

[REDACTED]

DATED 14 SEPTEMBER 2022

**(1) NHS DIGITAL**

and

**(2) WORKSPACE TECHNOLOGY LIMITED**

**CONTRACT**

relating to  
the Survey, Design, Validation and Construction of a CPNI Approved Secure Room  
with all associated Mechanical, Electrical and Plumbing Modifications, Adjustments  
and Services to accommodate the secure room at [REDACTED]  
incorporating the conditions of the JCT Design and Build Contract 2016

**THIS AGREEMENT** is made the 14th of September 2022

**BETWEEN**

**The Employer, NHS Digital** whose principal / registered office is at 7 and 8 Wellington Place, Leeds, West Yorkshire, LS1 4AP;

**AND**

**The Contractor, Workspace Technology Limited** (Company No.05302612) of/whose registered office is at Unit 10 Reddicap Trading Estate, Sutton Coldfield, West Midlands, B75 7BU

**WHEREAS**

**First** the Employer wishes to have the design and construction of the following work carried out:

Survey, Design, Validate and Construction of a new CPNI Compliant Security Enclave Room on the first floor with the works including but not limited to the construction of the Partition (utilising the Remtech range) which is to be constructed from floor to slab; within the partition there is to be a Remtech ModuSec Door with a three point locking system along with all the other necessary compliant ironmongery along with all necessary decoration, floor finishes and ceilings; the Works also include all necessary Security, Mechanical, Electrical and Plumbing modifications, adjustments and installations to accommodate the construction of the room but also the actual provisions within the room; this includes but not limited to Automatic Access Control System (AACS); Intruder Detection System (IDS); Electrical Distribution, Lighting, Power, Data, Security, Fire Alarm, CCTV, UPS (Uninterrupted Power System); Mechanical Works to include but not limited to ventilation (HVAC and a split Air Conditioning System) and wet heating; Fixtures and Fittings to include but not limited to electronic sit / stand desks; Monitor Arms; Power Modules; Ergonomic Task Chairs; with works within the NER (Downstairs) to be upgraded to accommodate and ensure compliance with the CPNI which is to include to new solid door; access control; replacement / upgrade of existing trunking; comms cabinet and security bars to the windows; all Works are to be undertaken in line with the CPNI Accreditation / Compliance / Best Practice and the Works are to be certified and confirmed as compliant upon completion;

at [REDACTED] ('the Works') and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements ('the Employer's Requirements');

**Second** in response to the Employer's Requirements the Contractor has supplied to the Employer:

- Documents showing and describing the Contractor's proposals for the design and construction of the Works ('the Contractor's Proposals'); and
- An analysis of the Contract sum ('the Contract Sum Analysis'); as set out within Appendix 1

**Third** the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements;

**Fourth** for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

**Fifth** the division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars;

**Sixth** where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;

**Seventh** whether any of Supplemental Provisions 1 to 10 apply is stated in the Contract Particulars;

## **ARTICLES**

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

#### **Article 1: Contractor's obligations**

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

#### **Article 2: Contract Sum**

The Employer will pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of two hundred and twenty thousand, nine hundred and fifty-five pounds and forty pence (£220,955.40) ('the Contract Sum') or such other sum as becomes payable under this Contract.

The Employer is an end user for the purposes of section 55A VAT Act 1994 relating to the reverse charge for building and construction services. Please issue us with normal VAT invoices, with VAT charged at the standard rate. The Employer will not account for the reverse charge.

#### **Article 3: Architect/Contract Administrator**

Further purposes of this Contract the Employer's Agent is [REDACTED] or such other person as the Employer nominates in [REDACTED] place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions.

#### **Article 4: Employer's Requirements and Contractor's Proposals**

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

#### **Article 5: Principal Designer**

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

#### **Article 6: Principal Contractor**

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

#### **Article 7: Adjudication**

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 9.2.

#### **Article 8: Arbitration**

Where Article 8 applies, then, subject to Article 7 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with Schedule 1 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

## Article 9: Legal proceedings

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

## CONTRACT PARTICULARS

(an asterisk\* indicates text that is to be deleted as appropriate)

Clause etc	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is not a 'contractor' for the purposes of the CIS
Fifth Recital	Description of the Sections (if any) <i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of the documents in which they are shown.)</i>	
Sixth Recital	Framework Agreement (if applicable) <i>(state date, title and parties)</i>	
Seventh Recital and Schedule 3	Supplemental Provisions – Part I <i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)</i>	
	Named Key Sub-contractors	Supplemental Provision 1 does not apply
	Valuation of Changes – Contractors estimates	Supplemental Provision 2 applies
	Loss and expenses – Contractor's estimates	Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions – Part 2 <i>(Where neither entry against one of the Supplemental Provisions 4 to 1 is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	Supplemental Provision 4 applies
	Collaborative working	Supplemental Provision 5 applies
	Health and safety	Supplemental Provision 6 applies
	Cost savings and value improvements	Supplemental Provision 7 applies



Clause etc	Subject	
	Sustainable development and environmental considerations	Supplemental Provision 8 applies
	Performance Indicators and monitoring	Supplemental Provision 9 does not apply
	Notification and negotiation of disputes	Supplemental Provision 10 does not apply
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee  Contractor's nominee  Or such replacement as each Party may notify to the other from time to time
Article 4	Employer's Requirements (State reference numbers and dates or other identifiers of the relevant documents.)	As set out and detailed within Appendix 1.
Article 4	Contractor's Proposals (State reference numbers and dates or other identifiers of the relevant documents.)	As set out and detailed within Appendix 1.
Article 4	Contract Sum Analysis (State reference numbers and dates or other identifiers of the relevant documents.)	As set out and detailed within Appendix 1.
Article 8	Arbitration (If neither entry is deleted, Article 8 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, <u>it must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply
1.1	Base Date	September 2022
1.1	BIM Protocol (where applicable (State title, edition, date or other identifiers of the relevant documents.)	
1.1	Date for Completion of the Works (Where completion by Sections does not apply.)	The works are to be completed 5 weeks from the commence of the works.
	<del>Sections: Dates for Completion of Sections</del>	<del>Section :</del>  <del>Section :</del>

Clause etc	Subject	
		<del>Section</del> : <del>Section</del> :
1.7	Addresses for service of notices by the Parties <i>(If none stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i>	Employer  TBC  Contractor TBC
2.3	Date of Possession of the site <i>(Where possession by Sections does not apply.)</i>	The Contractor will be provided 3 weeks advance notice that Possession of the site is available to Commence the Works.
	<del>Sections: Dates of Possession of Sections</del>	<del>Section : 20</del>  <del>Section : 20</del>  <del>Section : 20</del>  <del>Section : 20</del>
2.4	Deferment of possession of the site <i>(Where possession by Sections does not apply.)</i>	Clause 2.4 applies  Maximum period of deferment (if less than 6 weeks) is
	<del>Sections: deferment of possession of Sections</del>	<del>Clause 2.4</del> <del>*applies/does not apply</del>  <del>Maximum period of deferment (if less than 6 weeks) is</del> <del>Section _____ :</del> <del>Section _____ :</del> <del>Section _____ :</del> <del>Section _____ :</del>
2.17.3	Limit of Contractor's liability for loss of use etc. (if any)	Liability limited to value of insurance provision of £10m.
2.29.2	Liquidated damages <i>(where completion by Sections does not apply)</i>	At the rate of £250 per week or part thereof.
	<del>Sections: rates of liquidated damages for each Section</del>	<del>Section _____ : £ _____ per</del> <del>Section _____ : £ _____ per</del> <del>Section _____ : £ _____ per</del> <del>Section : £ per</del>

