, the following words shall have the following meanings and they shall be in addition to Schedule 6 & Appendix 1 FAC-1:

|  |  |
| --- | --- |
| **"Actual Delivery Date"** | the date on which a Modular Building is actually delivered to the Additional Client; |
| **“Chillers”** | has the meaning given in Annex A; |
| **“Default”** | any breach of the obligations of the Supplier Alliance Member (including abandonment of the Project Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier Alliance Member, of its subcontractors or any Supplier Alliance Member’s staff howsoever arising in connection with or in relation to the subject-matter of the Project Contract and in respect of which the Supplier Alliance Member is liable to the Additional Client; |
| **“Delivery Places”** | the places for delivery as reasonably instructed by the Additional Client in writing; |
| **“Due Delivery Date”** | the date specified as the due date for delivery of a Modular Building as reasonably instructed by the Additional Client and as confirmed by the Supplier Alliance Member in accordance with clause 5.1; |
| "**Force Majeure Event**"  **“Hire Charges”** | any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Project Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Project Contract, but excluding: i) any industrial dispute relating to the Supplier Alliance Member or its staff (including any subsets of them) or any other failure in the Supplier Alliance Member or the subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; iii) any failure of delay caused by a lack of funds; and (iv) an event, circumstance, matter or cause reasonably known to such Party before the date of the Project Contract including but not limited to COVID-19 Events;  the charges for hiring the Modular Buildings as set out in Annex B; |
| **"Hire Payments"** | the Hire Charges and other charges payable under the Project Contract including the Upfront Charges and any charges for additional services as set out in Annex B. |
| **"Hire Period"** | in relation to a Modular Building, for the purpose of the Hire Charges, the period commencing on the Actual Delivery Date for that Modular Building and ending on the Return Date for that Modular Building unless extended or terminated early in accordance with this Project Contract; |
| **"Hire Terms"** | these terms and conditions of supply and hire; |
| **“Order”** | an order placed for Modular Buildings on the Order Form and subject to the Hire Terms and all other applicable Project Contract terms; |
| **“Permitted Use”** | Has the meaning given in clause 8.10 |
| **“Project Contract”** | has the meaning given in the Introduction; |
| **“Racking”** | the racking as shown in the drawings appended at Annex C; |
| **"Return Date"** | the date on which a Modular Building is returned to the Supplier Alliance Member in accordance with clause 7.10; |
| **“Services”** | the services obligations of the Supplier Alliance Member under the Project Contract, as more particularly described in the Specification in Annex A; |
| **“Specification”** | the additional client requirements appended at Annex A; |
| **“Total Loss”** | Any event which in the reasonable opinion of the Supplier Alliance Member renders the Modular Building incapable of economic repair if it is lost, stolen or destroyed. In order to demonstrate the Supplier Alliance Member is acting reasonably it shall produce an engineering report which justifies why the Supplier Alliance Member considers the Modular Building is a Total Loss in which it shall demonstrate to the reasonable satisfaction of the Additional Client and any insurer with an interest that the Modular Building is beyond economic repair; |
| **“Upfront Charges”** | The upfront charges as described in the Order Form and set out in Annex B |

* 1. References in this Project Contract to “Modular Buildings” are deemed to refer to the relevant modular buildings as fitted out pursuant to this Project Contract, including (but not limited to) with Chillers, Racking, racking plates and ramps.
  2. References to the singular includes the plural and vice versa.
  3. References to “written” or “in writing” include by e-mail.

## Modular Building Orders

* 1. Each Order is subject to and incorporates the Hire Termsso that no other terms and conditions which the Supplier Alliance Member tries to impose under any quotation, confirmation of order, delivery note, invoice or similar document are part of the Project Contract.
  2. The Parties agree that any other terms or conditions (whether or not inconsistent with the terms of the Project Contract) contained or referred to in any correspondence or any documentation submitted by the Supplier Alliance Member which is not part of the Modular Buildings Framework Alliance Contract or which are elsewhere implied by custom, practice or course of dealing do not apply.
  3. The Supplier Alliance Member must send a confirmation of the Order to the Additional Client by electronic means (or in any other method as the Parties may agree from time to time) within forty-eight (48) hours of receipt of an Order Form and the confirmation will confirm the Order details including:

3.3.1 a description of the Modular Building ordered;

3.3.2 details of any optional extras ordered and any conversion work to be carried out;

3.3.3 the anticipated delivery details; and

3.3.4 the name and address of the Supplier Alliance Member.

