**RM6014 – MODULAR BUILDING SOLUTIONS**

**PROJECT CONTRACT**

**MODULAR BUILDINGS HIRE AGREEMENT**

This Hire Agreement (also referred to as the **Project Contract**) is in accordance with the Crown Commercial Services Framework Agreement RM6014 and consists of the following in the following order of priority in the event of conflict:

* The Order Form
* Hire Terms and Conditions as modified by both Parties
* Annex A – Additional Client Requirements
* Annex B – Pricing Document
* Annex C – [REDACTED] Quotation together with the Drawings (65766-1-A to 65766-5-A inclusive)

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

ORDER REFERENCE: [REDACTED]

DATE OF ORDER: **26 March 2020**

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

THE ADDITIONAL CLIENT CONTACT [REDACTED]

INVOICE CONTACT [REDACTED]

THE SUPPLIER ALLIANCE MEMBER: [REDACTED]

MEMBER ADDRESS: [REDACTED]

SUPPLIER ALLIANCE MEMBER

ACCOUNT MANAGER: [REDACTED]

## THE DELIVERABLES

**Modular Buildings for use as temporary mortuaries**

|  |  |  |
| --- | --- | --- |
|  | **Description** | **Units** |
|  |  |  |
|  | **Titan 184** | **15** |
|  | **Titan 154** | **60** |
|  | **Titan 124** | **50** |
|  | **Modular 123** | **40** |
|  | **Modular 093** | **30** |

**Total Quantity of Modular Buildings: 195**

**All modular buildings provided with agreed refrigeration, racking, access ramps and alarm telemetry**

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

Delivery Place: To be advised by the Additional Client

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

HIRE PERIOD

The Hire Period for the purposes of the Hire Charges, shall be the period from 10 April 2020 until 10 October 2020.

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

PRICE AND PAYMENT

Hire Payment payable by the Additional Client

As set out at Annex B – Pricing Document

Hire rate for any period beyond the initial Hire Period of 6 months to be as set out in Annex B.

The amount payable under Clause 10.2 of the Hire Terms is the Hire Payment together with any additional charges required to remove building from site and returned to nearest [REDACTED] depot.

Additional Charges for Services (Services Charge)

Additional charges for delivery and collection to be charged at evidenced cost plus [REDACTED] and shall be invoiced at the end of the month and paid within thirty (30) days from receipt of invoice.

Additional charges for groundworks, installation and dismantling shall be charged on a project specific basis and shall be invoiced at the end of the month and paid within thirty (30) days from receipt of invoice.

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

Subject always to clauses 4.3 10.2, 10.3 and 10.4 while the payment schedule at Annex B represents the Hire Charges for delivery of 195 Modular Buildings, to the extent that the full number of Modular Building are not delivered to the Additional Client in accordance with the Project Contract, the Additional Client shall only pay the Hire Charges for the Modular Buildings which are delivered. At the end of the Hire Period, the Supplier Alliance Member shall reconcile the payments received and reimburse the Additional Client accordingly for any overpayments made.

SPECIAL TERMS

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

## For and on behalf of the Additional Client:

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

|  |  |
| --- | --- |
| Name and Title |  |
| Signature |  |
| Date |  |

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

[REDACTED]