Clause etc	Subject	
2.34	<del>Sections: Section Sums</del>	<del>Section : £</del> <del>Section : £</del> <del>Section : £</del> <del>Section : £</del>
2.35	Rectification Period (where completion by Sections does not apply) (If no other period is stated, the period of 12 months.)	12 Months from the date of practical completion of the Works
	<del>Sections: Rectification Periods</del> (If no other period is stated, the period is 6 months.)	<del>Section : months</del> <del>Section : months</del> <del>Section : months</del> <del>From the date of practical completion of each Section</del>
4.7	Advance payment (Not applicable where the Employer is a Local or Public Authority)	Clause 4.6 does not apply  If applicable:  The advance payment will be £ / per cent of the Contract Sum and will be paid to the Contractor on =  It will be reimbursed to the Employer in the following amount(s) and at the following time(s)
4.6	Advance Payment Bond (Not applicable where the Employer is a local or Public Authority) (Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)	An advance payment bond is not required as not advance payment is to be made.
4.7.1	Method of payment – alternatives (If no Alternative is selected, Alternative B applies.)	periodically in accordance with Alternative B (clause 4.13)

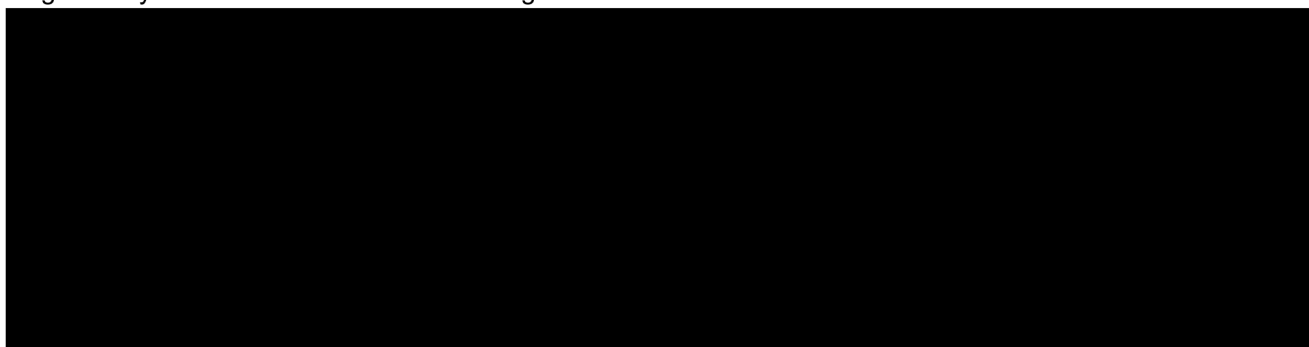
	Alternative A: Stage Payments	<p>The stages are</p> <p><del>*set out in the following document</del></p> <p><del>/</del></p> <p><del>*as follows</del></p>
	Stages (insert brief description)	<p>Cumulative _____ value</p> <p>£</p> <p>£</p>
4.7.2	<p>Interim Payments – Interim Valuation Dates</p> <p><i>(The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)</i></p>	<p>The first Interim Valuation Date is 30<sup>th</sup> of September 2022</p> <p>and thereafter the same date in each month or the nearest Business Day in that month</p>
4.15.4	<p>Listed Items – uniquely identified</p> <p><i>(Delete the entry if no bond is required)</i></p>	<p><del>*For uniquely identified Listed Items a bond in respect of payment for such items is required _____ for</del></p> <p><del>£</del></p>
4.15.5	<p>Listed Items – not uniquely identified</p> <p><i>(Delete the entry if clause 4.15.5 does not apply.)</i></p>	<p><del>*For Listed Items that are not uniquely identified a bond in respect of payment for such items is required _____ for</del></p> <p><del>£</del></p>
4.17	<p>Contractor's Retention Bond</p> <p><i>(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars below.)</i></p>	<p>Clause 4.17</p> <p>does not apply</p> <p><del>If clause 4.17 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is</del></p> <p><del>£</del></p> <p><del>For the purposes of clause 6.3 of the bond, the expiry date shall be</del></p>
4.18.1	<p>Retention Percentage</p> <p><i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)</i></p>	<p>Nil Per cent</p>

5.5	Daywork	The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document – Nil
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than.	£5,000,000  for any one occurrence or series of occurrences arising out of one event
6.5.1	Insurances – liability of Employer	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event  £10,000,000
6.7 and Schedule 3	Works insurance – Insurance Options applicable	Schedule 3: Insurance Option C applies
	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	Nil per cent
	Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal dates <i>(as supplied by the Contractor)</i>	
	Where Insurance Option C applies, paragraph C.1 <i>(Unless otherwise stated, paragraph C.1 applies. If it is not to apply state the reference number and date or other identifier of the replacement document(s).)</i>	Is replaced by the provisions of the following document(s)  NHS PS is a self-insuring through NHS Litigation Authority.  (the 'C.1 Replacement Schedule')
6.10 and Schedule 3	Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool re Cover is required.)</i>	Are set out in the following document(s)

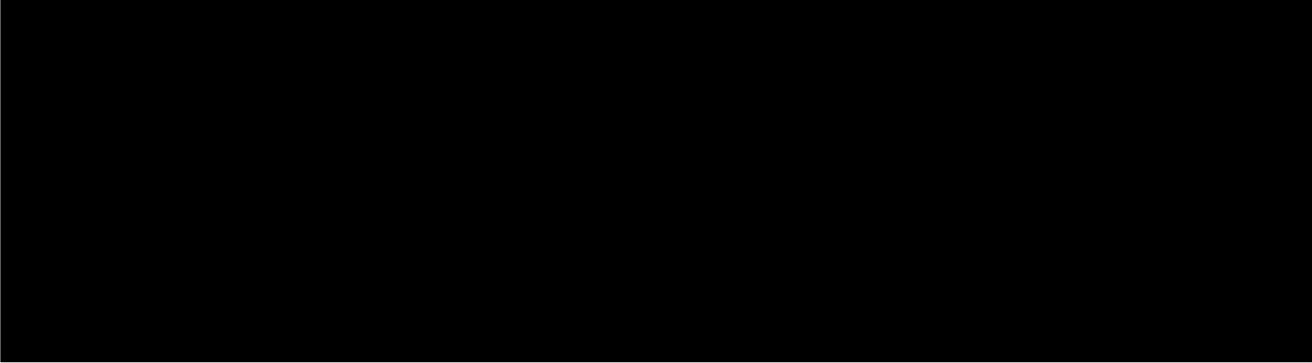
6.15	<p>Professional Indemnity Insurance</p> <p>Level of cover <i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i></p> <p><i>(If no amount is stated, insurance under clause 6.15 shall not be required.)</i></p> <p>Cover for pollution and contamination claims <i>(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i></p> <p>Expiry or required period of Professional Indemnity Insurance is <i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works.)</i></p>	<p>Amount of indemnity required relates to claims or series of claims arising out of one event/ and is £2,000,000</p> <p>is not required</p> <p>12 years</p>
6.17	<p>Joint Fire Code</p> <p>If the Joint Fire Code applies, state whether the insurer under Insurance Options A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':</p>	<p>The Joint Fire Code does not apply</p> <p>Yes</p>
6.20	<p>Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i></p>	<p>The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor</p>
7.3.1	<p>Performance bond or guarantee from bank or other approved surety <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i></p> <p>The required form of the bond or guarantee is set out in</p>	<p>is not required</p> <p>Schedule 6</p>
	Initial value	<del>10 per cent of the Contract Sum</del>

