

Dated **2025**

- (1) COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**
- (2) BOWMER AND KIRKLAND LIMITED**

Pre-Construction Services Agreement

For the delivery of Pre-Construction Services in relation to *Pilgrim Quarter, Newcastle - Cat B works* using the JCT Design and Build Contract 2024

PRE CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT is made the 22 day of January 2025

BETWEEN:

(1) THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS (hereinafter called the "Employer").

(2) BOWMER AND KIRKLAND LIMITED, which is a company registered in England and Wales under company number 00701982 and whose registered offices is at High Edge Court Church Street, Heage, Belper, Derbyshire, DE56 2BW of the other part (hereinafter called the "Contractor").

Collectively referred to as the "Parties".

BACKGROUND

(A) The Employer has accepted the First Stage Tender submitted by the Contractor for the provision of the Pre-Construction Services for the Project and the Parties agree the Contractor shall carry out the PreConstruction Services in accordance with the terms of this Agreement.

(B) The Employer may wish to appoint the Contractor to carry out the Works and wishes to secure agreement on the terms on which that appointment may be made.

AGREED TERMS

1 INTERPRETATION

1.1 In this agreement, words and expressions shall have the following meanings.

Definitions:

- 1.1.1 Additional Services: services performed by the Contractor under this agreement, in connection with the Project or the Works, that are additional to the Pre-Construction Services.
- 1.1.2 Building Regulations: Part 2A of the Building Regulations 2010, incorporated by Regulation 11 of SI 2023 911 Building Regulations etc. (Amendment) (England) Regulations 2023.
- 1.1.3 CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).
- 1.1.4 Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU) as amended.
- 1.1.5 Contract: the final contract (if any) to be entered into between the Employer and the Contractor in relation to the Works and the Project in the form of (or based on) the Proposed Contract Documents.

- 1.1.6 Contract Sum: the sum to be agreed by the parties under this agreement and included as the contract sum in the Contract.
- 1.1.7 Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:
- (a) posing a threat to the health and safety of any person; or
 - (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
 - (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Works; or
 - (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
 - (e) having been supplied or placed on the market in breach of the Construction Products Regulations.
- 1.1.8 Employer's Agent: Mace Limited or such other person as may be appointed by the Employer to act as employer's agent in connection with the Contract from time to time.
- 1.1.9 Employer's Requirements: the drawings, details and specifications of materials, goods and workmanship and other related documents that have been prepared or will be prepared by or on behalf of the Employer in relation to the requirements of the Works, as referred to in Schedule 5.
- 1.1.10 First Stage Tender: the Contractor's tender for the Pre-Construction Services contained in Schedule 5;
- 1.1.11 First Stage Tender Documents: the First Stage Tender which are contained in Schedule 5;
- 1.1.12 Key Personnel: the persons identified in Paragraph 4 of Schedule 1, or as otherwise agreed under Clause 3.3.
- 1.1.13 Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Pre-Construction Services, the Project and the Works 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 Pre-Construction Services, the Project and the Works.
- 1.1.14 Notice to Proceed: a notice to proceed issued by the Employer to the Contractor under Clause 6.1 in the form set out in Schedule 4.

- 1.1.15 PCSA Key Performance Indicators or PCSA KPIs: means the performance measurements set out in Schedule 9.
- 1.1.16 Permitted Uses: the tendering, re-tendering, design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Works (and the completed Works), whether or not those Works are carried out by the Contractor.
- 1.1.17 Pre-Construction Fee: the sum set out in Part 1 of Schedule 3 to be paid in accordance with the schedule of payments set out in Part 1 of Schedule 3.
- 1.1.18 Pre-Construction Period: that period of the Project up to and including the date of issue of any Notice to Proceed.
- 1.1.19 Pre-Construction Services: the services required to be performed by the Contractor as set out in Part 1 of Schedule 2.
- 1.1.20 Principal Designer: the Contractor or such other person as may be appointed by the Employer to act as principal designer under the CDM Regulations.
- 1.1.21 Professional Consultants: the professional consultants listed in Paragraph 3 of Schedule 1 and any other professional consultants from time to time engaged by the Employer in connection with the Project.
- 1.1.22 Programme: the programme at Schedule 8.
- 1.1.23 Project: the development of the Property for the purposes identified in Paragraph 2 of Schedule 1.
- 1.1.24 Property: the property identified in Paragraph 1 of Schedule 1.
- 1.1.25 Proposed Contract Documents: the first stage tender documents listed in and attached at Schedule 5 together with any amendments, alterations or variations to them agreed between the parties.
- 1.1.26 Quantity Surveyor: Aecom Limited or such other person as may be appointed by the Employer to act as quantity surveyor in connection with the Project or the Works from time to time.
- 1.1.27 Relevant Consents: any approval, permission or consent required under Statutory Requirements in order to undertake and complete the Project.
- 1.1.28 Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works.

