



## PART 1 – EARLY WORKS ORDER

THIS ORDER is made on the

20[21]

### BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ (the "**Client**", with such term including its successors in title and permitted assigns); and
- (2) **[INSERT NAME OF CONTRACTOR]** (company number **[INSERT COMPANY NUMBER]**), whose registered office is at **[INSERT ADDRESS OF REGISTERED OFFICE]** (the "**Contractor**").

### BACKGROUND:

- (A) This Order has been issued pursuant to and in accordance with the contract between (1) the *Client* and (2) the *Contractor* (and others) dated **[INSERT DATE]** (in their capacity as the "*Client*" and an "Alliance Member" respectively) (the "**FAC-1 Contract**").
- (B) In accordance with the FAC-1 Contract **[and following the completion of the Allocation Procedure]<sup>1</sup> [and a Main Works Package Procedure]<sup>2</sup>**, the *Client* intends to appoint the *Contractor* to undertake the design and construction of the Main Works Package known as **[INSERT DESCRIPTION OF PROJECT]** at **[INSERT ADDRESS]**, as more particularly described in the Contract Data.
- (C) Prior to the *Client* issuing any Notice to Proceed to Phase 2 to the *Contractor* pursuant to and in accordance with the FAC-1 Contract, which will have the effect of instructing the *Contractor* (subject to it signing and returning the Notice to Proceed to Phase 2 to the *Client*) to commence the construction of the Main Works Package, the *Client* wishes to appoint the *Contractor* to undertake certain Pre-Construction Activities pursuant to and in accordance with the FAC-1 Contract, with such Pre-Construction Activities being more particularly described in the Contract Data as the "*works*".

### IT IS AGREED:

1. The *Client* will pay to the *Contractor* the amount due and carry out its duties in accordance with the Early Works Terms.
2. The *Contractor* will Provide the Works and comply with its other obligations in connection with the *works* in accordance with the Early Works Terms (and for an amount to be determined in accordance with the Early Works Terms).
3. The Early Works Terms comprise:<sup>3</sup>
  - 3.1 this document entitled "Early Works Order" (and referred to herein as the Order);
  - 3.2 the "*conditions of contract*" of (and as such term is defined in) the standard form of NEC4 Engineering and Construction Short Contract (June 2017 Edition, amended January 2019 and October 2020) (with such "*conditions of contract*" deemed to be incorporated into the Early Works Terms by reference);
  - 3.3 the Early Works Amendments (which shall be deemed to be incorporated into the Early Works Terms by reference and shall be subject to any agreed modifications to the same as expressly stated in the *Client's* Contract Data only);

<sup>1</sup> **DRAFTING NOTE:** This wording should be deleted if the Allocation Procedure has not yet been completed as at the date of the Order.

<sup>2</sup> **DRAFTING NOTE:** This wording should be deleted if the Order relates to Full Sutton (as the "Main Works Package Procedure" does not apply to it).

<sup>3</sup> **DRAFTING NOTE:** This list will be updated on a case-by-case basis as appropriate.

- 3.4 the Contract Terms (incorporating the Special Terms and subject always to clause 12.1);
- 3.5 Schedule 1: Contract Data (and the Early Works Amendments referred to therein);
- 3.6 Schedule 1 – Appendix 1: Scope;
- 3.7 Schedule 1 – Appendix 2: Site Information;
- 3.8 Schedule 1 – Appendix 3: Price List;
- 3.9 the Collateral Warranties & Third Party Rights Schedule;
- 3.10 the Vesting Agreement;
- 3.11 the Data Protection Schedule; and
- 3.12 any and all other documents annexed to and/or referred to in the Contract Data,

which together form the Early Works Terms and all references to the "contract" in the *conditions of contract* (as amended by the Early Works Amendments) shall be construed in accordance with clause 12.1.

- 4. If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which comprise the Early Works Terms (or that are referred to herein and/or are incorporated into the Early Works Terms by reference), the priority of such documents is in accordance with the following sequence:

- 4.1 this Order;
- 4.2 the "*conditions of contract*" (as modified by the Early Works Amendments and any further modifications to the same as expressly stated in the *Client's* Contract Data);
- 4.3 the Special Terms;
- 4.4 the Contract Terms (excluding the Special Terms);
- 4.5 the *Client's* Contract Data (forming part of the Contract Data referred to above);
- 4.6 the *Contractor's* Contract Data (forming part of the Contract Data referred to above); and
- 4.7 all other documents annexed to or referred to in the above in the sequence stated.

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

- a) the "*conditions of contract*" and the Early Works Amendments, the Early Works Amendments shall take precedence; and
- b) the content of the *Client's* Contract Data (including any annexures to and/or documents referred to in the same) and the content of *Contractor's* Contract Data, the *Client's* Contract Data takes priority over the relevant part(s) of the *Contractor's* Contract Data.

- 5. No party other than the Parties shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Early Works Terms save for any Beneficiary only to the extent required to give full force and effect to a Contractor Collateral Warranty.