|  |  |
| --- | --- |
| Name and Title |  |
| Signature |  |
| Date |  |

**PROJECT CONTRACT HIRE TERMS**

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

## Definitions

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

|  |  |
| --- | --- |
| **"Actual Delivery Date"** | the date on which a Modular Building is actually delivered to the Additional Client; |
| **“Chillers”** | has the meaning given in Annex A; |
| **“Default”** | any breach of the obligations of the Supplier Alliance Member (including abandonment of the Project Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier Alliance Member, of its subcontractors or any Supplier Alliance Member’s staff howsoever arising in connection with or in relation to the subject-matter of the Project Contract and in respect of which the Supplier Alliance Member is liable to the Additional Client; |
| **“Delivery Place”** | the place for delivery as reasonably instructed by the Additional Client; |
| **“Due Delivery Date”** | the date specified as the due date for delivery of a Modular Building as reasonably instructed by the Additional Client; |
| **“Hire Charges”** | the charges for hiring the Modular Buildings as set out in Annex B; |
| **"Hire Payments"** | the Hire Charges and other charges payable under the Hire Agreement including charges for additional services (comprising installation, delivery, groundworks, dismantle and collection) as set out in Annex B. |
| **"Hire Period"** | in relation to a Modular Building, for the purpose of the Hire Charges, 10 April 2020 to 10 October 2020; and for all other purposes, the period commencing on the Actual Delivery Date for that Modular Building and ending on the Return Date for that Modular Building unless extended or terminated early in accordance with this Project Contract; |
| **"Hire Terms"** | these terms and conditions of supply and hire; |
| **“Project Contract”** | has the meaning given in the Order Form; |
| **“Racking”** | the racking as shown in the drawings appended at Annex C; |
| **"Return Date"** | the date on which a Modular Building is returned to the Supplier Alliance Member in accordance with clause 8.7; |
| **“Services”** | the services obligations of the Supplier Alliance Member under the Project Contract, as more particularly described in the Specification in Annex A; |
| **“Specification”** | the additional client requirements appended at Annex A; |
| **Total Loss** | Any event which in the reasonable opinion of the Supplier Alliance Member renders the Modular Building incapable of economic repair if it is lost, stolen or destroyed. In order to demonstrate the Supplier Alliance Member is acting reasonably it shall produce an engineering report which justifies why the Supplier Alliance Member considers the Modular Building is a Total Loss in which it shall demonstrate to the reasonable satisfaction of the Additional Client and any insurer with an interest that the Modular Building is beyond economic repair; |

* 1. References in this Hire Agreement to “Modular Buildings” are deemed to refer to the relevant modular building as fitted out pursuant to this Hire Agreement, including (but not limited to) with Chillers, Racking and ramps.

## Modular Building Orders

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

3.3.1 a description of the Modular Building ordered;

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

3.3.3 the anticipated delivery details; and

3.3.4 the name and address of the Supplier Alliance Member .

* 1. For the avoidance of doubt, each Modular Building Order survives the expiration or termination of the Modular Buildings Framework Alliance Contract.
  2. The Supplier Alliance Member shall, use reasonable endeavours to generate savings on the prices for the Chillers and if such savings are achieved, pass on to benefit to the Additional Client as a reduction of the Hire Payments.

## Hiring Modular Buildings

* 1. In consideration of the payment of the Hire Payments, the Supplier Alliance

Member will hire the Modular Buildings to the Additional Client in a timely manner and in accordance with the Project Contract and the requirements notified to the Supplier Alliance Member in the Modular Building Order.

* 1. The Supplier Alliance Member must advise the Additional Client on the selection and specification of the Modular Buildings and, where applicable, any conversion work to be carried out in respect of them so as to ensure that the Modular Buildings will be of sufficient quality and suitable for the requirements of the Additional Client.
  2. Before the Due Delivery Date of any Modular Building the Additional Client can amend or cancel and remove that Modular Building from the Modular Building Order by notifying the Supplier Alliance Member. If the Additional Client does cancel all or part of the Modular Building Order, for the avoidance of any doubt, the Additional Client will still pay the Hire Charges to the Supplier Alliance Member.
  3. If the Additional Client wants to keep any Modular Building after the expiry of the period ending on the later of 10 October 2020 and the Return Date then the Additional Client must give written notice to the Supplier Alliance Member 1 month prior to the end of the such period and the Supplier Alliance Member must confirm its agreement (which the Supplier Alliance Member cannot unreasonably refuse). The Hire Charge payable in relation to any period of hire after 10 October 2020 shall be in accordance with Annex B. 5.9. The Parties acknowledge that the Additional Client shall on and from 10 November 2020 pay the Hire Charges for the Modular Buildings which remain on hire following 10 October 2020. To avoid doubt the Additional Client shall not pay any Hire Charge from 10 October to 9 November 2020 inclusive.