- 1.1.29 Standards: any standards, policies and procedures applicable to the Pre-Construction Services as specified by the Employer in the Material;
- 1.1.30 Works: the works and the services required for the design, construction, completion and commissioning of the Project.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to a party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or reenacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.12 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.13 A reference to writing or written includes fax and email, save that the following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class:
 - 1.13.1 any termination notice under Clause 11;
 - 1.13.2 any notice in respect of suspension (Clause 10); and
 - 1.13.3 any notice of dispute.

Failure to send any original notice by personal delivery or recorded delivery as set out above shall invalidate the service of the related e-mail transmission.

- 1.14 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.15 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.16 Unless this agreement expressly provides otherwise, a reference to the Property or the Project is to the whole and any part of it.
- 1.17 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.18 Terms defined in the Proposed Contract Documents have the same meaning in this agreement as in the Proposed Contract Documents unless the meaning given in the Proposed Contract Documents is different to, or conflicts with, the meaning given in this agreement, in which case the meaning given in this agreement prevails.

2 DURATION AND EFFECT OF THIS AGREEMENT

- 2.1 The Parties' obligations under this agreement start on the date of this agreement or, if earlier, the date on which the Contractor commenced performance of the Pre-Construction Services until the earlier of:
 - 2.1.1 the execution and completion of the Contract; or
 - 2.1.2 the Contractor or Employer issuing a notice of termination of this agreement under Clause 11.
- 2.2 Before execution and completion of the Contract, the rights and obligations of the Parties in relation to the Works shall be governed by the provisions of this agreement supplemented by the Proposed Contract Documents. If there is any conflict or difference between this agreement and the Proposed Contract Documents, this agreement prevails.
- 2.3 On the execution and completion of the Contract, the Parties' respective rights and liabilities in respect of all matters with which this agreement is concerned (including any design performed or any work carried out or order placed under Clause 4.3) shall be subsumed into and be subject to the Contract.
- 2.4 The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - 2.4.1 These terms and conditions of this Agreement;
 - 2.4.2 Schedules 1 - 8.

2.5 Should there be any ambiguity or conflict in or between the documents comprising this Agreement, the priority of the documents is in accordance with the following sequence:

2.5.1 These terms and conditions of this agreement;

2.5.2 The Proposed Contract Documents;

2.5.3 First Stage Tender Documents; and

2.5.4 Any other Schedule forming part of this Agreement and the order of precedence of such documents shall be decided by the Employer.

3 PRE-CONSTRUCTION PERIOD

3.1 The Contractor warrants and undertakes that it shall:

3.1.1 comply with this agreement and the Proposed Contract Documents;

3.1.2 carry out and fulfil, in all respects, the duties of a principal contractor and principal designer under the CDM Regulations and the duties of a principal contractor under the Building Regulations;

3.1.3 ensure that the Key Personnel maintain a material involvement in the PreConstruction Services;

3.1.4 allocate personnel of sufficient numbers and qualifications to perform the Pre-Construction Services, deploying as a minimum the personnel and resources listed in Part 2 of Schedule 2;

3.1.5 perform all of its obligations under this agreement in a timely manner and shall provide the Pre-Construction Services in accordance with the Programme (including, but not limited to, the agreed cashflow forecast within that Programme), the outputs and due dates identified in the Specification or as agreed by the Parties; and

3.1.6 not specify for use anything Deleterious at the time of specification.

3.2 The Contractor warrants and undertakes that it shall exercise the Standard of Care when performing the Pre-Construction Services.

3.3 So far as is reasonably possible, the Contractor shall not change the identity of the Key Personnel without the Employer's prior consent. The Contractor must forthwith notify the Employer of any change of Key Personnel where the Employer's prior consent was not obtained and provide such further information about the replacement as the Employer may require, acting reasonably. The Employer may require such replacement to themselves be replaced if they are not of equivalent qualification and experience to the person replaced.

