

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS  
(the "Employer")

AND

Logan Construction SE Ltd  
(the "Contractor")

SCHEDULE OF AMENDMENTS TO THE  
JCT DESIGN AND BUILD CONTRACT 2016

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**Write the following wording into the JCT booklet as a new Article 10:**

"The Recitals, Articles, Contract Particulars and Conditions of Contract shall have effect as amended by the Schedule of Amendments attached hereto and signed by the parties as if the JCT Design and Build Contract, 2016 edition booklet had been physically amended to incorporate the provisions of the Schedule of Amendments. For the avoidance of doubt, this Schedule of Amendments shall take precedence over the printed JCT booklet."

Signed by the parties and dated

Employer

Contractor

## SCHEDULE OF AMENDMENTS

The following amendments are made to the JCT Design and Build Contract, 2016 edition.

### RECITALS

**Third** Delete the existing recital and insert the following:

“The Contractor has examined the Employer’s Requirements and accepts entire responsibility for the contents of the Employer’s Requirements (including, but not limited to, responsibility for any design contained therein) and is satisfied that:

- (i) the Contractor’s Proposals meet the Employer’s Requirements;
- (ii) there is no discrepancy within and/or between the Employer’s Requirements and the Contractor’s Proposals; and
- (iii) the Employer’s Requirements can be carried out within the timescale envisaged and at the cost indicated in the Contract Sum Analysis.”

### ARTICLES

**Article 1** After “The Contractor shall” insert “carry out and”.

**Article 10** Insert the following as a new article:

**“Article 10: Incorporation of Schedule of Amendments**

The Recitals, Articles, Contract Particulars and Conditions of Contract shall have effect as amended by the Schedule of Amendments attached and signed by the parties as if the JCT Design and Build Contract, 2016 edition booklet had been physically amended to incorporate the provisions of the Schedule of Amendments. For the avoidance of doubt, this Schedule of Amendments shall take precedence over the printed JCT booklet.”

**Article 11** Insert the following as a new article:

**“Article 11: Manufacturers’ guarantees**

The Contractor shall obtain all available manufacturers’ guarantees and/or warranties in favour of the Employer for items of plant and equipment and will deliver them to the Employer (as part of the related information concerning the maintenance and operation of the Works) once obtained but in any event prior to or on practical completion of the sub-contract works under which the plant and equipment was installed.”

**Article 12** Insert the following as a new article:

**“Article 12: Collateral Warranties**

**12.1** The Contractor shall, if requested by the Employer in writing, procure and deliver to the Employer within 14 days of the Employer’s request, duly executed deeds of collateral warranty in the relevant forms set out in **Appendix 1** in favour of any Beneficiary.

- 12.2 The Contractor shall, if requested by the Employer in writing, procure and deliver to the Employer within 14 days of the Employer's request, duly executed deeds of collateral warranty in the relevant forms set out in **Appendix 2** and **Appendix 3**, from the Design Consultants and the Key Sub-Contractors respectively, in favour of the Employer and any Beneficiary.
- 12.3 The Contractor shall ensure that a certified copy of each Design Consultant's appointment and each Key Sub-Contractor's sub-contract shall be provided by the Contractor to the Employer within 14 days of its execution. The Contractor may redact commercially sensitive pricing information."
- 12.4 If the Contractor fails to deliver to the Employer the executed deed or deeds of warranty within 14 days of the Employer's written request the Employer may withhold the sum of £10,000 in respect of each such deed which has not been executed and delivered from any payment that would otherwise be due to the Contractor under the Contract until such deed or deeds of warranty have been satisfactorily executed and delivered to the Employer.
- 12.5 If the Contractor fails to deliver to the Employer the Design Consultant's or Key Sub-Contractor's executed deed or deeds of warranty and their associated documents (being a certified copy of each Design Consultant's appointment and each Key Sub-Contractor's sub-contract) within 14 days of the Employer's written request the Employer may withhold the sum of [REDACTED] in respect of each such deed and associated documents which have not been executed or delivered from any payment that would otherwise be due to the Contractor under the Contract until such deed or deeds of warranty and its or their associated documents have been satisfactorily executed and delivered to the Employer."

**Article 13** Insert the following as a new article:

**"Article 13: Contractor's parent company guarantee**

Where it is stated in the Contract Particulars that a parent company guarantee is required, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached at **Appendix 4** to the Schedule of Amendments. The parent company guarantee shall be executed and delivered by the Contractor's Parent Company. If the Contractor does not procure execution and delivery of the parent company guarantee then, notwithstanding any other term of this Contract, the Employer shall not be liable to make any further payment to the Contractor under this Contract until the Contractor has procured such execution and delivery."

**Article 14** Insert the following as a new article:

**"Article 14: Performance bond**

Where it is stated in the Contract Particulars that a performance bond is required, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form attached at **Appendix 5** to the Schedule of Amendments. The bond shall:

- (i) be in an amount no less than 10% of the Contract Sum;
- (ii) have an expiry date no earlier than three months after the issue of the Notice of Completion of Making Good; and
- (iii) be executed and delivered by a surety approved by the Employer, acting reasonably.

If the Contractor does not procure execution and delivery of the bond then, notwithstanding any other term of this Contract, the Employer shall not be liable to make any further payment to the Contractor under this Contract until the Contractor has procured such execution and delivery.”

**Article 15** Insert the following as a new article:

**Article 15: Insurance of Existing Structures and contents**

The Employer, as a tenant of the Existing Structures, is unable to procure a Joint Names Policy in respect of the Existing Structures and contents and is unable therefore to procure that the Contractor’s interests are noted on the insurance policy for the Existing Structure and contents. Accordingly the parties have agreed, in respect of the cost of reinstatement, repair or replacement of loss or damage to the Existing Structures and contents arising out of or in the course of or by reason of the carrying out of the Works (and to the extent the same is due to any negligence, breach of statutory duty, omission or default of the Contractor), up to and including the date of issue of the Practical Completion Statement or last Section Completion Statement or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested), that:

16.1 the Contractor’s liability is limited to the amount specified in the Contract Particulars; and

16.2 the Employer shall be liable for, and shall indemnify the Contractor against, any expense, liability loss, claim or proceedings in respect of such liability identified in this Article 16 in excess of the amount stated in the Contract Particulars.” ]

**Article 16** Insert the following as a new article:

**“Article 16: Pre-construction services agreement**

Any work, services or supplies performed or provided by or on behalf of the Contractor in connection with the subject matter of this Contract whether carried out before, on, or after the date of this Contract or pursuant to any pre-construction services agreement shall be treated as having been performed or provided under this Contract. Such work, services or supplies shall be subject to the provisions of this Contract and any payments made by the Employer to the Contractor in respect thereof shall be treated as payments under this Contract on account of the Contract Sum.”

**CONTRACT PARTICULARS**

**Article 15** [REDACTED]

**Clause 2.2.6** The Key Personnel for the Contractor are: [REDACTED]

**Clause 2.17.3** Delete the reference to clause “2.17.3” and replace with “2.17.10”

**Clause 2.35** Delete both references to “6 months” shown in brackets and insert “12 months”.

**Clause 4.2, 4.12 and 4.13** Delete the entire entry on the Fluctuations Provision.

**Clause 6.15** Delete “6 years” shown in brackets in the last entry and insert “12 years”.

**Clause 7.2** Delete the entire entry.

**Clause 7.4** Delete the existing text and insert the following:

**“Contractor warranties**

The Contractor shall provide collateral warranties in favour of any Beneficiary.

**Key Sub-Contractor warranties**

The Key Sub-Contractors are to provide collateral warranties in favour of the Employer and any Beneficiary.

The “Key Sub-Contractors” are those sub-contractors with a material design responsibility and also include, without limitation, those sub-contractors who are responsible for the following elements of the works:

- (i) M&E Installation
- (ii) Rest TBC

**Design Consultants**

The Design Consultants are to provide collateral warranties in favour of the Employer and any Beneficiary.

The “Design Consultants” are those consultants listed in the table below, or such replacement appointed from time to time and any other designer who the Contractor has retained in connection with the Works.

