

**London & Partners**

[ London and Partners Ltd]

**Order for Construction Works**

This order is placed subject to and with the intention of incorporating the Order for Construction Works, Conditions of Contract, the Scope of Works, the Specification and Drawings and the Annex, all of which are attached hereto. The Employer is only willing to contract on the basis of the details set out in those documents and the Contractor, by executing this Order in the space provided below, hereby enters into a contract on such terms and conditions.

**Title of Work Package:**

[Main Contractor & Electrical works]

**Date:27/11/20**

**Attestation wording:**

**Order executed as a deed by**

**London & Partners**

**acting by:**

.....

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**Order executed as a deed by**

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**acting by:**

.....

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## Annex

<p><b>Employer:</b> London &amp; Partners Ltd</p> <p><b>Company Number:</b> 07493460.</p> <p><b>Address:</b> Level 6, 2 More London Riverside, London, SE1 2RR.</p>
<p><b>Package Contractor:</b> [+ here]</p> <p><b>Company Number:</b> [+ here]</p> <p><b>Address:</b> [+ here]</p>
<p><b>Project (Summary):</b> Refurbishment of part 1<sup>st</sup> floor 169 Union Street London SE1.</p>
<p><b>Package Contract Works (Summary):</b></p> <p>Main Contractor and electrical works</p>
<p><b>Specification and Drawing References:</b></p> <p>Specification of works: 1919 Spec 01</p> <p>Drawings &amp; register: 1919 drawings register 30/11/20</p> <p>Programme: 1919 L&amp;P build out programme 1</p> <p>Pre start H&amp;S report: 1919 H&amp;S 1</p>
<p><b>Development Documents:</b> N/A</p>
<p><b>Level of Liquidated Damages:</b> £5,000.00 per week or part thereof<sup>1</sup></p>
<p><b>Retention:</b> [No] If yes, %age of Contract Sum: [ ]</p>
<p><b>Commencement Date:</b> 18/1/20</p>
<p><b>Period for Completion:</b> 10 weeks</p>

<sup>1</sup> See option in clause 11.

<b>Insurances:</b>	Minimum amount (£)
1. professional indemnity insurance	[+ here]
2. personal injury and death (public liability)	[+ here]
3. employer's liability insurance	[+ here]
4. injury or damage to the property	[+ here]
5. construction all risks/works insurance	[+ here]
<b>Principal Contractor:</b>	
<b>CDM Planning Period:</b> 1 week	
<b>Employer's Representative:</b> Progress Work Place Solutions	
<b>Design Team:</b> Lyn Atelier Architects, Progress Work Place Solutions	
<b>Other Package Contractors:</b>	
<b>Name:</b>	<b>Package:</b>
TBC Package A	Main contractor
TBC Package B	Electrical
TBC Package C	mechanical
TBC Package D	Security
TBC Package E	Fire detection
TBC Package F	Structured cabling
<b>Site:</b>	
The site situated at Cumberland House, 1 <sup>st</sup> floor, 169 Union Street, London SE1	
<b>Package Contractor's Design Works:</b> Main Contractor & Electrical works	

**Contract Sum:** [+ here £number ]+ VAT

**Payment Terms:**

The Due date is Valuation date + 5 working days, the final payment date is Due date + 10 working days.

**Payment dates/interim payment periods (if applicable):**

Valuation dates:

**Milestones (if applicable):**

Project Start Date: [+ here]

Fit out completion: [+ here]

Project Completion: [+ here]

## CONDITIONS OF CONTRACT

### 1. Definitions and interpretation

1.1 In this Contract the following expressions shall have the following meanings:

**"Bills of Quantities"** means the bills of quantities for the Package Contract Works annexed hereto as Schedule 6;

**"CDM Co-ordinator"** means the person appointed to perform the role of CDM co-ordinator as defined in regulation 2 (1) of the CDM Regulations or any successor appointed by the Employer;

**"CDM Planning Period"** means the period stipulated in the Order for compliance with regulation 23 of the CDM Regulations;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007 or any statutory re-enactment or amendment thereof for the time being in force;

**"CIS Regulations "** means the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2005/2045) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (CIS 2007/672) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of this Contract.

**"Commencement Date"** means the date stated as such in the Order and as may be varied by clause 8.2;

**"Completion of the Package Contract Works"** means practical completion of the Package Contract Works as certified by the Employer's Representative under clause 9.1;

**"Construction Phase Plan"** means a document recording the health and safety arrangements, site rules and any special measures for all construction work to be carried out for the Project;

**"Contract Preliminaries"** means the preliminaries attached at Schedule 7;

**"Contract Sum"** means the amount stated in the Order net of all trade, cash and other discounts and exclusive of value added tax and subject to any adjustments made in accordance with this Contract;

**"Design Team"** means the design team stipulated in the Order or any other person notified in writing by the Employer to the Package Contractor from time to time;

**"Development Documents"** means those documents entered into or to be entered into by the Employer and any third party in relation to the Project, as described in the Order, relevant extracts of which shall have first been provided to the Package Contractor;

**"Documents"** means all drawings (including CAD drawings), reports, specifications, bills of quantities, calculations, designs, graphs, sketches, design details, models, computer programmes, photocopying, brochures, reports, notes of meetings, codes, data, documents and other written or recorded material produced by or on behalf of the Package Contractor in connection with the Package Contract Works.

**"Drawings"** means the drawings for the Package Contract Works annexed hereto as Schedule 3;

**"Employer"** means the first party to this Contract;

**"Employer's Representative"** means the person stipulated in the Order any other person notified in writing by the Employer to the Package Contractor from time to time;

**"Free-Issue Material"** means any plant, equipment or materials listed in the Order which is and remains the property of the Employer and which is handed over to the Package Contractor on a free-issue basis for incorporation in the Package Contract Works;

**"Insolvent"** means where the Package Contractor or Employer:

- (1) makes a composition or arrangement with its creditors or putting a proposal to its creditors for a voluntary arrangement for a composition of its debts or a scheme of arrangement; or
- (2) is the subject of an administration order (be it an interim order or an appointment of an administrator by other means); or
- (3) is the subject of a winding up order or passing a resolution for the winding up; or
- (4) has a provisional liquidator appointed; or
- (5) has a receiver or an administrative receiver appointed over its business, undertaking, property, or assets or any part thereof; or
- (6) otherwise ceases to exist;

**"Interest"** means the rate of 3% above the Bank of England base rate which is current at the date the Employer or the Contractor (as the case may be) becomes overdue on a payment;

**"Milestone"** means a milestone in the Package Contract Works referred to in clause 5 and as set out in the Order;

**"Order"** means the Order for Construction Works and the Annex to it which forms part of this Contract;

**"Other Package Contractors"** means the other Package Contractors engaged by the Employer and as listed in the Order or as advised by the Employer's Representative from time to time;

**"Package Contractor"** means the second party to this Contract;

**"Package Contract Documents"** means the Order, and the Scope of Works, Bills of Quantities (if applicable), the Specification(s) and Drawings, Contract Preliminaries] and such other documents shall be marked as Package Contract Documents and acknowledged as such by the application of the initials of the Parties' authorised signatories to such documents;

**"Package Contract Works"** means the execution and completion of the works and services described or referred to in the Package Contract Documents and the Order and which shall include the Package Contractor's Design Works.

**"Period for Completion"** means the period stated as such in the Order or such later period as may be fixed from time to time under clause 8;

**"Principal Contractor"** means the person appointed by the Employer as the principal contractor in accordance with the CDM Regulations and as specified in the Order or as otherwise advised by the Employer's Representative from time to time;

**"Project"** means the building and/or engineering works and associated supplies and installations which are to be carried out for the Employer for the fit out works of the shell building at the Site as more particularly described in the Order;

**"Project Defects Liability Period"** means a period of 12 months commencing from the date of issue of the certificate of practical completion for the Project as described in clause 9.2.

