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|  |
| **DATED** | **2020** |

**(1) [CLIENT]**

**- and -**

**(3) [Contractor]**

|  |  |  |
| --- | --- | --- |
|  | **PRE‑CONSTRUCTION SERVICES AGREEMENT** relating to roof renewal works at the National Oceanography Centre in Southampton |  |

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This AGREEMENT is made on 2020

BETWEEN

**(1) [CLient]** (company number                     )[[1]](#footnote-2) whose registered office is located at [                  ]  (the **"Client"**); and

**(2) [CONTRACTOR]** (company number                     ) whose registered office is located at [                  ]   (the **"Contractor"**).

**BACKGROUND**

1. The Client wishes to procure the carrying out of certain roof renewal works at the National Oceanography Centre, European Way, Southampton, SO14 3ZH (**"Site"**) which works are more particularly described in Schedule 1 (**"Development"**).
2. The Client wishes to appoint the Contractor to perform the pre-construction services set out in Schedule 2 (**"Services"**) on the terms and conditions set out in this agreement.
3. Subject to the terms of this agreement, the Client anticipates that it may wish to appoint the Contractor as Building Contractor for the performance of the Works (as defined below) and seeks to secure agreement with the Contractor on the terms upon which such appointment may be made.

**IT IS AGREED** as follows:

# DEFINITIONS AND INTERPRETATION

## In this agreement the following words and expressions shall, where the context so admits, be deemed to have the following meanings:

**"Additional Services"** means such further services (additional to the Services described in Schedule 2 as at the date of this agreement) as the Client may instruct and the Parties may agree that the Contractor shall perform under the terms and conditions of this agreement;

**"Building Contract"** means the final contract (if any) entered into between the Client and the Building Contractor for the performance of the Works, being a contract in the form of the draft contract appearing in Schedule 5 and incorporating *inter alia* (i) NEC4 ECC Option A (as amended by the Z clauses), (ii) duly completed Contract Data Parts One and Two (including, without limitation, the Contract Price and the Completion Date) and (iii) such Scope (including Works Delivery Methodology), Site Information and Activity Schedule as are developed and agreed between the Parties under and pursuant to this agreement;

**"Building Contractor"** means such building contractor as may be engaged by the Client under the Building Contract to carry out the Works;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2015 together with the recommendations contained in the most recent official guidance issued by the Health and Safety Executive relating to such regulations or any amendment to or re-enactment of the same;

**"Completion Date"** means such date for completion of the whole of the Works (or, as the case may be, the dates for completion of each section of the Works, if applicable) as may be agreed between the Client and the Contractor for the purposes of the Building Contract;

**"Construction Act"** means the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009);

**"Contract Price"** means a total lump sum fixed price for the carrying out of the Works, being the amount intended to be agreed between the Client and the Contractor pursuant to clause 8.1 and then specified as the “tendered total of the Prices” in Contract Data Part Two of the Building Contract;

**"Development Consent"** means any planning permission, consent, approval, certificate, permit, licence, wayleave, order, statutory agreement or authorisation required under any applicable law or any consent, approval and/or agreement from any third party which is necessary for or applicable to the carrying out of any of the Services and/or the Works (and **"Development Consents"** means all of them);

**"Development Programme"** means the programme set out in Schedule 4 (or any replacement thereof as may be agreed or determined under this agreement);

**"Documents"** means any and all documents, drawings, CAD materials, plans, designs, diagrams, details, specifications, technical data, reports and other design information, of any nature whatsoever, which have been or will be produced by the Contractor or on the Contractor's behalf in relation to the Development;

**"Fee"** means the lump sum fee stated in paragraph 5 of Schedule 1, being the total sum payable to the Contractor for the proper performance of the Services (as such sum may be adjusted from time to time in accordance with this agreement);

**"NEC4 ECC Option A"** means the conditions of the NEC Engineering and Construction Contract, Fourth Edition June 2017, incorporating Main Option A (*priced contract with activity schedule*);

**"Notice to Proceed"** means a notice to proceed issued by the Client to the Contractor pursuant to clause 8.2, in the form of the draft notice appearing in Schedule 6 (with all blanks therein duly completed);

**"Other Consultants"** means, collectively, those consultants appointed by the Client to provide any professional consultancy services in connection with the design and/or construction of the Development or any part thereof and identified in Schedule 1 or any replacement thereof notified by the Client to the Contractor and references to individual consultants shall mean those persons (or their replacements) identified in Schedule 1;

**"Parties"** means, collectively, the Client and the Contractor (including their respective permitted assignees under this agreement) (and **"Party"** means either of them);

**"Pre-Construction Period"** means the period from the date of this agreement up to and including the earlier of (a) the date of issue of a Notice to Proceed by the Client and (b) the date of termination of this agreement;

**"Project Manager"** means Ramboll UK Ltd having its registered office at 240 Blackfriars Road, London, SE1 8NW or any other person appointed as project manager by the Client and identified by the Client to the Contractor from time to time;

**"Proposed Development Documents"** means the documents appearing in Schedule 3, comprising the Initial Scope, the Initial Site Information and the Initial Pricing Document, which documents shall form the basis of the Parties' discussions pursuant to clause 8.1 during the Pre-Construction Period (and from which the Parties shall seek to develop and agree the final forms of the Scope, the Works Delivery Methodology, the Site Information and the Activity Schedule intended for inclusion in the Building Contract);

**"Reimbursable Costs"** shall mean the reimbursable costs instructed under clause 3.8;

"**Scheme**" means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 649) (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 or any re‑enactment of the same);

"**Statutory Requirements**" means the requirements of the Town and Country Planning Act 1990, the Construction Act, the CDM Regulations, the Building Act 1984, the Building Regulations 2010 and all other acts of Parliament, statutory requirements, legislation, codes of practice, permissions, plans, bye laws, instruments, judgments, rules, orders, regulations and permissions having the force of law and applicable to the Development (or any part thereof);

**"Sub‑Contract"** means any contract for the employment of a Sub‑Contractor in connection with the Works or any part thereof;

**"Sub‑Contractor"** means any sub‑contractor appointed by the Building Contractor to supply services and/or materials and goods in connection with the Works or any part thereof;

**"Works"** means the works and/or services required for the construction and completion of the Development (including, where relevant, the provision of design and/or the selection of materials and goods therefor) as described in the Initial Scope;

**"Works Delivery Methodology"** means a detailed written description of the manner in which the Works are to be undertaken by the Building Contractor at the Site so as to ensure that the Client’s premises can remain continuously occupied and used by the Client and third parties throughout the performance of the Works including, without limitation, (a) in a condition which is safe and suitable for use by the Client’s employees and other personnel, (b) without interrupting any utility supplies to the Client’s premises, (c) without compromising the security of the Client’s premises or its fire detection and alarm systems, (d) without preventing or unreasonably constraining or restricting pedestrian or vehicular access to or within the Site and (e) in a manner which is consistent with best practice and will not cause the Client to breach any Statutory Requirements applicable to the condition of workplaces or its duties as an employer or a statutory body;

"**Z clauses**" means the z clauses (amending the provisions of NEC4 ECC Option A) appearing in Schedule 5.

## The interpretation and construction of this agreement shall be subject to the following provisions:

### the clause headings in this agreement are for the convenience of the Parties only and do not affect its interpretation;

### words importing the singular meaning include where the context so admits the plural meaning and vice versa;

### where the context so admits words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner;

### references to a clause or a Schedule are (save where expressly otherwise stated herein) to a clause or a Schedule of this agreement;

### any reference to a statute (whether or not specifically named herein) shall include any amendment or re‑enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, bye‑laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom;

### terms defined in the Building Contract and/or the Proposed Development Documents (as the case may be) shall have the same meanings wherever used in this agreement; and

### no communication made by or on behalf of the Client under this agreement, no acceptance by the Client of any communication from the Contractor, no inspection, test, approval or acceptance of any the Contractor's work or design by the Client, the Project Manager or any Other Consultants, and no failure of the Client or the Project Manager to withhold acceptance or approval of, express disapproval of or otherwise comment on any submission, design or work carried out by the Contractor changes or diminishes the Contractor's duties, obligations or liabilities under this agreement (including the Contractor's responsibility to provide the Services).

# APPOINTMENT OF CONTRACTOR FOR PRE‑CONSTRUCTION SERVICES

## The Client hereby appoints the Contractor as pre‑construction contractor in relation to the Development and subject to the terms hereof the Contractor agrees to perform the Services fully and faithfully in the best interests of the Client in accordance with the terms and conditions set out in this agreement.

## The appointment of the Contractor shall be deemed to have commenced with effect from the date when the Contractor first began to perform the Services or from the date hereof whichever shall be the earlier and any works or services performed by the Contractor on behalf of the Client in connection with the Development prior to the date of this agreement shall be treated as having been performed by the Contractor under the terms of this agreement, notwithstanding the date of this agreement.

## Provided the same are not in conflict with or inconsistent with this agreement nor with any express instructions or directions of the Client, the Contractor shall act upon the instructions and directions of the Project Manager and shall be entitled to treat all such instructions and directions as those of the Client.

## The Contractor acknowledges that the Client and the Project Manager will take an active role in monitoring the performance of the Services. The Contractor agrees to cooperate and work closely with the Client, the Project Manager and the Other Consultants to accommodate, where reasonable, all proposed modifications and design changes relating to the Development.

# CONTRACTOR'S OBLIGATIONS

## The Contractor warrants to the Client that it has exercised and that it will continue to exercise in the performance of the Services such reasonable skill, care and diligence as may be expected of a properly qualified and competent professional engineer experienced in carrying out work similar to the Services for a development of a similar size, scope and complexity to the Development.

## Without prejudice to the generality of clause 3.1, the Contractor shall:

### notify the Client as soon as reasonably practicable in the event that the performance of the Services or the progress of the Development is delayed for any reason whatsoever; and

### allow the Project Manager to have access to all documents, records, accounts and other information created or held by the Contractor in connection with the Development and the Services and to provide to the Client a reasonable number of copies of such documents, records, accounts and information when reasonably requested to do so by the Project Manager.