Discipline	Identity of Design Consultant
Architect	
Mechanical and Electrical Engineer	
Structural Engineer	

**ATTESTATION**

This Agreement shall be executed as a deed.

**CONDITIONS Section 1: Definitions and Interpretation**

**Definitions**

**1.1** Insert the following as new definitions:

“Beneficiary: a Landlord, Purchaser, Funder and/or Tenant.”

“Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU) as amended by the Construction Products (Amendments etc.) (EU Exit) Regulations 2019 and Construction Products (Amendments etc.) (EU Exit) Regulations 2020.”

“Consents:	the planning permissions referred to in the Employer's Requirements, approval of reserved matters or details pursuant thereto, building regulations approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise for the carrying out of the Works and, if they are destroyed or damaged, the reinstatement of the Works.”
“Deleterious:	<p>any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:</p> <ul style="list-style-type: none"> <li>(i) posing a threat to the health and safety or any person;</li> <li>(ii) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works;</li> <li>(iii) reducing, or possibly reducing, the normal life expectancy of the completed Works or any part or component of the Works;</li> <li>(iv) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or</li> <li>(v) having been supplied or placed on the market in breach of the Construction Products Regulations.”</li> </ul>
“Design Consultants:	see the <b>Contract Particulars</b> (against the reference to <b>clause 7.4</b> ).”
“Emergency Repair:	<p>the repair, rectification or replacement work which is necessary as a result of a defect, shrinkage, damage or other fault:</p> <ul style="list-style-type: none"> <li>(i) that may reasonably be regarded by the Employer or any Beneficiary as a matter of emergency;</li> <li>(ii) that causes or may cause the Employer or a Beneficiary to be unable to operate or use the Works or any part of the Works or plant or machinery forming part of the Works properly or at all; and/or</li> <li>(iii) that it is a significant threat to health and safety.”</li> </ul>
“Key Personnel:	see the <b>Contract Particulars</b> (against the reference to <b>clause 2.2.6</b> )
“Key Sub-Contractors:	see the <b>Contract Particulars</b> (against the reference to <b>clause 7.4</b> ).”
“Landlord:	the Employer’s landlord of the property which is part of the site, namely: <span style="background-color: black; color: black;">[REDACTED]</span>
“Material:	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, BIM documents, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works), including the Contractor’s Design Documents, and all updates, amendments, additions and revisions to them and any works, designs,

or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).”

“Permitted Uses:	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, promotion, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Works (and the completed Works).”
“Schedule of Amendments:	the Schedule of Amendments as annexed to the JCT booklet.”
“Third Party Agreements:	the extracts from agreements between the Employer and third parties, which may affect the Works, attached at <b>Appendix 6</b> to the Schedule of Amendments, as supplemented by any instruction from the Employer referred to in <b>clause 5.1.3.</b> ”
“Viable Rates and Terms:	see <b>clause 6.15.2.</b> ”
“Works Programme:	see <b>clause 2.2A.</b> ”

**Amend** the following definitions:

Agreement:	At the end of the definition of “Agreement” <b>insert</b> “(all as amended by the Schedule of Amendments annexed hereto)”
BIM Protocol:	<b>Delete</b> “(where applicable)”
Conditions:	At the end of the definition of “Conditions” <b>insert</b> “(all as amended by the Schedule of Amendments annexed hereto)”
Consultants:	<b>Delete</b> this definition.
Contract Documents:	<b>Delete</b> “(where applicable)”  After “these Conditions”, <b>insert</b> “as amended by the Schedule of Amendments.”
Contract Particulars:	At the end of the definition of “Contract Particulars” <b>insert</b> “all as amended by the Schedule of Amendments.”
Employer:	At the end of the definition <b>insert</b> “(which expression shall include its successors in title and permitted assigns)”
Employer’s Rights	<b>Delete</b> this definition
Funder	<b>Delete</b> the existing definition and replace with “each and every party providing, or intending to provide, finance to the Employer in connection with the Works (including its successors in title and assigns and those deriving title under it or them)”
Funder’s rights	<b>Delete</b> this definition
Interest Rate	<b>Delete</b> “ <span style="background-color: black; color: black;">          </span> ” and <b>insert</b> “ <span style="background-color: black; color: black;">          </span> ”
P&T Rights	<b>Delete</b> this definition

Purchaser:	<b>Delete</b> the existing definition and <b>insert</b> “any person purchasing, or intending to purchase, the premises comprising the Works or any part thereof.”
Rights Particulars	<b>Delete</b> this definition
Tenant:	<b>Delete</b> the existing definition and <b>insert</b> “any person taking, or intending to take, a lease or underlease of the premises comprising the Works or any part thereof.”

## **Interpretation**

### **1.3 Agreement etc. to be read as a whole**

After “override or modify” **insert** “the Schedule of Amendments, ”

### **1.6 Contracts (Rights of Third Parties) Act 1999**

**Delete** clause 1.6 and **insert** the following:

“Other than any rights as take effect pursuant to section 7 of these Conditions, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.”

### **1.7 Notices and other communications**

1.7.5 In line 2 after “property” **insert** “(including Emergency Repair)”

### **1.8 Effect of Final Statement**

1.8.1.1 **Delete** this clause and **replace** with “Not used.”

### **1.9 Effect of payments other than payment of Final Statement**

**Delete** “Save as stated in clause 1.8,”

### **1.11 Applicable Law**

INSERT after “this Contract” “and any dispute or claim rising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)”.

INSERT “and shall be subject to the exclusive jurisdiction of the courts of England” at the end of the clause.

**Insert** the following as new clauses 1.12 to 1.14:

### **“1.12 Entire agreement**

The Employer and the Contractor each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements expressly set out in this Contract



provided that this clause shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

**1.13 Set-off and abatement**

Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.”

**1.14 Severance**

If any term, condition or provision in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.”

**CONDITIONS Section 2: Carrying out the Works**

**Contractor’s Obligations**

**2.1 General obligations**

**2.1.1 In line 1 after “proper” insert “, good”**

In line 1 after “workmanlike manner” insert “and in accordance with the recommendations of BS 8000 (unless there is a discrepancy or conflict between the recommendations of BS 8000 and the Contract Documents in which case the Contract Documents shall prevail)”

In line 3 after “shall” insert “carry out and”

**Insert** the following as a new clause 2.1.5:

**2.1.5 The Employer and the Contractor shall:**

- .1 comply with their respective obligations set out in the BIM Protocol;
- .2 have the benefit of any rights granted to them in the BIM Protocol; and
- .3 have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.”

**2.1A INSERT the following as a new Clause 2.1A:**

“Additional requirements”

In performing its obligations under this Contract, the Contractor shall at all times comply with the provisions set out in Appendix 7.”

**2.2 Materials, goods and workmanship**

**2.2.1 After “so far as procurable,” insert “be good quality materials of satisfactory quality that are appropriate for their use and”**

At the end of clause 2.2.1, **insert** the following as a new sentence:

“The Contractor warrants that he will use well-maintained plant and equipment in carrying out the Works.”

**Insert** the following as new clauses 2.2.6 and 2.2.7:

“2.2.6 The Contractor warrants and undertakes that it shall ensure that the Key Personnel maintain a material involvement in the Works and, so far as reasonably possible, the Contractor shall not change the identity of the Key Personnel without the Employer’s prior written consent (such consent not to be unreasonably withheld or delayed). The Contractor shall notify the Employer in writing within 5 days of the resignation or termination of engagement of any Key Personnel.

2.2.7 Throughout the duration of this Contract the Contractor shall use all reasonable endeavours to create employment opportunities for residents of the United Kingdom and shall create apprenticeship and job opportunities in accordance with the Employer’s Requirements.”

After clause 2.2, **insert** the following as a new clause 2.2A:

“2.2A **The Works Programme**

2.2A.1 As soon as possible after execution of this Contract and in any event no less than 7 Business Days prior to starting work on site, the Contractor will produce a fully resourced programme for the execution of the Works in such form and giving such information as prescribed in the Employer’s Requirements or as the Employer may otherwise reasonably require (the “**Works Programme**”). Thereafter, the Contractor must revise the Works Programme as appropriate to minimise or avoid any delay or disruption, or anticipated delay or disruption, to the carrying out of the Works.