* 1. For the avoidance of doubt, each Modular Building Order survives the expiration or termination of the Modular Buildings Framework Alliance Contract.
  2. In the event the Supplier Alliance Member fails to supply the number of Modular Buildings specified in an Order, the Additional Client is not in breach of the Project Contract and the provisions of clauses 13 and/or 14 do not apply, the Supplier Alliance Member shall refund to the Additional Client the proportionate amount of the Upfront Charges in respect of such undelivered Modular Buildings, after deduction of all reasonably incurred costs and expenses incurred by the Supplier Alliance Member in relation to the Order, the detail of which the Supplier Alliance Member will provide to the Additional Client on request.

## Supply and Hiring Modular Buildings

* 1. In consideration of the payment of the Hire Payments, the Supplier Alliance Member will prepare, supply and hire the Modular Buildings to the Additional Client in a timely manner and in accordance with the Project Contract and the requirements notified to the Supplier Alliance Member in the each relevant Order.
  2. The Supplier Alliance Member must advise the Additional Client on the selection and specification of the Modular Buildings and, where applicable, any conversion work to be carried out in respect of them so as to ensure that the Modular Buildings will be of sufficient quality and suitable for the requirements of the Additional Client.

## Delivery and Installation

* 1. Provided that the Delivery Place has already been surveyed by the Supplier Alliance Member, the Supplier Alliance Member will give the Additional Client confirmation of the anticipated Due Delivery Date for each Modular Building within five (5) Working Days of receipt of an Order.
  2. If a survey has not been carried out for a Delivery Place, this is required before a Due Delivery Date can be confirmed, and the Supplier Alliance Member will arrange this as soon as reasonably practicable after receiving an Order, and will then give the Additional Client confirmation of the anticipated Due Delivery Date for each Modular Building within five (5) Working Days of completion of the survey.
  3. The Supplier Alliance Member will deliver the Modular Buildings to the Delivery Places or as otherwise reasonably directed by the Additional Client.
  4. The Additional Client must make sure that a duly authorised representative of the Additional Client is present at the installation of the Modular Buildings.
  5. The Supplier Alliance Member will, in consideration for payment of the delivery costs in accordance with Annex B, deliver the Modular Building to the Additional Client in a good working and clean condition on the Due Delivery Date agreed between the Parties and provided that the Supplier Alliance Member will use all reasonable endeavours to agree to delivery dates requested on a reasonable basis.
  6. The Supplier Alliance Member can only deliver Modular Building before the Due Delivery Date if the Additional Client agrees to early delivery before the Supplier Alliance Member attempts delivery.
  7. Any defects to a Modular Building notified to the Supplier Alliance Member by the Additional Client must be rectified at no cost to the Additional Client. The Supplier Alliance Member will rectify [REDACTED] of defects within twenty-four (24) hours, and [REDACTED] within forty-eight (48) hours of receiving notice and in line with the response times set out in Annex A, Section 3.
  8. A Modular Building is only delivered once a duly authorised representative of the Additional Client signs a delivery note (which quotes the Supplier Alliance Member's order number and full details of the Modular Building) to confirm delivery, satisfactory installation and commissioning, factory testing of all equipment in accordance with the Specification of the Modular Building but that signature is not evidence that the Modular Building complies with the requirements of the Modular Building Order.
  9. If, for any reason, the Additional Client is unable to take delivery of a Modular Building on or after the Due Delivery Date, the Supplier Alliance Member must, at an additional cost to be agreed with and paid by the Additional Client, store or arrange for the storage of the Modular Building for a reasonable time and must safeguard the Modular Building until actual delivery.
  10. The Supplier Alliance Member must make sure (at its own cost) that each Modular Building is delivered in a serviceable condition compatible with its intended use (in accordance with Project Contract), in accordance with the Specification. The Additional Client can at its sole discretion reject a Modular Building which is not in the condition requested in accordance with Specification and/or in respect of which the delivery note does not include the required information. The Supplier Alliance Member acknowledges and consents to the Additional Client use of each Modular Buildings as a temporary mortuary.
  11. If the Supplier Alliance Member does not deliver a Modular Building by the agreed time or specified date then the Additional Client can withhold payment of the Hire Charges for that Modular Building until the time when the Supplier Alliance Member actually delivers it, provided that if non-delivery occurs for any reason outside the control of the Supplier Alliance Member, then the Supplier Alliance Member will be entitled to recover from the Additional Client, its reasonable costs and expenses incurred by the Supplier Alliance Member as a result of the non-delivery (such as, without limitation, haulier, transportation or other associated abortive delivery costs).