## Without prejudice to the Contractor's general obligations at law and hereunder, the Contractor shall have regard to:

### any obligations (insofar as the same are not inconsistent with the Services) on the part of the Client which may be embodied in the Development Consents and any other relevant obligations that the Client may owe to third parties in relation to the Development (insofar as the Contractor has been given reasonable notice of the extent of the Client's obligations); and

### the contents (insofar as the same are not inconsistent with the Services) of the Proposed Development Documents.

## The Contractor acknowledges it has a duty to familiarise itself with the Statutory Requirements, the Development Consents and any other obligations upon the Client howsoever imposed.

## The Contractor must keep the Client fully and properly informed on all aspects of the progress and performance of the Services and shall further provide the Client with all such information and documentation in connection with the Services as the Client may reasonably require.

## In carrying out the Services the Contractor shall have regard to the constraints within the Development Programme.

## The Contractor shall carry out any Additional Services requested by the Client subject to the Client and the Contractor having agreed (in writing) on the amount of any fee and disbursements to be paid to the Contractor for the same which shall be negotiated in good faith.

## Both the Client and the Contractor acknowledge and agree that this agreement including any of the Additional Services does not permit the carrying out by or on behalf of the Contractor of any construction works at the Site. The Services and any Additional Services shall be limited to pre‑construction activities but may include the reservation of capacity, materials and/or plant should both the Client and the Contractor agree such reservation is necessary and the Client provides a written instruction that such reservation is a Reimbursable Cost.

## The Contractor has had or will be given the opportunity to inspect the physical and other conditions of the Site and its surrounds and the Contractor shall be deemed to have fully acquainted itself with the same and the Statutory Requirements and any standards and requirements contained within the Development Consents and all necessary information as to risks, contingencies and all other circumstances which may affect or influence its Services.

## The Contractor warrants that:

### it has the skills, knowledge, experience and organisational capability, and has allocated the resources necessary, to perform its duties and fulfil its role pursuant to the CDM Regulations insofar as they apply to the Development;

### in exercising the standard of skill, care and diligence referred to in clause 3.1, it has advised and supported and will continue to advise, assist and provide support to the Client in performing the its duties as a "client" pursuant to the CDM Regulations; and

### it shall co-operate and liaise with and provide information to the Other Consultants as necessary to enable them to comply with their respective obligations under the CDM Regulations.

# CONTRACTOR'S PERSONNEL

## The Contractor shall forthwith appoint the person named in paragraph 4.1 of Schedule 1 as its representative to direct and control the overall performance by the Contractor of the Services. Such person or any replacement approved by the Client shall have full authority to act on behalf of the Contractor for all purposes in connection with this agreement.

## The Contractor shall use the key persons listed in paragraph 4.2 of Schedule 1 in connection with the performance of the Services and such persons' services shall be available for so long as may be necessary to ensure the proper performance by the Contractor of the Services, providing such persons remain members of the Contractor and are not absent from work through illness or sickness.

## The Contractor agrees that it shall use its reasonable endeavours to employ the same personnel as used for this agreement for managing the performance of the Works under the Building Contract, if the Contractor is appointed as Building Contractor by the Client.

## The Contractor shall give to the Client if so requested a list of all persons who are or may be at any time directly concerned with the performance of this agreement specifying the capacity in which they are concerned with the performance of the Services and giving such other particulars as the Client may reasonably require.

## If the Client notifies the Contractor that it considers that an employee or sub‑contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this agreement, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Client considers necessary to remedy the situation or, if so required by the Client, shall remove the said employee or sub‑contractor from providing the Services and shall provide a suitable replacement (at no cost to the Client).

## The Contractor shall take all reasonable steps to avoid changes of employees or sub‑contractors assigned to and accepted to provide the Services under the Agreement except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Project Manager of proposals to change key employees or sub‑contractors.

## The Contractor shall use all reasonable endeavours to ensure that all its employees and sub‑contractors who are not EC Nationals are legally entitled to be resident in the UK and have a work permit, where applicable.

# contractor’S PRESENCE AT Client's premises

## The Contractor shall (and shall ensure that its personnel shall), whenever present at the Site during the Pre-Construction Period, take access to the Site and perform any Services there in accordance with the Client’s reasonable instructions and the security, health and safety and environmental requirements and policies set out or referred to in the Initial Scope or elsewhere in this agreement. Whenever performing any Services outside the Site, the Contractor shall have (and shall ensure that its personnel shall have) due regard to such requirements and policies.

## Subject to the Contractor making reasonable prior appointment with (and obtaining the written consent of) the Client (and without prejudice to clause 5.1), the Client shall permit the Contractor and its personnel to enter the Site and the Client’s premises during normal working hours in the Pre-Construction Period for the purposes of undertaking such inspections, non-invasive surveys, measurements and investigations as the Parties agree (i) are necessary for the performance of the Services and/or (ii) should assist the Parties to conclude the documents and details referred to in clause 8.1, provided that the consent of the Client may be granted subject to any reasonable conditions (with which the Contractor shall be obliged to comply) and the provisions of clause 10 shall apply in respect of any personal injury, death, loss and/or damage arises out of or in the course of or by reason of the Contractor or any of its personnel’s negligent acts, defaults or omissions when present at the Site and/or the Client’s premises.

# CLIENT'S OBLIGATIONS

## The Client shall if so requested by the Contractor:

### supply to the Contractor in such time as may be reasonable having regard to the time and nature of any such request any necessary and relevant data and information in the possession of the Client or which may only be obtained by the Client; and

### give or shall use its reasonable endeavours to procure that the Other Consultants or any of them or any other relevant third party give such assistance to the Contractor as shall reasonably be required by the Contractor in the performance of the Services,

## provided thatany such obligations of the Client shall be without prejudice to the Contractor's obligations to liaise directly with the Other Consultants or any other third party in an endeavour to procure the production of any information to be supplied by such persons.

## The Contractor shall upon receipt of any information supplied by the Client (in accordance with clause 6.1.1) or from any other source, review such information and in a timely fashion having regard to the Development Programme request from the Client any further information which should reasonably be within the Contractor's contemplation as necessary for the completion of the Services. For the avoidance of doubt this clause 6.2 does not impose any further obligation upon the Client to supply or obtain information than is contained in clause 6.1 above.

## The Client makes no representation or warranty as to the accuracy or completeness of any such information provided to the Contractor.

## For the avoidance of doubt, the Client, by entering in to this agreement, makes no representation or warranty that it will appoint the Contractor as the Building Contractor. However, should the Client decide to appoint the Contractor as the Building Contractor and issue a Notice to Proceed to the Contractor pursuant to clause 8.2, the Contractor undertakes to enter into the Building Contract and perform the Works in accordance with it.

## Where any approval or decision is required on the part of the Client and/or Other Consultants under this agreement, the Client shall use reasonable endeavours to procure that the Other Consultants shall:

### not unreasonably withhold or delay any approval or decision; and

### provide any approval or decision to the Contractor as soon as practicable and in any event in sufficient time to enable the Contractor to comply with his obligations under this agreement and so as not to delay the carrying out and discharging of the Development in accordance with any programme for the pre-construction phase (the Contractor shall notify the Client in writing if the Contractor anticipates that any delay in any approval or decision will have an impact on the Development Programme).

# REMUNERATION

## The Client shall (subject to the provisions of clause 15) pay the Fee to the Contractor as full remuneration for the proper performance of the Services in accordance with this agreement.

## The Fee shall be paid as provided in paragraph 5 of Schedule 1.

## The Client shall in addition pay to the Contractor the total amount of value added tax (**"VAT"**) properly chargeable by the Contractor on the supply to the Client of any goods or services under this agreement.

## The Fee shall be deemed to be inclusive of all costs, expenses and overheads (except overseas travel) incurred by the Contractor in connection with the provision of the Services.

## The Client shall, in addition to the Fee, reimburse the Contractor for Reimbursable Costs incurred by the Contractor in the performance of the Services, provided that the Client shall have in each case previously authorised the Contractor to incur the same in writing.

# procurement and Contract Price

## The Parties agree to work together during the Pre-Construction Period to consider, discuss, adjust and seek to agree (a) the final forms of the Scope, the Site Information and the Activity Schedule intended for inclusion in the Building Contract (based on the Proposed Development Documents), (b) the information necessary to complete the Contract Data for the Building Contract (including, without limitation, the Contract Price, the Completion Date and the required insurances) and (c) the Works Delivery Methodology for inclusion in the final Scope, and the Contractor agrees to provide such information, support and assistance to the Client and the Project Manager as may be necessary for this purpose. The Parties agree to negotiate in good faith and use reasonable endeavours to agree the documents and details referred to in this clause 8.1 within 3 months of the date of this agreement.

## Where the Parties agree the documents and details referred to in clause 8.1, the Client may, at its sole discretion, by the issuance of a Notice to Proceed to the Contractor, appoint the Contractor to perform the Works at the agreed Contract Price and on the terms of the Building Contract and, in such event, the Contractor agrees to accept such appointment (provided that, for the avoidance of doubt, the Client will be under no obligation to issue any Notice to Proceed). Upon receipt by the Contractor of a Notice to Proceed issued by the Client under this agreement, the Contractor shall proceed to commence the Works and, within 7 days of the Contractor receiving an engrossment of the final complete Building Contract (incorporating the documents and details agreed pursuant to clause 8.1) from the Client or its agents, the Contractor shall execute the Building Contract (as a deed) and return it to the Client.

## In the event that, pursuant to clause 8.2, the Client appoints the Contractor as Building Contractor to perform the Works, no further payments shall be made to the Contractor under this agreement and all payments at that date time yet to be made under this agreement shall be deemed to be included within the Contract Price under the Building Contract.