	<p>Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be  <i>(If no entry is selected, the date shall be the date of practical completion of the Works.)</i></p>	<p><del>*The date of practical completion of the Works/</del></p> <p><del>*2 weeks after the date of expiry of the Rectification Period for the Works/</del></p> <p><del>*The date for issue of the Notice of Completion of Making Good for the Works</del></p>
	<p>Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is  <i>(If not other percentage is stated, it shall be 50 per cent.)</i></p>	-per cent
7.3.2	Guarantee from the Contractor's parent company	is not required
	Parent company's name and registration number	
	The required form of the guarantee is set out in	Schedule 5
8.9.2	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	
8.11.1.1 to 8.11.1.6	Period of suspension <i>(If none is state, the period is 2 months)</i>	
9.2.1	<p>Adjudication</p> <p>Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i></p>	<p>The Adjudicator is  The Royal Institution of Chartered Surveyors</p>

Signed by or on behalf of NHS Digital the



Signed by or on behalf of Workspace Technology



## APPENDIX 1 – SCHEDULE OF AMENDMENTS

### CONDITIONS

#### SECTION 1 DEFINITIONS AND INTERPRETATION

Amend existing definitions as follows:

<b>Article</b>	Add to the end of the definition, before the full stop: "as amended by the Schedule of Amendments"
<b>Conditions</b>	Add to the end of the definition, before the full stop: "and any additional clauses and provisions and amendments to the Conditions as stated in the Schedule of Amendments"
<b>Employer</b>	Add to the end of the definition, before the full stop: "and his successors and assigns"
<b>Purchaser</b>	Any person to whom the Employer transfers or agrees to transfer his interest in all or part of the Works
<b>Recitals</b>	Add to the end of the definition, before the full stop: "as amended by the Schedule of Amendments"



**Tenant** Any person to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works

Insert new definitions as follows:

**Conviction** other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);

**Data Protection Law** the Data Protection Act 1998 and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including, on and from 25 May 2018, the GDPR, and the LED together with all legally binding guidance and codes of practice issued or adopted by a regulator (or group of regulators) with jurisdiction over the data processing arrangements contemplated in this Contract

**Deleterious** any materials or equipment that are generally accepted or suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person, or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing or possibly reducing, the normal life expectancy of the Works or any part or component of the Works, or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or the guidance contained in the document "good practice in the selection of construction materials" (current version)

**GDPR** the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

**Good Building Practice** the best practice generally followed by contractors skilled and experienced in carrying out construction works of similar scope, complexity, character, value and size as the Works

**Handover Documents** the documents in an agreed list

**Interested Party** any person who has an interest in all or part of the Works

**Key Sub-contractor** any domestic sub-contractor or supplier employed by the Contractor to undertake any construction works including, but not limited to works relating to the following works packages:

**Landlord** any person who owns the freehold or the long leasehold of the land in title number [insert], being that land on which the Works are being carried out

**LED** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Met Office**

**Novated Consultants** means those consultants to be novated to the Contractor pursuant to clause 3.19

**Personal Data** personal data as defined in the Data Protection Law which is supplied to the Contractor by the Employer or obtained by the Contractor in the course of performing

the Works.

**Practical Completion**

See clause 2.27.

**Site**

**Site Conditions**

the conditions of the Site including (but not limited to) climatic, hydrological, ecological, environmental, geotechnical, geological and sub-surface conditions

**Snagging Item**

any minor outstanding items of work, minor defects and other minor faults including external works which should be made or completed by which individually or collectively would not adversely affect the beneficial use, occupation or enjoyment of the relevant part of the Works so as to prevent the Architect/Contract Administrator certifying practical completion (save that snagging items shall not include soft or hard landscaping and/or the completion of roads and footpaths as each are necessary for the safe use and enjoyment of the Works or any part) and "Snagging Items" shall be construed accordingly

**Staff**

all persons employed or engaged by the Contractor to perform its obligations under this Contract including any subcontractors and person employed or engaged by such subcontractors

**Standard of Care**

all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in size, scope, value, character and complexity to the Works

**Sub-Consultant**

means any consultant engaged or to be engaged by the Contractor (including any replacement consultants) in relation to the Works to provide design and other professional services in addition to the Novated Consultants

**Weather Conditions**

the cumulative rainfall (mm), the number of days with rainfall more than 5mm, the number of days with minimum air temperature less than 0 degrees Celsius and the number of days with snow lying at 12:00 hours GMT<sup>2</sup>

**Weather Data**

the records of past Weather Conditions for each calendar month which were recorded at the Met Office

**Clause 1.8 .1.1**

Delete current wording and insert "Not used".

**Clause 1.9**

In line 1 delete "Save as stated in clause 1.8, no" and insert "No"

**Clause 1.11**

At the end of line 1 before "." insert "and, without prejudice to either Party's right to refer a dispute of difference to adjudication pursuant to the Housing Grants, Construction and Regeneration Act 1996, the courts of England and Wales shall have jurisdiction over any dispute or difference which may arise between the Parties."

**Clause 1.12**

Insert the following as new clause 1.13:

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<sup>2</sup> To be updated with any other weather conditions that may be considered adverse i.e. wind speed.

### **"Priority of documents**

The documents comprising this Contract shall be construed in the following order of precedence:

- 1.12.1 the Articles of Agreement (as amended by the Schedule of Amendments);
- 1.12.2 the Schedule of Amendments, including the Contract Particulars and the Appendices;
- 1.12.3 the conditions of the JCT Design and Build contract document (2016 edition);
- 1.12.4 the Employer's Requirements (subject to any changes and variations to the same agreed pursuant to the terms of this Contract); and
- 1.12.5 any other contract document."

### **Clause 1.13**

Insert the following as new clause 1.13:

### **"Deletion of references**

All references to arbitration, fluctuations and fluctuation provisions in this Contract (including the relevant definitions in clause 1.1 shall be deemed to be deleted."

## **SECTION 2: CARRYING OUT THE WORKS**

### **Clause 2.2.1**

In sub-clause 2.2.1, after "so far as procurable, be" add "of satisfactory quality and"

### **Clause 2.2.6**

Insert new clause as follows:

"The Contractor shall not specify or use any products or materials in the Works, which, at the time of specification or use, are Deleterious."