**"Retention"** means the retention percentage stated in the Order, if applicable;

**"Scope of Works"** means the scope of works for the Package Contract Works annexed hereto as Schedule 1;

**"Site"** means the site upon which the Package Contract Works will be carried out as specified in the Order;

**"Site Waste Management Regulations"** means the Site Waste Management Plans Regulations 2008 or any statutory re-enactment or amendment thereof from time to time;

**"Specification(s)"** means the specification(s) for the Package Contract Works annexed hereto as Schedule 2;

**"Specified Perils"** means fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding any loss or damage caused by ionising radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds).

**"Statutory Requirements"** means all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority which may be applicable to the Package Contract Works and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Package Contract Works;

**"Variation"** means the addition, omission or substitution of any work or services in the Package Contract Works including the manner and timing of the performance of the Package Contract Works;

**"Working Day"** means a day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London (other than solely for trading or settlement of the Euro).

1.2 In this Contract unless the context otherwise requires:

- (a) clause headings are inserted for convenience only and shall not affect the construction of this Contract;
- (b) words denoting the singular number include the plural and vice versa;
- (c) references to persons include references to bodies corporate and unincorporate;
- (d) references to statutes or statutory instruments include references to any modifications, extension or re-enactment thereof from time to time;
- (e) references to clauses and schedules is to clauses and schedules to this Contract.

## 2. **Package Contractor's obligations**

### **Generally**

2.1 The Package Contractor shall execute and complete the Package Contract Works in strict accordance with the Package Contract Documents and shall comply with and adhere to any instructions issued to him by the Employer's Representative relating to the Package Contract

Works including, but not by way of limitation, instructions relating to the sequencing and timing of the execution of the Package Contract Works. The Package Contractor shall comply with all rules and regulations of the Employer or Employer's Representative relating to the execution of the Project or to the Site set out or referred to in the Package Contract Documents.

### **Package Contractor's responsibility for design**

- 2.2 To the extent that the Package Contractor is required in the Package Contract Documents to provide design for the Package Contract Works or where the Package Contractor otherwise carries out or is responsible for (including by way of variation) any design work, which shall include (without limitation) those elements of the Package Contract Works specified in the Order (the "**Package Contractor's Design Works**"), the Package Contractor:
- (a) warrants that he has exercised and will exercise in the design of the Package Contractor's Design Works, all the skill, care and diligence to be expected of a properly qualified and competent specialist experienced in carrying out works of a similar scope, nature and size to the Package Contract Works;
  - (b) shall co-ordinate and integrate the Package Contractor's Design Works with the works being undertaken by the Other Package Contractors and shall co-operate with the Employer's Representative, the Other Package Contractors, the Design Team and any other consultant appointed by the Employer in the co-ordination of the Package Contractor's Design Works with the overall design of the Project;
  - (c) warrants that the Package Contractor's Design Works will, when completed satisfy in all respects the Statutory Requirements, any performance specification or requirement which is contained in the Package Contract Documents or which have been notified or communicated to the Package Contractor, and fully comply with any directly applicable provision of the EEC Treaty or of any EC Regulations, Act of Parliament, any instrument rule or order made under any Act of Parliament, regulation or bye-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Package Contract Works;
- 2.3 The Package Contractor's obligations under clause 2.2 shall be without prejudice to any warranties on the part of the Package Contractor implied at common law or by statute and the Package Contractor acknowledges that the Employer is relying exclusively on the Package Contractor in the performance of the Package Contractor's Design Works.
- 2.4 In relation to the Package Contractor's Design Works the Package Contractor shall comply with the design submission procedure set out in Schedule 5.

### **Prohibited Materials**

- 2.5 The Package Contractor warrants to the Employer that it shall exercise the standard of skill care and diligence described in clause 2.2(a) to ensure that:
- (a) the Package Contract Works will, when completed, comprise only materials and goods which are new and of sound and merchantable quality and all workmanship, manufacture and fabrication will be to the highest standards available at the date of execution of the same and consistent with the intended use of the Package Contract Works;
  - (b) any materials used or specified for use in the Package Contract Works shall be in accordance with the guidelines contained in the publication "Good Practice in the Selection of Construction Materials" (2011): published by the British Council for Offices; and
  - (c) the Package Contractor shall not specify for use or use or permit to be used in the Package Contract Works any products or materials which at the time of specification



or use do not conform with British standards or other appropriate applicable European standards or codes of practice or generally recognised good building practice and/or at the time of specification or use are generally known to be deleterious, in the particular circumstances in which they are used, to health, safety and/or durability of buildings or structures.

### **Copyright**

- 2.6 Copyright in any Documents produced by the Package Contractor in connection with the Package Contract Works shall remain vested in the Package Contractor but the Package Contractor hereby grants to the Employer and its appointee with full title guarantee an irrevocable, royalty free, non-exclusive licence to copy and use the Documents for any purpose whatsoever relating to the Project including but without limitation, the execution, completion, reconstruction, reinstatement, modification, maintenance, letting, promotion, advertisement, sale, repair and use of the Project. Such licence shall include the right to grant sub-licences and shall enable the Employer and its appointee to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the design contained in them for any extension of the Project. Save as provided in this clause 2.6, the Package Contractor shall not be liable for any such use by the Employer or its appointee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Package Contractor.
- 2.7 The Package Contractor shall indemnify the Employer against all claims or proceedings suffered or incurred by the Employer arising out of or in connection with the infringement or alleged infringement of any copyrights, design rights, registered design, patent or other intellectual property rights of third parties by reason of the carrying out of its obligations under this Contract.

### **Ambiguities and discrepancies**

- 2.8 If the Package Contractor shall find any ambiguity or discrepancy contained in or between any Package Contract Documents or in or between any of the drawings, details, documents or information supplied by the Employer or Employer's Representative or a divergence between any of the same and the Package Contractor's Design or a divergence between any of the same and the Statutory Requirements, he shall immediately notify the Employer's Representative, who shall, on or before the expiry of five Working Days from receipt of such notice, issue an instruction as to how such ambiguity, discrepancy or divergence shall be resolved. The provisions of Clause 5 shall apply in respect of compliance by the Package Contractor with such Employer's Representative's instruction, unless such ambiguity, discrepancy or divergence could reasonably have been found or foreseen at the date of this Contract by a Package Contractor exercising the skill, care and diligence described in clause 2.2(a) or unless it relates to the Package Contractor's Design.

### **Development Documents**

- 2.9 The Package Contractor shall be supplied with copies of the Development Documents or such extracts as shall be relevant to the Employer's obligations thereunder, and the Package Contractor shall (provided that such duties and obligations have been made known to the Package Contractor) exercise the standard of skill, care and diligence described in clause 2.2(a) in the discharge of its duties and obligations hereunder so as not to cause or contribute towards, by any action, inaction or omission of the Package Contractor, a breach of the duties and obligations of the Employer under such Development Documents.

### **Liaison with the Employer's Representative and Other Package Contractors**

- 2.10 The Employer has appointed the Employer's Representative (who acts with the Employer's authority in connection with any matter associated with this Package Contract) to manage the execution of the Project and has also appointed the Design Team to provide professional services to the Employer in connection with the Project. Notwithstanding the generality of clause 2.1 The Package Contractor shall:

- (a) comply with and adhere strictly to any instructions issued to him by the Employer's Representative relating to the Package Contract Works and shall comply with any Site safety policies in place;
- (b) liaise with the Design Team and shall carry out the Package Contract Works in conjunction with and co-operate with the Employer, the Employer's Representative, the Design Team and the Other Package Contractors. The Package Contractor shall fully co-operate with the Design Team and Other Package Contractors in the preparation and/or co-ordination of drawings for the Project and shall re-sequence all or any part of the Package Contract Works as necessary to co-ordinate with them; and
- (c) permit and facilitate the execution of work on Site not forming part of the Package Contract Works by Other Package Contractors or other third parties entitled to be on the Site as may be specified by the Employer's Representative.