- 3.4 Nothing in this agreement shall prevent or restrict the Employer from entering into negotiations or contracting with any other contractor at any time in relation to the Project.
- 3.5 The Employer shall within a reasonable time:
- 3.5.1 comply with any reasonable request from the Contractor for information in the Employer's possession or control, which is relevant to the Contractor's obligations under this agreement (including the Pre-Construction Services) and which has not previously been provided to the Contractor; and
- 3.5.2 give instructions or approvals and make decisions (or procure that the Employer's Agent or the Professional Consultants give instructions or approvals and make decisions) as reasonably requested by the Contractor, to allow the Contractor to
- comply with its obligations under this agreement (including performing the PreConstruction Services).
- 3.6 The Contractor shall at all times meet the Standards during the term of this agreement and the term of any subsequent Contract between the Parties in connection with the Works and the Project.
- 3.7 The Contractor is encouraged to suggest economically viable amendments to the Works which may improve the environmental performance and sustainability in the carrying out of the Works or of the completed Works or a reduction in environmental impact.

4 ADDITIONAL SERVICES, WORKS AND ORDERS

- 4.1 In placing orders, executing work, delegating or sub-contracting the Pre-Construction Services or the Works, or carrying out any other function under this agreement, the Contractor shall comply with the Employer's instructions and the procedures and obligations referred to in the Pre-Construction Services and the Proposed Contract Documents.
- 4.2 The Employer may instruct the Contractor to carry out Additional Services. The Contractor shall perform those Additional Services. As a condition precedent to the Contractor's entitlement to any additional payment in connection with those Additional Services, the Contractor shall notify the Employer if it will require additional payment for those services within ten Business Days of receipt of the Employer's notice. That notice shall state the total sum the Contractor requires to perform those Additional Services. On receiving such a notice from the Contractor, the Employer may cancel its instruction, at no cost to the Employer (who shall not pay the Contractor for those Additional Services), and the Contractor shall not perform those Additional Services.
- 4.3 The Contractor may (with the prior consent of the Employer) and shall (if so instructed by the Employer or the Employer's Agent) place a specific order or perform a specific item of work comprising part of the Works (including any design of the Works) or by way of enabling works preparatory to the Works before the issue of any

Notice to Proceed provided that, unless the Employer expressly so directs, the Contractor shall not place an order or commence any item of work until the sum forming part of the Contract Sum in respect of that order or item has been agreed in writing between the Employer and the Contractor.

- 4.4 Any order or item of work referred to in Clause 4.3 shall be carried out in accordance with the Proposed Contract Documents.
- 4.5 Where the Contractor wishes to sub-contract any of the Pre-Construction Services, it must obtain the prior written consent of the Employer Organisation. The decision of the Employer to consent or not shall be at its entire discretion, acting in its interest only.
- 4.6 Without affecting the Contractor's obligations under the Proposed Contract Documents, the Contractor shall:
 - 4.6.1 be responsible for the acts and activities of its Sub-Contractors, and its liability to the Employer shall not in any way be reduced, qualified, released or diminished by the Employer's approval of any list, design, document, material, programme, subcontract, supply agreement, order, sub-contractor or supplier;
 - 4.6.2 ensure that any Sub-Contractor appointed during the Pre-Construction Period in relation to any element of the design of the Works shall provide a collateral warranty or shall grant third party rights as provided for, and in favour of the parties identified in, the Proposed Contract Documents;
 - 4.6.3 ensure that any Sub-Contract entered into in relation to the Works during the PreConstruction Period contains a clause that permits its termination if the Employer does not issue a Notice to Proceed;
 - 4.6.4 itself, and shall procure that any Sub-Contractor appointed by it in relation to the Works during the Pre-Construction Period shall, on any termination of this agreement by the Employer, consent to and (if requested by the Employer or the Contractor) effect the novation of their respective Sub-Contract and any other similar document to the Employer or any person that the Employer nominates; and
 - 4.6.5 give the Employer a copy of any Sub-Contract, and any other similar document within three Business Days of the Employer's request to do so.
- 4.7 The Contractor shall where required participate in joint initiatives with other contractors and third parties in respect of fixtures fittings and equipment, hard and soft facilities management and security to establish a common and harmonised supply chain. The common and harmonised supply chain may be designed to secure:
 - 4.7.1 a clear methodology for surveys, design (as applicable), manufacture, supplies, installation, delivery and other activities including achieving sustainability;

- 4.7.2 best value, improved prices, warranties and other added value;
- 4.7.3 integrated briefs and a consistent approach to ordering;
- 4.7.4 structures of joint performance reviews and targets;
- 4.7.5 long-term commitments in the achievement of targets;
- 4.7.6 the operation of full processes and procedures for continuous improvement for the Works;
- 4.7.7 terms and conditions reasonably acceptable to the Contractor and other third parties including without limitation any suppliers;
- 4.7.8 reduced number of material components used and move towards standardisation to reduce subsequent maintenance
- 4.7.9 the application of any discount that the Contractor may receive in relation to any project or Works to all works carried out by the Contractor in another project; and
- 4.7.10 the delivery of efficiency savings.