## Upon execution of the Building Contract, the Parties' respective rights, obligations and liabilities in respect of all matters with which this agreement is concerned shall be deemed to be subsumed within and regulated solely by the Building Contract.

# INSURANCES

## Without prejudice to its obligations under this agreement or otherwise at law the Contractor covenants with the Client that:

### the Contractor has taken out and shall maintain professional indemnity insurance cover, in an amount of not less than ten million pounds (£10,000,000) in aggregate in any 12 month period of insurance for a period beginning now and ending 12 years after the date of completion of the Development, provided always that such insurance is generally available at commercially reasonable rates and terms but disregarding the extent to which such commercial rates and terms may be onerous on account of the insurance record of the Contractor;

### if for any period such professional indemnity insurance is not obtainable on commercially reasonable terms (as defined above) the Contractor shall forthwith inform the Client; and

### within 7 days of the Client's written request to do so, the Contractor shall (but not in any way which would breach any term of the insurance policy then in force) provide to the Client documentary evidence that the professional indemnity insurance required hereunder is being maintained.

## The Contractor shall (a) insofar as not already done, effect insurance cover with substantial and reputable insurers against death or personal injury to persons and loss or damage to property arising as a consequence of the Services (including employer’s liability insurance and public liability insurance) with a level of indemnity of not less than ten million pounds (£10,000,000) in respect of each and every claim and (b) exhibit to the Client documentary evidence as the existence of such insurances and the levels of cover thereof within 7 days of the date of this agreement (and the Client’s obligation to make payment of the Fee shall be conditional on the Contractor evidencing the existence of the insurances required under this clause 9). The Contractor shall maintain such insurances throughout the Pre-Construction Period and shall immediately inform the Client in writing if any of such insurances is cancelled, voided or otherwise ceases to be maintained for any reason.

# indemnity

## The Contractor shall be liable for, and shall indemnify the Client against any expense. liability, loss, claim, or proceedings whatsoever arising under any Statutory Requirement or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Services or any of the Contractor’s other activities pursuant to this agreement, save only where such personal injury to or death of any person is a result of the Client's negligence.

## The Contractor shall be liable for, and shall indemnify the Client against any expense, liability, loss, claim, or proceedings in respect of any loss injury or damage whatsoever to any property real or personal in so far that such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Services or any of the Contractor’s other activities pursuant to this agreement and to the extent that the same is due to any negligence, breach of Statutory Requirement, omission or default of the Contractor, its employees, servants or agents or of any person employed or engaged by the Contractor in connection with the Services.

# COPYRIGHT and confidentiality

## The Contractor grants and agrees to grant to the Client an irrevocable, royalty‑free and non‑exclusive licence to copy and use the Documents, to reproduce the contents of them and to reproduce the designs, works and inventions contained in them for all purposes relating to or connected with the Development including (but without limitation) the execution, completion, insuring, financing, letting, management, sale, advertisement, extension, alteration, maintenance, reinstatement and repair thereof. Such licence will carry the right to grant sub‑licences and be transferable to third parties.

## The Contractor will not be liable for any use of the Documents for any purpose other than that for which they were produced.

## As between the Parties the copyright in the Documents will remain vested in the Contractor. Insofar as ownership of the copyright and/or any other intellectual property right in any Document prepared or provided by the Contractor in connection with the Development is vested in any person other than the Contractor (including, without limitation, any Sub‑Contractor), the Contractor will procure for the Client the benefit of such a licence as is referred to in clause 11.1 for the purposes referred to in that clause.

## The Contractor warrants to the Client that the use by the Client of any of the Documents for any purpose provided for in clause 11.1 will not infringe the intellectual property rights of any third party in relation to the Documents.

## The Contractor will if so requested at any time execute such documents and perform such acts as may be required fully and effectively to ensure the Client and/or any third party the rights referred to in clause 11.1.

## The Contractor will not, without the prior written approval of the Client, take or authorise the taking of any photographs of the Site or the Development for use in any publicity or advertising or publish, alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the Site or the Development or any part thereof or impart to any media outlet, website, publication, journal or newspaper or any radio, internet or television programme any information regarding the Development.

## Any information concerning the Development obtained either by the Contractor or any person employed by the Consultant in connection with the Development is confidential.

## The Contractor will not without the prior written authority of the Client, either during its engagement under this agreement (except in the proper course of its duties) or at any time after its expiry or termination (for any reason), disclose to any person or otherwise make use of any confidential information relating to the Client, the Development or otherwise including (but without limitation) any information relating to the methods and techniques of construction for the Development proposed by the Client, all financial information relating to the Development, the content of any documents (including the Client's brief and any legal agreements prepared by or on behalf of the Client and copies or drafts of which the Contractor receives or obtains in the course of its engagement under this agreement) or disclose to any person (except its insurers or professional advisers) anything contained in this agreement. The restrictions in this clause 11.8 will continue to apply, without limitation in point of time, unless and until such information comes properly into the public domain through no fault of the Contractor.

# ASSIGNMENT AND SUB‑LETTING

## The Contractor shall not assign, sub‑contract or transfer any right or obligation under this agreement to any person without the prior written consent of the Client. The Client may assign its rights under this agreement to any person.

## Where the Contractor sub‑contracts any of its obligations under this agreement the Contractor shall nevertheless remain fully responsible to the Client for the performance of the Services (including any services sub‑contracted to any other person) and further shall not be excused liability for the acts or omissions of any sub‑contractor by reason of the fact that it may have exercised all due skill and care in the selection of such sub‑contractor and further will be deemed to have entered into a contract with the Contractor which imposes the same obligations, with the necessary changes having been made, on the sub‑contractor as clauses 11 and 12 hereto.

# TIME FOR PERFORMANCE

## The Contractor shall, subject to the provisions of this agreement, proceed with the Services regularly and diligently and shall perform the same as may be necessary and having regard to the Development Programme. If the Contractor is prevented or delayed in the performance of the whole or any part of the Services for any reason then the Contractor shall give written notice thereof forthwith to the Client advising the specific reason for the delay or prevention together with its best estimate of its effect on the Development Programme and shall use all reasonable endeavours as soon as practicable to resume and expedite the performance of the Services so as to complete the same with all reasonable speed.

## Any times, dates or periods specified in this agreement may be extended or altered by agreement in writing between the Parties. Time shall however be of the essence of this agreement as regards the performance of the Contractor’s obligations under this agreement, both as regards times, dates and periods specified in the agreement and as to any times, dates or periods that may by agreement between the Parties be substituted for any of them.

# TERMINATION OR SUSPENSION OF CONTRACTOR'S ENGAGEMENT

## In the event of a material breach by either Party of its obligations under this agreement either Party shall be entitled to serve on the other a notice in writing requiring remedy of such breach within 14 days of the date of receipt of such notice. If such breach is not remedied by the expiry of the 14 day period provided for, either Party shall be entitled forthwith by notice in writing to the other Party to terminate the Contractor's engagement under this agreement.

## Without prejudice to the provisions of clause 14.1, the Client may, at its sole discretion, on giving not less than 14 days' notice thereof to the Contractor, terminate the Contractor's engagement under this agreement in relation to the Development or any part thereof. Alternatively, the Client may, at any time, by giving at least 14 days' notice thereof to the Contractor, bring to an end or cancel any part or parts of the Services to be performed by the Contractor.

## The Client may at any time after commencement of the Services, by giving not less than 14 days' notice thereof to the Contractor, require the Contractor to suspend performance of the whole or any part of the Services under this agreement without the need for there to have been any breach of any of the terms of this agreement. If the Client shall not have required the Contractor to resume performance of the Services or the relevant part within a period of six months from the date of such notice then either Party may thereafter by notice in writing forthwith terminate the Contractor's engagement under this agreement in relation to the Services so suspended.

## In any case in which the Client has required the Contractor to suspend the Services under clause 14.3 the Client may at any time within a period of six months from the date of such notice require the Contractor in writing to resume the performance of the Services or part or parts thereof. In such event the Contractor shall as soon as reasonably practicable resume the performance of the Services or the relevant part in accordance with this agreement and any payment made under clause 15.2 shall rank as payment on account towards the payments to be made to the Contractor under this agreement.

## Without prejudice to any of the rights and remedies which the Contractor may possess, if the Client shall fail to pay the Contractor in full any amount properly due and payable to it under this agreement by the final date for payment thereof in accordance with the requirements of clause 7 and paragraph 5 of Schedule 1 the Contractor may, after giving the Client not less than 7 days' notice in writing of the same, suspend the performance of the Services until payment in full occurs.

# CONSEQUENCES OF TERMINATION OR SUSPENSION OF CONTRACTOR'S ENGAGEMENT

## Upon any termination of the Contractor's engagement under clause 14 the Contractor shall take immediate steps to bring to an end the Services (or the relevant part in the case of a suspension of part of the Services) in an orderly manner but with all reasonable speed and economy and shall cause to be delivered to the Client all Documents and other work (whether in the course of preparation or completed) being undertaken as part of the Services.

## If the Contractor's engagement in relation to the Development or any part thereof is terminated the Client shall (subject to prior compliance by the Contractor with its obligations under clause 15.1 and to any withholdings, deductions or set‑offs which the Client is entitled to make (if any) and to clauses 15.2.1, 15.3, 15.4 and 15.5) pay to the Contractor that part of the Fee which fairly represents work already done in respect of the provision of the Services (or any part thereof) in relation to the Development or the part of it to which the termination relates (as the case may be) up to the date of such termination less the amount of any payments in respect of the Fee previously made by the Client to the Contractor under this agreement in relation thereto provided always:

### that the Contractor shall have first submitted to the Client an application for payment of the amount considered by the Contractor to be payable pursuant to this clause 15.2; and

### the provisions of paragraph 5.2 of Schedule 1 shall apply to such application as if it were an application for payment of an instalment of the Fee as provided for therein.