### 3. Payment

#### Interim Certificates

- 3.1 The Contract Sum shall be paid by the Employer to the Package Contractor for the carrying out and completion of the Package Contract Works in accordance with the stage payment dates or interim payment periods set out in the Order and (if Milestones are specified in the Order) only when the Milestones are achieved.
- 3.2 The Package Contractor shall submit to the Employer's Representative interim applications stating the total amounts he considers due to the Package Contractor on the application dates set out in the Order, with all supporting documents as required by the Employer's Representative. The payment due date in each case shall be 5 Working Days following the date on which the Employer's Representative receives the Package Contractor's application pursuant to this clause 3.2 ("**Due Date**"). The final date for payment shall be 10 Working Days following the Due Date ("**Final Date for Payment**").
- 3.3 No later than 5 days after the Due Date the Employer's Representative shall issue interim certificates stating the amount due to the Package Contractor, and the basis on which that sum is calculated ("**Payment Notice**"), which shall be [●]% of:
  - (a) the Employer's Representative's assessment of the total value of work properly executed in accordance with the Package Contract Documents; and
  - (b) at the discretion of the Employer's Representative, and only if specifically listed in the Order, the total value of any goods and materials before delivery to the Site but which are ready for incorporation into the Package Contract Works, provided that:
    - (i) the Employer's Representative is satisfied that property in such goods and materials is vested in the Package Contractor;
    - (ii) such goods and materials have been and are set apart at the premises where they are stored and have been clearly and indelibly marked so as to identify the Employer and the Project;
    - (iii) the Employer's Representative is satisfied that such goods and materials are properly insured; and
  - (c) the amount of any adjustments to the Contract Sum ascertained under this Package Contract in respect of work executed by the Package Contractor;

less all amounts previously stated as due in any prior interim certificate and less any amount which may become due to the Employer from the Package Contractor whether by deduction from the Contract Sum or otherwise.

- 3.4 The Employer shall, subject to a Pay Less Notice, pay to the Package Contractor by Final Date for Payment:
- (a) the sum stated in any Payment Notice issued by the Employer's Representative under clause 3.3; or
  - (b) if the Employer's Representative fails to issue a Payment Notice, the sum stated in the Package Contractor's interim application submitted under clause 3.3.
- 3.5 In the event that the Package Contractor does not make an application, then the Employer's Representative shall not be obliged to make payment to the Package Contractor for that period until at least the next interim certificate has been issued following the next application and the Package Contractor shall not be entitled to any interest on the payment of such monies.
- 3.6 Not later than 2 Working Days before the Final Date for Payment of any amount due the Employer may give a written notice to the Package Contractor of the Employer's intention to pay less than the sum stated in the Payment Notice (or the sum stated in the Package Contractor's interim application where clause 3.4(b) applies) ("**Pay Less Notice**") and such Pay Less Notice shall specify the sum the Employer considers to be due on the date such Pay Less Notice is served and the basis on which that sum is calculated.
- 3.7 Where no Pay Less Notice is given pursuant to clause 3.6 the Employer shall pay to the Package Contractor the amount due pursuant to clause 3.4.

#### **Title in goods and materials**

- 3.8
- (a) The title, ownership, property and beneficial interest in all materials and goods shall vest in the Employer, upon delivery of such materials and goods to the Site if they have not previously become his property. The Employer shall not make any payment for the materials and goods unless the Package Contractor provides the Employer's Representative with documentary evidence from the supplier(s) of the materials that the Package Contractor has an unqualified right to pass ownership of the materials to the Employer.
  - (b) The Package Contractor shall take delivery of any Free-Issue Material made available to the Package Contractor for incorporation in the Package Contract Works. The Package Contractor shall be responsible for the care of any Free-Issue Material until Completion of the Package Contract Works and shall replace, at its own cost, any such Free-Issue Material that is lost, damaged or stolen. Title in all Free-Issue Material shall remain with the Employer at all times.

#### **Payment on Completion**

- 3.9 Upon Completion of the Package Contract Works, subject to clauses 3.2-3.6 (inclusive), the Package Contractor may apply for and the Employer's Representative shall, within 10 Working Days of such application, issue an Interim Certificate stating the amount of the Contract Sum as set out in the Order but adjusted in accordance with the provisions of this Contract as due to the Package Contractor. Such sums shall be paid in accordance with the provision of clauses 3.2-3.6 (inclusive) (but adjusted in accordance with the provisions of this Contract), and such sums shall include payment of half of the Retention. The other half of the Retention shall be released to the Package Contractor on satisfactorily completing any snags or defects in the Package Contract Works as described in Clause 9.2 of this Contract.
- 3.10 The Employer's interest in the Retention shall not be fiduciary either as trustee for the Package Contractor or any other person, or in any other capacity. The Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever, and shall be entitled to the full beneficial interest in the

Retention and every part thereof (and without limitation interest thereon) unless and until the Retention is paid to the Package Contractor under this Contract.

### **Final Payment**

- 3.11 The Package Contractor shall submit to the Employer's Representative within 20 Working Days after Completion of the Package Contract Works the Package Contractor's final account for the Package Contract Works and all supporting documents and information as may be required by the Employer's Representative for computing the Contract Sum and any adjustments to it under this Package Contract. As soon as possible after receipt of the same, the Employer's Representative and the Package Contractor shall take steps to agree the Package Contractor's final account and, following agreement, the Package Contractor shall sign the same to acknowledge that he accepts the amounts included in such account in full and final settlement of all monies due to him under or in connection with this Package Contract.

### **Final Certificate**

- 3.12 If, on the expiry of two months from Completion of the Package Contract Works, the Package Contractor shall not have signed the final account pursuant to clause 3.9, the Employer's Representative may, at any time thereafter, issue a certificate, stating the Contract Sum and any adjustments to it under this Contract and the amounts stated in such certificate shall be final and conclusive as to the amounts due to the Package Contractor under or in connection with this Package Contract, unless the Package Contractor or the Employer shall, on or before the expiry of 10 Working Days from receipt of such certificate, issue a notice to the adjudicator referring the dispute to him under clause 23 or issue proceedings disputing such amounts.

### **VAT**

- 3.13 The Employer shall pay to the Package Contractor at the same time as making any payment under this clause 3 the total amount of value added tax properly chargeable by the Package Contractor provided that the Package Contractor shall present to the Employer a tax invoice, at the same time as making an interim application, in accordance with Regulation 12 Value Added Tax (General) Regulation 1985 or any amendment or re-enactment thereof.

## **4. Contract Sum**

### **Sufficiency of pricing**

- 4.1 The Package Contractor acknowledges that he has taken account of all work necessary to complete the Package Contract Works as shown or described in the Package Contract Documents and of all work which can reasonably be inferred from the Package Contract Documents in agreeing the time for completion and the Contract Sum. The Contract Sum shall not be adjusted or altered except in accordance with the express provisions of this Contract

### **4.2 Bill of Quantities – Errors and Inadequacy**

If applicable, the Package Contractor shall be fully responsible for the Bills of Quantities. In the event of there being any errors in the Bills of Quantities or any inadequacy in the same, the Package Contractor shall correct such error or inadequacy without any adjustment to the Contract Sum and no instruction by the Employer's Representative to correct such error or inadequacy shall be regarded as a Variation.

### **Remedy for failure by Package Contractor**

- 4.3 Without prejudice to his other rights and remedies, the Employer's Representative may at any time give to the Package Contractor notice specifying any negligence, omission or default of the Package Contractor in the performance of his obligations under this Contract and, if the Package Contractor fails to remedy or take steps diligently to remedy the same on or before

the expiry of five Working Days from service of such notice, the Employer shall be entitled to employ and pay other persons to remedy the same and all damage, loss and/or expense suffered or incurred by the Employer in so doing may be deducted from any monies otherwise due to the Package Contractor under this Contract or shall be recoverable by the Employer from him as a debt. Provided that, in the case of the Package Contractor's obligations to keep the Site in a clean and tidy condition in accordance with this Contract, this provision shall apply without the requirement to give prior notice before employing other persons or the Employer or Employer's Representative may, alternatively, suspend the further execution of the Package Contract Works pending compliance by the Package Contractor with such obligations.