- 6. The Parties acknowledge and agree that this Order may be executed:

- 6.1 in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument; and

6.2 by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature provided by a Party to the other Party).

7. Pursuant to and in accordance with the FAC-1 Contract, this Order and the Early Works Terms shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 7 and for the enforcement of any judgment, order or award given under English jurisdiction.<sup>4</sup>

**IN WITNESS WHEREOF THIS ORDER HAS BEEN SIGNED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE**

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

**Authenticated by (signature):** \_\_\_\_\_

**Authenticated by (printed name):** \_\_\_\_\_

**[EXECUTION BLOCK FOR THE CONTRACTOR TO BE CONFIRMED.]**

**SIGNED** by **[INSERT NAME OF CONTRACTOR]** acting by a director in the presence of a witness:

**Director (signature):** \_\_\_\_\_

**Director (printed name):** \_\_\_\_\_

**Witness (signature):** \_\_\_\_\_

**Witness (printed name):** \_\_\_\_\_

**Witness address:** \_\_\_\_\_

**Witness occupation:** \_\_\_\_\_

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<sup>4</sup> **DRAFTING NOTE:** To be updated if the works relate to a site in Wales.



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**SCHEDULE 1**

**(OF THE ORDER)**

**CONTRACT DATA**

[TO BE INSERTED IN THE FINAL VERSION OF EACH ORDER, BASED UPON PART 2 OF THIS SCHEDULE, ALONG WITH ALL APPENDICES INCLUDED AS PART OF THE CONTRACT DATA DOCUMENT.]

**PART 2 – TEMPLATE EARLY WORKS SUPPORTING DOCUMENTS**  
**(EXCLUDING THE EARLY WORKS AMENDMENTS)**

**CONTRACT DATA**

**THE CLIENT'S CONTRACT DATA**

**1 General**

- General • The **conditions of contract** are the NEC4 Engineering and Construction Short Contract (June 2017, amended January 2019 and October 2020).
- Contact details • The **Client** is:
  - Name:** The Secretary of State for Justice of the Ministry of Justice.
  - Address for communications:** FAO [INSERT NAME OR POSITION], The Secretary of State for Justice of the Ministry of Justice, 102 Petty France, Westminster, London, SW1H 9AJ.
  - Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The **Client's delegate** is:
  - Name:** [INSERT NAME].
  - Address for communications:** [INSERT ADDRESS].
  - Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The authority of the **Client's delegate** is to act on behalf of the **Client** in performance of the **Client's** obligations under the contract, provided that the **Client's delegate** shall have no authority to amend the contract and except as otherwise stated in the contract:
  - whenever carrying out duties or exercising any authority specified in or implied by the contract, the **Client's delegate** is deemed to act for the **Client**;
  - the **Client's delegate** has no authority to relieve either Party of any duties, obligations or responsibilities under the contract; and
  - any approval, acceptance, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the **Client's delegate** (including any absence of disapproval or rejection and any failure to give, issue, make or undertake any of the foregoing) shall not relieve the **Contractor** from any responsibility it has under the contract.
- Main Works Package • The **Main Works Package** is the [design and construction] of [INSERT DETAILS] at the Site.
- The **Provisional NTP Date** is [INSERT PROVISIONAL DATE OF THE MAIN CONSTRUCTION WORKS COMMENCEMENT] (as such date may be adjusted by a written notice from the **Client** to the **Contractor**).
- The works • The **works** are [INSERT DESCRIPTION OF THE WORKS] (as more particularly described in the Scope).
- The **Scope** is set out at Appendix 1 of the Contract Data.
- The Site • The **Site (or "site")** is [INSERT DETAILS].
- The **Site Information** is set out at Appendix 2 of the Contract Data.
- Time • The **starting date** is [INSERT DATE].
- The **completion date** is [INSERT DATE].

- The **delay damages** are [REDACTED] pounds per week or part thereof.<sup>5</sup>
- Period for reply • The **period for reply** is [ten] ([10]) Working Days.
- Quality • The **defects date** is [REDACTED] after the earlier of the following dates to occur:
- the Completion of the whole of the *works*;
  - the last date on which the *Contractor* completed an activity forming part of the *works*; or
  - the termination of the engagement of the *Contractor* under the contract.
- The **defects correction period** is [REDACTED].
- Payment • The **assessment day** is the final Working Day of each month.
- The **final date for payment** is [REDACTED] after the later of the following dates to occur:
    - the date on which payment becomes due; and
    - the date of receipt by the *Client* of a Valid Invoice for the sums due.
  - The **Purchase Order Number** is [INSERT DETAILS]
  - The template form of **Valid Invoice** is as specified in the FAC-1 Agreement (including a reference to the Purchase Order Number), provided that the *Client* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Contractor*, with any such amendments applying as from the next *assessment day* after such notification.
  - The **interest rate** is as specified in the FAC-1 Agreement (as the "rate of interest").
- Retention • The **retention** percentage is [REDACTED]
- Construction Act • The **Housing Grants, Construction and Regeneration Act 1996** does apply to the contract.
- Law • The **law of the contract** is the law of England and Wales.
- The **Adjudicator** is as nominated by the *Adjudicator nominating body*.
  - The **Adjudicator nominating body** is The Technology and Construction Solicitors Association (TeCSA).
  - The **tribunal** is litigation in the courts of England.<sup>6</sup>
- Period for retention • The **period for retention** commences on the Effective Date and (subject to clause 18) expires on the End of Liability Date.
- Insurance • [REDACTED]
- [REDACTED] • [REDACTED]
- The **End of Liability Date** is the date identified as such in the FAC-1 Agreement.
- Other • The **Early Works Amendments** is the document identified as such in the FAC-1 Agreement and referred to in the Order to which the Contract Data is annexed.