2.2A.2 The Contractor will report to the Employer every month in writing comparing the progress of the execution of the Works with the then current Works Programme and will promptly advise the Employer in the event of delay or disruption and will set out the measures which the Contractor is taking or proposes to take to minimise or make good such delay or disruption. A revised Works Programme shall show:

2.2A.2.1 actual progress against each operation and its effect upon the timing of the remaining work;

2.2A.2.2 the effects of any extensions of time which have already been given by the Employer; and

2.2A.2.3 how the Contractor intends to deal with any delays.

In preparing, reviewing and revising the Works Programme the Contractor shall observe, respect and comply with any restrictions as regards possession of and access to the site and any covenants binding upon the Employer in respect thereof and any conditions concerning the order in which the Works are to be completed contained in the Contract.

The Contractor shall prepare and submit, at such times and in such detail as the Employer may require, such further information concerning the constructional plant, labour, and supervisory personnel available to the Contractor and concerning the Contractor’s planning of the Works as the Employer may require for the purpose of appraising the Works Programme.

No approval or disapproval (or failure to approve or disapprove) by the Employer of any of the Works Programmes or submissions in accordance with this clause shall relieve the Contractor of any of his duties or responsibilities under the Contract, nor constitute by virtue of such approval or disapproval a Change.

The Contractor shall at all times retain full responsibility for ordering and scheduling the conduct of the Works so as to comply with his obligations under the Contract and shall adjust or re-schedule the Works Programme so as to absorb within the period until the Date for Completion or any extended date for completion of the Works, or any relevant section or part thereof, all contingencies, difficulties and delays save only insofar as such contingencies, difficulties or delays entitled him (if at all) to an extension of time under clauses 2.24-2.26.”

”

## **Possession**

### **2.5 Early use by Employer**

2.5.1 At the end of clause 2.5.1, **insert** the following as a new sentence:

“Subject to such confirmation, the Contractor’s consent shall not be unreasonably delayed or withheld.”

**Insert** the following as a new clause 2.5.3:

“2.5.3 Where the Employer uses or occupies the site under clause 2.5.1, this shall not be construed as evidence to deem, for the purposes of this Contract, that practical completion shall have taken place.”

### **2.6 Work not forming part of the Contract**

DELETE clause 2.6 and SUBSTITUTE the following as a new clause 2.6:

#### **Work not forming part of the Contract**

2.6.1 The Contractor shall in accordance with the requirements of the Employer afford reasonable facilities for any other contractors employed by the Employer and/or any Purchaser/Tenant or the workmen of the Employer and/or any Purchaser/Tenant and of any other properly authorised authorities or statutory corporations or statutory bodies who may be employed in the execution on or near the site of any work not in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

2.6.2 The Contractor shall provide attendance for such other contractors and workmen as may be directed by the Employer.

2.6.3 For the purposes of clause 2.6.2, attendance shall be deemed to cover all expenses incurred by the:

2.6.3.1 planning, programming and co-ordinating of his work with that of such other contractors and workmen so as to minimise (so far as reasonably practicable) any disruption or interference to such work caused by the carrying out of the Works (and vice versa);

2.6.3.2 storing material for the other contractors as reasonably required but storage is to be at such other contractors’ risk and the Contractor shall not be responsible to such other contractors for the security or condition of any such storage area; and

2.6.3.3 allowing the other contractors space for their site offices and reasonable access to and egress from the relevant parts of the site and facilities for the proper execution of their work including the free use of standing scaffolding, ladders, stores, mess rooms, latrines, site services including background lighting and distribution boards for the other contractors' own localised lighting, and providing the necessary watching and lighting (provided that these facilities are normally available on site at the time) and allowing such persons to deliver plant, goods and materials to relevant parts of the site at times to be agreed."

## **2.8 Construction information**

**Replace** "Save for any Contractor's Design Documents contained in the Contractor's Proposals, the" with "The"

## **Discrepancies and Divergences**

### **2.11 Preparation of Employer's Requirements**

**2.11 Delete** clause 2.11 and insert the following:

"The Contractor accepts entire responsibility for the contents of the Employer's Requirements including the adequacy of any design contained within them."

### **2.12 Employer's Requirements - Inadequacy**

**2.12.1 Delete** "and the Contractor under clause 2.11 is not responsible for verifying its adequacy"

**2.12.2 Delete** clause 2.12.2

### **2.13 Notification of Discrepancies etc.**

**2.13 Renumber** "2.13" as "2.13.1", "2.13.1" as "2.13.1.1" and replicate for "2.13.2" and "2.13.3"

**Insert** the following as a new clause 2.13.2:

**"2.13.2** The Contractor shall not have or make any claim for loss and/or expense under clause 4.19 and clause 2.25 shall not have effect, where and to the extent that the cause of the progress of the Works (having been delayed, affected or suspended) is:

- .1 any such discrepancy or divergence as is referred to in clause 2.13; or
- .2 any failure by the Contractor to provide necessary drawings, documents or other information in due time and/or in accordance with the Conditions.

The Contractor shall not be entitled to any adjustment of the Contract Sum in respect of any instructions issued by the Employer in order to correct any such discrepancy or divergence as is referred to in this clause 2.13."

### **2.14 Discrepancies in Documents**

**2.14.2 Delete** "and treated as a Change" and **insert** "and the Contractor shall be obliged to comply with the decision or acceptance by the Employer without affecting in any way or to any degree the responsibility of the Contractor under this Contract and without any adjustment to the Contract Sum (whether under clause 4.19 or otherwise) nor shall there be any extension to the Completion Date."

## **2.15 Divergences from Statutory Requirements**

2.15.1 In line 7 after “clause 2.15.2,” insert “carry out and”.

2.15.2.1 In line 1 after “Statutory Requirements” insert the following:

“(which could not have been reasonably foreseen by an experienced and competent design and build contractor)”.

2.15.2.2 At the end of clause 2.15.2.2, before the full stop, insert the following:

“and has not been caused by the Contractor’s breach of this Contract (to include without limitation, the Contractor’s default, omission and/or negligence in the provision of the Contractor’s planning services to procure the Development Control Requirements) other than an amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable.”

### **Design Work - liabilities and limitation**

**Delete** clause 2.17 and insert the following:

“2.17.1 The Contractor shall be solely responsible in all respects for the design of the Works (including any design contained in a Change and any performance specification) and shall adopt and take full responsibility and liability for any error, mistake, inaccuracy or discrepancy in the design of the Works including any design contained in the Employer’s Requirements and/or the Contractor’s Proposals and/or other Contractor’s Design Documents, whether or not carried out before or after the date of this Contract and whether or not by any Contractor’s Person. Without prejudice to the foregoing generality, the Contractor undertakes and warrants to the Employer that:

.1 he has exercised and will continue to exercise in the performance of his design services, the reasonable skill, care and diligence expected of competent and properly qualified persons of the relevant disciplines who are experienced in carrying out such design services in relation to works of a similar size, scope and nature to the Works.

.2 subject to the standard of reasonable skill and care required by clause 2.17.1.1, when completed the Works will comply with:

.1 any performance specification or requirement included or referred to in the Employer’s Requirements and/or the Contractor’s Proposals including in any Changes issued pursuant to section 5 of these Conditions; and

.2 all appropriate requirements of any Local or Public Authority, Consents and any relevant Statutory Requirements.

2.17.2 The Contractor warrants and undertakes to the Employer that it shall not use or specify for use or permit to be used by or on behalf of the Contractor in relation to the Works anything which, at the time of specification or use, is Deleterious.

2.17.3 The Contractor shall be deemed to have inspected the physical and other conditions of or affecting the site, its surroundings and access to the site and shall be deemed to have fully acquainted and satisfied itself with the same and to have obtained all

necessary information as to any risks, contingencies, restrictions and all other circumstances in relation thereto which may influence or affect the execution of the Works. The Contractor shall be responsible for satisfying himself as to the restrictions on access to the site and the restrictions on parking around the site.