#### **Set off**

- 4.4 Nothing contained elsewhere in this Contract shall in any way limit or exclude any of the Employer's rights to deduct or to set off (whether under this Contract or for breach of it) any sums to which he is or may become entitled, whether as damages or otherwise, from or against the Contract Sum or from or against any monies otherwise due to the Package Contractor under this Contract. The Employer's Representative shall give to the Package Contractor notice of any such deduction or set off and such notice shall specify the amount proposed to be withheld and the grounds for withholding in accordance with clauses 3.3 and 3.63.5.

#### **Interest and Suspension**

- 4.5 In the event that the Employer fails to pay the Package Contractor any amount due under clause 3 by the final date for payment as specified by clause 3.2 (and has not issued a Pay Less Notice in accordance with clause 3.5) the Package Contractor shall be entitled to charge Interest on such overdue amount from the day after the final date for payment until the date that such amount is paid to the Package Contractor. If the Employer has failed to pay the Package Contractor by the final date for payment described in clause 3.2, the Package Contractor shall be entitled to give the Employer 10 Working Days' notice of its intention to suspend the Package Contract Works stating the grounds on which it is intended to suspend performance. If the Employer has failed to pay the Package Contractor by the date notified in the notice, the Package Contractor shall be entitled to suspend the performance of the Package Contract Works. The right to suspend performance shall cease when the Employer makes payment in full of the amount due. The Package Contractor shall be entitled to a fair and reasonable adjustment to the Contract Sum in respect of the costs necessarily incurred by him as a result of a valid suspension to be ascertained by the Employer's Representative after consultation with the Package Contractor.

#### **5. Employer's Representative's Instructions**

- 5.1 The Employer's Representative may issue written instructions (including instructions instructing a Variation) which, subject to this clause 5, the Package Contractor shall forthwith carry out.
- 5.2 If any instruction issued under this Package Contract:
- (a) shall require the Package Contractor to undertake work not provided for in, or to be reasonably inferred from, the Package Contract Documents; or
  - (b) shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,

and provided that such instruction has not arisen from, and compliance with it does not reveal any negligence, omission or default of the Package Contractor, his servants, agents, sub-contractors, suppliers or other persons engaged by the Package Contractor upon the Package Contract Works, the Contract Sum shall be adjusted and the provisions of clause 5.3 shall apply. Otherwise, the Package Contractor shall not be entitled to any additions to the Contract Sum nor to claim, whether as damages or otherwise, any additional payment in

respect of compliance by the Package Contractor with any such instruction. Where any instruction requires further investigations and/or tests arising from a failure by the Package Contractor to execute work in accordance with this Contract the Contract Sum shall be adjusted and the provisions of clause 5.3 shall apply but only where such further investigations and/or tests were unreasonably instructed having regard to the nature and extent of the Package Contractor's failure.

#### **Package Contractor's Estimates**

- 5.3 Where, in the opinion of the Package Contractor or of the Employer's Representative, any instruction issued by the Employer's Representative requires an adjustment to the Contract Sum in accordance with clause 5.2, the Package Contractor shall not comply with it (subject to clause 5.7), but shall first furnish the Employer's Representative on or before the expiry of five Working Days (or such other period as may be agreed between the Package Contractor and the Employer's Representative) from receipt of the instruction with estimates of:
- (a) the value of the adjustment (providing him with all necessary supporting calculations by reference to the rates and prices contained in the Package Contract Documents where applicable, or otherwise); and
  - (b) the length of any extension of time to which he may be entitled under clause 7.3.

#### **Agreement of Package Contractor's estimates**

- 5.4 The Package Contractor and the Employer's Representative shall then take reasonable steps to agree the Package Contractor's estimates and any agreement so reached shall be binding upon the Package Contractor and the Employer. The Package Contractor shall immediately thereafter comply with the instruction and the Employer's Representative shall grant an extension of time under clause 7.3 of the agreed length (if any) and the agreed adjustment (if any) shall be made to the Contract Sum.

#### **Failure to agree Package Contractor's estimates**

- 5.5 If agreement cannot be reached on or before the expiry of five Working Days from receipt by the Employer's Representative of the Package Contractor's estimates on all or any of the matters set out in them, then the Employer's Representative may instruct the Package Contractor to comply with the instruction in which case the provisions of clause 5.7 shall apply, as if the Employer's Representative had dispensed with the Package Contractor's obligation under clause 5.3, or the Employer's Representative may withdraw the instruction.

#### **Withdrawal of instruction**

- 5.6 If the Employer's Representative withdraws any instruction under clause 5.5, the Package Contractor shall have no claim arising out of or in connection with such instruction or with any failure to reach agreement, unless otherwise agreed in writing by the Employer's Representative prior to submission by the Package Contractor of his estimates under clause 5.3.

#### **Valuation if no agreement of estimates**

- 5.7 The Employer's Representative may, by notice to the Package Contractor before or after the issue of any instruction, dispense with the Package Contractor's obligation under clause 5.3, in which case the Employer's Representative shall, after consultation with the Package Contractor and within a reasonable time after the issue of such instruction, ascertain a fair and reasonable adjustment to the Contract Sum based on prices or rates included in the Package Contract Documents in respect of compliance by the Package Contractor with such instruction and a fair and reasonable extension of time may be granted under clause 7.3.

#### **Provisional sums**

- 5.8 [The Employer's Representative shall issue instructions in regard to the expenditure of any provisional sums. The Package Contractor shall be deemed to have made due allowance for programming, planning and pricing preliminaries for the works covered by all provisional sums and shall not be entitled to any extension to the time for completion as a result of an instruction by the Employer's Representative under this clause 5.8. The Package Contractor shall not place any orders for works, goods or materials which are the subject of a provisional sum until the valuation has been agreed in accordance with this clause 5 and the Employer's Representative shall have issued an instruction for the expenditure of such provisional sums.]

## **6. Access to the Site and to the Works**

### **Access to the Site**

- 6.1 The Employer shall give to the Package Contractor such access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Package Contractor to carry out and complete the Package Contract Works in accordance with this Contract. The Package Contractor acknowledges that such access will be in common with other persons on the Site and will not be exclusive to him.

### **Site condition**

- 6.2 The Package Contractor has had an opportunity of inspecting the physical conditions and other conditions of or affecting the Site and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the construction of the Package Contract Works, the materials necessary for the completion of the Package Contract Works, the means of communication with and restrictions of access to the Site. No failure on the part of the Package Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Package Contractor to an addition to the Contract Sum or to claim in damages or otherwise any additional sum or to an extension of time.

### **Previous work**

- 6.3 The Package Contractor shall satisfy itself in adequate time before commencing any part of the Package Contract Works as to the position, dimensions and suitability of any previous work which might in any way affect the Package Contract Works and shall advise the Employer's Representative immediately in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable, so as to minimise any interruption or interference caused by such other work.

### **Co-ordination**

- 6.4 The Package Contractor shall permit and facilitate the execution of work on Site not forming part of the Package Contract Works by the Other Package Contractors and other persons as specified in the Package Contract Documents or as may be required by the Employer's Representative. The Package Contractor shall fully and actively co-operate with all such persons (including, but not by way of limitation, by the preparation jointly with them and co-ordination of drawings for the Project and by setting out the Package Contract Works jointly with them and by re-sequencing all or any part of the Package Contract Works as necessary to co-ordinate with them) and shall comply with all instructions issued by the Employer's Representative in respect of co-ordination of all work on Site. The Package Contractor shall notify the Employer's Representative if any other person is not fully and actively co-operating with him. The Package Contractor shall, where necessary or where directed by the Employer's Representative, arrange and/or attend meetings with other persons on the Site and shall use his best endeavours to ensure that no interruption or interference is caused by or to such other persons in or by the execution and completion of the Package Contract Works

### **Inspection by Design Team**

- 6.5 The Package Contractor shall give and shall procure that his sub-contractors and suppliers give to the Design Team, the Employer's Representative and the Employer and their respective representatives and licensees full access to the Package Contract Works and to the workshops or other places where design or work is being prepared or goods or materials are being manufactured for the Package Contract Works, so that they may test, inspect or examine the same. The Package Contractor shall do all things necessary to assist any of them during the course of any visits which they make to such places.