## Upon any termination or suspension of the Contractor's engagement either in relation to the Development or any phase or part thereof:

### the amount payable by the Client pursuant to clause 15.2 shall be a full and final settlement of the liability of the Client under this agreement for payment of the Fee in relation to the Development or the part of it to which the termination or suspension relates by reason of such termination or suspension and further;

### the Client shall not be liable to the Contractor for any loss of profit, loss of contracts or other costs, damages, losses and/or expenses arising out of or in connection with such termination or suspension.

## Termination of the Contractor's engagement shall subject to clause 15.3 be without prejudice to the rights and remedies of either Party in relation to any negligence, omission or default of the other prior to such termination.

## The Client's obligation to pay the Contractor pursuant to clause 15.2 shall be subject to the Contractor providing to the Client such detail as the Client may reasonably require to validate payment including, without limitation, timesheets.

## Subject to the provisions of the Limitation Act 1980 (or any re‑enactment or modification thereof) the provisions of this agreement shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

# ALTERATIONS TO TERMS

All and any additions, amendments and variations to this agreement shall be binding only if in writing and signed by the duly authorised representatives both of the Client and of the Contractor.

# independent enquiry

The duties and obligations of the Contractor under or pursuant to this agreement shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by the Client or by any firm, company or person on behalf of the Client nor by any action or omission of any such firm, company or person whether or not such action or omission might give rise to an independent liability of such firm, company or party to the Client provided that nothing in this clause 17 shall prevent the Contractor seeking contribution from third parties whether under statute or common law.

# NOTICES

## Any notice to be given hereunder shall be in writing and either be delivered personally or by registered post or recorded delivery. Notices sent by email or fax shall not be valid for the purposes of this agreement. The addresses for service of the Client and of the Contractor shall be those stated in Schedule 1 or such other address as the Party to be served may have previously notified in writing to the other Party. A notice shall be deemed to have been served as follows:

### if personally delivered, at the time of delivery; or

### if sent by registered post or recorded delivery, at the time of delivery as recorded in the appropriate register.

## In proving such service, it shall be sufficient to prove that personal delivery of the notice was made or that the applicable notice was properly addressed and despatched as the case may be.

# adjudication procedure

## Either Party may refer any dispute or difference arising under this agreement to adjudication. Unless the adjudicator has been agreed between the Parties, the adjudicator shall, upon the request of the Party seeking adjudication, be nominated by the Chairman for the time being of the Technology and Construction Solicitors Association (**"TeCSA"**) or such other person within TeCSA with authority to make such nomination.

## The adjudication shall be undertaken in accordance with the rules and provisions of the Scheme, subject to the inclusion of a requirement that the adjudicator to give reasons for his decision.

## The Client and the Contractor shall maintain strict confidence in respect of any intention to refer a dispute or difference under this agreement to adjudication, or any information relating to any adjudication.

# audit

The Contractor shall keep and maintain, until two years after this agreement has been completed, records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Client on a time charge basis. The Contractor shall on request afford the Client or his representatives such access to those records as may be required by the Client in connection with this agreement.

# Anti-Corruption

## The Contractor shall:

### comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (and any amendment to, or re-enactment of, it);

### not engage in any activity , practice or conduct which would constitute an offence under the Bribery Act 2010; and

### maintain throughout the term of this agreement its own policies and procedures which satisfy the requirement for "adequate procedures" referred to in section 7(2) of the Bribery Act 2010 and shall at the reasonable request of the Client confirm in writing compliance with this clause 21 and/or provide any evidence of compliance that the Client may reasonably request.

## The Contractor warrants and represents that neither the Contractor nor any of its shareholders, members, directors, officers, employees, agents, sub-contractors, suppliers, associates or affiliates has been convicted or any offence involving bribery or corruption.

# APPLICABLE LAW AND JURISDICTION

This agreement shall be governed by and construed according to the laws of England and, subject to clause 19, subject to the exclusive jurisdiction of the English courts.

# EXCLUSION OF RIGHTS UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause 23 is subject to clause 12 and does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

# FREEDOM OF INFORMATION ACT AND THE ENVIRONMENTAL INFORMATION REGULATIONS

## The Contractor provides all necessary assistance to enable the Client to comply with any request under the FOIA and/or the EIR should either be applicable to the Client.

## In no event does the Contractor or its Subcontractors respond directly to a Request for Information unless expressly authorised to do so by the Client.

# Transparency

## In order to comply with the Government’s policy on transparency in the areas of procurement and contracts the Contractor agrees that the contract and the sourcing documents issued by the Client which led to its creation will be published by the Client on a designated website.

## The entire contract and all the sourcing documents issued to the Client will be published on the designated website save where to do so would disclose information the disclosure of which would:

### contravene a binding confidentiality undertaking that protects information which the Client, at the time when it considers disclosure, reasonable considers to be confidential to the Contractor,

### be contrary to Regulation 21 of the Public Contract Regulations 2015 (as amended) or

### in the reasonable opinion of the Client be prevented by virtue of one or more of the exemptions in the FOIA or more of the exceptions in the EIR.

## If any of the situations in (25.2.1), (25.2.2), (25.2.3) above apply the Contractor consents to the contract or sourcing documents being redacted by the Client to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

In this entire clause the expression “sourcing documents” means the advertisement issued by the Client seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

# Payment to other parties

## The Contractor ensures, pursuant to Regulation 113(2)(c) of the PCRs 2015, that any subcontract awarded by the Contractor contains suitable provisions to impose, as between the parties to the subcontract, requirements that:

### any payment due from the Contractor to the Subcontractor under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed,

### any invoices for payment submitted by the Subcontractor are considered and verified by the Contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed, and

### any Subcontractor will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs (26.1.1) and (26.1.2) above, subject to suitable amendment to reflect the identities of the relevant parties.

## For the avoidance of doubt, in any situations that the Client is making payments to the Contractor without being presented with an invoice, the absence of an invoice does not waiver any obligation regarding payments made by the Contractor to its subcontractors or supply chain.

## The Contractor shall ensure, pursuant to the UK Government’s payment objectives, that it shall in its performance of this contract meet the standard required of payment of 95% of invoices paid within 60 days across monthly reporting to its so as to demonstrate to the Client that it has an appropriate and effective payment system in place for any subcontract or supply chain associated with this contract.

## The Contractor shall be obliged during its performance of the Contract to provide evidence to the Client that payments being made to its subcontractors or supply chain, by either of the following methods:

### information can be easily be obtained directly and free of charge by the Client from a national database, with details provided by the Contractor on how the Client may access this information at any time during the performance of the Contract when requested to do so by the Client; or

### the information shall be provided to the Client by email free of charge on frequency advised below, such as the supplier has a sufficiency of invoice volumes to do so and that the volumes of invoices handled by the Contractor accurately represents the assurance sought.

## The Contractor shall not be obliged to provide such above assurances to the Client during the contract by either of the above referred methods, in the following circumstances only:

### if the Contractor in its performance of the Contract does not at any time need to engage a Subcontractor; or

### if the volumes of invoices processed by the Contractor in its performance of the contract falls below the above required standard, due to the volumes of invoices processed by the Contractor, being particularly high or particularly low as measurement by percentage may distort the true picture. In such circumstances the Contractor shall suitably inform the Client of either of these situations supported by a suitable declaration and supporting evidence in.

## For the avoidance of doubt, the Client reserves the right at any time in considering the Contractor’s submission or information secured via access to any national data base, to seek further explanation or declaration from the Contractor to ensure that payments meet the required obligations placed upon the Client.

## The Contractor shall without reservation assist the Client to the reasonable extent as is requested to assist the Client to secure these assurances during the contract.

## In situations that the Client is making payments to the contract without an Invoice, the absence of an invoice (e.g. timesheet submissions for services) does not waiver any obligation regarding payments made to the Contractor’s subcontractors or supply chain.

# modern slavery

## The Contractor agrees that during any term or extension it completes and returns a report as advised below, covering the following, but not limited to areas as relevant and proportionate to the contract evidencing the actions taken, relevant to the Contractor and its supply chain associated with this contract:

### Impact assessments undertaken,

### Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised,

### Evidence of stakeholder engagement,

### Evidence of ongoing awareness training,

### Business-level grievance mechanisms in place to address modern slavery and

### Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation.

## The Client reserves the right to audit any and all reports submitted by the Contractor to an extent as deemed necessary and the Contractor unreservedly assists the Client in doing so.

## The Client reserves the right to amend or increase the frequency, as it deems necessary to secure assurance in order to comply with the Modern Slavery Act 2015.

## The Client requires such interim assurances to ensure that the Contractor is compliant and is monitoring its supply chain, so as to meet the requirements of the Modern Slavery Act 2015 details of which can be found at: <https://www.gov.uk/government/collections/modern-slavery-bill> and UKRI’s policy can be found at: <https://www.ukri.org/about-us/policies-and-standards/modern-slavery-human-trafficking/>

## The Contractor shall complete and return the report to the contact named in the contract on the anniversary of the commencement of the Contract.

## The Contractor agrees that any financial burden associated with the completion and submission of reports and associated assistance at any time, is at the Contractors’ cost to do so and will not be reimbursable.

# Taxation obligations of the contractor

## The relationship between Client and Contractor is that of “independent contractor” which means that the Contractor is not a Client employee, worker, agent or partner, and the Contractor does not give the impression that they are.

## As this contract is not an employment contract, the Contractor is fully responsible for all its own tax, including any national insurance contributions arising from carrying out the works.

### In respect of the consideration received under this contract, the Contractor at all times complies with the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) and all other statutes and regulations relating to income tax in respect of that consideration.

### Where the Contractor is liable to make National Insurance Contributions (“NICs”) in respect of any consideration received by it under this contract, it at all times complies with the Social Security Contributions and Benefits Act 1992 (“SSCBA”) and all other statutes and regulations relating to NICs in respect of that consideration.

### The Client may, at any time until the defects date, request the Contractor to provide information which demonstrates how the Contractor is complying with its obligations under clauses 28.2.1 and 28.2.2 above or why those clauses do not apply to it.