  12. If the Supplier Alliance Member becomes aware that a Modular Building cannot be delivered by the agreed Due Delivery Date or if a Modular Building is not actually delivered by its Due Delivery Date, the Supplier Alliance Member shall inform the Additional Client of the revised delivery date. Where the Additional Client has indicated that the timing of delivery is critical, the Supplier Alliance Member must use all commercially reasonable endeavours to provide an alternative Modular Building of the same specification or one with equivalent specification by the Due Delivery Date until the time as the Modular Building is actually delivered. If the Supplier Alliance Member cannot supply an alternative Modular Building by the Due Delivery Date, the Supplier Alliance Member must meet and promptly refund to the Additional Client all and any reasonable additional costs reasonably incurred by the Additional Client for provision of a Modular Building of the same specification or one with equivalent specification.
  13. To facilitate delivery and, if applicable, installation, the Additional Client must provide all requisite materials, facilities, Delivery Place access and suitable working conditions to enable site survey, delivery and, if applicable, installation to be carried out safely and efficiently. In particular:
      1. the Additional Client, at its own cost, will assume all responsibility for all conditions of the Delivery Place above and below the surface including all environmental matters as may be applicable to the Delivery Place;
      2. the Additional Client will obtain all necessary consents, licenses and approvals required for the delivery, unloading, siting, installation and use of the Modular Buildings for their Permitted Use;
      3. the Additional Client will allow the Supplier Alliance Member access to the Delivery Place to carry out any necessary survey of the Delivery Place required for the Supplier Alliance Member to deliver and install the Modular Buildings and perform the Services in accordance with the relevant Orders;
      4. the Additional Client will ensure that the delivery and installation is capable of being performed at the Delivery Place; and the Delivery Place and Delivery Place access (including ground conditions) are suitable for the safe and effective delivery, collection, movement, loading, unloading, siting, installation and operation of the Modular Buildings and performance of the Services;
      5. the Additional Client will at all times ensure that the Supplier Alliance Member has sufficient access to the Delivery Place to do all things required to be done under the Project Contract and perform the Services; and
      6. the Additional Client will provide adequate facilities at the Delivery Place including clear road access, security for the Modular Buildings, facilities and connection to such local services (e.g. electrical connection) to enable the Modular Buildings to be connected to the Delivery Place for operation for the Permitted Use.

## Title, Possession and Risk

* 1. The Modular Buildings are the property of the Supplier Alliance Member at all times and the Additional Client will not have any right, title or interest in or to the Modular Buildings apart from the right to possess and use the Modular Buildings in accordance with the Project Contract.
  2. The Additional Client accepts a Modular Building by signing a delivery note (including by electronic means) and shall be thereupon be deemed to take possession of a Modular Building unless the Additional Client notifies the Supplier Alliance Member that the Modular Building is not in accordance with the agreed Specification or otherwise not in conformity with the requirements of the Modular Building Order by telephone and confirmed in writing within seventy-two (72) hours of delivery.
  3. Once the Additional Client notifies the Supplier Alliance Member of non- acceptance, the Parties will agree a course of action to take.
  4. Except where non-acceptance is due to default of the Additional Client, in the event of non-acceptance the Supplier Alliance Member will, at its own expense make an equivalent alternative Modular Building available for use by the Additional Client until the time that the Supplier Alliance Member actually delivers an acceptable Modular Building to the Additional Client. If non- acceptance is due to the default of the Additional Client, the Additional Client can cancel the part of the Modular Building Order relating to that Modular Building but must pay reasonable cancellation charges to the Supplier Alliance Member.
  5. From the time of acceptance of a Modular Building, the Additional Client bears the risk of loss or damage to the Modular Building however caused and whether insured or not, provided that the Additional Client does not bear the risk of loss or damage:
     1. caused by the negligence of the Supplier Alliance Member, its Subcontractors or its agents; or
     2. while the Supplier Alliance Member has possession of the Modular Building, including for any maintenance.
  6. The Supplier Alliance Member must give the Additional Client quiet possession of the Modular Building and the Supplier Alliance Member warrants that the Additional Client can peaceably hold the Modular Building throughout the Hire Period free of any interference from the Supplier Alliance Member or any person acting through the Supplier Alliance Member.