#### **Site safety**

- 6.6 The Package Contractor shall and shall ensure that his employees, agents and servants shall carry out the Package Contract Works having full regard to the safety of all persons entitled to be upon the Site and shall contribute to keeping the Site in an orderly state appropriate to the avoidance of danger to such persons. At the end of each working day the Package Contractor shall ensure that the Site is left in an orderly manner and that the Package Contract Works are kept secure at all times. The Package Contractor shall be fully responsible at all times for the protection and safekeeping of all plant and materials necessary for the carrying out of or incorporation into the Package Contract Works.

#### **Statutory authorities**

- 6.7 The Package Contractor shall notify all relevant local authorities and statutory undertakers (which shall include telecommunication companies) of the dates and times when the Employer will require their services on the Site and shall be responsible for the co-ordination of their works with the remainder of the Package Contract Works.

#### **Attendances**

- 6.8 The Package Contractor agrees that the attendances referred to in this clause 6 shall be deemed to cover all expenses incurred by the Package Contractor in planning, programming and co-ordinating the Package Contract Works with that of the Other Package Contractors and other contractors and workmen entitled to be on the Site.

#### **Other Package Contractors**

- 6.9 The Package Contractor agrees that it could reasonably foresee the activities of the Other Package Contractors and/or statutory undertakers on or near the Site or parts thereof throughout the period of carrying out the Package Contract Works and has costed for such activities in its pricing of the Contract Sum.
- 6.10 The Package Contractor shall notify the Employer's Representative if any other person is not fully and actively co-operating with him. The Package Contractor shall, where necessary or where directed by the Employer's Representative, arrange and/or attend meetings with other persons on the Site and shall use his best endeavours to ensure that no interruption or interference is caused by or to such other persons in or by the execution and completion of the Package Contract Works.

### **7. Commencement and Completion**

#### **Commencement and completion of the Package Contract Works**

- 7.1 Subject to Clause 7.2, on the Commencement Date the Package Contractor shall commence the execution of the Package Contract Works and shall thereafter regularly and diligently proceed with the Package Contract Works and shall complete each part of the same on or before the expiry of the Period for Completion which relates thereto.

#### **Deferment of the Commencement Date**

- 7.2 The Commencement Date may be deferred by the Employer's Representative for a maximum period of 8 weeks, provided the Employer's Representative has given the Package Contractor



a minimum of 7 Working Days' notice of such deferment.

### **Grounds for extensions of time**

- 7.3 If the progress of the Package Contract Works or any part thereof is delayed as a result of:
- (a) force majeure
  - (b) exceptionally adverse weather conditions;
  - (c) loss or damage occasioned by one or more Specified Perils;
  - (d) civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed upon the Package Contract Works or any trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Package Contract Works, except where such events arise upon the Site or concern the Package Contractor's employees or those of its sub-contractors and do not arise out of or in connection with a national labour dispute;
  - (e) an instruction under clause 5 of this Package Contract (provided only that it can be shown that such instruction affects the completion of the Package Contract Works) and except in respect of any Employer's Representative's instruction for which under the terms of this Contract the Package Contractor is not entitled to any extension of time;
  - (f) any breach by the Employer of his obligations under this Package Contract; or
  - (g) delay on the part of any person (other than the Package Contractor) engaged by the Employer on or in connection with the Project, which the Package Contractor has taken all practicable steps to avoid and/or reduce;
  - (h) the execution of work not forming part of the Project by the Employer or persons employed by the Employer and/or the late or non-supply of materials and goods which the Employer has agreed to provide for the Package Contract Works;
  - (i) a change in Statutory Requirements after the date of this Contract by the United Kingdom Government which directly effects the execution or the progress of the Package Contract Works and which could not have been foreseen by the Package Contractor prior to the date of this Contract;
  - (j) the carrying out by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Project or the failure to carry out such works;
  - (k) the failure of the Employer to give in due time sufficient egress or ingress to parts of the Site or any land or passage adjacent to the Site relevant to carrying out the Package Contract Works, provided the Package Contractor has given the Employer or Employer's Representative sufficient notice of such requirement;
  - (l) the deferment of the Date of Possession under clause 7.2;
  - (m) the use of threat or terrorism and/or the activity of the relevant authorities in dealing with such threat;
  - (n) delay arising from suspension by the Package Contractor pursuant to clause 4.4; and
  - (o) where the Package Contractor is not the CDM Co-ordinator or Principal Contractor, failure of the CDM Co-ordinator or Principal Contractor (as the case may be) to comply with their duties under the CDM Regulations with all reasonable diligence provided that the failure so to comply has not been caused by any act or default on the part of the Package Contractor or any of his sub-contractors;

then provided that the Package Contractor:

- (a) shall prove to the reasonable satisfaction of the Employer's Representative that the completion of the Package Contract Works or any part of the Package Contract Works is thereby delayed and that such delay could not reasonably have been foreseen at the date of this Contract by a Package Contractor exercising the standard of skill care and diligence to be expected of a competent specialist Package Contractor experienced in carrying out work of a similar scope, nature and size to the Package Contract Works within a project of similar scope, nature and size to the Project; and
- (b) has taken all reasonable steps to avoid or minimise the delay; and
- (c) has forthwith given written submissions to the Employer's Representative (and in any event no later than 5 Working Days after the cause of the delay has arisen) setting out the detailed particulars of the delay,

the Employer's Representative may upon receipt of such written submission and request for an extension of time, grant such extension to the Period for Completion of the whole or part of the Package Contract Works as may in his opinion be reasonable. The Employer's Representative shall be entitled to take into account the effects of any omission from the Package Contract Works.

#### **Failure to inform**

- 7.4 Any failure by the Package Contractor to inform the Employer's Representative of such delays shall be a breach of this Contract and shall disentitle the Package Contractor at any time thereafter from relying on such circumstance(s) as amounting to or resulting from any breach of contract or act of prevention on the part of the Employer.

#### **Disentitlement**

- 7.5 Notwithstanding any other provision of this Contract, the Package Contractor shall not be entitled to any extension of time for completion of the Package Contract Works or any part of the Package Contract Works on account of any circumstance arising by reason of an error, omission, negligence or default of the Package Contractor or of any of its employees or agents or any sub-contractor or supplier, or any of their respective employees or agents where a delay could have been reasonably foreseen at the date of this Contract by a Package Contractor acting in compliance with the provisions of this Contract.

#### **Revised programme**

- 7.6 If the Employer's Representative shall grant an extension of time pursuant to clause 7.3, the Package Contractor shall submit to the Employer's Representative for approval a revised programme within 10 Working Days of the Employer's Representative's instruction of such extension of time.

#### **8. Loss and expense associated with an extension of time**

To the extent that the Employer's Representative issues an instruction pursuant to clause 7.3(d), (f), (g), (h), (i), (j), (k), (m) and (o), the Package Contractor shall be entitled to make a written application, with full substantiation and documentary evidence, to the Employer's Representative that the Package Contractor has incurred or is likely to incur direct loss and/or expense for which the Package Contractor would not be reimbursed by a payment made under this Contract, then the Employer's Representative shall ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum and shall be added as part of the interim certificate issued by the Employer's Representative pursuant to clause 3.3.

#### **9. Completion and defective work**

### **Practical completion of the Package Contract Works and snagging**

- 9.1 When in the opinion of the Employer's Representative the Package Contract Works are practically complete, the Employer's Representative shall issue a certificate to that effect and practical completion of the Package Contract Works shall occur on the date named in the certificate. Such certificate may be issued notwithstanding that minor defects or minor items of work ("**Minor Defects**") and/or final commissioning and adjustment of mechanical and electrical services installations remain to be completed in which event such Minor Defects, incomplete work and/or commissioning and adjustment shall be included in an appropriate schedule and completed as soon as possible but in any case not later than 7 Working Days from the date of Completion of the Package Contract Works (or such longer period as the Employer's Representative may, when issuing the schedule, agree). Where such Minor Defects minor items of work and/or final commissioning and adjustment of mechanical and electrical services installations have not been completed within the time period stated under this clause 9.1 the Employer may employ others to carry out such work and/or commissioning and adjustment and deduct the cost of the same from the Contract Sum or recover the same from the Package Contractor as a debt.