<sup>5</sup> **DRAFTING NOTE:** To be confirmed on a project-specific basis based on the information that is available as at the date of the Order and given the nature of the early works in question.

<sup>6</sup> **DRAFTING NOTE:** To be updated if the works relate to a site in Wales.

- The **Client's Policies** are set out at [INSERT LOCATION] of the Scope.
- The **Principal Contractor** is [the Contractor].
- The **Principal Designer** is [the Contractor].
- Without prejudice to the generality of clause 12.1, the **BIM Requirements** are the requirements identified as such in the FAC-1 Agreement (unless otherwise specified in the Scope, in which case all references to "**BIM Requirements**" in this contract shall be construed by reference to such requirements).
- Without prejudice to the generality of clause 12.1, the **Data Protection Schedule** is the document identified as such in the FAC-1 Agreement (subject to the *Client's delegate* providing an alternative form of such document to the *Contractor* for use exclusively in connection with the *works*).

[REDACTED]

- [REDACTED]



## CONTRACT DATA

### THE CONTRACTOR'S CONTRACT DATA

#### 1 General

- Contact details • The **Contractor** is:  
**Name:** [INSERT NAME]  
**Address for communications:** FAO [INSERT NAME OR POSITION], [INSERT ADDRESS].  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].

- Price • The **offered total of the Prices** is [INSERT DETAILS], as set out [in the Price List / INSERT LOCATION].

- The **Price List** is set out at Appendix 3 of the Contract Data.

- Fee and rates • The **fee percentage** is [INSERT PERCENTAGE] ([INSERT PERCENTAGE]%).

- The **people rates** are:

Category of person	Unit	Rate
[INSERT DETAILS]	[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]	[INSERT DETAILS]

- The **published list of Equipment** is [INSERT DETAILS].
- The **percentage for adjustment for Equipment** is [plus (+) / minus (-)] [INSERT PERCENTAGE] ([INSERT PERCENTAGE]%).



## APPENDIX 1

### THE SCOPE

<b>DESCRIPTION OF THE <i>WORKS</i></b>	[INSERT DETAILS]
<b>DRAWINGS</b>	[INSERT DETAILS]
<b>SPECIFICATIONS</b>	[INSERT DETAILS]
<b>CONSTRAINTS ON HOW THE <i>CONTRACTOR</i> PROVIDES THE <i>WORKS</i></b>	[INSERT DETAILS]
<b>REQUIREMENTS FOR THE PROGRAMME</b>	[INSERT DETAILS]
<b>SERVICES &amp; OTHER THINGS PROVIDED BY THE <i>CLIENT</i></b>	[INSERT DETAILS]



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APPENDIX 2

THE SITE INFORMATION

[INSERT DETAILS]



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APPENDIX 3

THE PRICE LIST

[INSERT DETAILS, ENSURING THAT THE "TOTAL OF THE PRICES" IS STATED.]



## PART 3 – EARLY WORKS AMENDMENTS

### 1. AMENDMENTS TO CLAUSE 1 – GENERAL

- 1.1 In the definition of "**Completion**" at clause 11.2(1), after "Scope" insert:  
"(and the *Contractor* has provided or procured any Contractor Collateral Warranties (in favour of any Beneficiary) and/or Subcontractor Collateral Warranties, Subsubcontractor Collateral Warranties and/or Subconsultant Collateral Warranties (in favour of the *Client* only) which the *Contractor* is obliged under the contract to provide or procure)".
- 1.2 Replace the definition of "**Corrupt Act**" at clause 11.2(3) with "Not used."
- 1.3 In the definition of "**Defect**" at clause 11.2(4), insert ", applicable law and/or any other requirement of this contract" after "Scope".
- 1.4 Insert a new clause 11.2(A) with the heading "**Additional identified and defined terms: general**" and with the following new sub-clauses:
- (1) **Additional Order** means an order between the *Client* and the *Contractor* (issued as an "Order") pursuant to and in accordance with the Contract Terms in respect of any Stage 1B Pre-Construction Services and/or Pre-Construction Activities in connection with the Main Works Package to which the *works* relate, the scope of the same being specified in such order(s), that are not the *works* that are the subject of this contract.
  - (2) **Construction Act Supplement** means the section of the *conditions of contract* headed "If the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act) applies to the contract, the following additional conditions apply."
  - (3) [REDACTED]
  - (4) **Effective Date** means the date of the Order.
  - (5) **FAC-1 Contract** has the meaning given to such term in the Order.
  - (6) The **Final Date for Payment** is the date identified as such in the Contract Data.
  - (7) A **Force Majeure Event** means any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of a *Client's* liability:  
[REDACTED]
  - (8) **Order** means the document entitled "Order" as executed by the *Client* and the *Contractor* in connection with the *works* pursuant to and in accordance with the Contract Terms.
  - (9) **Principal Contractor** is the party identified as such in the Contract Data to fulfil such statutory role under and as defined in the CDM Regulations.