In order to further the objectives in this Clause 4.7 the Contractor shall provide and share such reasonably necessary information regarding its own supply chain (subject always to the duty of confidentiality).

5 PRE-CONSTRUCTION FEE AND PAYMENT

- 5.1 The Employer shall pay the Contractor the Pre-Construction Fee in accordance with the procedure set out in Schedule 3.
- 5.2 If the Contractor has notified the Employer that it will require additional payment for Additional Services under Clause 4.2 and the Employer has not cancelled its instruction to carry out those Additional Services under Clause 4.2, the Employer shall pay the Contractor the sum set out in the Contractor's notice or such other sum agreed between the parties for those Additional Services. If the parties do not agree a sum, the Employer shall pay the Contractor a fair and reasonable sum taking into account any rates and prices agreed between the parties for any Additional Services and any rates and prices used to calculate the Pre-Construction Fee. The Contractor shall be entitled to claim payment, by reference to the proportion of Additional Services carried out in accordance with this PCSA, from the next payment date following commencement of those Additional Services for payment of an instalment of the PreConstruction Fee, as referred to in Part 1 of Schedule 3.
- 5.3 Subject to the provisions of Schedule 3 paragraph 10, the Employer shall pay the Contractor for any order or item of work referred to in Clause 4.3 under the payment provisions of the Proposed Contract Documents.
- 5.4 If the Employer issues a Notice to Proceed under Clause 6.1:

5.4.1 the Employer's obligations to pay the Contractor under this agreement (including its obligations under Clause 5.1 to Clause 5.3 inclusive) shall be replaced by an obligation to pay the Contractor the sums due under the Proposed Contract Documents and all payments under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Proposed Contract Documents; and

5.4.2 when the Contract has been executed and completed the Employer shall make no further payments under this agreement and all payments made under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Contract.

5.5 If the Employer does not pay a sum due under this agreement on or before the final date for payment the Employer shall pay interest on that sum to the Contractor as if that sum was due under the Proposed Contract Documents..

6 NOTICE TO PROCEED AND CONTRACT

6.1 The Employer shall have absolute discretion, acting in its own interests, whether or not to proceed with the Works, with or without the Contractor.

6.2 Provided that the Contractor has delivered the Contractor's Proposals and Contract Sum Analysis, the Employer may, by issuing a Notice to Proceed, at its sole option and discretion appoint the Contractor to perform the Works and the Contractor agrees to accept that appointment on the basis set out in this agreement. On receipt of the Notice to Proceed, the Contractor shall:

6.2.1 execute (or procure the execution of) the Proposed Contract Documents and return the executed Proposed Contract Documents to the Employer (without amendment other than the correction of errors in a manner agreed between the parties);

6.2.2 commence, carry out and complete the Works in accordance with the Proposed Contract Documents and, when executed and completed, the Contract; and

6.2.3 comply in all respects with the Proposed Contract Documents and, when executed and completed, the Contract.

6.3 If the Employer issues a Notice to Proceed, the Contract will be on the terms of the Proposed Contract Documents, incorporating the particulars set out in Paragraph 5 of Schedule 1 (subject to any changes to those particulars agreed by the parties) and incorporating the Contract Sum agreed between the parties, as referred to in the Pre-Construction Services.

7 COPYRIGHT

7.1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any

Material prepared by or on behalf of the Contractor for any purpose relating to the Works and the Project including any of the Permitted Uses.

- 7.2 This licence allows the Employer to use the Material in connection with any extension of the Works or the Project, but not to reproduce the designs contained in the Material in any such extension.
- 7.3 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.
- 7.4 The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 7.5 The Employer may, at any time (whether before or after completion of the Pre-Construction Services, or after termination of this agreement), request one or more copies of some or all of the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing those copies, the Contractor shall provide those copies to the Employer.

8 Not used

9 LIMIT OF EMPLOYER'S LIABILITIES

- 9.1 Unless the Employer has issued a Notice to Proceed, the Employer's liability, 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), shall be limited to the following:
 - 9.1.1 a fair and reasonable proportion of the Pre-Construction Fee, which shall be commensurate with the Pre-Construction Services performed by the Contractor to the date of issue of any notice of termination of this agreement, but which shall not in any event exceed the Contractor's cumulative entitlement to the Pre-Construction Fee at the date of issue of any notice of termination, as set out in Part 1 of Schedule 3;
 - 9.1.2 a fair and reasonable proportion of any payment due under Clause 5.2 for any Additional Services;
 - 9.1.3 the value of work actually executed and orders actually placed under Clause 4.3, calculated in accordance with the Proposed Contract Documents (as referred to in Clause 5.3); and
 - 9.1.4 any interest due under Clause 5.5.
- 9.2 The parties acknowledge and agree that unless the Employer has issued a Notice to Proceed the Employer shall be under no obligation to the Contractor other than as set out in this agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project or the Works) and the Contractor shall have no claim against the Employer for:

9.2.1 loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or

9.2.2 any indirect or consequential loss.