### **Practical completion of the Project and snagging**

- 9.2 When in the opinion of the Employer's Representative the Project is practically complete, the Employer's Representative shall issue a certificate to that effect and practical completion of the Project shall occur on the date named in the certificate. Such certificate may also be accompanied by a list of items of work which are, in the Employer's Representative's opinion, required to render the Project entirely completed. The Package Contractor shall with all due diligence complete any items of such works which relate to the Package Contract Works.

### **Defects during the defects correction period**

- 9.3 The Package Contractor shall, entirely at its own cost, make good any defects, excessive shrinkages or other faults to the Package Contract Works which appear within a period commencing from the date of Completion of the Package Contract Works and up to the expiration of the Project Defects Liability Period and which are due to materials or workmanship not being in accordance with the terms of this Contract. The Employer's Representative shall notify the Package Contractor of any such defects during the Project Defects Liability Period and such defects shall be rectified within a reasonable time and in any event within the timescales for rectifying defects stipulated in the Contract Preliminaries and forthwith in the case of any defect, shrinkage or other fault which:-
- (a) raises a health and safety issue or prevents occupation of the relevant part of the Package Contract Works;
  - (b) prevents any Other Package Contractor from carrying out his work or rectifying his defects; or
  - (c) have to be rectified to ensure the Employer is complying with its obligations to rectify defects contained in the Agreement for Lease.

When in the opinion of the Employer's Representative all defects that have arisen in the Project Defects Liability Period have been rectified the Employer's Representative shall issue a certificate to that effect.

### **Failure to rectify defects**

- 9.4 Where the Package Contractor fails to rectify any defects, shrinkages or other faults notified by the Employer pursuant to this clause 9 within the time required under this clause 9, the Employer's Representative shall be entitled to undertake such rectification work and to recover the cost of the same from the Package Contractor as a debt and/or to deduct the same from any monies otherwise due to the Package Contractor.

### **10. Early take over of the Package Contract Works**

#### **Employer may take over part**

- 10.1 The Employer may, at his discretion and by notice (such notice to be given by the Employer's Representative) in writing to the Package Contractor, take over any part of the Package Contract Works prior to practical completion of the same.

#### **Date of practical completion of part**

- 10.2 Practical completion of the said part shall be deemed to have occurred on the date stated in the Employer's notice under clause 10.1.

### **11. Damages for Non Completion<sup>2</sup>**

Either:

Subject to clauses 4.3 and 4.4, if the Package Contractor fails to complete the Package Contract Works by the expiry of the Period for Completion and provided that decisions have been given on all outstanding applications for extension of time the Package Contractor shall pay or allow to the Employer a sum equivalent to any direct loss and/or expense suffered by the Employer which has arisen from the failure of the Package Contractor. Such sum shall include, but shall not be limited to any damages, costs or expenses which the Employer is obliged or may be liable to pay or allow to any other person whether or not engaged by the Employer on or in connection with the Project as a direct consequence of the Package Contractor's failure.

Or:

If the Package Works are not completed by the expiry of the Period for Completion and provided that decisions have been given on all outstanding applications for extension of time the Package Contractor shall pay or allow to the Employer liquidated damages at the rate stipulated in the Order per week or part of any week between the aforesaid expiry of Period for Completion and the actual completion date. The Package Contractor agrees that the liquidated damages sum stated in the Order is a reasonable pre-estimate of the Employer's losses in the event of delay to the Period for Completion.

The Employer may recover liquidated damages from the Package Contractor as a debt or deduct the liquidated damages from any monies due to the Package Contractor under this Package Contract provided that a Pay Less Notice pursuant to clause 3.6 has been given. If the Employer intends to deduct any such damages from the sum stated as due in the final certificate, the Employer shall additionally inform the Package Contractor in writing of that intention not later than the date of issue of the final certificate.

### **12. Statutory obligations**

The Package Contractor shall make all applications, give all notices and pay all fees required by and shall fully comply with all laws, decrees, judgments, orders, treaties, permissions,

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<sup>2</sup> Client to nominate which applies.

consents, bye-laws, rules and regulations (including the Building Regulations), health and safety regulations or other requirements of any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person of the Government of the United Kingdom or of the European Community and any planning permission or listed building consents as the same may be modified and amended from time to time during the term of this Contract.

### **13. Facilities for Package Contractor**

The Employer shall permit the Package Contractor the non-exclusive use of the facilities listed in the Contract Preliminaries subject to temporary mechanical or other breakdowns, use by other persons, failures or disruptions to power or water supplies or adverse weather conditions. The Package Contractor shall not be entitled to an extension of time by reason of any failure by the Employer to provide any of the facilities listed in the Order or any delay or disruption in the availability of such facilities.

### **14. Risk and insurance**

#### **Risk in the Package Contract Works**

- 14.1 The Package Contract Works and each part of them shall, subject only to the provisions of clause 14.6, be at the risk of the Package Contractor until practical completion of the Package Contract Works or such part. If the Employer's Representative so instructs after practical completion of the Package Contract Works the Package Contractor shall carry out at his own cost any necessary repairs or remedial works instructed by the Employer so that the Package Contract Works are as required by this Package Contract at practical completion of the Project. The provisions of clause 5.2 shall apply in respect of compliance with such Employer's Representative's instruction.

#### **Protection of the Package Contract Works**

- 14.2 The Package Contractor shall protect the Package Contract Works to prevent damage to them as required and shall maintain such protection until practical completion of the Project or practical completion of any section in which the part of the Package Contract Works to be so protected is comprised. The Package Contractor shall also protect occupiers of adjacent properties and the public from danger, discomfort, disturbance, trespass or nuisance caused by the Package Contract Works.

#### **Insurance by the Package Contractor**

- 14.3 The Package Contractor shall take out and maintain as are necessary to cover his liability in respect of personal injury or death arising out of or in the course of or caused by the carrying out of the Package Contract Works and in respect of injury or damage to property real or personal (except for loss or damage to the Package Contract Works) arising out of or in the course of or by reason of the carrying out of the Package Contract Works. The Package Contractor confirms that it currently maintains employer's liability insurance cover with a reputable insurance company without a limit of indemnity to cover any claim in respect of personal injury or death of any person under contract or service or apprenticeship with the Package Contractor.
- 14.4 Where the Package Contractor is carrying out the Package Contractor's Design Works as part of the Package Contract Works, the Package Contractor shall take out and maintain professional indemnity insurance cover with a reputable insurance company with a limit of indemnity of not less than the amount stated in the Order in respect of each and every claim to cover any claims made against the Package Contractor in respect of any negligence, omission or default on the Package Contractor's part in the performance of its obligations under this Package Contract for the duration of the Package Contract Works and for a period of 12 years from the date of Completion of the Package Contract Works. The insurance shall be with a well established insurance office or underwriter of repute.

- 14.5 The Package Contractor shall produce documentary evidence to the Employer that each of the insurances required by clauses 14.3-14.4 is properly maintained as and when requested so to do and, in the case that the Package Contractor is in breach of clauses 14.3-14.4, the Employer may itself insure and may deduct the costs of so insuring from the Contract Sum.

#### **Insurance by the Employer**

- 14.6 The Employer shall take out and maintain contractor's construction all risks insurance in such amounts as are specified in the Order for the full costs of reinstatement, repair or replacement or loss or damage due to one or more Specified Perils and the replacement value of the Site facilities in the joint names of the Employer and the Package Contractor from the Date of Commencement to the date of Completion of the Package Contract Works or where this Contract is terminated pursuant to clause 17, up to the date of termination of this Contract. The all risks insurance will not cover loss or damage to any plant or equipment owned or controlled by the Package Contractor or any of its sub-contractors. The Package Contractor shall authorise the insurers to pay all monies from such insurance in respect of loss or damage to the Employer. Where the Employer's status for VAT purposes is exempt or partially exempt the full cost of reimbursement repair or replacement of loss or damage to which this clause refers shall be inclusive of any VAT chargeable on the supply of such reinstatement, repair or replacement.