- 2.17.4 No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether or not the same ought reasonably to have been discovered or foreseen by a competent and careful contractor, shall entitle the Contractor to make any claim for an extension of time under clause 2.25 or for loss and/or expense under clause 4.19 (or otherwise) or to any adjustment of the Contract Sum.
- 2.17.5 The Employer makes no representation or warranty as to the accuracy or completeness of any survey, report or document provided by the Employer or included in or forming part of the Employer's Requirements regarding any matter, including without limitation any matter referred to in this clause 2.17. The Employer shall have no liability arising out of or in relation to any such survey, report or document or their contents including any representation or statement, whether made negligently or otherwise.
- 2.17.6 The Contractor shall be responsible for satisfying itself as to the location and nature of the power and utility services and mains which may affect the Works, including the excavation of trial holes if appropriate. All protection to such services and mains deemed necessary by the relevant authority, Statutory Undertaker or public utility organisation as a consequence of executing the Works are to be agreed between the Contractor and that party and advised to the Employer's Agent and carried out or procured by the Contractor. The costs of all such location and protection works, including any charges or fees levied by that authority, Statutory Undertaker or public utility are the responsibility of the Contractor.
- 2.17.7 The Contractor shall make, and be deemed to have made, at his own cost due allowance for any service installations and diversions on or through the site and also for restricted access to the Works and restrictions on parking and for the works of any statutory bodies, authorities, Statutory Undertakers or public utilities insofar as these may affect the carrying out of the Works.
- 2.17.8 Without prejudice to the provisions of clauses 2.17.6 and 2.17.7, the Contractor shall comply with any special requirements that any Statutory Undertakers may require at his own cost without any entitlement to an adjustment to the Contract Sum or to an adjustment of the Completion Date under clause 2.25 or to loss and/or expense under clause 4.19 (or otherwise).
- 2.17.9 The Contractor shall be responsible for making all necessary applications for services and utilities connections required for the purposes of the Works to the relevant service and utilities providers and/or Statutory Undertakers or other relevant body as the case may be and the Contractor shall be responsible for lodging all necessary documentation including all drawings and specifications. The Contractor shall be responsible for procuring the installation or diversion of such services and utilities connections. It is agreed that the Contract Sum is inclusive of all fees and other sums payable to the service and utilities providers or other body in order to achieve the necessary service and utilities connections in respect of all sums due by way of standing charges and consumption charges which are referable for the period up to and including the date of practical completion."
- 2.17.10 Without affecting any other limitation in this Contract, the Contractor's liability under or in connection with this Contract shall be limited to the sum stated in the Contract Particulars. This limit shall apply however that liability arises including a liability arising by breach of contract, arising by tort (including the tort of

negligence) or arising by breach of statutory duty, provided that this clause shall not exclude or limit the Contractor's liability for:

2.17.10.1 any indemnities listed in this Contract;

2.17.10.2 fraud or fraudulent misrepresentation;

2.17.10.3 breach by the Contractor of clauses 2.38 or 3.16 of this Contract; or

2.17.10.4 termination pursuant to clauses 8.4 to 8.6 of this Contract."

- 2.17.11 Save where otherwise stated in the Employer's Requirements, the Contractor shall be responsible for making all necessary applications for the Consents required for the purposes of the Works to the relevant Statutory Undertakers or other relevant body as the case may be and the Contractor shall be responsible for lodging all necessary documentation including all drawings and specifications. The Contractor shall be responsible for obtaining and/or discharging those Consents. It is agreed that the Contract Sum is inclusive of all fees and other sums payable to any other body in order to obtain and discharge the necessary Consents."

### **Adjustment of Completion Date**

#### **2.24 Notice by Contractor of delay to progress**

- 2.24.1 After the word "forthwith" insert "(and in any event not later than 14 days after it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed)"

At the end of clause 2.24.1 insert "and provide a revised version of the Works Programme to illustrate the nature of the delay."

#### **2.25 Fixing Completion Date**

- 2.25.5 After "2.25.3" insert "provided always that the Contractor has complied with clause 2.24.1."

- 2.25.5.1 **Delete** "and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.24.1."

#### **2.26 Relevant events**

- 2.26.1 At the start of this clause insert "Subject always to clause 5.8,"

- 2.26.2.1 **Delete** this clause

- 2.26.6 At the end of clause 2.26.6 insert the following before the semi-colon:

"or in the case of any impediment or prevention, save to the extent that the same is the consequence of the reasonable exercise of the rights of the Employer under this Contract"

- 2.26.7 At the end of clause 2.26.7 insert the following:

", but always subject to clauses 2.17.7 and 2.17.8"

- 2.26.12 **Delete** this clause and **replace** with "Not used."

**Insert** the following as a new clause 2.26A after clause 2.26:

- “2.26A (save where the Relevant Event is as defined in clause 2.26.9 and provided, in that case, that the Contractor has complied fully with any obligation upon the Contractor to maintain insurance against Specified Perils under this Contract) the Contractor shall not become entitled to any extension of time on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor the Contractor’s Persons.”

## **Practical Completion, Lateness and Liquidated Damages**

### **2.27 Practical completion**

**Renumber** “2.27” as “2.27.1”, “2.27.1” as “2.27.1.1” and “2.27.2” and “2.27.1.2”

**Delete** the opening paragraph and **insert** the following:

“The Contractor shall provide the Employer with not less 7 days’ notice in writing of the date when the Contractor anticipates that the Works or any Section will reach practical completion. Provided that the Contractor has provided sufficient prior notice and that practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with this clause 2.27 and clauses 2.37 and 3.16 in respect of the supply of documents and information, then:”

At the end of clause 2.27.1, **insert** the following as a new sentence:

“If the Employer does not consider that practical completion of the Works or a Section has been achieved then the process in clause 2.27.1 shall be repeated and the Contractor shall be obliged to provide the Employer with further notice of the date when the Contractor anticipates that practical completion of the Works or a Section will be achieved.”

**Insert** the following new clauses 2.27.2 to 2.27.4 after clause 2.27.1:

- “2.27.2 For the purposes of this clause 2.27, ‘practical completion’ means the state in which the Works are (or any Section is) complete in all respects and free from any apparent defects, save for any minor items of any incomplete works or minor defects the existence, completion, rectification of which will not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works or Section, provided that where it is expressly stated in any provisions of the Contract Documents that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before practical completion of the Works or any Section, the Works or Section shall not be considered practically completed until the same is done as the Contract Documents require.
- 2.27.3 The Practical Completion Statement or Section Completion Certificate (as the case may be) may have appended to it a snagging list setting out minor, incomplete or defective works and the timescale within which such works are to be made good by the Contractor. Should the Contractor fail to make good the works set out on any snagging list within the time set out on that list or such other reasonable period as the Employer’s Agent may instruct, the Employer shall be entitled to complete or make good those items and deduct those sums from the Contract Sum or recover those costs from the Contractor as a debt.
- 2.27.4 The Employer’s Agent shall not be obliged to issue the Practical Completion Statement or Section Completion Certificate (as the case may be) unless all items required by the Employer’s Agent have been provided to the Employer including but not limited to:
- .1 two complete sets of copies of test certificates and commissioning reports, full maintenance and operation manuals for the mechanical and



- electrical installation (if any) and any other plant and material installed at the Works;
- .2 one hard copy and one electronic copy of the health and safety file maintained in relation to the Works pursuant to the Contractor's obligations under the CDM Regulations;
- .3 copies of all manufacturers' guarantees and/or warranties which are available or should be available in respect of the Works;
- .4 the collateral warranties and certified copy sub-contracts and design appointments required by this Contract;
- .5 completion certificates from the Local or Public Authority or, where applicable, a building inspector;
- .6 two copies of the fire, gas safety and electrical certificates; and
- .7 keys for all locks at the site, individually labelled indicating their location
- .8 all Models, Materials or Specific Models as required by the BIM Protocol;
- .9 evidence that the Contractor has obtained complied with and/or discharged all of the conditions of the Consents (except for those Consents that the Employer's Requirements state are not the Contractor's responsibility) that are required to be complied with before the site can be occupied and used for the intended use they have been occupied."