## Supplier Alliance Member Obligations

## Maintenance

* 1. The Supplier Alliance Member must transfer to the Additional Client, so far as is possible, the benefits of any manufacturers' warranties relating to the fitness and performance of the Modular Building.
  2. The Supplier Alliance Member is responsible for performing:
     1. normal routine maintenance in accordance with manufacturers' maintenance recommendations as amended from time to time (noting for the avoidance of doubt that no scheduled maintenance is required to be performed on the Modular Units for the first twelve (12) months of the Hire Period, under normal operating conditions); and
     2. any Modular Building specific maintenance, provided that the costs have been duly authorised by the Supplier Alliance Member and a service outlet approved by the Supplier Alliance Member carries out the maintenance.
  3. If the Parties agree that the Additional Client will pay any additional costs not included in Annex B, the Supplier Alliance Member must advise the Additional Client of the costs as soon as practicable which must then be subject to approval in writing by the Additional Client and the Supplier Alliance Member must submit an invoice to the Additional Client within twenty-one (21) days of the cost being incurred and such invoice will be due and payable on receipt.

## Other Services

* 1. The Supplier Alliance Member shall comply with its service obligations as described in the Specification.

**Indemnity**

* 1. Subject to clause 7.7, the Supplier Alliance Member indemnifies the Additional Client against all reasonable Losses incurred whilst the Modular Building is unavailable for use by the Additional Client due a Default or due to the negligence of the Supplier Alliance Member, its servants or agents.
  2. Nothing in the Project Contract shall be construed to limit or exclude either Party's liability for:
     1. death or personal injury caused by its negligence or that of its Staff; fraud or fraudulent misrepresentation by it or that of its staff; or
     2. liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which, by Law, may not be excluded or limited.
  3. No Party is liable to the other for:
     1. any indirect losses;
     2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
  4. Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Project Contract, including any indemnities.
  5. Subject to Clause 7.6 and Clause 7.7 and without prejudice to the obligation of the Additional Client to pay the Hire Payments as and when they fall due for payment, the Additional Client’s aggregate liability (in tort, contract or otherwise) under the Project Contract, other than in respect of the payment of the Hire Payments in accordance with the Project Contract, shall not exceed the sum equal to [REDACTED] of the total Hire Payments made by the Additional Client under the Project Contract.
  6. Subject to Clause 7.6 and Clause 7.7, the Supplier Alliance Member’s aggregate liability (in tort, contract or otherwise) in respect of each Order, shall not exceed the sum equal to [REDACTED] of the total Hire Payments received by the Supplier Alliance Member under the Project Contract.