## Delivery and Installation

* 1. The Supplier Alliance Member must give the Additional Client confirmation of the anticipated Due Delivery Date for each Modular Building within five (5) Working Days of receipt of the Modular Building Order.
  2. The Supplier Alliance Member will deliver the Modular Building to the Delivery Place or as otherwise reasonably directed by the Additional Client.
  3. The Additional Client must make sure that a duly authorised representative of the Additional Client is present at the installation of the Modular Building.
  4. The Supplier Alliance Member will, in consideration for payment of the delivery costs in accordance with Annex B, use its reasonable endeavours to deliver the Modular Building to the Additional Client in a good working and clean condition on the Due Delivery Date provided that Due Delivery Dates and Delivery Places shall be notified by the Additional Client to the Supplier Alliance Member on a reasonable basis.
  5. The Supplier Alliance Member can only deliver Modular Building before the Due Delivery Date if the Additional Client agrees to early delivery before the Supplier Alliance Member attempts delivery.
  6. Any defects to a Modular Building notified to the Supplier Alliance Member by the Additional Client must be rectified within twenty four (24) hours at no cost to the Additional Client.
  7. A Modular Building is only delivered once a duly authorised representative of the Additional Client signs a delivery note (which quotes the Supplier Alliance Member's order number and full details of the Modular Building) to confirm delivery, satisfactory installation and commissioning, testing of all equipment in accordance with the Specification of the Modular Building but that signature is not evidence that the Modular Building complies with the requirements of the Modular Building Order.
  8. If, for any reason, the Additional Client is unable to take delivery of a Modular Building on or after the Due Delivery Date, the Supplier Alliance Member must, at an additional cost to be agreed with the Additional Client, store or arrange for the storage of the Modular Building for a reasonable time and must safeguard the Modular Building until actual delivery.
  9. The Supplier Alliance Member must make sure (at its own cost) that each Modular Building is delivered in a serviceable condition compatible with its intended use, in accordance with the Specification. The Additional Client can at its sole discretion reject a Modular Building which is not in the condition requested in accordance with Specification and/or in respect of which the delivery note does not include the required information. For the avoidance of doubt, the Additional Client is responsible for ensuring that the Modular Buildings are suitable for their intended use and purposes and the Supplier Alliance Member accepts no liability in respect thereof, including in respect of whether the Specification complies with relevant laws and regulations in relation to the supply of buildings for the use for which the Modular Buildings are intended.
  10. Not used.
  11. If the Supplier Alliance Member becomes aware that a Modular Building cannot be delivered by the agreed Due Delivery Date or if a Modular Building is not actually delivered by its Due Delivery Date, the Supplier Alliance Member shall inform the Additional Client of the revised delivery date. Where the Additional Client has indicated that the timing of delivery is critical, the Supplier Alliance Member must use reasonable endeavours to provide an alternative Modular Building of the same specification or one with equivalent specification by the Due Delivery Date until the time as the Modular Building is actually delivered. If the Supplier Alliance Member cannot supply an alternative Modular Building by the Due Delivery Date, the Supplier Alliance Member must meet and promptly refund to the Additional Client all and any additional costs incurred by the Additional Client for provision of a Modular Building of the same specification or one with equivalent specification.
  12. To facilitate delivery and, if applicable, installation, the Additional Client must provide all requisite materials, facilities, access and suitable working conditions to enable delivery and, if applicable, installation to be carried out safely and efficiently.

## Title, Possession and Risk

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

## Supplier Alliance Member Obligations Maintenance

* 1. The Supplier Alliance Member must transfer to the Additional Client, so far as is possible, the benefits of any manufacturers' warranties relating to the fitness and performance of the Modular Building.
  2. Where the Additional Client selects the maintenance option in the Modular Building Order, the Supplier Alliance Member is responsible for the costs of:
     1. normal routine maintenance in accordance with manufacturers' maintenance recommendations as amended from time to time; and
     2. any Modular Building specific maintenance, provided that the costs have been duly authorised by the Supplier Alliance Member and a service outlet approved by the Supplier Alliance Member carries out the maintenance.
  3. If the Parties agree that the Additional Client will pay any additional maintenance or repair costs, the Supplier Alliance Member must advise the Additional Client of the costs as soon as practicable which must then be subject to approval in writing by the Additional Client and the Supplier Alliance Member must submit an invoice to the Additional Client within twenty-one (21) days of the cost being incurred.

## Other Services

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

Indemnity

* 1. Subject to the remainder of clauses 7 and 13 the Supplier Alliance Member indemnifies the Additional Client against all reasonable losses incurred whilst any Modular Building is unavailable for use by the Additional Client due a Default or due to the negligence of the Supplier Alliance Member, its servants or agents.