9.3 Nothing in this Clause 9 or elsewhere in this agreement shall exclude or limit either party's liability for death or personal injury caused by that party's negligence.

10 SUSPENSION

10.1 The Employer may, at any time, suspend performance of part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 by giving notice to the Contractor. Subject to Clause 11.2, the Contractor shall resume performance of that part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 as soon as reasonably practicable after receiving a notice from the Employer to do so.

10.2 If the Employer does not pay a sum due under this agreement on or before the final date for payment the Contractor may suspend the performance of any or all of its obligations under this agreement as if the Employer had not paid a sum due under the Proposed Contract Documents, by giving notice as required by the Proposed Contract Documents.

10.3 In the event of a suspension under Clause 10.1, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5 and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3.

10.4 In the event of a suspension under Clause 10.2, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5 and any other sum due and not otherwise provided for in this agreement, which is required to be paid under section 112 of the Housing Grants, Construction and Regeneration Act 1996, and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3.

11 TERMINATION

11.1 The Employer may terminate this agreement at any time by giving the Contractor notice to that effect and such termination shall be effective from the date of issue of that notice.

11.2 The Contractor may terminate this agreement if:

11.2.1 the Employer is Insolvent; or

11.2.2 a suspension of all of the Pre-Construction Services under Clause 10.1 continues for a continuous period of six months and the Employer does not instruct the Contractor to resume those Pre-Construction Services within twenty Business Days of receiving a notice from the Contractor requiring it to do so,

by giving notice to the Employer to that effect and such termination shall be effective from the date of issue of that notice.

- 11.3 If this agreement is terminated, the parties shall co-operate to bring the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 to an orderly conclusion and to allow the parties to comply with their remaining obligations under this agreement.
- 11.4 If this agreement is terminated, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5, and that payment shall be the Contractor's sole compensation for termination, save that in no circumstances shall the Contractor be entitled to recover any loss of profit or other direct or indirect losses in respect of any Pre-Construction Services that have not been performed.

12 INSURANCE

- 12.1 The Contractor shall maintain:
 - 12.1.1 Contractor's all risks insurance;
 - 12.1.2 professional indemnity insurance;
 - 12.1.3 employer's liability insurance; and 12.1.4 public liability insurance, as required by the Proposed Contract Documents.
- 12.2 Before it carries out any of the Works at the Property, the Contractor shall provide the Employer with written evidence that it maintains:
 - 12.2.1 any insurance required by the Proposed Contract Documents under Insurance Option C; and
 - 12.2.2 any insurance if required by the Proposed Contract Documents in connection with clause 6.5 of the JCT Design and Build Contract, 2024 edition.

13 NOTICES

- 13.1 Any notice required under this agreement shall be sent in accordance with the requirements for notices in the Proposed Contract Documents.

14 ASSIGNMENT

- 14.1 The Employer may assign or otherwise transfer the benefit of this agreement to any person.
- 14.2 The Employer shall notify the Contractor of any assignment within ten Business Days. If the Employer fails to do this, the assignment shall still be valid.
- 14.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this Clause 14 may not recover any sum under this

agreement because that person is an assignee and not a named party to this agreement.

- 14.4 The Contractor shall not assign or charge the benefit of this agreement or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion.

15 DISPUTES

- 15.1 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649).

- 15.2 The adjudicator shall be appointed by: the Royal Institution of Chartered Surveyors.

16 LIABILITY PERIOD

- 16.1 The Employer may not commence any legal action against the Contractor under this agreement after 12 years from the date of practical completion of all of the Works under the Contract.

17 THIRD PARTY RIGHTS EXCLUSION

- 17.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 17.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

18 ENTIRE AGREEMENT

- 18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 18.4 Nothing in this Clause 18 or elsewhere in this agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

19 PCSA KPIs

- 19.1 The Contractor shall at all times during the Pre-Construction Period comply with the PCSA KPIs. The Consultant shall report on a monthly basis, keep full records of its performance against the PCSA KPIs and also its performance against its social value obligations, where not included within the PCSA KPIs.