### **Partial Possession by Employer**

#### **2.30 Contractor's consent**

In the third line, after "obtained" insert "(which consent shall not be unreasonably delayed or withheld)"

### **Defects**

#### **2.35 Schedules of defects and instructions**

Insert the following as a new clause 2.35A after clause 2.35:

- 2.35A.1 As soon as reasonably practicable after the date of the Practical Completion Statement (or date of the Section Completion Statement where appropriate) the Contractor shall remedy or cause to be remedied any omission imperfection defect or other fault specified in the Snagging List annexed to the Practical Completion Statement at no cost to the Employer. The Contractor shall at its own cost and to the Employer's reasonable satisfaction procure the remedy of any defects in the Works which appear in the Snagging List referred to above.
- 2.35A.2 Following receipt of any schedule or instructions referred to in 2.35, the defects shrinkages or other faults specified therein shall, subject to clause 2.35A.3, at no cost to the Employer, be made good by the Contractor:
  - .1 if specified by the Employer as 'Emergency Works' within 4 hours of receipt of such schedule or instruction (or, if it is not practicable to carry out such works within 4 hours, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

.2 if specified by the Employer as 'Essential Works' within 24 hours of receipt of such schedule or instruction (or, if it is not practicable to carry out such works within 24 hours, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

.3 if specified by the Employer as 'Urgent Works' within 7 days of receipt of such schedule or instruction (or, if it is not practicable to carry out such works within 7 days, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

.4 if specified by the Employer as 'Normal Works' within 28 days of receipt of such schedule or instruction (or, if it is not practicable to carry out such works within 28 days, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

unless the Employer shall otherwise instruct.

2.35A.3 The Employer may elect to instruct the Contractor not to remedy any defects deficiencies snagging items shrinkages or other faults. If he does so instruct the Contractor, an appropriate deduction shall be made from the Contract Sum in respect of the defects deficiencies snagging items shrinkages or other faults not made good. The amount of any deduction shall be determined by the Employer's Agent acting reasonably and shall be final and binding on the Parties.

2.35B Insert the following as a new clause 2.35B:

The timing and method of all remedial and other works pursuant to clauses 2.35 and 2.35A shall be approved by the Employer in advance. All such works shall be carried out during such hours as the Employer may reasonably request (which, for the avoidance of doubt, may include working outside normal working or trading hours) and shall be executed to the reasonable satisfaction of the Employer. The Contractor shall ensure that in making good such defects deficiencies snagging items shrinkages or other faults it shall keep to a minimum any inconvenience and interruption to the Employer, to any party occupying the Works or to any other neighbouring occupiers and shall cause as little damage to the Works, the site or neighbouring property as in each case is reasonably practicable and the Contractor shall ensure that any such damage is made good as soon as reasonably practicable to the Employer's reasonable satisfaction and all costs and any related costs shall be met by the Contractor."

## **2.36 Notice of Completion of Making Good**

In line 2 after "have been made good" insert "to the reasonable satisfaction of the Employer"

At the end of clause 2.36, before the full stop, insert the following:

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

## **Contractor's Design Documents**

### **2.38 Copyright and use**

2.38.1 In line 3, replace "Contractor's Design Documents" with "Material"

Delete clauses 2.38.2 and 2.38.3 and insert the following:

- “2.38.2 Notwithstanding clause 2.38.1, the Contractor grants to the Employer and its nominees (and if it cannot grant such a licence at the date of this Contract then the Contractor shall procure its ability to grant such licence and shall then grant on the same terms when it is able to do so) with full title guarantee a non-exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Works (and completed Works) including any of the Permitted Uses.
- 2.38.3 The licence carries the right to grant sub-licences and is transferable to third parties without the Contractor’s consent.”
- 2.38.4 Replace the word “Contractor’s Design Documents” with “Material”

Insert the following as new clauses 2.39 to 2.41:

### **Additional Provisions**

#### **“2.39**

##### **Nuisance**

The Contractor shall at all times prevent any nuisance (including but without limitation any noisy working operations or obstruction or damage of the roadways or common areas) or other interference with the rights of the Employer (in respect of land not forming part of the site) and any adjoining land-owner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and the Contractor shall assist the Employer in defending any action or proceedings which may be instigated in relation thereto. Without prejudice to the generality of the foregoing, the Contractor shall indemnify the Employer, on demand and as a debt, against any and all expenses, liabilities, losses, claims and proceedings whatsoever (including the entire legal fees and internal management time incurred by the Employer in defending and/or managing any such expenses, liabilities, losses, claims and proceedings whether or not such legal fees and internal management time are reasonably incurred) resulting from any failure by the Contractor to comply with this clause 2.39.

#### **2.40**

##### **Trespass**

Without prejudice to any other provision of this Contract, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of a tower crane jib or the erection of scaffolding or hoarding) on or over any nearby property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of nearby property and members of the public. If carrying out the Works or any obligation pursuant to clauses 2.35 and/or 2.35A would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any nearby property to that act. That agreement shall be subject to the Employer's approval before its completion. The Contractor shall comply with any condition or obligation contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any condition or obligation contained in that agreement.

#### **2.41**

##### **Third Party Agreements**

##### **2.41.1**

The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.

- 2.41.2 The Contractor shall perform and assume, as part of his obligations under this Contract, the Employer's obligations, liabilities and risks contained within the Third Party Agreements that relate to the carrying out of the Works as if they were expressly referred to in this Contract as obligations, liabilities and risks of the Contractor, all other things being equal.
- 2.41.3 The Contractor shall ensure that no act or default or omission on his part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of his obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of his obligations under the Third Party Agreements."

## **CONDITIONS      Section 3: Control of the Works**

### **Access and Representatives**

#### **3.1 Access for Employer's Agent**

Renumber existing clause 3.1 as 3.1.1.

INSERT the following additional clause 3.1.2:

"3.1.2 The Contractor irrevocably authorises the Employer and any person authorised along with their representatives to enter upon the site prior to practical completion of inspecting the Works or any part on first giving reasonable notice to the Contractor. The Contractor shall use reasonable endeavours to procure that no interference in or obstruction of the Works by the Contractor shall be caused thereby. The Contractor shall permit authorised by the Employer and such other representatives as they may require meetings (of which the Contractor shall not give less than ten days' notice) and facilities for such meetings shall be supplied to the Employer."

### **Sub-Contracting**

#### **3.3                      Consent to sub-contracting**

3.3.1.1 In line 2, after "Works" insert the following:

"(save that the Contractor shall not sub-contract the whole of the Works under one contract or to one sub-contractor)"

3.3.1.2 At the end of clause 3.3.1.2, insert the following as a new sentence:

"The Contractor shall appoint any Design Consultants under an appointment that is executed as a deed and which contains no limitations on liability which are of a lesser amount on an any one claim basis than the respective Design Consultant's level of professional indemnity insurance cover (subject to a minimum level of cover set out in clause 6.15.6.1). In addition, such appointment of any Design Consultant shall contain terms, in respect of the design of the Works and the provision of collateral warranties that are no less onerous than those terms imposed on the Contractor under this Contract."

#### **3.4                      Conditions of sub-contracting**

3.4.2.5 **Delete** this clause and replace with:

"3.4.2.5.1 that each Key Sub-Contractor or Design Consultant must execute and deliver collateral warranties in favour of the Employer and/or any Beneficiary in the relevant form annexed to this Contract.

3.4.2.5.2 that each Key Sub-Contractor or Design Consultant carried out and maintains professional indemnity insurance for an amount of not less than that required by clause 6.15.6.2 of this Contract”

Insert the following as a new clause 3.4.4:

“3.4.4 the sub-contract for Key Sub-Contractors shall contain such amendments as are necessary to render it consistent with the Contract Documents and be executed as a deed.”

Insert the following as a new clause 3.4.5:

“3.4.5 the Contractor shall ensure that it complies with the government’s Prompt Payment Policy and that it pays any sums due to its sub-contractor within 30 days of the final date for payment.”