### **Clause 2.2.7**

Insert new clause as follows:

"Without prejudice to clause 2.2.6, the Contractor shall not suffer or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious. The Contractor shall immediately notify the Employer if he becomes aware of any such use."

### **Clause 2.7.6**

Insert new clause 2.7.6:

- "2.7.6.1 The Contractor shall not (and shall procure that the Sub-Consultants Key Sub-contractors and/or Novated Consultants shall not) disclose to any person or publish or make any statement concerning this Contract or the Works or any matters arising from or relating to the Contract or the Works directly or indirectly without the prior confirmation of the Employer during the Works or at any time thereafter (except as may be required by law or in order to properly perform its obligations under the Contract or in the case of Sub-Consultants and Key Sub-contractors as may be required in order to properly perform their obligations under their contracts or terms of engagement (as the case may be) in relation to the Works)).
- 2.7.6.2 Both the Employer and the Contractor shall keep confidential and shall not without the other's written consent disclose to any third party any trade or business secrets or similar confidential information supplied by the other Party except as shall be absolutely necessary for the proper performance of this Contract.

- 2.7.6.3 The Contractor shall not (and shall procure that the Sub-Consultants and Key Sub-contractors shall not) take, or permit to be taken any photographs of the Works or the Site without obtaining prior permission of the Employer.
- 2.7.6.4 The Contractor shall not:
- 2.7.6.5.1 use the Contractor's Design Documents for any purpose whatsoever connected with the Site other than in the carrying out of the Works under this Contract; and/or
  - 2.7.6.5.2 without the Employer's consent use the Contractor's Design Documents to design any other project or development which is of similar design appearance or concept to the Works.
- 2.7.6.5 The provisions of clauses 2.7.6 shall continue in full force and effect notwithstanding any suspension or determination of the employment of the Contractor and/or the determination of this Contract."

#### **Clause 2.11**

Delete the current wording and insert "Not used."

#### **Clause 2.12**

Delete the current wording and insert "Not used."

#### **Clause 2.14      Discrepancies in Documents**

Delete clause 2.14 and insert:

- "2.14.1 Where the Contractor notifies the Employer of an inadequacy, discrepancy or a divergence under clause 2.13, subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the inadequacy or discrepancy or divergence shall be dealt with. The Contractor shall comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract.
- 2.14.2 Where the discrepancy results from an Instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy and where the Parties have agreed a fixed price for the carrying out of the initial Change, the Contractor shall comply with any instruction for a further Change to resolve the discrepancy without any adjustment of the Contract Sum and/or extension of time for the completion of the Works."

#### **Clause 2.15.2.1**

In line 1 delete "If" and insert "Subject to clause 2.15.3, if"

#### **Clause 2.15.2.1**

In sub-clause 2.15.2.1 after "change in the Statutory Requirements" insert "that was not foreseen by the Contractor at the Base Date and that could not reasonably have been foreseen by a competent contractor at the Base Date"

## Clause 2.17

Delete clause 2.17 and insert:

### "2.17           **Design work**

- 2.17.1           The Contractor shall, to the extent set out in clause 2.17.2.1 below, be fully responsible in all respects for the design of the Works, including:
- 2.17.1.1           any design contained in the Employer's Requirements and for any discrepancy in or divergence between the Employer's Requirements and/or the Contractor's Proposals and/or any drawings, details documents and other information submitted by the Contractor in accordance with clause 2.8;
  - 2.17.1.2           the coordination and integration of all design and the interface between design elements for the Works whether carried out by the Contractor or by any other party engaged on the Works and the Contractor shall adopt and take responsibility for any design work in relation to the Works which may be carried out or may have been carried out by professional consultants or specialist sub-contractors or by any other person at the request of the Employer;
  - 2.17.1.3           all aspects of design development, selection of goods and materials and the satisfaction of performance specifications included or referred to in the Employer's Requirements, the Contractor's Proposals, this Contract or any Change.
- 2.17.2           Without prejudice to any express or implied warranties or conditions, or to the generality of clause 2.17.1, the Contractor warrants to the Employer that it shall use the Standard of Care when:
- 2.17.2.1           designing of the Works (including any design carried out by any design consultant or any subcontractor with design responsibility or by any other person whether or not engaged or employed by the Contractor);
  - 2.17.2.2           to ensure that the Contractor designs and constructs the Works in compliance with all Statutory Requirements and Good Industry Practice;
  - 2.17.2.3           to ensure the Works comprise or will comprise only materials and goods which are new and of sound and satisfactory quality and all workmanship and fabrication will be to standards consistent with the Contract requirements.

## Clause 2.21

Delete the second sentence and insert:

"Ownership of all materials and goods intended for the Works shall pass to the Employer when they are [delivered to Site] [incorporated in the Works] and their value has been included in any Interim Certificate, but subject to Insurance C (if applicable), the Contractor shall remain responsible for loss or damage to them. It shall be a condition of the inclusion in any Interim Certificate of the value of any materials or goods that, such materials or goods shall become the property of the Employer."

## Clause 2.22

Insert at the end of the clause:

"The Contractor shall provide the Employer with a vesting certificate in the form set out in Schedule 4.

**Clause 2.24.1**

Delete clause 2.24.1 and insert:

"If and whenever it becomes reasonably apparent and/or whenever information comes to the attention of the Contractor which indicates that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall as soon as reasonably practicable give notice to the Employer of the material circumstances, including the cause or causes of the delay and shall identify in the notice any event which in his opinion is a Relevant Event and provide a narrative explaining in reasonable detail the circumstances of the event and documentary evidence supporting any extension of time claimed. If the Contractor does not notify the Employer of a delay within 8 weeks of becoming aware of the event he is not entitled to any extension of time."

**Clause 2.25.1.3**

Insert new clause 2.25.1.3:

"and provided that (a) the Contractor has complied with clause 2.25.6 and (b) any delay caused by a Relevant Event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account."

**Clause 2.25.6**

Add a new sub-clause 2.26.6.5:

"(save where the Relevant Event is as defined in clause 2.29.9 and provided, in that case, that the Contractor has complied fully with any obligation upon it to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

**Clause 2.26.7**

Insert at the end of the clause:

"provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of such work as soon as reasonably practicable after the date of this Contract so as not to delay or disrupt the local authority or Statutory Undertaker in relation to such work;"

**Clause 2.26.8**

Delete clause 2.26.8 and insert:

" a Weather Condition is recorded:

2.27.8.1 within a calendar month;

2.27.8.2 before the Completion Date; and

2.17.8.3 at the Met Office,

the value of which, by comparison with the Weather Data, is shown to occur on average less than once in ten years;"

**Clause 2.26.10**

Insert at the end of the clause:

"provided that the Works, or supplies of labour or materials, are directly affected by such civil commotion or the use or threat of terrorism"

**Clause 2.26.11**

Insert at the end of the clause:

"provided that such strike, lock-out or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

**Clause 2.26.12**

In line 2 before ";," insert "which the Contractor could not reasonably have foreseen at the Base Date".