#### **15. Testing and Inspection**

- 15.1 The Package Contractor shall at the request of the Employer's Representative supply such test certificates and such other documents as may be necessary to prove that the Package Contract Works and any materials and goods used or to be used within or in connection with the Package Contract Works comply with the provisions of clause 2.
- 15.2 The Employer's Representative may require that the Package Contractor open up for inspection any work covered up or arrange for or carry out any test of any materials and goods (whether or not already incorporated into the Package Contract Works) or of any executed work. The cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless such cost is allowed for in the Package Contract Documents or unless any inspection or test shows that any work, materials or goods are not in accordance with this Contract.
- 15.3 The Employer's Representative may issue instructions in regard to the taking down and/or removal from the Site or re-execution or repair or making good of any work, materials or goods which are not in accordance with this Contract (notwithstanding any previous inspection or test thereof). The Package Contractor shall forthwith comply with such instructions entirely at his own cost.

#### **16. Construction (Design and Management) Regulations 2007<sup>3</sup>**

- 16.1 Where and to the extent that the CDM Regulations apply to the Package Contract Works, the Package Contractor shall discharge the role of [Principal Contractor,] Designer and/or Contractor (both terms as defined in the CDM Regulations) and the Package Contractor warrants that he is competent to discharge the duties of a [Principal Contractor, ]Designer and/or Contractor under the CDM Regulations. Where the Package Contractor takes any action as either [Principal Contractor, ]Designer or Contractor as the case may be, the Package Contractor shall state in writing that the action is being taken under the CDM Regulations.
- 16.2 The Package Contractor shall work with and assist and comply with the instructions of the [Principal Contractor, the ]CDM Co-ordinator and the Employer as is necessary to ensure compliance with the CDM Regulations.

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<sup>3</sup> Amend according to role.

16.3 The Package Contractor shall ensure that it properly plans and prepares for the Package Contract Works and that it shall submit method statements to the Employer's Representative and/or the CDM Co-ordinator for incorporation into the Construction Phase Plan during the CDM Planning Period.

16.4 Where and to the extent that the Site Waste Management Regulations apply to the Package Contract Works the Employer's Representative shall be the "Principal Contractor" as defined in and for the purposes of the Site Waste Management Regulations and shall prepare a Site Waste Management Plan (as defined in the Site Waste Management Regulations) in relation to the disposal of all waste produced in connection with the Project, and the Package Contractor shall be responsible for the management and disposal of waste in accordance with the Site Waste Management Regulations and Site Waste Management Plan and shall do all that is necessary in order to assist the Employer's Representative to comply with the duties of a Principal Contractor under the Site Waste Management Regulations.

## 17. Termination

17.1 The Employer may terminate this Contract at any time on 7 days' notice in writing to the Package Contractor.

17.2 If the Package Contractor shall be in breach of his obligations under this Contract then the Employer may without prejudice to any right or remedies which the Employer may possess serve notice on the Package Contractor specifying the breach and requiring its remedy and if the Package Contractor fails to remedy the same on or before the expiry of 14 days from service of such notice, the Employer may by further notice forthwith terminate the employment of the Package Contractor. Further, if the Package Contractor becomes Insolvent, the Employer may forthwith terminate this Contract by notice in writing to the Package Contractor.

17.3 If the Employer:

- (a) does not pay the Package Contractor the amount properly due and payable on any certificate issued under this Contract by the final date for payment (subject to any deductions or set offs which the Employer may be entitled to make); or
- (b) obstructs the issue of any certificate due under this Contract;

then the Package Contractor may serve a notice on the Employer specifying the event of default and requiring its remedy and if the Employer fails to remedy the same within 14 days of the receipt of such notice, the Package Contractor may on or within 10 days from the expiry of that 14 days by a further notice to the Employer determine the employment of the Package Contractor under this Contract and the determination shall take effect on the date of receipt of such further notice. If the Employer becomes Insolvent, the Package Contractor may forthwith terminate this Contract by notice in writing to the Employer.

17.4 If the Package Contractor's employment is terminated by the Employer under clause 17.2, the Employer shall not be bound to make any further payment to the Package Contractor until the full and final cost of completion of the Package Contract Works by others has been ascertained but upon such cost being ascertained the Employer's Representative shall issue a certificate which shall also be signed by a member of the Design Team stating the amount of any damage, loss and/or expense suffered or incurred by the Employer by reason of termination of the Package Contractor's employment and, if such amount when added to the monies paid to the Package Contractor before the date of termination exceeds the total value of work properly executed up to the date of termination, together with any adjustments to the Contract Sum ascertained in accordance with this Contract, the difference shall be a debt payable to the Employer by the Package Contractor.

17.5 If the Package Contractor's employment is terminated by the Package Contractor under clause 17.3 or by the Employer under clause 17.1 the Employer's Representative shall issue a certificate which shall also be signed by a member of the Design Team under clause 3.2 stating the total amount properly due to the Package Contractor up to the date of termination

and any damage, loss or expense reasonably incurred by the Package Contractor by reason of the termination of the Package Contractor's employment and the Employer shall pay such amount to the Package Contractor in accordance with clause 3.

- 17.6 If the Package Contractor's employment is terminated and notwithstanding that the validity of such termination is disputed by the Package Contractor, the Package Contractor shall immediately protect and secure the Package Contract Works and shall immediately then leave the Site and shall deliver to the Employer the Documents and all drawings, details, documents and information prepared by or on behalf of the Package Contractor for the Package Contract Works.
- 17.7 Termination of the Package Contractor's employment shall not prejudice the rights of either party to sue for the recovery of any damage, loss and/or expense suffered or incurred by him arising out of or in connection with any breach by the other of this Contract prior to such termination and generally to enforce any of its rights and remedies in relation to anything done prior to such termination.
- 17.8 Upon any termination of the Package Contractor's employment and, if the Employer so requires, the Package Contractor hereby agrees and consents to the novation to the Employer, without payment, of the Package Contractor's entire benefit, right and interest in and under any sub-contract between the Package Contractor and any sub-contractor or supplier and the Package Contractor agrees, forthwith upon receipt of a written request from the Employer, to do all acts and execute all documents necessary to make such novation effective.

## 18. **CIS Regulations**

- 18.1 The Employer is a "contractor" for the purposes of the CIS Regulations. The Package Contractor shall provide to the Employer prior to the Commencement Date details (including confirmation of its national insurance number/company registration number and unique tax reference number) in order to allow the Employer to verify the Package Contractor's identity with Her Majesty's Revenue & Customs ("**HMRC**") in accordance with the CIS Regulations.
- 18.2 Where the Package Contractor is verified by HMRC as being registered as a sub-contractor who receives payment net of deductions, then 7 Working Days before the final date for payment of any sum due, the Contractor shall give the Employer details of the direct cost of materials included in the payment and the Employer shall be entitled to make the statutory deduction from that part of the payment which is not in respect of the direct cost of materials. In this clause 18.2 "statutory deduction" means the deduction in force at the time of payment under section 61 of the Finance Act 2004. Where the Employer has made an error or omission in calculating the statutory deduction, the Employer may correct the error by making deductions from payments due to the Package Contractor, subject only to an instruction by HMRC to the Employer not to make such a correction.
- 18.3 Where the Package Contractor is not verified by HMRC as being registered as a sub-contractor or is verified as a sub-contractor entitled to receive gross payments under the CIS Regulations then the Employer shall pay any amount due without making the statutory deduction.

## 19. **Assignment**

- 19.1 The Package Contractor shall not assign, charge or transfer any right or obligation under this Contract to any other person. The Package Contractor shall not, without the written consent of the Employer, sub-let or sub-contract the whole or any portion of the Package Contract Works and such consent, if given, shall not relieve the Package Contractor from any liability or obligation under this Contract.
- 19.2 The Employer may, without the consent of the Package Contractor, assign, transfer and/or charge all or any of its rights under this Contract and/or assign, transfer, novate and/or charge all or any of its liabilities and/or obligations under this Contract at any time to any person.