Insert the following as a new clause 3.4A:

**“3.4A Additional conditions of Key Sub-Contractor’s sub-contract and Design Consultant’s appointment**

3.4A.1 The Contractor shall:

- .1 within 7 days of the execution of each Design Consultant’s appointment and each Key Sub-Contractor’s sub-contract, deliver to the Employer a certified copy of the relevant sub-contract or appointment;
- .2 not vary, waive, release or dismiss any Key Sub-Contractor or Design Consultant without the written approval of the Employer (such approval not to be unreasonably withheld or delayed);
- .3 not do anything that would entitle any of the Design Consultants or Key Sub-Contractors to regard its employment under its appointment or sub-contract as terminated;
- .4 immediately inform the Employer if the Contractor believes that any Design Consultant or Key Sub-Contractor may be intending to rescind or terminate its appointment or sub-contract;
- .5 ensure that each Design Consultant or Key Sub-Contractor is contractually required to adopt open book contracting; and
- .6 insofar as it is relevant to the Works, ensure that each Design Consultant and Key Sub-Contractor complies with the BIM Protocol.

3.4A.2 If the employment of any Key Sub-Contractor or any Design Consultant is terminated before the completion of the sub-contract works or design allocated to such Key Sub-Contractor or Design Consultant (as the case may be), the Contractor shall, as soon as is practicable but on 7 days’ prior written notice to the Employer, appoint another sub-contractor or designer (subject to the Employer’s consent) to complete those sub-contract or design works (save for any sub-contractor or designer which the Employer makes reasonable objection to in writing). The foregoing provisions of this clause 3.4A shall apply to such replacement sub-contractor or designer, mutatis mutandis.

3.4A.3 If the Contractor breaches any provision of clause 3.4 or this clause 3.4A, it shall be a deemed failure to comply with his obligations pursuant to clause 8.4.2.”

3.13 Work not in accordance with the Contract

3.13.1 After "from the site" insert "and /or the making good".

## **CONDITIONS Section 4: Payment**

### **Payments and Notices - general provisions**

#### **4.7 Interim Payments - Contractor's Interim Payment Applications, due dates and Payment Notices**

4.7.1 After "by the Employer to the Contractor" insert "or the Contractor to the Employer"

4.7.2 In line 2 delete "by the Employer"

4.7.3 Insert the following to the end of clause 4.7.3

"The sum due in an Interim Payment Application shall be calculated in accordance with clause 4.14 (Sums due as Interim Payments). Where an Interim Payment is not calculated in accordance with clause 4.14 (Sums due as Interim Payments) the sum stated as due in the Interim Payment Application shall be deemed to be £nil."

Insert the following as a new clause 4.7.6:

"4.7.6 The Contractor warrants the sum claimed in his Interim Payment Application is calculated in accordance with clause 4.14 (Sums due as Interim Payments)."

#### **4.9 Interim and final payments - final date and amount**

4.9.1 Delete "14 days" and insert "28 days".

Insert the following as a new clause 4.9.8:

"4.9.8 In the event that the sum specified in a Payment Notice is a negative figure showing a balance due to the Employer to be paid by the Contractor, the Contractor shall, subject to any Pay Less Notice given under clause 4.9.5, pay the sum specified in the Employer's Payment Notice to the Employer by the final date for payment. Where a Pay Less Notice is given by the Contractor to the Employer, the payment to be made to the Employer on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice."

#### **4.10 Pay Less Notices and other general provisions**

"4.10.4 Replace "The Employer's fiduciary interest... prevent him from exercising" with "The Employer may exercise"

### **Retention**

#### **4.16 Rules on treatment of Retention**

Delete the existing clause and insert the following:

"4.16.1 The Employer will be under no obligation to set aside in a separate account any amount representing the Retention and will be under no fiduciary obligation with regard to it.

4.16.2 Any right of the Employer to deduct or set off any amount (whether arising under any term of this Contract or under any rule of law or in equity) shall be exercisable

against any monies due or to become due to the Contractor, whether or not such monies included or consist of any Retention.”

## **Loss and Expense**

### **4.19 Matters materially affecting regular progress**

Insert new sub-clause 4.19.3:

Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under this Contract in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or any Contractor’s Person, or any of their respective agents servants or sub-contractors (other than an amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable).”

### **4.20 Notification and ascertainment**

4.20.1 After the words “as soon as” insert “and in any event not later than 14 days after”

### **4.21 Relevant Matters**

4.21.1 At the start of this clause, insert “Subject always to clause 5.8, ”

## **CONDITIONS Section 5: Changes**

### **General**

### **5.1 Definition of Changes**

Replace the full stop at the end of clause 5.1.2.4 with a semi-colon and insert the following as a new clause 5.1.3:

“5.1.3 without prejudice to the rest of this clause 5.1, an instruction from the Employer supplementing or amending the Third Party Agreements.”

### **The Valuation Rules**

### **5.6 Change of conditions for other work**

At the end of the clause, insert the following:

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

Insert a new clause 5.8:

### **“5.8 Employer’s instruction affecting the Contract Sum and/or the Completion Date**

5.8.1 Where in the opinion of the Contractor any instructions issued by the Employer to the Contractor under this Contract may require an adjustment to the Contract Sum and/or the Completion Date, before complying with that instruction the Contractor shall provide to the Employer as soon as practicable (and in any event within 10 Business Days of the date of the Employer’s instruction) with details of all necessary design details including Material associated with that instruction, along with details of the value of the adjustment to the Contract Sum (providing the Employer with

all necessary supporting calculations by reference to the values contained in the Contract Sum Analysis) and the length of any extension of time to the Completion Date which the Contractor considers he may be entitled to if he complies with that instruction.

- 5.8.2 The Employer shall either confirm or revoke that instruction in writing. The Contractor shall not be entitled to any adjustment to the Contract Sum or the Completion Date in respect of any Change under this Contract unless and until he is in receipt of an Employer's written instruction pursuant to this clause 5.8.2.<sup>1</sup>

## **CONDITIONS      Section 6: Injury Damage and Insurance**

### **Professional Indemnity Insurance**

#### **6.13              Loss or damage - insurance claims and reinstatement**

- 6.13.3 **Delete** "and from any policies covering Existing Structures or their contents that are effected by the Employer"

#### **6.15              Obligation to insure**

**Delete** clause 6.15.2 and **insert** the following:

- "6.15.2 thereafter, provided it is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting ("**Viable Rates and Terms**"), the Contractor shall maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works. Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within Viable Rates and Terms;"

- 6.15.3 **Replace** the full stop at the end of clause 6.15.3 with a semi-colon.

**Insert** the following as new clauses 6.15.4 to 6.15.6:

- 6.15.4 immediately inform the Employer if such insurance ceases to be available at Viable Rates and Terms so the Contractor and the Employer can discuss the means of best protecting their respective positions in respect of the Works in the absence of such insurance. If the professional indemnity insurance cover ceases to be available by reason of the Contractor's acts, defaults or omissions and/or due to the Contractor's claims record such cover shall nevertheless be deemed to be available at Viable Rates and Terms;

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<sup>1</sup> DRAFTING NOTE: This variation mechanism is intended to stand alone and should not be used in conjunction with supplemental provision 2



6.15.5 fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Viable Rates and Terms if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above Viable Rates and Terms; and

6.15.6 procure that:

.1 each Design Consultant maintains professional indemnity insurance of not less than £10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event; and

.2 each Key Sub-Contractor maintains professional indemnity insurance of not less than £5,000,000 (five million pounds) for any one claim or series of claims arising out of any one event,

for a period of 12 years from the date of practical completion of the Works.”

**6.16 Professional Indemnity Insurance: Increased cost and non-availability**

Delete the existing clause 6.16 and insert “Not used.”

**CONDITIONS Section 7: Assignment, Third Party Rights and Collateral Warranties**

### **Assignment**

**7.1 General**

Delete clause 7.1 and insert the following:

“7.1 The Employer may assign his entire rights and benefits under this Contract to any person having or acquiring an interest in the Works and such rights and benefits shall be capable of one further assignment by the assignee. In addition, the Employer’s rights and benefits may be charged and/or assigned by way of security and by way of reassignment on redemption without the Contractor’s consent and without the same counting against the permitted number of assignments. Also, intra group assignments shall be permitted and shall not count against the permitted number of two assignments. The Contractor may not assign the benefit of this Contract without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).”