**Clause 2.27**

Delete clause 2.27 and insert:

**"Practical Completion**

- 2.27.1 The Contractor shall give a notice to the Employer in writing indicating the date on which each Section and the Works will have in the Contractor's opinion reached Practical Completion. Such notice shall be served at least 15 Working Days prior to the anticipated date of Practical Completion.
- 2.27.2 Following receipt of the notice from the Contractor in Clause 2.27.1 above the Employer will arrange with the Contractor to inspect each Section and the Works for the purposes of ascertaining whether or not such section and such works have been completed.
- 2.27.3 The Employer may within 5 Working Days of carrying out its inspection serve a notice on the Contractor detailing any items of works which are required to be done before each Section and the Works can be certified as having reached Practical Completion.
- 2.27.4 Upon receipt of such a notice in clause 2.27.3 above the Contractor shall forthwith proceed to remedy the defects specified therein and once the defects have been remedied shall serve a notice on Employer inviting the Employer to re-inspect the Works within 3 Working Days whereupon the procedure in clauses 2.27.1 to 2.27.3 shall be repeated.
- 2.27.5 If the Employer is satisfied that each Section and the Works have been completed in accordance with this Contract and the Contractor has complied with Clauses 2.27.6 and 3.16.5, the Employer shall give a written statement to the Contractor confirming that each Section and the Works have been completed, which statement shall not be unreasonably withheld or delayed and Practical Completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such statement.
- 2.27.6 The Employer shall not be obliged to issue the Practical Completion Statement unless all documents relevant to each Section and the Works and the use and occupation of each Section and the Works have been provided to the Employer, including but not limited to those contained in the list of Handover Documents.
- 2.27.7 For the purposes of this Contract, Practical Completion shall mean suitable for occupation and fully compliant with all Statutory Requirements current at the date of handover. The Employer at his discretion may give a written statement of Practical Completion notwithstanding that Snagging and/or final commissioning and adjustment of mechanical and electrical services installations remain to be completed, provided always that the number of Snagging Items is not excessive. Any such Snagging Items shall be completed as soon as reasonably practicable but in any case not later than 5 Working Days from the date of issue of the statement of Practical Completion. Where such Snagging Items have not been completed within this time period, the Employer may employ others to carry out such work and deduct the cost of the same from the Contract Sum or recover such sum as a debt."

**Clause 2.32**

At the end of the clause before "." insert:

"provided that the Employer shall not be required to issue such notice any earlier than 14 days after the end of the Rectification Period applicable to such Relevant Part"

#### **Clause 2.36**

Add to the end of clause 2.36, before the full stop insert:

", provided that the Employer shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period."

#### **Clause 2.37**

Add a new sentence at the end of clause 2.37:

"In addition to the preceding, the Contractor shall, no less than 10 Working Days prior to Practical Completion of the Works, deliver to the Employer three paper copies and two electronic copies of the following documents:

- 2.37.1 the drawings, plans, sections and specifications;
- 2.37.2 all draft of maintenance and operating manuals (including copies of all test and commissioning certificates and/or statements);
- 2.37.3 originals of all warranties, guarantees and certificates or other documents in respect of plant and machinery installed in the Works;
- 2.37.4 schedule listing the names and addresses of all Key Sub-contractors, Sub-Consultants and suppliers who have been involved in or concerned with the Works;
- 2.37.5 the original notice of passing of plans under the building regulations and confirmation from the relevant authority that all conditions under the building regulations have been complied with; and
- 2.37.6 the original copy of the health and safety file.

The Contractor shall not be entitled to any release of Retention until all of the above documents have been provided."

#### **Clause 2.38.2**

In line 1 delete "Subject to all sums due and payable to the Contractor having been paid the Employer shall have" and insert "The Contractor hereby grants to the Employer".

#### **Clause 2.39**

Insert new clause as follows:

##### **2.39 Data Protection**

###### **2.39.1 General**

- 2.39.1.1 Unless the context otherwise requires, the terms "controller", "data processor" and "data controller" have the meanings given in Data Protection Law.
- 2.39.1.2 The Parties agree in relation to all Personal Data, the Contractor shall process Personal Data as an independent controller in its own right. Nothing in this Contract or the arrangements contemplated by it is intended to construe either party as joint data controllers with one another, with respect to the Personal Data.
- 2.39.1.3 The Parties acknowledge that for the purposes of Data Protection Law, the Contractor is a data controller and it is the data processor of Personal Data in



accordance with its obligations pursuant to carrying out the Works and that it is not anticipated that it will act as a data processor for the Employer under the terms of this Contract.

- 2.39.1.4 The Contractor will at all times comply with the Data Protection Law as a data controller, if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Law covering the data processing to be performed by it in connection with the Works.
- 2.39.1.5 The Contractor will, and it will procure that any sub-contractor whose services it uses in order to perform the Works, only undertake such processing of Personal Data as is reasonably required in connection with the Works and it will, and it will procure that any sub-contractor will, at all times comply with Data Protection Law in relation to its, and their, in the case of any sub-contractors, obligations as data processors.

#### **2.39.2 No Disclosure**

- 2.39.2.1 The Contractor shall not disclose Personal Data to any third parties other than:
  - (a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works; or
  - (b) to the extent required under a court order,

provided that disclosure under clause 2.39.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 2.39.2.1 and that the Contractor shall give notice in writing to the Employer of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under clause 2.39.2.1(b) immediately upon becoming aware of such a requirement.
- 2.39.2.2 The Contractor shall bring into effect and maintain all adequate and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, theft, use or disclosure of Personal Data and shall protect against any anticipated threats or hazards to the security or integrity of the Personal Data, and detect and prevent unauthorised processing of, or unauthorised access to the Personal Data, including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 2.39.2.3 The Employer may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor. Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Employer can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Law.

#### **2.39.3 Indemnity by the Contractor**

The Contractor shall indemnify and keep indemnified the Employer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 2.39 or failure to comply with Data Protection Law by the Contractor and/or any sub-contractor of the Contractor.

### **SECTION 3 – CONTROL OF THE WORKS**

#### **Clause 3.4**

In clause 3.4, after "JCT Design and Build Sub-Contract." insert:

"If the Contractor does not consider it appropriate to appoint to engage a Sub-Contractor using the relevant version of the JCT Design and Build Sub-Contract it shall first obtain approval of the Employer and shall, on request, provide a full copy of that different form of sub-contract to the Employer."

**Clause 3.6**

In line 5 delete "and an appropriate deduction shall be made from the Contract Sum" and insert "which amount may be deducted by him from any sums due or to become due to the Contractor under this Contract or may be recoverable from the Contractor by the Employer as a debt due".

**Clause 3.11**

In line 1 delete "The" and insert "If and as required, the"

**Clause 3.13.1**

In line 1 after "removal from the site" insert "or rectification".

**Clause 3.17**

Insert new clause 3.17:

"3.17 The Contractor shall in carrying out the Works observe the requirements of the Disclosure and Barring Service in accordance with the Safeguarding Vulnerable Groups Act 2006, any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health & Safety Commission or published by the Health & Safety Executive (or their replacements from time to time) as applicable to the Works."