- (10) **Principal Designer** is the party identified as such in the Contract Data to fulfil such statutory role under and as defined in the CDM Regulations.
- (11) **Provisional NTP Date** is the provisional date (if any) for the commencement of the Main Works Package following the issue and execution of a Notice to Proceed to Phase 2 in respect of the Main Works Package issued pursuant to and in accordance with the Contract Terms.
- (12) **Purchase Order Number** means the number identified as such in the Contract Data.
- (13) **Reasonable Rates and Terms** has the meaning given to such term in clause 83.4.

1.5 Replace the wording of clause 12.1 in its entirety with the following:

"Subject to paragraph 4 of the Order, the Parties acknowledge and agree that

- this contract forms part of the FAC-1 Contract and is supplemental to and shall be read in conjunction with the Contract Terms wherever the context requires and, subject to Contract Term 1A to Contract Term 1C (inclusive) of the Contract Terms, the Contract Terms (including, for the avoidance of doubt, Special Term 35) shall be deemed to be incorporated into the contract mutandis mutatis as between the *Client* and the *Contractor* and
- save where defined in the Contract Terms, capitalised terms and/or italicised terms in the contract have the meaning given to them in clause 11.2 and clause 11.2(A) unless expressly defined elsewhere in the contract."

1.6 Replace the wording of clause 13.1 in its entirety with the following:

"Any communication required under the contract from the *Contractor* to Others is copied simultaneously to the *Client* and *Client's delegate*."

1.7 Insert a new clause 13.3 with the following wording:

"The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *works* for the *period for retention*."

1.8 Replace the wording of clause 14.3 in its entirety with the following:

"The *Contractor* has reviewed the contract (including the Scope and any documents referred to and/or comprising the same) prior to the Effective Date with a view to, using the Standard of Care, identifying any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the contract and has notified the *Client* of the outcome of the review prior to the Effective Date.

As from the Effective Date

- each Party notifies the other as soon as it becomes aware of any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the contract,
- the *Contractor* submits a proposal to the *Client* as to how to resolve the issue,
- the *Client* gives an instruction resolving the issue and
- the instruction shall not constitute a compensation event and shall not give rise to any adjustment to the Prices and/or the Completion Date."

1.9 Insert a new clause 14.6 with the following wording:

"The *Client*

- has delegated its responsibilities to the *Client's delegate* as identified in the Contract Data and

- may replace the *Client's delegate* after it has notified the *Contractor* of the name of the replacement."

1.10 Replace the wording of clause 16.1 in its entirety with the following:

"The *Client* allows non-exclusive access to and use of each part of the Site to the *Contractor*.

The *Contractor* acknowledges and agrees that the *Client* and all persons authorised by the *Client* shall at all times have access to the Site. The *Contractor* acknowledges and agrees that the non-exclusive access that it is entitled to under this clause 16.1 takes effect as a non-exclusive licence only for the purpose of Providing the Works and performing the *Contractor's* other obligations under the contract, and such non-exclusive licence shall not give rise to any other rights or entitlements in favour of the *Contractor* over or in connection with the Site and/or the Site's use."

1.11 Replace the wording of clause 17 in its entirety with the following:

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

17.1 The *Contractor* acknowledges and agrees that

- it is appointed by the *Client* under the contract solely to Provide the Works and perform its duties and obligations under the contract,
- subject always to the provisions of the Contract Terms, the *Client* makes no guarantee to the *Contractor* that the *Contractor* will be issued a Notice to Proceed to Phase 2 in connection with the Main Works Package to which the *works* relate in accordance with the Contract Terms and the *Contractor* shall have no entitlement to perform the same and
- the *Contractor* shall have no entitlement to make any claim against the *Client* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being issued with a Notice to Proceed to Phase 2 in connection with such Main Works Package.