20 GOVERNING LAW

- 20.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21 JURISDICTION

- 21.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by being signed, sealed and delivered for and on behalf of the Commissioners for His Majesty's Revenue and Customs.

SIGNATURE [REDACTED]

FULL NAME [REDACTED]

ON BEHALF OF THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

OCCUPATION. [REDACTED]

ADDRESS

WITNESSED BY:

SIGNATURE [REDACTED]

FULL NAME [REDACTED]

OCCUPATION [REDACTED]

ADDRESS [REDACTED]

Additional Signatory:

SIGNATURE [REDACTED]

FULL NAME [REDACTED]

OCCUPATION [REDACTED]

ADDRESS [REDACTED]

Confirmation that the document is as agreed between the two parties.

SIGNATURE [REDACTED]

FULL NAME [REDACTED]

SIGNED and DELIVERED)	[REDACTED]
as a Deed by)	[REDACTED]
Bowmer and Kirkland Limited)	
acting by two directors/)	[REDACTED]
director and its secretary)	[REDACTED]
)	[REDACTED]

Schedule 1
PROJECT PARTICULARS

1 THE PROPERTY

Pilgrim’s Quarter, Newcastle upon Tyne NE1 6UG.

2 THE PROJECT

Circa 43,000m2 of Cat B fit out of all floors, levels 1-8 including open workspaces, meeting rooms, booths, refreshment facilities and secure enclaves. The ground floor is a CAT B fit out of the Cafe and BEC areas with CAT A minus additional scope included. Further described in the Stage 1 Tender Pack, Volume 2 Project Brief documents.

3 PROFESSIONAL CONSULTANTS

- 3.1 [REDACTED]
- 3.2 [REDACTED]
- 3.3 [REDACTED]
- 3.4 [REDACTED]
- 3.5 [REDACTED]
- 3.6 [REDACTED]
- 3.7 [REDACTED]

4 KEY PERSONNEL (Contractor)

- [REDACTED]
- [REDACTED]
- [REDACTED]

5 CONTRACT PARTICULARS

- 5.1 Date for Completion: [REDACTED]
- 5.2 The Stage 2 Contract Sum will be made up of the following:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 5.3 Liquidated damages for delay: £[REDACTED] per week or pro rata for part thereof for the first 2 weeks, £[REDACTED] per week or pro rata for part thereof from week 3 onwards capped at 10 weeks cumulative.
- 5.4 Rectification Period: 12 months from the date of practical completion of the Works.
- 5.5 Insurance of the Works - Insurance Options Insurance Option C applies.

Schedule 2

PRE-CONSTRUCTION SERVICES, PERSONNEL AND RESOURCES

Part 1.

Pre-Construction Services

See PCSA Scope of Services *NEW1-MAC-XX-XX -RP-J-00004-Stage 1 PCSA Scope of Services* below.
Also issued in the ITT Package, Volume 2, PCSA - Scope of Services.



HM Revenue
& Customs

HMRC Newcastle Pilgrims Quarter

Invitation To Tender

CAT B Fit-out

PCSA



Newcastle Cat B 05/09

Schedule 3

PAYMENTS

Part 1.

Pre-Construction Fee

[REDACTED]

The above is based on :

[REDACTED]

Part 2.

Payment terms of this agreement

1 THIS AGREEMENT AND THE PROPOSED CONTRACT DOCUMENTS

- 1.1 The payment terms in this Part 2 of Schedule 3 apply to payments under this agreement, except where a payment under this agreement is required to be made under the Proposed Contract Documents, in which case subject to paragraph 10 of this Schedule 3 the Proposed Contract Documents apply.
- 1.2 The due date for payment of instalments of the Pre-Construction Fee shall be the day, on a monthly basis, 7 (seven) days after the date of receipt by the Employer (or his representative nominated for that purpose) of the Contractor's valid invoice for sums to which the Contractor has become entitled. The Contractor's invoice shall be deemed to be an Interim Application (as defined below) for the purposes of the Construction Act.
- 1.3 In relation to payment of the Pre-Construction Fee, the Contractor shall send an invoice to the Employer or a person nominated by the Employer for that purpose, which Interim Application shall:
 - 1.3.1 be submitted not later than 1 (one) month after the commencement of the Pre-Construction Services and thereafter on a monthly basis;
 - 1.3.2 state the sum that the Contractor considers will become due on the Due Date in respect of the payment for the period and the basis on which that sum is calculated; and
 - 1.3.3 include all supporting documentation reasonably required for the computation of any amount due.
- 1.4 The Contractor warrants that the sum claimed in any Interim Application is properly due and payable and calculated in accordance with clause 1.5 of this agreement.