**Clause 3.18**

Insert new clause 3.18:

**"3.18 Novated Consultants**

The Contractor shall (to the extent that it has not already done so) forthwith sign as deeds and complete deeds of novation in the form to be agreed by the Employer with the Novated Consultants."

**Clause 3.19**

Insert new clause 3.19:

**"Contractor's liability**

"3.19 The Contractor acknowledges that the Contractor's liability under this Contract shall not be released, diminished or in any other way affected by:

- 3.19.1 any direction, admission, approach, consent, approval, confirmation, comment, sanction acknowledgement or advice made by given by or on behalf of the Employer;
- 3.19.2 any act, omission or delay by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works;
- 3.19.3 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer or the Employer's Agent;
- 3.19.4 the inclusion of the value of any work, materials or goods in any Interim Payment;
- 3.19.5 the appointment of or failure to appoint any clerk of works or other person to inspect or report in respect of the Works or by any act or omission of any clerk of works or other person whether or not such act or omission might give rise to an independent

liability to such clerk of works or another person to the Employer and/or any third party;

- 3.19.6 the issue of the Practical Completion Statement, any Section Completion Statement and/or the Notice of Completion of Making Good Defects."

## **SECTION 4 – PAYMENT**

### **Clause 4.9.1**

Delete "14 days" and replace with "30 days".

### **Clause 4.9.8**

Insert new clause 4.9.8:

"Where a notice complying with clause 4.9.2 or 4.9.5 has been given and either Party refers a dispute concerning such notice(s) to adjudication under clause 9.2 and the Adjudicator finds that any further amount over and above that set out in the notice should be paid then payment of such amount should be made not later than seven (7) days from the date of the Adjudicator's decision or the final date for that instalment, whichever is the later."

### **Clause 4.9.9**

Insert new clause 4.9.9:

"On receipt of the Employer's Payment Notice given under clause 4.7.5 or the Final Payment Notice under clause 4.8.1 the Contractor shall issue a VAT invoice for the sum stated in the Payment Notice or the Final Payment Notice. If the Employer does not issue a Payment Notice in accordance with clause 4.7.5 or a Final Payment Notice in accordance with 4.8.1 the Contractor shall issue a VAT invoice for the amount set out in the Interim Payment Application."

### **Clause 4.10.4**

In lines 1 to 2 delete "The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent him" and insert "The Employer shall not be prevented from".

### **Clause 4.16**

Delete clause 4.16 and insert:

"The Employer's interest in the Retention shall not be fiduciary and the relationship of the Employer and the Contractor with regard to the same shall be solely that of debtor and unsecured creditor. Any right of the Employer to deduct or to set off any amount (whether arising under any express term or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor whether or not such monies consist of or include any Retention. The Employer shall:

4.16.1 have no obligation to invest the Retention or any part of the Retention;

4.16.2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner; and

4.16.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including without limitation interest and income arising from the Retention)."

### **Clause 4.17.1**

At the end of clause 4.17 insert a new paragraph:

"provided always where the Employer has exercised its discretion under clause 2.21 and notwithstanding any other provisions of this Contract, the Employer shall not be obliged to pay to the Contractor any part of the Retention deducted prior to and upon practical completion unless and until the Contractor has carried out and completed to the reasonable satisfaction of the Employer, all work and/or remedied all defects in the Works as may be notified to the Contractor as outstanding and to be carried out or remedies (as the case may be) as a condition of practical completion or as may be specified as Snagging Items provided that if the Employer has been unable for any reason to provide

access to the Contractor to remedy or complete the defects or outstanding work within three months of the date of practical completion the Employer shall pay to the Contractor the half of the Retention otherwise due when the Works have reached practical completion."

**Clause 4.18.1**

At the end of clause 4.18.1 insert a new paragraph:

"provided always where the Employer has exercised its discretion under clause 2.27 and notwithstanding any other provisions of this Contract, the Employer shall not be obliged to pay to the Contractor any part of the Retention deducted prior to and upon practical completion unless and until the Contractor has carried out and completed to the reasonable satisfaction of the Employer, all work and/or remedied all defects in the Works as may be notified to the Contractor as outstanding and to be carried out or remedies (as the case may be) as a condition of practical completion or as may be specified as Snagging Items provided that if the Employer has been unable for any reason to provide access to the Contractor to remedy or complete the defects or outstanding work within three months of the date of practical completion the Employer shall pay to the Contractor the half of the Retention otherwise due when the Works have reached practical completion."

**Clause 4.20.5**

**Insert new clause 4.20.5**

"If the Contractor does not notify the Employer of an effect within 8 weeks of becoming aware of the matter he is not entitled to any loss and/or expense."

**Clause 4.21A**

Insert new clause 4.21A:

"Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under clause 4.21 in respect of any costs, loss or expenses incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of their employees or agents."

**Clause 4.23**

Delete clause 4.23 and insert:

"Reimbursement of the Contractor for loss and/or expense under clauses 4.19 to 4.22 shall be deemed to be full compensation for the Contractor in respect of which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law."

**SECTION 5 – CHANGES**

**Clause 5.6.2**

In the paragraph below sub-clause 5.6.2 after "executed," add:

"provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"

**SECTION 6 – INJURY, DAMAGE AND INSURANCE**

**Clause 6.1**

In line 1 after "expense" insert "damage, cost"

In line 3 after "carrying out the Works" insert "including the performance of the Contractor's obligations under clause 2.38 or out of the presence on site of any person or persons for any other reason".

**Clause 6.2**

At the end of line 4 after "the Works" insert "or of any obligation pursuant to clause 2.35".

**Clause 6.3A**

Insert the following new clause 6.3A:

"Without prejudice to the generality of clause 6.2 the Contractor shall at all times prevent public or private nuisance or any other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any statutory undertaking arising from the carrying out of the Works or of any obligation pursuant to clause 2.35 and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expense, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference caused by deliberate or negligent acts of the Contractor or its sub-contractors, employees or agents. For the avoidance of doubt, the Employer shall use reasonable endeavours to mitigate such expense, liabilities and losses."

**Clause 6.4.1**

In line 2 after "maintain" insert "until the issue of the Notice of Completion of Making Good".

**Clause 6.7**

Insert at the end of the clause:

"Option A, B or C whichever is applicable shall not affect the responsibility of the Contractor under this Contract for any loss or damage not covered by any Joint Names Policy."

**SECTION 7 – ASSIGNMENT, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**

**Clause 7.1**

Delete and insert:

- |        |   |
|--------|---|
| "7.1.1 | The Contractor shall not without the written consent of the Employer assign the benefit of this Contract or any rights thereunder.  |
| 7.1.2  | The Employer may assign the benefit of this Contract without the Contractor's consent to any person who acquires any interest in the whole or a substantial part of the Works or to one or more person(s) jointly and severally. The Employer will notify the Contractor in writing, as soon as practicable after any such assignment having taken place, of the names and addresses of the person(s) in whose favour such assignment has been made." |

**Clause 7.2**

Delete the current wording and insert "Not used."

**Clause 7.4**

Delete the current wording and insert "Not Used."

**Clause 7.5**

Delete the current wording and insert "Not used."