17.2 Notwithstanding any other provision of the contract, the *Contractor* acknowledges and agrees that the *Client* may give an instruction to the *Contractor* which changes the Scope to remove or omit all or part of the *works* at any time and for any reason and the *Client* may instruct a third party to carry out such omitted work, in which case

- the total of the Prices shall be reduced to reflect such removal or omission, calculated by reference to the *Client's* reasonable determination of the value attributable to such omitted part(s) or by such other sum as otherwise agreed between the Parties,
- the *Client* shall have no liability whatsoever to the *Contractor* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), and such reduction or omission shall not give rise to any entitlement for the *Contractor* to claim for abortive costs, actual or expected loss of payment or profit, loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses of any type or for any other amount under the contract and
- the *Contractor* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Client* pursuant to this clause 17.2,

provided always that nothing in this clause 17.2 shall affect, in respect of any works and/or services forming part of an activity that is subject to such an omission instruction, the *Contractor's* entitlement to payment (or reimbursement) in respect of

- any works and/or services forming part of that activity that have been properly performed by the *Contractor* as at the effective date of the relevant omission instruction but which cannot, by reason of the omission, be completed, the value of which shall be determined by the *Client*, acting reasonably, on a pro rata basis by reference to the value of the relevant works and/or services as against the total of the Prices for the relevant activity,

- the *Contractor's* reasonably and properly incurred direct demobilisation costs (as disclosed to the *Client* for review and approval on an open book basis) in relation to the omitted works and/or services only,
- the cost of any Plant and Materials that the *Contractor* has itself manufactured in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the Site that and provided that the *Contractor* has used reasonable endeavours to mitigate such costs, either whole or in part (including by using such Plant and Materials as part of the wider delivery of the *works*) and
- any direct costs that the *Contractor* is contractually committed to pay to any third party (including its Subcontractors) that relate to such omitted works and/or services only (such as cancellation costs and the cost of Plant and Materials that have been manufactured by a third party in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the Site) and to the extent that which the *Contractor* is unable, using reasonable endeavours and exercising the terms of the relevant contract with such third party (but without having to incur further costs to such third party in doing so) to mitigate such costs, either whole or in part (including by using any Plant and Materials, Equipment and/or other physical items that the *Contractor* is contractually committed to purchase as part of the wider delivery of the *works*).

Where any sums are to be paid to the *Contractor* under the third and fourth bulleted items above in respect of Plant and Materials, Equipment and/or other physical items referred to in such bulleted items, it shall be a precondition to the *Contractor's* entitlement to payment in respect of the same under this clause 17.2 that

- (save in relation to Plant and Materials and/or Equipment that is hired by the *Contractor* and/or its Subcontractors) ownership and title in such Plant and Materials, Equipment and/or other physical items transfers to the *Client* and
- the *Contractor* delivers the same to a location to be agreed between the Parties in advance,

no later than the date on which the *Contractor* receives payment from the *Client* in connection with the relevant Plant and Materials, Equipment and/or other physical items under this clause 17.2. "

1.12 Insert a new clause 18 with the following wording:

**"18 Effect of the Notice to Proceed to Phase 2**

If the *Client* issues to the *Contractor* and the *Contractor* executes and returns to the *Client* a Notice to Proceed to Phase 2 in connection with the Main Works Package specified in the Order only pursuant to and in accordance with the Contract Terms (and not any other "Main Works Package" as referred to in the FAC-1 Contract), as from the date of the Notice to Proceed to Phase 2

- the Main Works Terms as referred to in such Notice to Proceed to Phase 2 will supersede this contract, which shall cease to have any further effect,
- the *works* undertaken by the *Contractor* under this contract as at the date of the Notice to Proceed to Phase 2 shall be deemed to have been undertaken pursuant to the Main Works Terms,
- the liability of the *Contractor* under this contract shall cease and each Party shall be deemed to have waived their respective rights against one another in connection with any claims in connection with this contract (save in respect of any legal or other dispute-related proceedings that have commenced or that one Party has notified to the other Party before the date of the Notice to Proceed to Phase 2) and
- (if agreed between the Parties) any payments made to the *Contractor* in respect of the *works* under this contract shall be deemed to have been payments on account in respect of the relevant works of which they form part under the stated Main Works Terms."



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

2.1 In clause 20.1, insert "(but subject always to clause 20.3) and in accordance with the contract" after "Scope".

2.2 Insert a new clause 20.3 with the following wording:

"20.3 The *Contractor*

- carries out and completes the *works* in a good and workmanlike manner, using only materials which are new (unless the contract states otherwise or as otherwise agreed with the *Client* in writing), and are sound and of good quality and which are consistent with the intended use of the *works* as stated in the contract or reasonably to be inferred given the nature of the *works*,
- in providing any services (including any design in respect of the *works*) that are ancillary or otherwise related to the *works* as required by the contract (including the preparation of any reports, summaries, recommendations and/or any other analogous deliverables in relation to the *works*) is to exercise (and it warrants that it has exercised) the Standard of Care in respect of the same,
- Provides the Works in accordance with all applicable laws and (to the extent that the *Contractor* can control the same) so that the product of the *works* complies with all applicable laws,
- (where identified as the Principal Designer in the Contract Data) fulfils the role of Principal Designer in connection with the *works* and
- (where identified as the Principal Contractor in the Contract Data) fulfils the role of Principal Designer in connection with the *works*.

The Parties acknowledge and agree that nothing in the contract, whether express or implied, shall impose any fitness for purpose obligation on the *Contractor* in relation to the *works*."