**Modular Building Collection and Decommission**

* 1. In accordance with the payment arrangements set out in Annex B, the Supplier Alliance Member must collect the Modular Building from the agreed collection point on the date notified by the Additional Client and agreed by the Supplier Alliance Member in writing (the **Return Date**).
  2. The Additional Client must ensure the interior of the Modular Building has been decontaminated and suitably cleaned prior to the Return Date. On the Return Date, the Additional Client shall provide all requisite facilities, access and ensure suitable working conditions to enable Supplier Alliance Member to carry out collection and decommissioning safely and efficiently.
  3. Acknowledging the practical difficulty of undertaking a joint inspection at the Delivery Place on the Return Date, the parties agree that the Supplier Alliance Member will inspect the Modular Buildings at its own site as soon as practicable after collection, taking into account any photographic or other evidence taken on the Return Date, and acting reasonably. It will submit a final written report on the condition of the Modular Buildings to the Additional Client. The Additional Client will reimburse the Supplier Alliance Member for the reasonable costs of any damage to the Modular Buildings beyond fair wear and tear. Any invoice relating to any such damage will be payable upon receipt.
  4. Subject to Clause 13, if the Supplier Alliance Member does not collect the Modular Building at the agreed time and collection point, the Supplier Alliance Member indemnifies the Additional Client against all Losses due to the failure to collect the Modular Building as agreed.

## The Additional Client's Obligations

## Modifications

* 1. Subject to clause 8.9 below the Additional Client must not alter, tamper with or modify any Modular Building without the Supplier Alliance Member's written consent, which cannot be unreasonably withheld or delayed.

## Limits of Use

* 1. While a Modular Building is in its control, the Additional Client must:
     1. Maintain any necessary permits, consents, licences or authorisations required for the delivery, installation and use of the Modular Units at the Delivery Places, for the Permitted Use;
     2. keep the Modular Building in a suitable environment and use it only for the purposes for which it is intended (in accordance with this Project Contract and clause 8.10);
     3. take such steps (including compliance with all safety and usage instructions provided by the Supplier Alliance Member) as may be necessary to make sure, so far as is reasonably practicable, that the Modular Building is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work; and
     4. not overload the Modular Building or use it for sub-hire or reward activities, any use for which it was not intended or any form of sporting competition.
  2. Subject to clause 8.9 the Additional Client must not sell or offer to sell the Modular Building and can only part with possession or control of the Modular Building to an authorised user in the employment of the Additional Client.
  3. The Additional Client must not allow to exist any lien nor assign mortgage pledge or otherwise deal with the Modular Building in a manner inconsistent with the Supplier Alliance Member's interest in the Modular Building.

**Insurance**

* 1. The Additional Client must (unless self-insuring):
     1. insure the Modular Building from the Actual Delivery Date and keep the Modular Building insured during the Hire Period and until the agreed date of collection by the Supplier Alliance Member, or its nominated agent to the full replacement value of the Modular Building (as notified by the Supplier Alliance Member in writing to, and agreed by the Additional Client no later than seven (7) days of the date of this Project Contract) under a fully comprehensive policy of insurance in the name of the Additional Client bearing endorsements recording the interest of the Supplier Alliance Member and any other persons the Supplier Alliance Member nominates as loss payee. The insurance policy referred to above may be subject to such uninsured amount ("Excess") as may be applicable from time to time and the Additional Client indemnifies the Supplier Alliance Member against any Losses with the Excess;
     2. punctually pay all premiums due under the insurance policy and otherwise comply with all the terms and conditions thereof and produce to the Supplier Alliance Member on demand the policy, evidence of the adequacy of the insurance and evidence that all premiums have been duly paid. If the Additional Client does not pay any premium the Supplier Alliance Member can do so and the Additional Client must reimburse the Supplier Alliance Member; and
     3. apply all money received in respect of such insurances in the repairing of damage to or in restoring or replacing the Modular Building; and
     4. on occurrence of a Total Loss in relation to any Modular Building, at its sole discretion, the Additional Client shall either

1. pay to the Supplier Alliance Member the full replacement value of the Modular Building (as notified by the Supplier Alliance Member in writing to, and agreed by the Additional Client no later than seven (7) days of the date of this Project Contract) together with all other sums due up to the date of such Total Loss, and thereupon terminate the hire of that Modular Building; or
2. pay to the Supplier Alliance Member the full Replacement Value of the Modular Building for the purpose of replacing the Modular Building and thereupon the hire of Modular Building shall continue in accordance with the Project Contract.

**Use and Maintenance by Additional Client**

* 1. The Additional Client must ensure that at all times the Modular Building is used for the Permitted Use only, is operated in line with any instructions in the operating manual, that its internal fabric, is maintained in accordance with the operating manual (excluding the maintenance of Chillers which are maintained under the Services provided as detailed in Annex B); and that the Modular Building is kept clean and in a good state of repair throughout the Hire Period.