## A request made under clause 28.2.3 above may specify the information which the Contractor is required to provide and the period within which that information must be provided to the Client.

## The obligations of the Contractor under clauses 28.2.1, 28.2.2 and 28.2.3 survive Completion of the works or termination of this contract and/or the Contractor’s obligation to Provide the Works under the contract and the Contractor’s obligations to indemnify the Client survive, without limitation, until such time as these obligations are complied with.

## The Client may supply any information received from the Contractor (including that which it receives under clause 28.2.3, to HMRC for the purposes of the collection and management of tax revenue or information for which they are responsible under applicable law.

## If the Client becomes obliged to pay to HMRC any sums owed by the Contractor in respect of any taxation of the sort referred to in clauses 28.2.1 and 28.2.2, the Contractor reimburses the Client in full (upon service of the Client’s first written demand therefor) all such sums as the Client has had to pay to HMRC and the Contractor also reimburses the Client in full (and upon service of the Client’s first written demand therefor) in respect of any fine or penalty sustained by the Client as a consequence of the Contractor’s failure to pay any of the tax owed by it to HMRC and compensates the Client (on demand) for any other financial punishment imposed on the Client arising from the Contractor’s failure to pay any amount of taxation due by it under ITEPA or where any National Insurance Contributions payable by the Contractor were not paid to HMRC by the Contractor.

# General data protection regulation (gdpr) & data protection act 2018

## The Contractor warrants that it shall under this contract:

### Process only on documented instructions by the Client, including regarding international transfers (unless, subject to certain restrictions, legally required to transfer to a third country or international organisation);

### Provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment (see <http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> of the GDPR). prior to commencing any processing. Such assistance may, at the discretion of the Client, include;

#### Systematic description of envisaged process operations and the purpose of the processing;

#### An assessment of the necessity and proportionality of the processing operations in relation to the works;

#### An assessment of the risks to the right and freedoms of Data Subjects; an

#### The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

### ensure those processing personal data are under a confidentiality obligation (contractual or statutory);

### appoint a suitably qualified data protection representative to manage the data;

### keep records of their data processing activities performed under this contract in order to be able to provide information included in those records to the Data Protection Authorities, upon request. Records should include: (1) details of the data controller and data processor and their representatives; (2) the categories of processing activities that are performed; (3) information regarding cross-border data transfers and; and (4) a general description of the security measures that are implemented;

### take all measures required under the security provisions which includes pseudonymisation and encrypting personal data as appropriate;

### only use a sub-processor with the Client’s formal written consent (specific or general, although where general consent is obtained processors must notify all and any changes to the Client, giving them an opportunity to object);

### flow down the same contractual obligations to sub-processors as is imposed upon the Contractor by the Client;

### notify the Client without undue delay data breaches;

### assist the *Client* in responding to requests from individuals (data subjects) exercising their rights;

### assist the *Client* in complying with the obligations relating to a security breach notification, Data Protection Impact Assessment and consulting with supervisory authorities;

### securely destroy (providing evidence that this has occurred e.g. a secure waste disposal certificate from a third party) or return as instructed by the *Client* all personal data at the end of the contract (unless storage is required by applicable law);

### make available to the *Client* all information necessary to demonstrate compliance; allow/contribute to audits (including inspections by the *Client* or a third party); and inform the *Client* if its instructions infringe data protection law or other EU or member state data protection provisions; and

### where the *Contractor* is required to collect any Personal Data on behalf of the *Client*, ensure that it provides the data subjects from whom the Personal Data are collected, with a privacy notice in a form to be agreed with the *Client*.

## The Client may require further assurances during the contract through a series of questions as to the Contractor’s GDPR compliance.

## Notwithstanding any other remedies available to the Client, the Contractor shall fully indemnify the Client as a result of any such breach of the General Data Protection Regulation (GDPR) or Data Protection Act 2018 by the Contractor or any other party used by the Contractor in its performance of the works, that results in the Client suffering fines, losses or damages.

## For the avoidance of doubt, this clause 29 shall require the Contractor to ensure that this contract from its commencement shall be performed in such a way so as to be compliant with the Data Protection Act 2018 and meet the requirements of the GDPR.

Annex A - Table of Processing, Personal Data and Data Subjects

The following Table shall be completed by the *Client* from time to time and then notified to the *Contractor*. When completing the Table the *Client* may take account of the views of the *Contractor*, however the final decision as to the content of the Table shall be with the *Client* at its absolute discretion the *Contractor* shall only process in accordance with the instructions as advised below and comply with any further written instructions with respect to processing by the *Client*. Any such further written processing instructions required by the *Client* shall be incorporated into the Table and shall be at the subject of a formal amendment to this contract.

1. The contact details of the Client’s Data Protection Officer are: [Insert Contact details]

2. The contact details of Contractor’s Data Protection Officer are: [Insert Contact details]

3. The Contractor shall comply with any further written instructions with respect to processing by the Client.

|  |  |
| --- | --- |
| Description  | Details  |
| Subject matter of the processing |  |
| Duration of the processing |  |
| Nature and purposes of the processing  |  |
| Types of Personal Data |  |
| Categories of Data Subjects  |  |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under applicable law to preserve that type of data  |  |

## GDPR Questionnaire

### The Contractor agrees that until the defects date it completes and returns the GDPR questionnaire appearing below (see the embedded link below to an Excel file) to the Client within 14 days of being requested in writing to do so by the Client or the Project Manager.

### The Client requires such interim assurances to ensure that the Contractor is still compliant with the data protection requirements of this contract.

### The Contractor agrees that any financial burden associated with the completion and submission of the questionnaire at any time shall be at the Contractor’s cost to do so and will not be reimbursable.

#

**IN WITNESS** whereof the Client and the Contractor have executed this agreement as a deed the day and year first before written.

SCHEDULE 1

Project Information

1. The Site is located at the National Oceanography Centre, European Way, Southampton, SO14 3ZH (as more particularly described in the Initial Site Information).
2. The Development comprises the renewal of roofs at the Client’s premises located at the Site, as described in the Initial Scope.
3. The Other Consultants include, without limitation:

**Architect:** Stride Treglown Ltd having its registered office at Promenade House, The Promenade, Clifton Down, Bristol, BS8 3NE or such other architect as may be appointed by the Client from time to time in connection with the Development;

**Civil & Structural Engineer:** Ramboll UK Ltd having its registered office at 240 Blackfriars Road, London, SE1 8NW or such other civil & structural engineer as may be appointed by the Client from time to time in connection with the Development;

**Project Manager:**  Ramboll UK Ltd having its registered office at 240 Blackfriars Road, London, SE1 8NW or such other project manager as may be appointed by the Client from time to time in connection with the Development;

**Mechanical and Electrical Services Consultant:** Ramboll UK Ltd having its registered office at 240 Blackfriars Road, London, SE1 8NW or such other mechanical and electrical engineer as may be appointed by the Client from time to time in connection with the Development;

**Principal Designer:** Ramboll UK Ltd having its registered office at 240 Blackfriars Road, London, SE1 8NW or such other principal designer as may be appointed by the Client from time to time in connection with the Development;

**Quantity Surveyor:** Turner & Townsend Ltd having its registered office at Low Hall, Calverley Lane Horsforth, Leeds, West Yorkshire, LS18 4GH or such other quantity surveyor as may be appointed by the Client from time to time in connection with the Development.

1. The Contractor’s representative and key personnel:
	1. The person referred to in clause 4.1 is                      (Contractor’s representative).
	2. The person(s) referred to in clause 4.2 is/are
		1.                     (Design Manager);
		2.                     (Programme Manager).
2. The Fee is £                     (exclusive of VAT). The Fee shall be payable in instalments as set out below:
	1. The Contractor shall (subject to the provisions of this Schedule 1 paragraph 5) be entitled to make application for payment of each instalment of the Fee set out in the following table on the application date (**"Application Date"**)set opposite to it:

|  |  |
| --- | --- |
| **Application Date** | **Instalment of Fee(£)\*** |
|  The date that the Services applicable to Milestone 1 have been completed in accordance with this agreement. | £[ ] |
| The date that the Services applicable to Milestone 2 have been completed in accordance with this agreement. | £[ ] |
| The date that all other Services have been completed in accordance with this agreement. | £[ ] |
| \*All instalments are stated exclusive of VAT, which is payable in addition. |

5.2 Each application for payment of an instalment of the Fee (**"Application"**) shall be made in writing by the Contractor and accompanied by such detail in relation thereto as the Client shall reasonably require and the due date for payment of such instalment of the Fee shall be the later of (a) the Application Date applicable to such instalment and (b) the date on which the relevant Application is received by the Client.

5.3 Not later than ten working days after any instalment of the Fee becomes due and if the Client disagrees with the sum claimed by the Contractor in the Application, the Client shall give to the Contractor a written notice specifying the amount of payment proposed to be made in respect of such Application, the basis on which the payment is calculated and to which instalment the payment relates. Subject thereto and to the provisions of paragraph 5.4 below, the Client shall pay the amount identified no later than the final date for payment specified in paragraph 5.5.

5.4 Not later than five days before the final date for payment of any instalment due pursuant to paragraph 5.2 or 5.3 above, the Client may give a written notice to the Contractor which shall specify any amount proposed to be withheld and/or deducted from that due amount, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground and, subject thereto, the Client shall be entitled to make such withholding and/or deduction whether by way of set‑off or otherwise.

5.5 The final date for payment of each instalment of the Fee due to the Contractor shall be 30 days after receipt by the Client of the relevant Application made under and in accordance with paragraph 5.2.

5.6 The Contractor shall issue to the Client an appropriate VAT invoice in respect of each instalment of the Fee within five days of the final date for payment of the relevant instalment.