2.3 Insert a new clause 20.4 with the following wording:

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

2.4 Insert a new clause 20.5 with the following wording:

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

2.5 Insert a new clause 20.6 with the following wording:

"20.6 Without prejudice to the generality of clause 7.7 of the Contract Terms (as the context requires), the *Contractor* acknowledges and agrees that:

- within twenty (20) days of receiving notification from the *Client*, the *Contractor* enters into a deed or deeds of Contractor Collateral Warranty in favour of any Beneficiary specified by the *Client* ([REDACTED]) and the *Contractor* acknowledges and agrees that the *Client* shall be required to withhold [REDACTED] of any further sums that would otherwise be payable to the *Contractor* under the contract until the same is provided by the *Contractor* and
- within twenty-eight (28) days of receiving notification from the *Client*, the *Contractor* procures that each Subcontractor or subsubcontractor (as the context requires) executes a Subcontractor Collateral Warranty, Subsubcontractor Collateral Warranty or a Subconsultant Collateral Warranty (as appropriate) (with any such



amendments that the *Client* may agree, acting reasonably) in favour of

- the *Client* and/or
- any Beneficiary specified by the *Client*,

([REDACTED]) and the *Contractor* acknowledges and agrees that if the *Contractor* fails to deliver the same within the time required, the *Contractor* is not entitled to [REDACTED] relating to the services and/or works of the relevant Subcontractor or subsubcontractor which would otherwise be due and payable under the contract until such date as the relevant collateral warranty is provided."

2.6 Replace the wording of clause 21.3 in its entirety with the following:

"After consultation with the *Contractor*, the *Client* may (acting reasonably), having stated its reasons, request the removal of a person employed by the *Contractor*. The *Contractor* then promptly replaces that person with a replacement person accepted by the *Client* not later than ten (10) Working Days after the date of the *Client's* request. The *Client* does not unreasonably withhold or delay its acceptance of such replacement person."

2.7 Insert a new clause 21.4 with the following wording:

"21.4 The *Contractor*, in relation to any subletting of any portion of the *works*

- procures that each subcontract contains such obligations as necessary to ensure that it is, in all respects, compatible with the terms of the contract and without limitation, replicates the obligation to use the degree of skill and care specified in clause 20.3 and requires collateral warranties to be provided in favour of any Beneficiary in the form of the Subcontractor Collateral Warranty and/or Subsubcontractor Collateral Warranty (as the context requires, in each case with any such amendments that the *Client* may agree, acting reasonably),
- procures that all subcontracts are executed and delivered as deeds,
- warrants each Subcontractor's compliance with any provisions referred to herein and/or the FAC-1 Contract that are expressed as applying to Subcontractors of the *Contractor*,
- warrants that all Subcontractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations,
- provides to the *Client* a certified copy of any subcontract,
- ensures that the period for payment of any amount due to a Subcontractor under a subcontract is not greater than twenty-one (21) days after the payment due date under this contract,
- does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015 and
- notifies the *Client* of the name, contact details and legal representatives of each Subcontractor before appointing the *Subcontractor*."

2.8 Insert a new clause 21.5 with the following wording:

"21.5 The *Contractor* includes in any subcontract awarded by it provisions

- specifying that invoices for payment submitted by the Subcontractor or supplier are considered and verified by it in a timely fashion,
- specifying that undue delay in the consideration and verification of invoices is not sufficient justification for the *Contractor* failing to regard an invoice as valid and undisputed and
- that have the same effect as those of the contract."



3. **AMENDMENTS TO CLAUSE 3 – TIME**

- 3.1 At the end of the second bulleted item of clause 30.4, insert "pursuant to and in accordance with clause 17.2".
- 3.2 Replace the wording of clause 31.1 in its entirety with the following:
- "As from the Effective Date (and in addition to any other requirements as set out in the Scope), the *Contractor* submits programmes to the *Client* every four (4) weeks (or at such other frequency as the *Client* may request, acting reasonably) showing
- the changes to the programme previously submitted by the *Contractor* (if applicable),
  - the progress of the *works* (as against the original programme for the *works*),
  - the effects of any implemented compensation events,
  - any changes that the *Contractor* proposes to make the programme and
  - the Provisional NTP Date."

4. <b>AMENDMENTS TO CLAUSE 4 – DEFECTS</b>
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4.1      In clause 41.1, insert "and such instruction shall not constitute a compensation event" before the full stop.

4.2      Add the following to the end of clause 44.1:

"The *Client* informs the *Contractor* of the amount that it actually cost the *Client* to have the Defect corrected by other people within a reasonable time of that being known. If the actual cost differs from that amount assessed and paid by the *Contractor* to the *Client*, either the *Client* repays promptly the *Contractor* any overpayment or the *Contractor* promptly pays to the *Client* any underpayment (as the context requires)."

## 5. AMENDMENTS TO CLAUSE 5 – PAYMENT

5.1 [REDACTED]

5.2 In the second bulleted item of clause 50.3, insert the words "(which includes any VAT that may be payable on the amount due)" after the words "paid to the *Contractor*".