* 1. The Supplier Alliance Member’s aggregate liability (in tort, contract or otherwise) under the Project Contract shall:
     1. for property damage, for each Modular Building, not exceed [REDACTED]
     2. for claims relating to breach of the service level requirements in the Specification in relation to the Chillers - those caps given to the Supplier Alliance Member by the supplier of the Chillers which the Supplier Alliance Member shall notify to the Additional Client in writing no later than seven (7) days after the date of this Project Contract , provided always that if the caps on liability given to the Supplier Alliance Member by the supplier of the Chillers are lower than [REDACTED] for each Modular Building the Supplier Alliance Member’s liability under this clause 7.6.2 shall be limited to [REDACTED] per Modular Building subject to a [REDACTED] cap in the aggregate (**Proposed Chiller Cap**) then the Supplier Alliance Member’s aggregate liability (in tort, contract or otherwise) under the Project Contract for claims relating to breach of the service level requirements in the Specification in relation to the Chillers shall be the Proposed Chiller Cap;
     3. for all other claims, for each Modular Building, not exceed [REDACTED] and
     4. in aggregate not exceed [REDACTED]
  2. Nothing in the Project Contract shall be construed to limit or exclude either Party's liability for:
     1. death or personal injury caused by its negligence or that of its Staff; fraud or fraudulent misrepresentation by it or that of its Staff; or
     2. liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which, by Law, may not be excluded or limited.
  3. No Party is liable to the other for:
     1. any indirect losses;
     2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
  4. Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Project Contract, including any indemnities.
  5. Subject to Clause 7.7 and without prejudice to the obligation of the Additional Client to pay the Hire Payments as and when they fall due for payment, the Additional Client’s aggregate liability (in tort, contract or otherwise) under the Project Contract, other than in respect of the payment of the Hire Payments in accordance with the Project Contract, shall not exceed [REDACTED].

**Modular Building Collection and Decommission**

* 1. In accordance with the payment arrangements set out in Annex B, the Supplier Alliance Member must collect the Modular Building from the agreed collection point on the date which the Parties agree will be the Return Date.
  2. To facilitate collection and, if applicable, decommissioning, the Additional Client must ensure the interior of the Modular Building has been decontaminated and suitably cleaned to return the Modular Building to general service while providing all requisite materials, facilities, access and suitable working conditions to enable collection and, if applicable, decommissioning to be carried out safely and efficiently.
  3. The Supplier Alliance Member must agree a note of the condition of the Modular Building with the authorised representative of the Additional Client at the time of collection and state the condition on an inspection form.
  4. Subject always to clause 13, if Supplier Alliance Member does not collect the Modular Building at the agreed time and collection point, the Supplier Alliance Member indemnifies the Additional Client against all losses due to the failure to collect the Modular Building as agreed.

## Replacement Modular Building

* 1. If a Modular Building becomes not fit for any of the purposes for which a Modular Building of its type is commonly used and the Modular Building Order states that the Additional Client requires a replacement Modular Building, the Supplier Alliance Member must replace the Modular Building for the Additional Client's use within the conditions specified in the Project Contract for a period up to twenty-eight (28) days for any one event.
  2. The Supplier Alliance Member must provide a replacement Modular Building that is, where reasonably possible, a comparable model to the Modular Building which has become unfit for purpose.

## The Additional Client's Obligations Modifications

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

## Limits of Use

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

**Insurance**

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

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

**Maintenance by Additional Client**

* 1. The Additional Client must ensure that at all times the Modular Building and its internal fabric (but excluding the Chillers, Racking and ramps), is maintained in accordance with the manufacturer's recommendations and warranty stipulations and that the Modular Building is kept clean and in a good state of repair.