- 1.5 The sums due as an interim payment shall be the value of Pre-Construction Services carried out at the due date for payment less the amounts paid in previous interim payments.

2 VAT

The Employer shall pay the Contractor any Value Added Tax (VAT) properly chargeable on a sum due under this agreement. Any sum expressed as payable under this agreement is exclusive of VAT unless stated otherwise.

3 FINAL DATE FOR PAYMENT

The final date for payment shall be 28 days from the due date for payment.

4 PAYMENT NOTICE

Not later than five days after the due date for payment, the Employer shall give a notice to the Contractor specifying the sum it proposes paying, to what that sum relates, and the basis on which that sum has been calculated (a payment notice).

If the Employer does not give a payment notice under this clause 4 or a pay less notice under clause 7, the sum stated as due in the Interim Application shall not be deemed to be accepted or agreed.

5 CONTRACTOR'S DEFAULT NOTICE

If the Employer has not given notice under Paragraph 4, the Contractor may give notice to the Employer specifying the sum the Contractor considers to be or have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (a payment notice). If the Contractor serves such a payment notice the final date for payment of the sum specified in that notice shall for all purposes be regarded as postponed by the same number of days after the date the Employer's payment notice should have been served under Paragraph 4 that the Contractor's payment notice was given.

6 NOTIFIED SUM

In this Part 2 of Schedule 3, notified sum means:

- 6.1 the sum referred to in a payment notice given under Paragraph 4, or, if such notice is not given;
- 6.2 the sum referred to in a payment notice given under Paragraph 5.

7 PAY LESS NOTICE

Not later than five days before the final date for payment, the payee may give a notice to the payer specifying its intention to pay less than the notified sum. If given, such notice shall specify the sum that the payee considers to be due on the date the notice is served and the basis on which that sum is calculated (a pay less notice).

8 EMPLOYER TO PAY ON OR BEFORE FINAL DATE FOR PAYMENT

Subject to Paragraph 7, the Employer shall pay the notified sum on or before the final date for payment.

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 7, pay the sum specified in the 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.

9 NOTICE TO PROCEED

If the Employer issues a Notice to Proceed under Clause 6 of this agreement, then from the date of the Notice to Proceed the Employer shall be under no further obligation to make payment to the Contractor under this agreement (including its obligations under this clause) (save for any payments which have already become due for payment) and all sums paid or to be paid under this agreement shall be treated as paid on account under the Contract.

Schedule 4

NOTICE TO PROCEED

[TO BE TYPED ON THE EMPLOYER’S HEADED PAPER]

To:

BOWMER AND KIRKLAND LIMITED

High Edge Court Church Street, Heage, Belper, Derbyshire, DE56 2BW.

[DATE]

[EMPLOYER’S REFERENCE]

Dear [CONTRACTOR],

[WORKS/PROJECT NAME]

Notice to Proceed

We refer to the pre-construction services agreement entered into between us on [DATE] (the Pre-Construction Services Agreement).

In accordance with Clause 6 of the Pre-Construction Services Agreement, we hereby give you Notice to Proceed with the Works (as defined in the Pre-Construction Services Agreement) in accordance with the Pre-Construction Services Agreement.

Please arrange for the enclosed documents to be executed and delivered to [PERSON] by return.

Yours faithfully

.....

Signed on behalf of [EMPLOYER]

Schedule 5

DOCUMENTS AND PROPOSED CONTRACT DOCUMENTS

First stage tender documents - Refer to 'ITT Package - Final' as of tender closing date 18/10/24 issued separately.

Below is a list of the ITT documents.

Note below Volume 2 are the Employers Requirements.

[REDACTED]

And refer to tender addendum 06/11/2024 which contains the following updates:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

JCT DB schedule of amendments, including HMRC special terms dated 5th September 2024

All responses submitted by B&K as part of the tender exercise for this Contract are to be considered part of the PCSA and subsequent JCT DB Contract.

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

(the “Employer”)

AND

[Bowmer and Kirkland Limited]

(the “Contractor”)

SCHEDULE OF AMENDMENTS TO THE
JCT DESIGN AND BUILD CONTRACT 2024

[PILGRIM QUARTER, NEWCASTLE - CAT B WORKS]

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

“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, 2024 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

[202[]

Employer

Contractor

SCHEDULE OF AMENDMENTS

The following amendments are made to the JCT Design and Build Contract, 2024 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 10A Insert the following as a new article:

“Article 10A: 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, 2024 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: 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

1

execution and delivery.”