**Clause 7.6**

Delete "clause 7C or 7D" and replace with ""clause 7C or 7E".

**Clause 7A**

Delete the current wording and insert "Not used."

**Clause 7B**

Delete the current wording and insert "Not used."

**Clause 7C**

Delete and insert:

- "7C.1 The Contractor shall execute and deliver to the Employer within 15 Business Days of a request to do so by or on behalf of the Employer from time to time a collateral warranty in favour of the following parties:

- .1 the Landlord;
- .2 the Purchaser;
- .3 the Tenant; or
- .4 any other Interested Party.

Such collateral warranties shall be in the appropriate form set out at Schedules 1 with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

- 7C.2 If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled to withhold all sums which would otherwise be due and payable under this Contract."

#### **Clause 7D**

Delete the current wording and insert "Not used."

#### **Clause 7E**

Delete and insert:

- "7E.1 The Contractor shall procure that each and every Key Sub-contractor and Sub-Consultant shall execute and deliver to the Employer within 15 Business Days of a request to do so by or on behalf of the Employer from time to time a collateral warranty or warranties in favour of the following parties:

- .1 the Employer;
- .2 the Landlord;
- .3 the Purchaser;
- .3 the Tenant; or
- .4 any other Interested Party.

Such collateral warranties shall be in the appropriate form set out at Schedule 2 and 3 with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

- 7E.2 If the Contractor fails to procure the execution and delivery to the Employer of such deed or deeds of warranty within 15 Business Days of the request to do so the Employer shall be entitled to withhold any sums relating to the works or services carried out by the Key Sub-contractor or Sub-Consultant then in default and which would otherwise be due and payable under this Contract. Such retained amounts shall become due and payable following provision of the relevant warranties to the Employer.

- 7E.3 The Contractor shall provide to the Employer within 5 Business Days of completion of the same a certified copy of:

- 7E.3.1 the completed appointment between the Contractor and each Sub-Consultant; and

- 7E.3.2 each sub-contract between the Contractor and every Key Sub-contractor provided that the Contractor shall be entitled to delete the sub-contract sum and any commercially sensitive information from the certified copy of the sub-contract documentation to be provided in accordance with this clause."

## **SECTION 8 – TERMINATION**

#### **Clause 8.4.1.3**

Delete and insert:

"refuses or neglects to comply with any instruction or notice properly issued by the Employer;"

#### **Clause 8.4.1.6**

Insert the following as new clause 8.4.1.6:

"either refuses or neglects to comply with a written notice by the Architect/Contract Administrator requiring him to remove defective work or materials or goods that are not in accordance with this Contract or are in breach of any material term of this Contract."

#### **Clause 8.7.2**

After "the Contractor shall" and before the colon, insert: ", at the Contractor's expense"

#### **Clause 8.7.4**

After "as referred to in clause 2.35)", insert : "and at the Contractor's expense"

#### **Clause 8.7.6**

Insert the following as new clause 8.7.6:

"The Contractor shall immediately deliver to the Employer possession of the Site and the Works, notwithstanding that the validity of such determination may be disputed by the Contractor. Upon termination of the Contractor's employment under this Contract, the Contractor shall forthwith vacate the Site."

#### **Clause 8.9.1.3**

Delete the current wording and insert "Not used."

### **SECTION 9 – SETTLEMENT OF DISPUTES**

#### **Clauses 9.3 to 9.8**

Delete clauses 9.3 to 9.8 (inclusive) and insert "Not used." for each.

### **SECTION 10 – NHS PS SPECIAL CONDITIONS**

#### **Clause 10**

Insert the following as new clause 10:

"10.1 Where the Works are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Contractor:

10.1.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

10.1.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and

10.1.3 shall ensure that no person is employed or otherwise engaged in carrying out the Works if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person."

10.2 The Contractor shall ensure that the Employer is kept advised at all times of any member of Staff who subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Contractor or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients,

service users or any other person. The Contractor shall only be entitled to continue to engage or employ such member of Staff with the Employer's written consent and with such safeguards being put in place as the Employer may reasonably request. Should the Employer withhold consent the Contractor shall remove such member of Staff from being employed or otherwise engaged in carrying out the Works forthwith.

- 10.3 The Contractor shall immediately provide to the Employer any information that the Employer requests to enable the Employer to satisfy itself that the obligations set out in this Clause 10 have been met.
- 10.4 The Employer may at any time request that the Contractor remove and replace any member of Staff from carrying out the Works, provided always that the Employer will act reasonably in making such a request. Prior to making any such request the Employer shall raise with the Contractor the Employer's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Employer shall be under no obligation to have such prior discussion should the Employer have concerns regarding patient or service user safety.





# **Appendix 1 - Combined Employers Requirements, Contract Sum Analysis and Contractors Proposal**


for the Construction of a Secure Enclave at [REDACTED]  
[REDACTED]

This Document is Security Sensitive

Contract Version

July 2022

Revision #2

	<div><div></div><div><div>PREAMBLE</div><div>NHS Digital</div><div></div><div></div></div></div>	
	<div><div>1.0</div><div>Generally</div></div> <div><p>The following preamble applies:</p><div><div>1.1</div><div>The works are to be procured on a standard NHS Digital JCT Design and Build.</div></div><div><div>1.2</div><div>The successful contractor is also the Principal Designer and Contractor and will be responsible for discharging and complying with the responsibilities of the CDM Regulations.</div></div><div><div>1.3</div><div>The Contractor will be responsible for and complete the design and construction of the Secure Enclave, which is inline and meets with the Centre for the Protection of National Infrastructure (CPNI) and Catalogue of Security Equipment (CSE); along with any other necessary standards, requirements and requirements such as UKNACE / FCDO accreditation. In conjunction with the security standards, the works are also to comply with the necessary HTM / HBN; Building Control, Legislation (such as DDA), British Standards and/or Euro Codes and the relevant Best Practice Guideline for the proposed purpose and use of the building i.e. Secure Enclave.</div></div><div></div><div><div>1.8</div><div>Unless specifically mentioned, the terms "take down", "remove", "take out", "replace" shall be taken to include removal and proper disposal off site of items(s) taken down/out, removed or replaced, and associated activities / works.</div></div><div><div>1.9</div><div>All demolished and redundant materials are to be removed from the building site as the works proceeds due to the fact there is no available space for external skips, waste storage etc.</div></div><div><div>1.10</div><div>Allow for all hoardings, protection as necessary. Allow for staged removals and making good accordingly. Works to be delivered in such a manner considering it is a live, operational office.</div></div><div><div>1.11</div><div>Allow for all other works not specifically noted but which may be inferred or included within the information contained within the tender information.</div></div></div>	
	<div><div>2.0</div><div>Project Team</div></div> <div><p>The project team is as follows:</p><div><div>2.1</div><div><b>Employer:</b> NHS Digital, 7 and 8 Wellington Place, Leeds, West Yorkshire, LS1 4AP</div></div></div>	