5.7 In the event that the Client fails to pay any amount due to the Contractor by the final date for payment of such amount under the terms of this agreement, the Client will pay interest to the Contractor on the unpaid amount (calculated from the final date for payment) at a rate equivalent to two per cent above the base lending rate (or, if replaced, its successor from time to time) of the Bank of England accruing at a daily rate (based on a 365‑day year) for the period until such amount is paid to the Contractor. The Company and the Contractor agree that this paragraph 5.7 constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

1. The Client's address for service of notices is as follows:

|  |  |
| --- | --- |
| Address: | [                    ] |

The Contractor's address for service of notices is as follows:

|  |  |
| --- | --- |
| Address: | [                    ] |

SCHEDULE 2

Part 1 – Services

The Services required to be carried out by the Contractor pursuant to this agreement are as set out in this Part 1 of Schedule 2. The Services shall be carried out by the Contractor and its personnel in accordance with this agreement including, without limitation, the Proposed Development Documents (insofar as relevant to the Services). The Parties acknowledge that the Services shall not require or be construed as requiring the Contractor to carry out the performance of any of the Works.

The Contractor shall, as part of the Services, perform and complete the following duties, responsibilities and services as and when necessary or as and when the Client may require:

1. **Milestones**

The principal objectives (**"Milestones"**) to be achieved by the Contractor in its performance of the Services (including the deliverables that the Contractor is to provide to the Client as part of the Services) during the Pre-Construction Period are as follows:

* 1. **Milestone 1**: Procuring the Client’s agreement to the Contractor’s full detailed design package for the Development within 2.5 months of the date of this agreement; and
	2. **Milestone 2**: Procuring the Client’s agreement to the Contractor’s proposed Works Delivery Methodology, the Contract Price and the other items and matters referred to in clause 8.1 within 3 months of the date of this agreement.

A collaborated cost plan to be developed between the Project Quantity Surveyor and Main Contractor during the PCSA period will be used as a working document to seek to finalise the Contract Price with the Contractor. Once agreed with the Client, the Contract Price is intended to be the "tendered total of the Prices" for the Building Contract.

1. **Key Deliverables**

The Contractor shall prepare (or cause to be prepared) and provide to the Client:

* 1. a detailed design for the Development to RIBA stage 4.
	2. a detailed Works Delivery Methodology, to achieve the relevant criteria set out in the Initial Scope;
	3. a fully developed Preliminaries cost based on an accepted logistics, phasing and construction programme agreed by the Client, which Preliminaries will be finalised using the rates and under the rules and conditions stated in the NOC 1st stage Tender Pricing Document;
	4. Development of costs for work packages which shall be developed in accordance with the cost plan, Information Release Schedule, Package Procurement Tracker and rules and conditions under this scope of services Clause 7 (Subcontractor Package Procurement)
	5. a priced Contractor Risk Allowance based on a fully developed and agreed Early Warning Register
	6. the Contractor’s proposed fee percentage in respect of the Works;
	7. a Contract Price and, subject to agreement of the Contract Price by the Client, a fully priced Activity Schedule aligning with that Contract Price and the programme agreed with the Client.
	8. Buildability Advice

Provide detailed feedback to the Project Team as to buildability issues, and to assist in developing with the client a comprehensive suite of documents to identify any constraints on the execution of the works and/or site operations, and the planning of specific mitigations. This is likely to include, inter alia:

* Report on noisy works, dust, vibration and temperature impact on the live campus
* Developing detailed Phasing drawings, proposals for screening/hoarding including access arrangements for NOC and Contractor Staff
* Development of Temporary works as may be required
* Advise on long lead procurement items
* Report on environmental impact on live campus (noisy works / dust / vibration / temperature etc)
* Temporary works (roofing and crash decks) and access
* Identification of elements of works, sections or packages which may need to be carried out ‘out of hours’
* Identification of technology/advanced techniques which may be used to minimise impact on NOC Staff and mitigate need for out of hours working.
1. **General**

The Contractor shall work with the Client, the Project Manager and the Other Consultants in an active and positive role as a member of the Client’s team, in a spirit of mutual trust and co-operation, carrying out pre-contract services required in connection with the proposed roof renewal works at the Client’s premises on the Site.

NOC will offer an office space suitable for up to four people for use by the Contractor during the PCSA period. The office space, electricity, internet and NOCS welfare facilities will be available to the Contractor for this period during NOC standard operating hours.

1. **Progress meetings**

Interim monthly progress design and commercial meetings shall be convened and held by the Contractor in order that the Contractor can update the Client ad the Project Manager on the progress of the design and provision of the Services (see Section 5 of the Initial Scope for details of attendance and content of these meetings). The Contractor must advise the Client at these meetings of any changes to its estimated prices.

1. **Design release**

The Contractor shall (a) prepare and seek to agree with the Client and the Other Consultants an Information Release Schedule (for the issuance of design data by the Contractor the Client and the Other Consultants for their review) which shall adhere to the Development Programme and (b) analyse and report on any implication on the design for the Development arising from package interfaces where this may impact on the design. All designs to be submitted by the Contractor shall be submitted by it for approval by the Client in accordance with the mechanism set out in Section 5 of the Initial Scope.

1. **Milestones 1 & 2 - Deliverables**

The Contractor shall (in respect of each Milestone) prepare and provide to the Client, as a minimum, the design documentation listed in the Tables below for review and comment by the Client as to whether they are satisfactory to it. The Contractor’s Submissions shall include the complete design for the Development and shall fully reflect all comments raised by or on behalf of the Client during the design review process. Where such comments have not been adopted by the Contractor, responses shall be given by it as to why this has not been done.

**Table 1**: Milestone 1 - General documentation

|  |
| --- |
| Site Waste Management Plan (SWMP) and ISO14001 compliance  |
| Construction Environmental Management Plan (CEMP)  |
| Designers CDM Residual Risk Assessments  |
| Initial Construction Phase Health & Safety Plan  |
| Design Information to update the Pre-Construction Health & Safety Information Pack  |
| Priced Schedule and Milestone Payment Schedule  |
| Project Programme  |
| Risk Register  |
| Quality Plan  |
| Drawing Index  |
| Access & Maintenance Schedule  |
| Statement and Details of Deviations from the Design Brief  |
| Compliance of Design Certificate  |

**Table 2**: Milestone 1 - Technical documentation

|  |
| --- |
| Architectural Drawings (e.g. Plans, elevations, sections, details all fully dimensioned)  |
| Architectural Details (e.g. roof, walls, floors and windows junctions)  |
| Structural Drawings (e.g. for temporary works and temporary conditions etc.)   |
| Structural Calculations (e.g. for temporary works and temporary conditions including checks on the existing roof structure capacity as required.)  |
| Full Architectural Schedules  |
| Detailed condensation analysis (by a specialist) to validate proposed roof build-up  |
| External Services Drawings, including pipework and cable sizes\*  |
| Ventilation System Layout and Schematic\*  |
| Hot & Cold Water Layout and Schematic\*  |
| Fire Alarm Layout and Schematic\*   |
| LV Layout and Schematic\*  |
| Above Ground Drainage Layout and Schematic\*  |
| Incoming connection and ventilation extract / intake details (including analysis)  |
| Building sections showing co-ordinated services routes\*  |
| Lighting Layout and Schedule\*  |
| M&E Schedules for plant and equipment\*  |
| M&E Detailed Design calculations\*  |
| M&E Load Estimates\*  |
| M&E builders work dimensioned drawings and details\*  |
| M&E co-ordinated and dimensioned installation drawings\*  |
| Temporary Works Design Calculations  |
| Drainage Drawings (e.g. G. A’s, Details, Setting Out)\*  |
| Full Drainage Design Calculations\*  |
| Full Engineering (NBS or equivalent) Specifications for all disciplines  |
| Notes: \* To be provided by the Contractor if this element is altered as part of the roof works. If the Contractor does not believe this shall be affected, then they are to provide a statement confirming this.  |

**Table 3**: Milestone 2 - Construction documentation

|  |
| --- |
| Method Statements (e.g. scaffolding, stripping roof, new roof installation, cavity installations)  |
| Requisition for Construction Subcontractors  |
| Subcontracts (unpriced)  |
| Inspection and Testing Schedules  |
| Quality Control Manuals |
| Technical Queries / RFI Schedule  |

**Table 4**: Milestone 2 – Supplier/Vendor Data Documentation

|  |
| --- |
| Literature for key architectural components (e.g. zinc roof, zinc cladding, insulation)   |
| Data Sheets & Technical Information for Main M&E Equipment\*  |
| Technical Literature for M&E Components\*  |
| Technical Literature for Main Drainage Components\*  |
| Technical Drawings for Main Components and Equipment\*  |
| Installation Instructions\*  |
| Notes: \* To be provided by the Contractor if this element is altered as part of the roof works. If contractor does not believe this shall be affected, then they are to provide a statement confirming this.  |

The items listed above are for guidance only and represent the minimum acceptable for each Milestone, provided that this will not relieve the Contractor of its obligation to provide full and comprehensive suite of the design documents necessary for the satisfactory completion of the Development. The Contractor’s final Submission to the Client shall be complete in all respects and shall not contain any references to information that will be “to follow”.

Following review of the Contractor’s final Submission by the Client and the Project Manager, the Contractor shall incorporate any comments and reissue relevant documentation within 14 days of comments being received from the Client and/or the Project Manager. The Contractor shall present this information in a formal meeting with the Client and Project Manager, together with a completed Design Compliance Certificate which once complete to the satisfaction of the project team will trigger release of the final payment.

1. **Subcontract Package Procurement** (for all Subcontract work packages to be finalised for the Development in accordance with this agreement)
	1. **General Responsibilities**

The Contractor shall develop and advise the Client on the Subcontract packaging strategy for the Development to facilitate effective financial control, better efficiency, and expeditious progress of the Development; and agree the strategy with the Client.

The Contractor shall prepare a detailed scope for each subcontract package taking due account of its inter-relationship and interdependency with other subcontract packages and the Contractor’s direct works.