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

* 1. On expiry of the Hire Period or in the event of early termination of the hire in respect of any Modular Building, the Additional Client must:
     1. make the Modular Building available for collection by the Supplier Alliance Member on the date assigned for collection. The Supplier Alliance Member will be bound by all obligations under this Project Contract until the time when the Supplier Alliance Member actually collects the Modular Building which the Supplier Alliance Member shall do promptly;
     2. complete an inspection form with the Supplier Alliance Member on the Return Date and ensure that the Modular Building is returned and that the Modular Building is in a condition consistent with its age;
     3. remove all personal effects and any other items belonging to the Additional Client;
     4. if the Supplier Alliance Member notifies the Additional Client that the Modular Building is not in the condition required, pay to the Supplier Alliance Member the amount that the Additional Client and the Supplier Alliance Member agree as the cost of rectification. In the event of any dispute regarding the condition of the Modular Building, an independent assessment must be carried out by a properly qualified and experienced consultant appointed by the Supplier Alliance Member and the Additional Client. Any consultant must act as an expert and not as an arbitrator and their decision is final;
     5. in the event of a dispute the Modular Building or other form of evidence acceptable to the Additional Client must be held by the Supplier Alliance Member until an independent assessment has been made. The costs of the independent consultant must be borne equally between the Additional Client and the Supplier Alliance Member provided that both Parties act reasonably at all times during the dispute;
     6. in the event of damage to any Modular Building the Supplier Alliance Member must forward an invoice to the Additional Client within twenty- one (21) days following the Return Date. In the case of dispute the Additional Client will notify the Supplier Alliance Member of what is in dispute within twenty-one (21) days of receipt of invoice or pay the invoice in accordance with the payment terms; and
     7. without prejudice to clause 7.12, on the Return Date, the Additional Client shall comply with such deep cleaning and contamination requirements relating to each Modular Building as are necessary to allow the Modular Building to be reused without contamination of Covid-19 or otherwise.

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

* 1. Upon termination or expiry of the Hire Period (as may be extended), the Supplier Alliance Member shall use its reasonable endeavours to dispose of or sell the Racking and in the event of such disposal or sale, the Supplier Alliance Member shall pay [REDACTED] of the proceeds of any disposal or sale of such Racking to the Additional Client. Reasonable evidence of the terms of such sale or disposal shall be provided to the Additional Client.
  2. The Supplier Alliance Member hereby agrees that the Additional Client may at its own risk use or licence a third party to use the Modular Buildings for the purposes of a temporary mortuary.

## Termination of a Hire

## *Additional Client default*

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

*Termination by Additional Client without cause*

* 1. At any time, the Additional Client can terminate the hire of any Modular Building by giving:
     1. Ten (10) days’ written notice to the Supplier Alliance Member in the event of termination taking effect in the period 10 April 2020 to 10 October 2020; and
     2. One (1) month’s written notice to the Supplier Alliance Member in the event of termination taking effect on or after 10 October 2020.

*Termination by Additional Client for Supplier default*

* 1. If any of the following events happen, the Additional Client has the right to immediately terminate (in part or whole) the Project Contract and/or the hire of any Modular Building by issuing a termination notice to the Supplier Alliance Member:
     1. there is an insolvency event relating to the Supplier Alliance Member;
     2. there is a material Default that is not corrected in line with an accepted rectification plan which is irremediable or (if such breach is remediable) the Supplier Alliance Member fails to remedy that breach within a period of twenty (20) Working Days after being notified in writing to do so;
     3. there is any material Default of the Project Contract which is irremediable or (if such breach is remediable) the Supplier Alliance Member fails to remedy that breach within a period of 40 Working Days after being notified in writing to do so; or
     4. there is a change of control of the Supplier Alliance Member which is not pre-approved by the Additional Client in writing
     5. to avoid doubt a material default includes but is not limited to the Supplier Alliance Member’s breach in respect of its obligations to fix the Chillers within the timescales set out in Annex A to this Project Contract.