	<div>3.0</div> <div>Contractual Provisions for Contract Particulars</div>	
	<div>3.1</div> <div>Within the Tender Pack, enclosed is a draft JCT Design and Building 2016 Contract, outlining the proposed form of contract, along with contract particulars.</div>	
	<div>3.2</div> <div>Within the draft Contract, enclosed are draft Collateral Warranties, these are only relevant should the Contractor be sub-contracting elements of the works and/or design.</div>	
	<div>4.0</div> <div>Interface and Provisions</div>	
	<div>4.1</div> <div>The work site forms part of the operational and live [REDACTED]; therefore the Contractor will be responsible for obtaining and managing any permits, licences and the like necessary to enable and facilitate the works, but also ensuring that the methodology and stakeholder engagement is proactive and the works delivered accordingly.</div>	
	<div>4.2</div> <div><b>Utilities / Services</b> - the existing services are to be utilised. Connections, commissioning and the like are to be managed and implemented with the least disruption for the Employer, therefore, to be undertaken outside of operational hours of the office and/or otherwise agreed with the relevant representatives.</div>	
	<div>4.3</div> <div><b>Welfare and Principal Contractor Provisions</b> - as noted above; the available space from the Employer is the footprint of the worksite, therefore, the Contractor is to allow for all necessary welfare provisions within that defined area. The Employer is not able to provide additional space.</div>	
	<div>5.0</div> <div>Health &amp; Safety / CDM</div>	
	<div>5.1</div> <div>The Contractor will be the Principal Designer and Contractor for the project under CDM Regulations.</div>	
	<div>5.2</div> <div>The Contractor is responsible for completing the Pre-Construction Information as the Principal Designer.</div>	
	<div>5.3</div> <div>The Contractor is to ensure and implement a suitable and safe system of works to be issued to the Employer for approval prior to the commencement.</div>	
	<div>5.4</div> <div>The Contractor is responsible for site security; supervision; and this includes but is not limited to: + Pedestrian Management / Safety Signage + Principal Contractors duties as per CDM Regulations. + Accommodating 3rd Party Access + Welfare, Storage and Office + Site Hoarding and Security</div>	
	<div>6.0</div> <div>Site Management &amp; Coordination</div>	
	<div>6.1</div> <div>Normal working hours are to be Monday to Friday 08:00- 17:00 (Excl Bank Holidays) and Saturday between 09:00-13:00. Any works outside of normal business hours are deemed included but will be required to be agreed in advance to ensure minimal disruption.</div>	
	<div>6.2</div> <div>Vehicle parking / deliveries should not adversely impact the adjoining property including local stakeholders / users. For the avoidance of doubt, the Employer cannot provide any car park spacing, therefore, alternative parking arrangements are to be made for the Contractors site based workforce, [REDACTED]</div>	
	<div>6.3</div> <div>As the works are taking place in an busy, occupied and operational building, the Contractor must make appropriate arrangements to ensure safety to their personnel plus that of the patients, staff and that of the general public at all times.</div>	
	<div>6.4</div> <div>The Contractor is responsible for liaison and co-ordination with the various stakeholders.</div>	
	<div>6.5</div> <div>All waste / surplus material shall be regularly removed from site and disposed of via appropriate recycling / facilities. The Contractor is to maintain the site in an orderly fashion, with redundant materials removed from the site as the works progress. Where appropriate the Contractor is to make best endeavours to recycle as much waste as possible with waste transfer notes provided within the handover documentation.</div>	
	<div>6.6</div> <div>The Contractor will be responsible for any access and associated temporary works (and their associated / corresponding designs) where necessary to facilitate the safe delivery of the works.</div>	
	<div>6.7</div> <div>The Contractor will be responsible for provision of all and any site welfare, office and storage as part of their role as Principal Contractor.</div>	
	<div>6.8</div> <div>The Contractor must accommodate the Employer for planned site visits with 24hrs notice as required. Each month the Employer will require a formal progress meeting which will be held on site and the Contractor is to provide a report which includes; + Current progress including milestones achieved + Works programme including forecast for the coming month and completion programme + Average number of tradesmen working on site during the period + Progress photos + Status of Request For Information (RFI) schedule + Updated risk register and key risks + Procurement status and overview (packages issued, let, sub-contractors etc) + Change control and forecast final account + Building Control and other inspections / visitors + Health and safety performance / KPI's (accidents / incidents)</div>	
	<div>6.9</div> <div>The Contractor is expected to undertake a detailed dilapidation schedule prior to the commencement of the works, otherwise any damage to adjoining properties; items; objects which are present upon completion of the works will be deemed the Contractors responsibility to rectify.</div>	

	<b>7.0 Planning and Undertaking of the Works</b>	
7.1	The Contractor is responsible for working with the Employer to enable and facilitate the approval of the Contractors Proposals and ensuring compliance with the necessary Security Protocols.	
7.2	The Contractor is required to review, check and plan for the works 2 weeks ahead and provide a RFI schedule with sufficient time for the design team to answer any questions or queries. It is noted that the Design Team will require at least 1 week minimum to answer the queries.	
7.3	It will be the Contractors responsibility to liaise with the Building Control and/or any other necessary authority and to co-ordinate, invite and request the inspections at the appropriate stages of the works.	
7.4	The Contractor will be required and expected to maintain, implement and record inline with industry best practice and appropriate international standards to ensure the relevant quality checks are implemented throughout the construction process. This includes materials, construction and elements of the works held off site.	
7.5	No later than 2 weeks before commencement on site the Contractor is to agree a programme of works with the Employer.	
7.6	The Contractor is to provide their Construction Phase Plan / RAMs for the works for acceptance by the Employer a minimum of 3 weeks prior to the start of the works. The Employer is to accept the CPP and RAMS in writing prior to site works commencing.	
7.7	The Contractor is required to present there design 3 weeks prior to the commencement of the works and will be required to receive written acceptance by the Employer prior to undertaking these works and/or them being designated as accepted.	
7.8	All staff working on the project, irrespective of whether or not they are site or office based should hold a minimum of National Security Vetting to Security Check (SC) level. The vetting reference and issuing authority must be provided and will be verified prior to attending site and/or issuing of any information.	
	<b>8.0 Handover &amp; Assurance</b>	
8.1	Prior to the handover of the works, the Contractor will be required and expected to have completed a range of cleaning and testing to ensure the works are compliant.	
8.2	Upon completion of the works, the Contractor is to provide detailed Health and Safety Files (2 nr hard copies and 1 electronic copy) incorporating the Operational and Maintenance Manuals within 3 weeks from issue of the Practical Completion Certificate. This is to include, but not limited to as-built drawings; building control approval and inspections; testing and commissions certificates for electrical, fire, gas and water services; product data sheets and associated warranty documentation; maintenance requirements for all the products / materials used etc. [REDACTED]	
8.3	The Contractor is responsible for completing their own snagging. Once the works have been snagged by the Contractor, they are to be presented to the Employer for snagging, should more than 20 snags be found, the snagging visit will be cancelled and the works non deemed complete. [REDACTED] [REDACTED]	
8.4	Any and all snagging / defects are to be completed within the following time frame:	
8.4.1	Those deemed an "Emergency" by the Employer are to be resolved within 24 hrs of receipt of notification.	
8.4.2	Those deemed "Non Critical" by the Employer are to be resolved within 7 working day of receipt of notification.	



