5.3 [REDACTED]

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

5.5 In clause 50.8, insert "(1/4)" after "quarter".

5.6 In clause 51.1:

- replace "within three weeks" with "on or before the Final Date for Payment"; and
- insert the following wording at the end of the clause:  
"If the *Client* pays the *Contractor* any sums under or in connection with the contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Contractor* on account and shall be deductible from the next payment to be made to the *Contractor* under the contract."

5.7 Insert a new clause 51.4 with the following wording:

"Notwithstanding clause 51.2, where a Party notifies the other Party that it has made an overpayment to that Party in connection with the contract, the payee shall repay such overpaid amount to the payer within twenty-eight (28) days of the date of the notification of the overpayment and the amount of such sum, if not so repaid, shall be recoverable on demand by the payer as a debt. The Parties agree that this clause 51.4 shall not apply in relation to any overpaid amounts that are, as at the time of the notification, the subject of any dispute which has been referred to an *Adjudicator* and/or a *tribunal* to be resolved. The Parties further acknowledge and agree that neither shall exercise the rights afforded under this clause 51.4 in a manner which is inconsistent with Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended)."

5.8 Insert a new clause 51.5 with the following wording:

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

## 6. AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS

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

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

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

6.2 Add at the end of clause 60.1(1):

"or a change to the Scope provided by the *Contractor* which is made either at its request or to comply with other Scope provided by the *Client* at the Effective Date (subject to clause 14.3)".

6.3 Replace the wording of clause 60.1(11) with the following:

"The occurrence of a Force Majeure Event which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the Completion Date."

6.4 In clause 61.2, insert "(1)" after "one".

6.5 In clause 61.3, insert "(4)" after "four".

6.6 In clause 62.2, insert "(2)" after "two".

6.7 In clause 62.3, insert the following at the end of the clause and before the full stop:

"(provided always that the *Contractor* has first notified the *Client* a further time in writing of its failure to reply and the *Client* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)".

6.8 In clause 62.4, insert "(1)" after "one".

6.9 In clause 63.2, insert the following as a new paragraph at the end of the clause:

"Where the compensation event notified by the *Contractor* to the *Client* is a Force Majeure Event, the *Contractor* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to the Completion Date only."

6.10 Replace the wording of clause 63.8 with "Not used."

6.11 In clause 63.10, replace "the assessment" with the following:

"save in the case of a compensation event arising as a result of a breach of the contract or failure to perform in accordance with the contract by the *Client*, the assessment".



7. AMENDMENTS TO CLAUSE 7 – TITLE

7.1 At the end of the first sentence in clause 70.1 insert:

"and the *Contractor* acknowledges and agrees that title in any such object vests in the *Client*".

7.2 Insert a new clause 70.3 with the following wording:

"Each item of Plant and Materials becomes the property of (and title in that item transfers to) the *Client* at whichever is the earlier of the following circumstances to occur

- when it is brought within the internal boundaries of the Site or
- (whether or not the item has been brought within the internal boundaries of the Site) the date on which the *Contractor* receives payment from the *Client* for the item in question.

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

It is a precondition to the *Contractor's* entitlement to payment for any Plant and Materials that the *Contractor*

- marks and stores such Plant and Equipment in accordance with the contract (including any requirements in respect of the same as specified in the Scope) and
- (unless otherwise agreed in advance and in writing by the *Client*) provides an executed Vesting Agreement in favour of the *Client* in the form referred to in the Contract Data in respect of such Plant and Equipment (with such amendments as the *Client* may approve in advance, acting reasonably) (or in such alternative form as is acceptable to the *Client*, acting reasonably).

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

7.3 Insert a new clause 70.4 with the following wording:

"Title to Plant and Materials that the *Client* has not paid for under this contract passes back to the *Contractor* if they are removed from the Site. If the Plant and Materials have been paid for by the *Client* under this contract, the title in such Plant and Materials remains with the *Client* even if they are removed from the Site and the *Contractor* complies with the requirements of clause 70.3 as to the marking and storage of such removed Plant and Materials. No Plant and Materials within the Site may be removed from the Site without the *Client's* prior written permission."

7.4 Insert a new clause 70.5 with the following wording:

"The *Contractor* removes Equipment from the Site when it is no longer needed unless the *Client* allows it to be left in the *works*."

## 8. AMENDMENTS TO CLAUSE 8 – LIABILITIES & INSURANCE<sup>7</sup>

8.1 [REDACTED]

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

"From the Effective Date until the Defects Certificate has been issued, the risks which are not expressly stated as being *Client's* liabilities are carried by the *Contractor*."

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

8.4 Replace the wording of clause 82.4 with "Not used."

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

8.6 In clause 83.3, add the following row to the Insurance Table:

Insurance against	Minimum amount of cover or minimum limit of indemnity
Negligent acts, errors and/or omissions in the performance of the <i>Contractor's</i> professional obligations under the contract (with such insurance being referred to in the contract as " <b>professional indemnity insurance</b> ").	The amount stated in the Contract Data.