The Contractor shall develop and agree the form of subcontract and associated tender documents with the Project Manager and the Client, including ensuring that such documents are fully compatible with the terms of the Building Contract. The subcontract terms and conditions shall be no more or less than onerous than the terms of the Building Contract terms shall be in a form agreed with the Client.

The Contractor shall ensure that the subcontract terms specify that the subcontractor will provide third-party rights, collateral warranties, assignments, insurances, bonds, parent company guarantees and the like and incorporate these requirements into the subcontract package tender documents developed by the Contractor. If any tenderer qualifies its tender with less onerous contractual requirements than those required by the Client, the Contractor shall seek the Client’s approval for such less onerous contractual requirements under the relevant subcontract. Notwithstanding that any subcontract contains less onerous contractual terms (whether or not approved by the Client), the Contractor shall not be not released from or relieved of any its duties, obligations and liabilities under the Building Contract.

* 1. **Subcontract Work Procurement Protocol**
		1. **Selection process**

The Contractor shall prepare and issue to the Client and the Project Manager its proposed list of tenderers for each of the proposed Subcontract work packages identified for the Development. For each and every Subcontract work package, the list of tenderers shall consist of no fewer than 3 organisations, all of which shall have been contacted in advance by the Contractor to confirm their interest in submitting a tender proposal for the relevant Subcontract work package.

For any Subcontract work package(s) where the Contractor proposes to use any subsidiary or group company of the Contractor or any other company affiliated with the Contractor, a minimum of 3 alternative unconnected organisations must be identified by the Contractor to provide “arm’s length” evidence to the Client of the competitive nature of the Subcontract tender(s).

Should there be any objection from the Client and/or the Project Manager to the inclusion of specific firms, companies or other organisations on the Contractor’s proposed Subcontract work package tender list then such firms, companies or other organisations shall be removed from the list and an alternative selected and included in the tender list. Such objections shall be made within the period identified within the programme so as not to jeopardise the timing of the procurement of the Subcontract work packages.

Should the name of an alternative or additional tenderer be proposed to the Contractor by the Client or the Project Manager for any and all Subcontract work packages this tenderer’s name shall be added to the Contractor’s tender list for the relevant Subcontract work package(s) unless the Contractor demonstrates to the reasonable satisfaction of the Client (with supporting evidence and reasons) that the proposed tenderer should not be included.

Following receipt by the Contractor of all comments from the Client and the Project Manager on its proposed list of tenderers for each of the agreed Subcontract work packages, the Contractor shall prepare and issue a formal tender recommendation report the Client (copied to the Project Manager) detailing the Contractor’s tendering process, the agreed list of tenderers and the Contractor’s tender selection process for each of the Subcontracted works packages.

* + 1. **Preparation of Tender Documentation for Subcontract Work Packages**

The Contractor shall prepare, in line with the Contractor’s main procurement programme, a schedule of design information requirements for each of the agreed Subcontract packages and issue to the Project Manager for review and comment. The schedules of design information requirements should be split by design disciplines and identify the level of desirable level of design information required in order to obtain meaningful Subcontract tender prices.

In each and every case the schedule of design information requirements must be issued by the Contractor to the Project Manager in sufficient time to enable the Project Manager to properly review and comment on the same. In addition the level of information requested in each schedule should be fair and reasonable given the status and progress of the design at the time of tendering, and should not be used as a tool to extend the pre-construction programme.

The Contractor shall carry out a general review, in conjunction with the Project Manager, of its draft tender package for each of the Subcontract work package (including plans and specifications) prior to issuing invitations to tender, use all reasonable endeavours to ensure there are no discrepancies, anomalies or lack of coordination with other trades and seek to agree the contents of each Subcontract tender package with the Project Manager prior to its issue by the Contractor to the approved tenderers.

The Contractor shall ensure that each of the Contractor’s Subcontract work tender packages shall each include, but not be limited to, the following information:

* a Tender Invitation Agreement detailing the name of the Subcontract work tender package, its date of issue, the time and date for tender receipt, the contents of the tender package and the Contractor’s contact details for the receipt of all queries;
* a form of confirmation notice to be returned by the tenderer stating its intention to return a valid tender (which is to identify that responses must be issued within 5 Working Days of receipt of the tender documents);
* Detailed Instructions to the tenderers outlining the process to be followed in the completion of the tender documents. The exact wording is to be defined by the Contractor; however the following items must be identified therein:
	+ Confirmation that only fully priced tender documents will be accepted;
	+ Notification that a duly completed form of tender, in the form issued with the tender documents, must be returned;
	+ Confirmation of the base date for the tender costs (for the avoidance of doubt this shall be the mid-point of the programmed construction period);
	+ Notification that only the issued tender Pricing Document should be completed and returned completed and that the tenderer’s own form of tender or price analysis will be deemed to be unacceptable;
	+ Confirmation that only those tender returns received on or before the tender return date and time will be considered and that all those received outside of the tender period will be rejected;
	+ Confirmation that any and all discounts to the tender price shall be clearly indicated within the appropriate section of the relevant tenderer’s Pricing Document;
	+ Notification that any items left un-priced within the relevant tenderer’s Pricing Document will be deemed to be of no financial value in terms of possible future variations to the subcontracted work;
* a detailed Subcontract preliminaries document prepared on a back-to-back basis with the Building Contract’s preliminaries. The Contractor shall ensure that this document shall include the following information as a minimum:
	+ Site information including restrictions to working operations and hours, Site access arrangements, parking restrictions and the like;
	+ Appendix to the proposed form of subcontract;
	+ Details of the insurance requirements applicable to the subcontractor;
	+ Details of any liquidated damages to be applied;
	+ Details of the retention percentage to be applied the percentage to be applied must not exceed that being applied to the Building Contract;
	+ Details of any provisional sums to be applied;
	+ Details of any services/attendances to be provided by the subcontractor (this will cross reference with the Schedule of Attendances);
* Draft copy of the proposed form of subcontract, completed in part as per the Building Contract’s Contract Data;
* Detailed, quantified and complete tender Pricing Document prepared by the Contractor for each Subcontract work package on a package by package basis. The tender Pricing Document shall be measured to a minimum of BCIS level 4 (below sub-element level) with measured quantities and specification referenced descriptions so as to provide a firm basis for the costing of the overall Works;
* The form of tender Pricing Document and the instructions to tenderers shall both include written notification to the tenderers that all items in the tender Pricing Document must be priced by them and that, where items are left blank they shall be taken as having no financial value. Furthermore, the tenderers shall be advised by the Contractor that single item pricing entering of one price and then making reference to other items being 'incl.' or 'included' shall not be permissible;
* A copy of the current project programme, highlighting the relevant Subcontract work package and its location in terms of the main programme, as part of Milestone 2.
* Copies of the relevant design information, together with a formal document schedule detailing in each case the drawings and document references, description, current revision number and date of issue; and
* Blank tender information request form, to be completed by the tenderers if required.

Following the Contractor issuing the draft Subcontract work tender package to the Project Manager, the Contractor shall convene, if required by the Client or the Project Manager, a meeting with the Project Manager to discuss the proposed tender package. The Contractor shall chair all such meetings and promptly provide formal written records of all discussions to the Project Manager for his information.

Upon receipt by the Contractor of comments from the Project Manager on any draft Subcontract work tender package, the Contractor shall make such amendments to the draft Subcontract work tender package as are necessary to take account of the Project Manager’s comments.

The Contractor shall prepare and issue the final form Subcontract work tender packages to the tenderers identified in the previously agreed list of tenderers for that work package, providing one copy of the tender documents to the Project Manager for record purposes, including a copy of all Tender Invitation Agreements issued by the Contractor.

Within 3 Working Days of issue of the tender package documents the Contractor shall contact all of the relevant tendering parties to confirm receipt of documentation and that their intention to return valid tenders. In each and every case the Contractor shall identify a main contact point within the relevant tendering organisation and keep the Project Manager fully informed of progress via the formal communication process under this agreement.

* + 1. **Tender Process of Subcontract Work Packages**

The Contractor shall operate a robust tender query process throughout the tender process for each Subcontract work package. Upon receipt of queries from tenderers the Contractor shall ensure that a response is issued to them within a maximum of three (3) Working Days via a formal tender clarification/amendment form. All such forms shall be referenced in such a way to provide a reviewable audit trail and enable their incorporation into the final subcontract documents, where appropriate.

In each case, where responses are issued by the Contractor to tender queries they must be issued to all of the tenderers so as to ensure that the same level of information is provided to all. Where query responses are provided verbally to any tenderer by the Contractor they shall be confirmed in written form to all tenderers in line with the above procedure.

Where the response to any tenderer query received by the Contractor requires any input from the Client, the Project Manager and/or any other member of the project team, a request shall be sent to them by the Contractor either via the formal communication channels or obtained verbally and confirmed in writing. In each and every case a copy of the request shall be issued to the Project Manager for information purposes.

Upon issue by the Contractor of any and all formal tender query responses to the tenderers a copy thereof shall be issued to the Project Manager and the Client for information purposes.

The Contractor shall advise the Project Manager of any formal requests received from the tenderers for an extension to the tender period, including the basis of any such application. Review the proposal with the Project Manager and the Client, highlighting the possible impact on the procurement programme, and determine the validity of the request. Where agreed, issue a formal extension notice to all tendering parties stating clearly the revised date and time for the return of tender documents.

Where it is found that there is not sufficient grounds for an extension to the tender period then the Contractor shall inform the tenderer in writing, including the basis of the rejection, where relevant.

No extension to the subcontract tender programmes shall be accepted by the Contractor unless first accepted as being valid by the Project Manager.

The Contractor shall actively liaise with the tenderers throughout the tender process to assist in their completion of the tender return documents.

If and where advised by one or more of the tendering parties that they wish to withdraw from the tender process, the Contractor shall immediately inform the Project Manager of the occurrence, including providing information on the reason for the withdrawal to be entered into the Tender Report. The Contractor shall agree with the Project Manager a strategy for substituting the relevant withdrawn tendering organisation with an alternative tenderer, including the need, if any, for possible extensions to the tender period if required.