## Actions upon Termination of Hire or Expiry of Hire Period

* 1. On expiry of the Hire Period or in the event of early termination of the hire in respect of any Modular Building, the Additional Client must:
     1. make the Modular Building available for collection by the Supplier Alliance Member on the date assigned for collection. The Supplier Alliance Member will be bound by all obligations under this Project Contract until the time when the Supplier Alliance Member actually collects the Modular Building which the Supplier Alliance Member shall do promptly;
     2. comply with the obligations in clause 7.9 (in particular, without limitation, the decontamination of the Modular Buildings)
     3. complete an inspection form with the Supplier Alliance Member on the Return Date and ensure that the Modular Building is returned and that the Modular Building is in a condition consistent with its age;
     4. remove all personal effects and any other items belonging to the Additional Client or which had been stored in the Modular Building by the Additional Client during the Hire Period;
     5. if the Supplier Alliance Member notifies the Additional Client that the Modular Building is not in the condition required, pay to the Supplier Alliance Member the amount that the Additional Client and the Supplier Alliance Member agree as the cost of rectification. In the event of any dispute regarding the condition of the Modular Building, an independent assessment must be carried out by a properly qualified and experienced consultant appointed by the Supplier Alliance Member and the Additional Client. Any consultant must act as an expert and not as an arbitrator and their decision is final;
     6. in the event of a dispute the Modular Building or other form of evidence acceptable to the Additional Client must be held by the Supplier Alliance Member until an independent assessment has been made. The costs of the independent consultant must be borne equally between the Additional Client and the Supplier Alliance Member provided that both Parties act reasonably at all times during the dispute; and
     7. in the event of damage to any Modular Building the Supplier Alliance Member must forward an invoice to the Additional Client within twenty- one (21) days following the Return Date. In the case of dispute the Additional Client will notify the Supplier Alliance Member of what is in dispute within twenty-one (21) days of receipt of invoice or pay the invoice in accordance with the payment terms.

**Residual Value on termination or expiry of the Hire Period**

* 1. Upon termination or expiry of the Hire Period (as may be extended), the Supplier Alliance Member shall use its reasonable endeavours to dispose of or sell the Racking, racking plates, ramps and Chillers and in the event of such disposal or sale, the Supplier Alliance Member shall pay [REDACTED] of the net proceeds of any disposal or sale of such Racking, racking plates, ramps and/or Chillers to the Additional Client. Reasonable evidence of the terms of such sale or disposal shall be provided to the Additional Client.

**Key Worker and Supplier Status**

* 1. The Additional Client will at all times procure for the Supplier Alliance Member and its supply chain any key worker or key supplier permits or certificates necessary to enable the performance of the Project Contract.

**Permitted Use**

* 1. The Supplier Alliance Member hereby agrees that the Additional Client may at its own risk use or licence a third party to use the Modular Buildings for the purposes of a temporary mortuary.

## Termination of a Hire

## *Additional Client default*

* 1. Without affecting any other right or remedy available to them, the Supplier Alliance Member can terminate the hire of any Modular Building with immediate effect by giving written notice to the Additional Client if:
     1. the Additional Client fails to pay any amount due under this Project Contract on the due date for payment and remains in default not less than forty (40) Working Days after being notified in writing to make such payment;
     2. there is a material default of any other term of these Hire Terms by the Additional Client which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of forty (40) Working Days after being notified in writing to do so; or
     3. there is a consistent repeated failure by the Additional Client to comply with any of the terms of the Project Contract that its conduct is inconsistent with them having the intention or ability to give effect to the terms of the Project Contract.

*Termination by Additional Client without cause*

* 1. At any time, the Additional Client can terminate the hire of any Modular Building by giving thirty (30) days’ written notice to the Supplier Alliance Member.