### **Performance Bonds and Guarantees**

Delete clause 7.3 and insert the following:

“7.3.1 Where it is stated in the Contract Particulars that a parent company guarantee is required, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached at **Appendix 4** to the Schedule of Amendments. The parent company guarantee shall be executed and delivered by the Contractor’s Parent Company. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer shall not be liable to make any payment to the Contractor under this Contract until the Contractor has procured such execution and delivery.”

7.3.2 Where it is stated in the Contract Particulars that a performance bond is required, the Contractor shall, no later than the date of this Contract, procure the execution

and delivery of a performance bond in favour of the Employer in the form attached at **Appendix 5** to the Schedule of Amendments. The bond shall:

- .1 be in an amount no less than 10% of the Contract Sum;
- .2 have an expiry date no earlier than three months after the issue of the Notice of Completion of Making Good; and
- .3 be executed and delivered by a surety approved by the Employer, acting reasonably.

If the Contractor does not procure execution and delivery of the bond then, notwithstanding any other term of this Contract, the Employer shall not be liable to make any payment to the Contractor under this Contract until the Contractor has procured such execution and delivery.”

### **Clauses 7A to 7E - Preliminary**

**Delete** clauses 7.4 to 7.6

### **Third Party Rights from Contractor**

**Delete** existing clauses 7A to 7E and insert the following:

**“7A**

#### **Contractor’s warranties - any Beneficiary**

The Contractor shall, within 14 days of receiving a written request from the Employer, deliver to the Employer duly executed deeds of collateral warranty in the relevant form set out in **Appendix 1** in favour of any Beneficiary.

**7B**

#### **Design Consultants’ warranties - Employer and any Beneficiary**

The Contractor shall, within 14 days of receiving a written request from the Employer (whether before or after completion of the Works), procure and deliver to the Employer duly executed deeds of collateral warranty in the form set out in **Appendix 2** from each Design Consultant in favour of the Employer and any Beneficiary.

**7C**

#### **Key Sub-Contractors’ warranties - Employer and any Beneficiary**

The Contractor shall, within 28 days of receiving a written request from the Employer (whether before or after completion of the Works), procure and deliver to the Employer duly executed deeds of collateral warranty in the form set out in **Appendix 3** from each Key Sub-Contractor in favour of the Employer and any Beneficiary.

**7D**

Notwithstanding clauses 7B and 7C, minor changes sought by Key Sub-Contractors and Design Consultants to the collateral warranty template will be considered by the Employer but the Employer will not be required to consider or to agree to material changes such as clauses limiting or excluding liability or which are net contributions clauses or clauses which materially lessen the obligations owed by the sub-contractor or design consultant to the beneficiary under the collateral warranty.

**7E**

#### **Warranty Retention**

If the Contractor fails to deliver to the Employer the executed deed or deeds of warranty within 14 days of the Employer’s written request the Employer may withhold the sum of £10,000 in respect of each such deed which has not been

executed and delivered from any payment that would otherwise be due to the Contractor under the Contract until such deed or deeds of warranty have been satisfactorily executed and delivered to the Employer.

7F If the Contractor fails to deliver to the Employer the Design Consultant's or Key Sub-Contractor's executed deed or deeds of warranty and their associated documents (being a certified copy of each Design Consultant's appointment and each Sub-Contractor's sub-contract) within 14 days of the Employer's written request the Employer may withhold the sum of £10,000 in respect of each such deed and associated documents which have not been executed or delivered from any payment that would otherwise be due to the Contractor under the Contract until such deed or deeds of warranty and their associated documents have been satisfactorily executed and delivered to the Employer with its or their associated documents.

8.4.1.3 In line 2 after "remove" **insert** "or rectify"

8.4.1.5 At the end of the clause, **insert** "or"

**Insert** a new clause 8.4.1.6:

8.4.1.6 "fails to comply with any other requirement in this Contract which is listed as a Contractor default event, "

## **8.5 Insolvency of Contractor**

8.5.1 In clause 8.5.1 after "Insolvent" **insert** the following:

"or files a notice of his intention to appoint an administrator: "

In clause 8.5.1, **transfer** "the Employer may..." until the end of the clause to a new clause 8.5.1.1.

At the end of new clause 8.5.1.1, **insert** "; and".

**Insert** the following as a new clause 8.5.1.2:

"8.5.1.2 The event of Insolvency is deemed to be a material breach of this Contract."

8.5.3.3 After "the Employer may" **insert** "at the Contractor's expense, "

8.11A **Insert** a new clause 8.11A "The Employer may voluntarily terminate this Contract at any stage by written notice."

8.12 At the start of clause 8.12 and in clause 8.12.3 after "clauses 8.9 to 8.11" **insert** "or clause 8.11A"

## **SCHEDULES**

### **SCHEDULE 2 SUPPLEMENTAL PROVISIONS**

### **SCHEDULE 3 INSURANCE OPTIONS**

#### **Insurance Option A**

In the subtitle, **delete** "New Buildings -" and **insert** "Insurance of Existing Structures and Works in or Extensions to them and"

Before paragraph A.1, **insert** the following as a new paragraph A.01:

**A.01 “Existing structures and contents**

In respect of the cost of reinstatement, repair or replacement of loss or damage to the Existing Structures and contents arising out of or in the course of or by reason of the carrying out of the Works (and to the extent the same is due to any negligence, breach of statutory duty, omission or default of the Contractor) up to and including the date of issue of the Practical Completion Statement or last Section Completion Statement or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested):

A01.1 the Contractor’s liability is limited to the amount stated in the Contract Particulars; and

A01.2 the Employer shall be liable for, and shall indemnify the Contractor against, any expense, liability loss, claim or proceedings in respect of such liability identified in this paragraph A.01 in excess of the amount stated in the Contract Particulars.”

**A4 Insert new paragraph A.4:**

**Loss or damage - insurance claims and Contractor’s obligations**

If during the carrying out of the Works there is any loss of or damage of any kind to any of the existing structures or their contents occasioned by any of the Specified Perils then, upon its occurrence or later discovery, the Contractor shall forthwith give notice to the Employer of its extent, nature and location.

If there is material loss of or damage to any of the Existing Structures and it is just and equitable, the Contractor’s employment under this Contract may within 28 days of the occurrence of such loss or damage be terminated at the option of either party by notice given to the other in accordance with clause 1.7.4. If such notice is given:

- .1 either Party may within 7 days of receiving such a notice (but not thereafter) invoke the dispute resolution procedures that apply under this Contract in order that it may be decided whether the termination is just and equitable; and
- .2 upon the giving of such notice of termination or, where those dispute resolution procedures have been invoked, upon any final upholding of the notice of termination the provisions of clauses 8.12.2 to 8.12.5 (except clause 8.12.3.5) shall apply.”]

**SCHEDULE 5 THIRD PARTY RIGHTS**

Delete the existing schedule and replace with “Not used”.

**SCHEDULE 7 JCT FLUCTUATION OPTION A**

Delete the existing schedule and replace with “Not used.”

## **Appendix 1**

### **CONTRACTOR'S COLLATERAL WARRANTY**

Template Deed of Collateral Warranty to be provided by the Contractor in favour of a  
**Landlord / Purchaser/ Tenant**



## **Appendix 2**

### **DESIGN CONSULTANT COLLATERAL WARRANTY**

Template Deed of Collateral Warranty to be provided by the Design Consultants  
in favour of the  
**Employer and Landlord/ Purchaser/ Tenant**



## **Appendix 3**

### **KEY SUB-CONTRACTOR COLLATERAL WARRANTY**

Template Deed of Collateral Warranty to be provided by a Key Sub-Contractor in favour of the  
Employer and Landlord/ Purchaser/ Tenant



## **Appendix 4**

### **PARENT COMPANY GUARANTEE**

Not applicable



## **Appendix 5**

### **PERFORMANCE BOND**

**Not applicable**

## Appendix 6

### THIRD PARTY AGREEMENTS

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## Appendix 7

### ADDITIONAL REQUIREMENTS



HM Revenue  
& Customs

#### AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean this contract between (i) the Authority (the Employer acting as part of the Crown) and (ii) the Contractor.
- B. The Agreement incorporates the Authority's mandatory terms set out in this Schedule 1A.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 1A will supersede any other terms in the Agreement.
- D. For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority's mandatory terms in this Schedule 1A are the definitions set out at Clause 1 of this Schedule 1A.