Where a substitute tenderer is identified and agreed on by the Project Manager, the Contractor shall issue a full set of the tender documents to the relevant organisation, together with a copy of any and all tender clarifications issued since the initial documents were produced (and inform the Project Manager accordingly).

Promptly following the opening of each set of Subcontract work package tender returns, the Contractor shall produce and deliver to the Project Manager a summary document (which shall later form a part of the Contractor’s main Tender Report), detailing the tenders received, their value, completeness of the tender package and the like.

The Contractor shall convene and chair any post tender meetings which may be necessary to allow its tender recommendation to the Client to be prepared (and shall (a) invite the Project Manager and appropriate members of the project team to attend and (b) prepare a list of issues/action points for them to consider). Following receipt of any comments from the Project Manager, the Contractor shall make all required amendments to the relevant Subcontract tender/work package documents and agree with the relevant tenderer. The Contractor shall promptly inform the Project Manager and the Client of any problems should they arise during the tendering process of any of the Subcontract work packages.

For each and every Subcontract work package tendering process, the following information is to be prepared by the Contractor and provided to the Project Manager as a minimum:

* Details of the tender process (including the number and identities of tenderers to whom the tender documents were issued, the date of issue of the tender documents and details of the tender clarifications/amendments issued throughout the process);
* Tender returns received including a like for like comparison of the tender returns based on the Pricing Document and schedule of attendances;
* Items for clarification within the tender returns (which may take the form of an actions list to be agreed with the Project Manager);
* Recommendation of the preferred tenderer for each Subcontract work package; and
* Package-based risk assessment (priced) detailing any perceived risks associated with the selection and engagement of the recommended preferred tenderer (which information is intended to form a part of the updated Early Warning Register for the Works).
1. **Cost Planning and Reporting**

The Contractor shall work with the Client’s Quantity Surveyor to prepare and/or develop a Package Cost Plan, allocating separate budgets for all listed packages.

The Contractor shall collaborate with the relevant members of the project team and the Project Manager, providing cost advice and assistance to them in its regular updating of the Cost Plan, including obtaining and reporting the budget costs of equipment and materials and advising on current pricing levels.

The Contractor shall confirm that each element of the updated Cost Plan represents a fair and reasonable projection of that element of the anticipated Contract Price for the Works. Immediately on it becoming apparent that any of the prices within the Cost Plan, or any element within those prices, is likely to be exceeded, the Contractor shall promptly initiate corrective action and advise the Project Manager of the nature of the excess and its proposed corrective action.

The Contractor shall, in liaison with the Project Manager, establish and maintain a cost reporting system and change control system throughout the duration of the Development, and agree with the Project Manager a protocol to ensure transparency of cost and information and proper control of all proposed and instructed changes affecting the Works.

With the Client and Project Manager, regularly review, manage and update the Early Warning Register in order to develop the Contractor’s final risk allowance in an amount acceptable to the Client for inclusion in the Building Contract (Refer to section 2 above).

The Contractor shall regularly liaise with its supply chain to facilitate accurate budget costs for review by the Project Manager.

1. **Programming and Planning**

The Contractor shall prepare and agree with the Client an integrated master programme (using Microsoft Project or a similar software approved by the Client) covering the Pre-Construction Services and the carrying out and completion of the Works by the Completion Date. The Contractor shall ensure that the master programme will include details for the following:

* Dates of design, production information and proposals provided by the Client’s project team members, the Contractor, subcontractors and/or suppliers, including dates for reviews, inspection and checking;
* Procurement dates for long lead items including subcontract procurement items;
* Planning and mobilisation of the Contractor;
* Earliest and latest start and finish dates for each activity and identification of all critical activities;
* Dates for the issue of information the Contractor is required to provide during the Pre-Construction Services Period and for the selection of subcontractors;
* Running in, adjustment, commissioning and testing of all engineering services and installations;
* Work resulting from instructions issued in regard to the expenditure of Provisional Sums;
* Work or activity to be done by or on behalf of the Client (if any) which does not form part of the Works; and
* Date of possession of the Site, Key Dates and the Completion Date of the Works.

The Contractor shall provide to the Client a programme identifying the critical path in terms of the successful delivery of the Pre-Construction Services, including highlighting all elements where specific input is required from the Client and the Project Manager so as to ensure their awareness of time critical issues. The Contractor shall (a) expand, update and adapt the master programme as and when may be necessary to reflect further information or changes in circumstances, (b) regularly monitor progress and, when appropriate, promptly initiate proposals for corrective action to ensure adherence to the master programme for the Works.

The Contractor shall prepare and agree with the Project Manager a detailed Subcontract work package procurement programme with details of dates for the production and completion of any working drawings, specifications, bills of quantities, pricing schedules and all other relevant information including dates for preparation and dispatch of sealed-bid tender documents, mid-tender interviews, the tender period, a period for evaluating and reporting on tenders received and target dates for placing each subcontract.

The Contractor shall advise the Client and the Project Manager on the availability, selection, and relative suitability of alternative materials and components, methods of working, building systems and equipment, preparing material and component flows. The Contractor shall identify those materials and components that require advance ordering and processing include details of the advance ordering and processing in the master programme for the Works. The Contractor shall manage the timely preparation of the scheme design, detailed design and production information for the Development, to ensure that the carrying out of the design, procurement and construction is maintained in accordance with the master programme for the Works.

The Contractor shall prepare and agree a programme of design information with the relevant members of the Project Manager and sub-contractors who have a design responsibility. Co-ordinating the production of that information in accordance with the programme and ensuring it is provided to all relevant parties to allow them to fulfil their design and design co-ordination responsibilities. The Contractor shall adjust and revise this programme as agreed with the Client, the Project Manager and the relevant subcontractors, as dictated by the requirements of the Works from time to time.

The Contractor shall liaise with the Project Manager and other members of the project team regarding drawing and information schedules advising on dates for the release of information. The Contractor shall (a) discuss and agree the drawing and information schedules with the Client, the Project Manager and other relevant members of the project team and (b) manage the procurement process in line with the agreed programme.

The Contractor shall prepare, in liaison with the Client and the Project Manager, handover programmes which will coordinate the receiving and release of possession by the Contractor of areas of the Site with the programme for the Works.

1. **Third Party Engagement**

The Contractor shall engage with and use all reasonable endeavours to obtain all consents, authorisations, approvals and permits required from landowners, tenants and other interested third parties (including Associated British Ports (ABP) and the University of Southampton) from time to time as may be necessary for the Works to be lawfully carried out (including where necessary for taking access to the Site).

1. **Key output documentation**

Over the course of the Pre-Construction Services Period, the Contractor shall prepare and deliver to the Project Manager and the Client the following information:

* Subcontract work package procurement programme
* Schedule of long lead items
* any option analysis that may be required
* Package procurement documentation for Subcontract work package tendering including:
	+ Subcontract work package scope
	+ Forms of work package subcontracts, Prelims, Constraints Documentation
	+ Collating Package design / temporary works information
	+ Subcontract work package tender Pricing Documents
	+ Subcontract Work Package Tender Reports
* RFIs/Queries for completion of comprehensive Subcontract Package Tenders
* Detailed Construction Programme including critical path
* Ad hoc Buildability Commentary / Reports on design
* Phased Logistics Constraints Drawings/Temporary Works Design & Information
* Progress Reports to the Client.

Part 2 ‑ Additional Services

The Additional Services may include any duties, responsibilities and/or services as the Client may (by notice) instruct the Contractor to carry out from time to time and the Parties then agree will be performed as Additional Services under and in accordance with this agreement.

SCHEDULE 3

Proposed Development Documents

Part 1 – Initial Scope

[*insert Ramboll’s Project Scope document, once finalised*]

Part 2 – Initial Site Information

[*insert* ]

Part 3 – Initial Pricing Document

[*insert* ]

SCHEDULE 4

Development Programme

[*Insert* ]

schedule 5

Form of Building Contract

[*To comprise:*

* *Contract Agreement (i.e. the front-end agreement between Client and Building Contractor)*
* *Contract Data Part One*
* *Contract Data Part Two*
* *Z clauses*]

schedule 6

Form of Notice to Proceed

**[*TO BE PRINTED ON CLIENT'S HEADED NOTEPAPER*]**

To:

[*Name of Contractor*]
[*Address*]

[*Date*]

[*Reference*]

Dear Sirs,

**ROOF RENEWAL WORKS AT NATIONAL OCEANOGRAPHY CENTRE (the "Project")**

**NOTICE TO PROCEED**

We refer to the Pre-Construction Services Agreement entered into between us dated [ *insert date* ] 2019 (the **"Pre-Construction Services Agreement"**).

Pursuant to clause 8.2 of the Pre-Construction Services Agreement, we hereby give you Notice to Proceed with the Works in accordance with the Pre-Construction Services Agreement.

The complete engrossed Building Contract [is enclosed] [will be forwarded to you shortly]. [Once received, please] [Please] arrange for the Building Contract to be executed (as a deed) by your company and returned to [  *insert Client’s contact name and address* ] as soon as possible.

Yours faithfully,

……………………………………..

For and on behalf of [the Client]

|  |  |  |  |
| --- | --- | --- | --- |
| Executed as a deed[, but not delivered until the first date specified on page 1,] by [**name of CLIENT**]:[[2]](#footnote-3) | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Secretary/Director** |

|  |  |  |  |
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| Executed as a deed[, but not delivered until the first date specified on page 1,] by [**name of conTRACTOR**]: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Secretary/Director** |

1. Note: Where UKRI is the Client, the Client’s designation (as a body established by statute) will need to be inserted and the Client’s signing block will need to be amended to accord with UKRI’s deed signing formalities. [↑](#footnote-ref-2)
2. Note: Where UKRI is the Client, the Client’s signing block will need to be amended to accord with UKRI’s deed signing formalities. [↑](#footnote-ref-3)