## Consequences of Expiry or Termination Payment for Early Termination

* 1. Where this clause 10 applies the standard early termination charges apply and the Supplier Alliance Member must invoice the Additional Client as appropriate within twenty one (21) days following the termination.
  2. Where hire of a Modular Building is terminated or cancelled under Clause 4.3, Clause 9.1, or Clause 9.2.1, the Additional Client shall pay the whole of the Hire Payment that would (but for the termination) have been payable if the Project Contract had continued from the date of such demand to 10 October 2020.
  3. where either Party terminates the Project Contract pursuant to clauses 11.2 or clause 13 (COVID-19 Events) the Additional Client shall pay to the Supplier Alliance Member the Hire Payments for the Modular Buildings which are on hire and the Supplier Alliance Member’s properly incurred costs evidenced to the Additional Client’s reasonable satisfaction at the date of termination.
  4. Where the Additional Client terminates the Project Contract pursuant to clause 9.3, the Additional Client shall pay to the Supplier Alliance Member the Hire Payments for the Modular Buildings which are on hire but the Additional Client’s obligation to pay the Supplier Alliance Member for Modular Buildings not delivered ceases on the date of the Additional Client’s notice to terminate the Project Contract.
  5. Where the Additional Client terminates the Project Contract pursuant to clause 9.3 and then makes other arrangements for the supply of the Modular Building, the Additional Client can recover the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Additional Client from the Supplier Alliance Member provided always that the other arrangements are for a supply of Modular Buildings equivalent to those the subject of this Hire Agreement. The Additional Client must take all reasonable steps to mitigate any additional expenditure. Where the Project Contract is terminated, the Additional Client will not make any further payments to the Supplier Alliance Member until the Additional Client has established the final cost of making those other arrangements.
  6. Save as otherwise expressly provided in the Project Contract:
     1. termination or expiry of the Project Contract shall be without prejudice to any rights, remedies or obligations accrued under the Project Contract prior to termination or expiration and nothing in the Project Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
     2. termination of the Project Contract shall not affect the continuing rights, remedies or obligations of the Additional Client or the Supplier Alliance Member including under clauses 12 (Insurances) and 13.1, 13.2 (save that the parties agree the prohibition on subcontracting is hereby deleted from that clause 13.2), 13.3 and 13.6 (General) of the Framework Alliance Contract.

**Circumstances beyond your control**

* 1. Any Party affected by a Force Majeure Event is excused from performing its obligations under the Project Contract while the inability to perform continues, if it both:
     1. provides written notice to the other Party;
     2. uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
  2. Either Party can partially or fully terminate the Project Contract if the provision of the Modular Buildings or Services is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.
  3. Where a Party terminates under Clause 11.2:
     1. each Party must cover its own losses; and

* + 1. clause 8.7 shall apply.
  1. Not used.
  2. Subject to Clause 11.6, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
  3. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier Alliance Member is the Affected Party, it shall take reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

"**Affected Party**" means the party seeking to claim relief in respect of a Force Majeure Event;

"**Force Majeure Notice**" means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"**Force Majeure Event**" any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Project Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Project Contract, but excluding: i) any industrial dispute relating to the Supplier Alliance Member or its staff (including any subsets of them) or any other failure in the Supplier Alliance Member or the subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; iii) any failure of delay caused by a lack of funds; and (iv) an event, circumstance, matter or cause reasonably known to such Party before the date of the Project Contract including but not limited to COVID-19 events.

## Disputes

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

## COVID-19 Event

* 1. Notwithstanding any other provision in this Project Contract, the Parties agree that, if the Supplier Alliance Member is prevented from performing, or delayed in the performance of some or all of its obligations under the Project Contract by an event, circumstance, matter or cause relating to or resulting from COVID-19 (“**COVID-19 Event**”), then the Supplier Alliance Member shall:
     1. notify the Additional Client within a reasonable time; and
     2. use reasonable efforts to mitigate the impact of such COVID-19 Event.
  2. If after the Supplier Alliance Member having complied with its obligation to mitigate under clause 13.1.2, the COVID-19 Event is not remedied to the reasonable satisfaction of the Additional Client, the Additional Client shall have the right to:
     1. terminate the Project Contract in whole or in part or:
     2. suspend the Supplier Alliance Member’s obligations under the Project Contract affected by the COVID-19 Event,
  3. If the Additional Customer suspends the Project Contract pursuant to clause 13.2.2 above the Supplier Alliance Member shall be excused from the performance of the suspended obligations until the inability to perform as a consequence of a COVID-19 Event ends when its obligations under the Contract shall resume and any time periods for performance of obligations would be extended by a period equivalent to the period of suspension. For the avoidance of doubt, the Additional Client shall continue to have the right to terminate under clause 13.2.1 during the period of such a suspension.
  4. If the Additional Client suspends the Supplier Alliance Member’s obligations under the Project Contract affected by the COVID-19 Event pursuant to clause 13.2.2 the Supplier Alliance Member shall pay the Additional Client’s reasonable and properly incurred costs in respect of the Supplier Alliance Member’s suspended obligations in respect of the maintenance of the Chillers only in so far as the cost of such maintenance is the Supplier Alliance Member’s responsibility.

## Which law applies

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