#### 1. Definitions

<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Authority Data"</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"><li>(i) supplied to the Contractor by or on behalf of the Authority; and/or</li><li>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or</li></ul> <p>(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;</p>
<b>"Charges"</b>	the charges for the Works as specified in the Contract;
<b>"Connected Company"</b>	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
<b>"Control"</b>	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

<b>“Controller”, “Processor”, “Data Subject”, “Data Protection Legislation”</b>	take the meaning given in the UK GDPR;  (a) "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and; (b) all applicable Law about the processing of personal data and privacy;
<b>“Key Subcontractor”</b>	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Works; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Contract;
<b>“Law”</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
<b>“Personal Data”</b>	has the meaning given in the UK GDPR;
<b>“Purchase Order Number”</b>	the Authority’s unique number relating to the supply of the Works;
<b>“Services”</b>	the services to be supplied by the Contractor to the Authority under the Agreement, including the provision of any Goods;
<b>“Subcontract”</b>	any contract or agreement (or proposed contract or agreement) between the Contractor (or a Subcontractor) and any third party whereby that third party agrees to provide to the Contractor (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>“Subcontractor”</b>	any third party with whom: (a) the Contractor enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
<b>“Supplier Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Subcontractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
<b>“Supporting Documentation”</b>	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
<b>“Tax”</b>	(a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;

- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

**“Tax Compliance”**      **Non-** where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Contractor or any agent, supplier or Subcontractor of the Contractor requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

**“UK GDPR”**      the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

**“VAT”**      value added tax as provided for in the Value Added Tax Act 1994.

## **2. Payment and Recovery of Sums Due**

**2.1** The Contractor shall invoice the Authority as specified in Clause 4 of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Contractor shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Contractor acknowledges and agrees that should it commence Services without a Purchase Order Number:

**2.1.1** the Contractor does so at its own risk; and

**2.1.2** the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Contractor.

**2.2** Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Contractor, as directed by the Authority from time to time via the Authority’s electronic transaction system.

**2.3** If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Authority. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

## **3. Warranties**

**3.1** The Contractor represents and warrants that:

**3.1.1** in the three years prior to the date of this Contract, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;

**3.1.2** it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and

- 3.1.3** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue and the Contractor has notified the Authority of any profit warnings issued in respect of the Contractor in the three years prior to the date of this Contract.
- 3.2** If at any time the Contractor becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 3.3** In the event that the warranty given by the Contractor pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the clause which provides the Authority the right to terminate the Agreement for Contractor fault (termination for Contractor cause or equivalent clause).
- 4. Promoting Tax Compliance**
- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Contractor, the Contractor shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Contractor is established.
- 4.3** The Contractor shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Contractor prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Contractor shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the term the Contract, there is Tax Non-Compliance, the Contractor shall:
- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2** promptly provide to the Authority:
- (a)** details of the steps which the Contractor is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b)** such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5** The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any Tax relating to payments made to the Contractor under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Contractor to the Authority

not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

**4.6** Upon the Authority's request, the Contractor shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Contractor complies with its Tax obligations.

**4.7** If the Contractor:

**4.7.1** fails to comply (or if the Authority receives information which demonstrates to it that the Contractor has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;

**4.7.2** fails to comply (or if the Authority receives information which demonstrates to it that the Contractor has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Contractor as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Contractor is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or

**4.7.3** fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Contractor fault (termination for Contractor r cause or equivalent clause).

**4.8** The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

## **5. Use of Off-shore Tax Structures**

**5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Contractor shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Contractor under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Contractor and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

**5.2** The Contractor shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Contractor or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Contractor shall notify the Authority within a

reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.

- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Contractor and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Contractor shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Contractor (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Contractor fault (termination for Contractor cause).

## **6 Data Protection and off-shoring**

- 6.1** The parties agree that the Contractor shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1** not process or permit to be processed Personal Data outside of the United Kingdom unless the prior explicit written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a)** the Contractor or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Contractor when it is the Controller;
  - (b)** the Data Subject has enforceable rights and effective legal remedies;
  - (c)** the Contractor or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Contractor when it is the Controller in meeting its obligations); and
  - (d)** the Contractor or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 6.2** Failure by the Contractor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Contractor fault (termination for Contractor cause or equivalent clause).

## **7 Commissioners for Revenue and Customs Act 2005 and related Legislation**

- 7.1** The Contractor shall comply with and shall ensure that all Contractor Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Contractor acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** The Contractor shall comply with and shall ensure that all Contractor Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992,



which may apply to the fulfilment of some or all of the Services. The Contractor acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Contractor's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

- 7.3** The Contractor shall comply with and shall ensure that all Contractor Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989.
- 7.4** The Contractor shall regularly (not less than once every six (6) months) remind all Contractor Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Contractor Personnel set out in Clause 7.1 above. The Contractor shall monitor the compliance by Supplier Personnel with such obligations.
- 7.5** The Contractor shall ensure that all Contractor Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Contractor shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.6** In the event that the Contractor or the Contractor Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Contractor fault (termination for Contractor cause).

## **8 Confidentiality, Transparency and Publicity**

**8.1** The Contractor shall not, and shall take reasonable steps to ensure that the Contractor Personnel shall not:

8.1.1 make any press announcement or publicise the Agreement or any part of the Agreement in any way; or

8.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders, except with the prior written consent of the Authority.

**8.2** Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**8.3** The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ("FOIA"), the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish the Agreement in its entirety, (*but any information which is exempt from disclosure in accordance with the provisions of the FOIA may be redacted by the Authority*) including from time-to-time agreed changes to the Agreement, to the general public. The Authority may consult with the Contractor to inform its decision regarding any redactions, but the Authority shall have the final decision at its absolute discretion.

**8.4** The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **9 Security Requirements**

**9.1** The Contractor shall comply with the security management plan set out in the Security Plan Questionnaire (“Security Management Plan”) and the security policy identified as such within the Security Management Plan (“Security Policy”).

**9.2** The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.’

## **10 Intellectual Property Rights**

**10.1** All Intellectual Property Rights in any materials provided by the Employer to the Contractor for the purposes of this Agreement shall remain the property of the Employer but the Employer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.

**10.2** All Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any Intellectual Property Rights in such materials vest in the Employer by operation of law, the Employer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

**10.3** The Contractor hereby grants the Employer:

**10.3.1** a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Services; and

**10.3.2** a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

(a) any Intellectual Property Rights vested in or licensed to the Contractor on the date of the Agreement; and

(b) any Intellectual Property Rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Employer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

**10.4** The Contractor shall indemnify, and keep indemnified, the Employer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Employer as a result of or in connection with any claim made against the Employer for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection

with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Contractor Personnel.

## **11. Premises and Equipment**

**11.1** If agreed between the Parties, and subject always to Security Policy, the Employer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. The Employer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Employer's premises the Contractor shall, and shall procure that all Contractor Personnel shall, comply with all the Employer's security requirements.

**11.2** The Contractor shall be solely responsible for the cost of carriage of Equipment to the Sites and to HMRC Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Contractor shall be responsible for the removal and safe disposal of all relevant Equipment from the Sites and HMRC's Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or HMRC Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements. For the avoidance of doubt, the Contractor shall ensure that all Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations ("WEEE") and that all Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Equipment as required by WEEE.

**11.3** All the Contractor's property, including Equipment, shall remain at the sole risk and responsibility of the Contractor.

**11.4** The loss or destruction for any reason of any Contractor Equipment shall not relieve the Contractor of its obligation to supply the Services in accordance with this Agreement.

**11.5** For the purposes of this Clause 11, "Equipment" means all equipment, materials, consumables and plant, other than HMRC's Property, to be used by the Contractor in the delivery of the Services.