8.7 Insert a new clause 83.4 with the heading "**Professional indemnity insurance**" with the following wording:

"83.4 **Professional Indemnity**

- Without prejudice to the generality of clause 83.3, the *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under the contract for the given insurance policy year in the event that it breaches the contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, with the minimum level of indemnity as stated in the Insurance Table, in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for the period specified in the Contract Data, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance ("**Reasonable Rates and Terms**").
- Any increased or additional premium required by insurers in respect of the *Contractor's* professional indemnity insurance by reason of the *Contractor's* own claims record or other acts, omissions, matters or things particular to the *Contractor* shall be deemed to be within Reasonable Rates and Terms.
- The *Contractor* shall immediately inform the *Client* if its professional indemnity insurance ceases to be available upon Reasonable Rates and Terms in order that the *Contractor* and the *Client* can discuss means of best protecting their respective positions in respect of the contract and the *works* in the absence of such professional indemnity insurance.

<sup>7</sup> **DRAFTING NOTE:** See the earlier comment on the treatment of insurance in the Early Works Terms.

- The *Contractor* shall co-operate fully with any measures reasonably required by the *Client* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the *Client* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above Reasonable Rates and Terms.
- The *Contractor* shall produce promptly for inspection and/or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- The *Contractor* shall notify the *Client* in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of the contract and within seven (7) days of the *Client*'s request at any time the *Contractor* will produce for inspection documentary evidence as to compliance with this clause 83.4."

8.8

[REDACTED]





9. **AMENDMENTS TO CLAUSE 9 – TERMINATION AND RESOLVING DISPUTES**

9.1 Replace the wording of clause 90.2 with the following:

"The *Client* may terminate the contract immediately on written notice to the *Contractor* if the *Contractor* is subject to or has suffered an Insolvency Event or where the *Client* (in its capacity as the "Client" under the FAC-1 Contract) terminates the *Contractor's* engagement (in its capacity as an "Alliance Member" under the FAC-1 Contract) under the FAC-1 Contract pursuant to Contract Term 14.3, the notice of such termination shall also constitute a valid notice of termination issued under this clause 90.3 if the notice states that it also applies to the same (in each case, Reason 1)."

9.2 Replace the wording of clause 90.6 in its entirety with the following:

"The *Client* may immediately terminate the *Contractor's* obligation to Provide the Works if the *Client* (in its capacity as the "Client" under the FAC-1 Contract) terminates or has the right to terminate the *Contractor's* engagement (in its capacity as an "Alliance Member" under the FAC-1 Contract) under the FAC-1 Contract pursuant to Contract Term 14.4 (Reason 8)."

9.3 At the end of clause 90.7 before "(Reason 9)", insert the following after "for any other reason":

"(including where, subject to the Contract Terms, the *Client* intends to engage a third party to perform all or part of the *works* that have yet to be completed by the *Contractor* as at the date of termination)".

9.4 Insert a new clause 90.8 with the following wording:

"The *Client* may immediately terminate the engagement of the *Contractor* under the contract by reference to the circumstances set out at regulation 73(1)(a) or regulation 73(1)(c) of the Public Contracts Regulations 2015, which shall be treated the same as a termination for "Reason 5" for the purposes of clause 90 to clause 92 (inclusive)."

9.5 Replace the wording of clause 92.3 with "Not used."

9.6 In clause 92.4:

- insert "(13)" after "thirteen" and
- insert "(3)" after "three".

9.7 Insert a new clause 92.5 with the following wording:

"Any final payment made by the *Client* to the *Contractor* pursuant to this clause 92 in relation to the termination of the *Contractor's* obligation to Provide the Works shall be the sole and exclusive remedy of the *Contractor* arising out of or in connection with such termination (whether in contract, tort (including negligence) or any other basis of law) and the *Contractor* shall have no right to claim any other amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of opportunity, and/or redeployment of workforce and/or for any consequential or indirect losses of any other kind."



10. **AMENDMENTS TO THE SECTION OF THE CONTRACT HEADED "IF THE UNITED KINGDOM HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY THE LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009 (THE ACT) APPLIES TO THE CONTRACT, THE ADDITIONAL CONDITIONS APPLY" (REFERRED TO AS THE "CONSTRUCTION ACT SUPPLEMENT" HEREIN)**

- 10.1 Replace the wording of clause 1.1(2) with the following:  
"The date on which a payment becomes due is seven (7) days after the *assessment day*. If there is a termination, the payment due date is thirteen (13) weeks after the notice of termination."
- 10.2 In clause 1.1(3), replace "three weeks after the payment due date" with "the date identified as such in the Contract Data".
- 10.3 Replace the wording of clause 1.3 with "Not used."
- 10.4 In clause 1.4, insert "(7)" after "seven".
- 10.5 In clause 1.6, insert "(7)" after "seven".
- 10.6 In clause 1.8, insert "(5)" after "five".
- 10.7 In clause 1.9, insert "(7)" after "seven".