20. **Collateral warranties**

20.1 The Package Contractor shall execute and deliver to the Employer within 14 days of written request a deed or deeds of collateral warranty in favour of:

- (a) any organisation providing finance in connection with the Package Contract Works; and
- (b) any purchaser of the whole or any part of the Site and/or the Package Contract Works; and
- (c) any tenant of the whole or a substantial part of the Site and/or the Package Contract Works; and
- (d) any landlord of the whole or any part of the Site and/or the Package Contract Works

in the form or substantially in the form attached at Schedule 4, with only such amendments as the Employer may approve.

21. **Miscellaneous**

21.1 This Contract and the Package Contract Documents represents the entire agreement between the Employer and the Package Contractor and supersedes all other agreements or terms concerning the subject matter hereof.

21.2 This Contract does not authorise the Package Contractor to enter into any contracts or commitments on behalf of or as agent for the Employer or to bind the Employer in any manner whatsoever.

21.3 If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions.

21.4 Nothing in this Contract is intended to confer on any person any right to enforce any term of this Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

22. **Law and jurisdiction**

22.1 This Contract shall be governed by, and construed in accordance with, English law.

22.2 The parties hereto irrevocably submit to the non-exclusive jurisdiction of the English courts.

22.3 The courts shall subject to clause 23 have full power to open up, review and revise any decision of the Employer having contractual effect hereunder as if the same had not been made.

23. **Disputes**

23.1 In the event of any dispute or difference arising between the parties under, out of or in connection with this Contract (each a "**Dispute**"), the parties shall procure that their respective senior management representatives shall, within 7 days of a written request from either party to the other meet in good faith effort to resolve the Dispute without recourse to adjudication or legal proceedings.

23.2 Either party to this Contract can refer a dispute or difference (other than a matter as to which a decision is provided by the Contract to be final and conclusive) to adjudication in accordance with the TeCSA Adjudication Rules Version 3.2.

- 23.3 The decision of the adjudicator shall be binding until referred to the courts for final determination or the parties agree otherwise expressly and in writing.
- 23.4 Nothing in this Clause 23 shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

**Schedule 1**  
**Scope of Works**

1919 Spec 02

**Schedule 2**  
**Specification(s)**

1919 Spec 02

### **Schedule 3**

#### **Drawings**

Please refer to:

1919 Drawings register 4<sup>th</sup> floor

1919 Drawings register 5<sup>th</sup> floor

**Schedule 4**

**Form of Deed of Collateral Warranty**

N/A

## Schedule 5

### Design Submission Procedure

1. Subject to paragraph 2, the Package Contractor shall prepare and shall submit to the Employer's Representative three paper copies and one copy in electronic format (including CAD where appropriate) of all drawings, specifications, details, levels, setting-out dimensions and other information which are either:
  - (a) necessary from time to time to explain and amplify the Package Contract Documents in respect of the Package Contractor's Design Works and any changes to them; or
  - (b) reasonably necessary to enable the Package Contractor to develop, execute and complete the design and construction of the Package Contract Works and any changes to them; or
  - (c) stated in the Package Contract Documents to be prepared by the Package Contractor.
2. The Package Contractor shall provide such drawings and details to the Employer's Representative in good time before they are required for implementation and on a date which will enable the Employer and Package Contractor to comply with all the provisions of this Schedule without delaying the progress of the Package Contract Works or the works of any Other Package Contractors.
3. If the Employer's Representative shall within 10 Working Days of the date of receipt of any such drawings, specifications, details, levels, setting-out dimensions and other information submitted or re-submitted by the Package Contractor, return one copy of each of these documents to the Package Contractor, marked "A Action", "B Action" or "C Action", provided that the Employer's Representative shall not comment unreasonably or adversely on any such drawings, specifications, details, levels and setting-out dimensions which comply with the Statutory Requirements and with the requirements of this Package Contract, including without limitation, the standards of workmanship and materials specified therein or in the Package Contract Documents, or to be reasonably inferred from them.
4. If the Employer's Representative returns any drawings, specifications, details, levels and setting-out dimensions in accordance with paragraph 3 together with his comments, the Package Contractor shall immediately take account of such comments in drawings, specifications, details, levels and setting-out dimensions and shall re-submit them to the Employer's Representative for his comments in accordance with the provisions of paragraph 1. The Employer's Representative shall return them to the Package Contractor in accordance with paragraph 3 so long as where the Package Contractor is of the opinion that any such comments are likely adversely to affect the design of the Package Contract Works he shall not take account of them but shall give notice of objection to the Employer's Representative and the Employer's Representative shall forthwith instruct the Package Contractor either to disregard or to take account of the comments to which the Package Contractor has objected and the Package Contractor shall comply with such instructions.
5. When the Employer's Representative returns any drawing, specification, detail, level, setting out dimensions, document or other information under paragraph 3, the Package Contractor shall immediately take the following action in relation to such drawing, specification, detail, level, setting out dimensions, document or other information:
  - (a) if it is stamped or marked "C Action", the Package Contractor shall execute and complete the Package Contract Works in strict accordance with such drawing, specification, detail, level, setting out dimensions, document or other information;
  - (b) if it is stamped or marked "B Action", the Package Contractor shall execute and complete the Package Contract Works in strict accordance with such drawing,

specification, detail, level, setting out dimensions, document or other information, provided that the Employer's Representative's comments are incorporated into such drawing, specification, detail, level, setting out dimensions, document or other information and a further reproducible copy of it is promptly submitted to the Employer's Representative; and

- (c) if it is stamped or marked "A Action", the Package Contractor shall take account of the Employer's Representative's comments in such drawing, specification, detail, level, setting out dimensions, document or other information and shall re-submit it to the Employer's Representative for his comment in accordance with the provisions of paragraph 1. The Package Contractor shall not execute the Package Contract Works in accordance with any drawing, specification, detail, level, setting out dimensions, document or other information stamped or marked "A Action".
6. The work shown on all drawings, specifications, details, levels, setting-out dimensions and other information shall, subject to having been given an "C Action" or "B Action" classification become part of the design of the Package Contract Works. The Package Contractor shall be responsible for the sufficiency of the Package Contract Works shown on all drawings, specifications, details, levels and setting-out dimensions prepared by him (including those in relation to which account has been taken of any comments of the Employer's Representative) and for ensuring that they are in accordance with the Employer's requirements and in compliance with the Statutory Requirements.
  7. Where the Package Contractor shall find any errors in or require any alteration or modifications to any drawings, specifications, details, levels, setting-out dimensions or other information after an "C Action" or "B Action" classification has been endorsed on such information, he shall, notwithstanding that the errors have become part of the design of the Package Contract Works, re-submit in accordance with paragraph 1 any such drawings, specifications, details, levels, setting-out dimensions and other information together with his corrections of the errors so found or his proposed alterations or modifications, and the provisions of this paragraph 7 shall apply to those corrections, alterations or modifications.
  8. If the Employer's Representative fails to return any drawings, specifications, detail, levels and setting-out dimensions in accordance with paragraph 3 then the Package Contractor may infer that the Employer's Representative has no comment to make and has returned the drawings, specifications, details, levels, setting-out dimensions and other information without comment.
  9. The Package Contractor shall attend such meetings as the Employer's Representative may reasonably require to discuss any comments raised under the provisions of paragraph 3
  10. It shall be a condition precedent to the Package Contractor's entitlement to payment for any work, materials or goods in respect of the Package Contractor's Design Works that the same have been executed or supplied in accordance with drawings, specifications, details, levels, setting out dimensions and other information returned by the Employer's Representative endorsed "C Action" or "B Action" under the provisions of paragraph 3.
  11. No comments or advice from the Employer's Representative under paragraph 3 or otherwise by the Design Team or the Employer in connection with any drawings, details, documents or information provided by the Package Contractor shall in any way relieve the Package Contractor from his responsibility for the same.



**Schedule 6**  
**Bills of Quantities**

N/A

**Schedule 7**  
**Contract Preliminaries**

N/A