*Termination by Additional Client for Supplier Alliance Member default*

* 1. If any of the following events happen, the Additional Client has the right to immediately terminate (in part or whole) the Project Contract and/or the hire of any Modular Building by issuing a termination notice to the Supplier Alliance Member:
     1. there is an insolvency event relating to the Supplier Alliance Member;
     2. there is a Default that is not corrected in line with an accepted rectification plan or which is irremediable or (if such breach is remediable) the Supplier Alliance Member fails to remedy that breach within a period of twenty (20) Working Days after being notified in writing to do so; or
     3. there is a change of control of the Supplier Alliance Member which is not pre-approved by the Additional Client in writing.

## Consequences of Expiry or Termination Payment for Early Termination

* 1. Where the Additional Client terminates the Project Contract pursuant to clause 9 the Additional Client shall pay to the Supplier Alliance Member the Supplier Alliance Member’s a proportion of the Hire Payment prorated to the date of termination properly incurred costs evidenced to the Additional Client’s reasonable satisfaction falling due at the date of termination.
  2. Where the Additional Client terminates the Project Contract as a consequence of a Supplier Alliance Member’s material breach the Additional Client’s obligation to pay the Supplier Alliance Member under the Project Contract ceases on the date of the Additional Client’s notice to terminate the Project Contract.
  3. Where the Additional Client terminates the Project Contract pursuant to clause 9.3 and then makes other arrangements for the supply of the Modular Building, the Additional Client can recover the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Additional Client from the Supplier Alliance Member provided always that the other arrangements are for a supply of Modular Buildings equivalent to those the subject of this Project Contract. The Additional Client must take all reasonable steps to mitigate any additional expenditure. Where the Project Contract is terminated, the Additional Client will not make any further payments to the Supplier Alliance Member until the Additional Client has established the final cost of making those other arrangements.
  4. Save as otherwise expressly provided in the Project Contract:
  5. Not used
  6. Not used
  7. Not used
     1. termination or expiry of the Project Contract shall be without prejudice to any rights, remedies or obligations accrued under the Project Contract prior to termination or expiration and nothing in the Project Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
     2. termination of the Project Contract shall not affect the continuing rights, remedies or obligations of the Additional Client or the Supplier Alliance Member.

## Subcontracting

* 1. The Supplier Alliance Member may subcontract any part of its obligations under the Project Contract but will remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own.

## Disputes

* 1. If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within twenty eight (28) days of a written request from the other Party, meet in good faith to resolve the dispute.
  2. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 12.3 to 12.5.
  3. Unless the Additional Client refers the dispute to arbitration using clause 12.4.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
     1. determine the dispute;
     2. grant interim remedies;
     3. grant any other provisional or protective relief.
  4. The Supplier Alliance Member agrees that the Additional Client has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
  5. The Additional Client has the right to refer a dispute to arbitration even if the Supplier Alliance Member has started or has attempted to start court proceedings under clause 12.3, unless the Additional Client has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 12.4.
  6. The Supplier Alliance Member cannot suspend the performance of the Project Contract during any dispute.

## COVID 19 (Coronavirus)

* 1. Notwithstanding any other provision in this Project Contract, the Parties agree that, if the Supplier Alliance Member is prevented from performing, or delayed in the performance of some or all of its obligations under the Project Contract by an event, circumstance, matter or cause relating to or resulting from COVID-19 (“**COVID-19 Event**”), then the Supplier Alliance Member shall:
     1. notify the Additional Client within a reasonable time; and
     2. use reasonable efforts to mitigate the impact of such COVID-19 Event.
  2. Following clause 13.1, the Supplier Alliance Member shall be excused from performance of the said obligations until the inability to perform as a consequence of a COVID-19 Event ends when its obligations under the Contract shall resume.

1. **Force Majeure** 
   1. A Party affected by a Force Majeure Event is excused from performing its obligations under the Project Contract while the inability to perform continues, if it both:
      1. provides written notice to the other Party; and
      2. uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
   2. Either Party can partially or fully terminate the Project Contract if the provision of the Modular Buildings is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously. If the Project Contract is terminated for a Force Majeure Event, the Additional Client shall not be liable for the Hire Payments which are due for the period after the termination date.
   3. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier Alliance Member is the notifying Party, it shall take reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## Which law applies

* 1. The Project Contract and any issues arising out of, or connected to it, are governed by English law.