Article 13 Insert the following as a new article:

“Article 13: 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 ■% 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 14 Insert the following as a new article:

Article 14: 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 due to any of the Specified Perils 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 15 Insert the following as a new article:

“Article 15: 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 14 Insert Contractor’s cap on liability for loss or damage to existing structures and contents due to any of the specified perils is ■■■% of the Design & Build Contract total value.

Clause 2.2.7 The Key Personnel for the Contractor are:

■■■■■■■■■■
■■■■■■■■■■

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

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 7.3.1 In the entry on the required form of the bond, **insert** “Appendix 5”

Clause 7.3.2 In the entry on the required form of the guarantee, **insert** “Appendix 4”

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) [INSERT ROLE OF KEY SUB-CONTRACTOR] 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.

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

Clause 8.11.1.1-The period of suspension is 3 months.
8.11.1.7

Schedule 3 The applicable C2 wording is ‘The Contractor will effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (or where applicable, Sections) plus any percentage started in the Contract Particulars to cover professional fees.’

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 or Tenant.”
- “Construction Products Regulations:

the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU) as amended.”
- “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:

any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

(i) posing a threat to the health and safety or any person;

- (ii) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works;
 - (iii) reducing, or possibly reducing, the normal life expectancy of the completed Works or any part or component of the Works;
 - (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
 - (v) having been supplied or placed on the market in breach of the Construction Products Regulations.”
- “Design Consultants: see the **Contract Particulars** (against the reference to **clause 7.4**).”
- “Key Personnel: see the **Contract Particulars** (against the reference to **clause 2.2.7**)
- “Key Sub-Contractors: see the **Contract Particulars** (against the reference to **clause 7.4**).”
- “Landlord: the Employer’s landlord of the property which is part of the site, namely: Reuben Brothers (Newcastle) Limited, company number 13412040 whose registered address is 4th Floor, Millbank Tower, London SW1P 4QP.
- “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: this 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 **Appendix 6** to the Schedule of Amendments, as supplemented by any instruction from the Employer referred to in **clause 5.1.3**.”
- “Viable Rates and Terms: see **clause 6.15.2**.”
- “Works Programme: see **clause 2.2A**.”

Amend the following definitions:

Agreement: At the end of the definition of “Agreement” insert “(all as amended by the Schedule of Amendments annexed hereto)”

- BIM Protocol:** **Delete** “(where applicable)”
- Conditions:** At the end of the definition of “Conditions” **insert** “(all as amended by the Schedule of Amendments annexed hereto)”
- Consultants:** **Delete** this definition.
- Contract Documents:** **Delete** “(where applicable)”
After “these Conditions”, **insert** “as amended by the Schedule of Amendments.”
- Contract Particulars:** At the end of the definition of “Contract Particulars” **insert** “all as amended by the Schedule of Amendments.”
- Employer:** At the end of the definition **insert** “(which expression shall include its successors in title and permitted assigns)”
- Employer’s Rights** **Delete** this definition
- Interest Rate** **Delete** “■” and **insert** “■”
- P&T Rights** **Delete** this definition
- Rights Particulars** **Delete** this definition
- Tenant:** **Delete** the existing definition and **insert** “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, ”
- 1.4.5 Insert** “legislative provision” after “statute,”
- 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.”
- 1.8 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,”
- 1.10 Delete** “except in the case of either Party’s consent under clause 7.1 where the giving of such consent shall be at the sole discretion of the party from which it is sought.”
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 3 after “shall” insert “carry out and”

Insert the following as a new clause 2.1.6:

“2.1.6 The Employer and the Contractor shall:

2.1.6.1 comply with their respective obligations set out in the BIM Protocol;

2.1.6.2 have the benefit of any rights granted to them in the BIM Protocol; and

2.1.6.3 have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.”

2.1.7 Insert the following as a new clause 2.1.7:

The Contractor:

2.1.7.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

2.1.7.2 shall not require any Contractor’s Persons or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

2.1.7.3 warrants and represents that it has not been convicted of any slavery or human

trafficking offences anywhere around the world;

2.1.7.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

2.1.7.5 shall make reasonable enquires to ensure that its officers, employees and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;

2.1.7.6 shall have and maintain its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;

2.1.7.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;

2.1.7.8 shall prepare and deliver to the Employer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

2.1.7.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;

2.1.7.10 shall not use, or allow its sub-contractors to use, child or slave labour;

2.1.7.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its sub-contractors to the Employer and the Modern Slavery Helpline and relevant national or local law enforcement agencies;

2.1.7.12 if it is in default under clauses 2.1.7.1 to 2.1.7.11 the Employer may by notice:

- (a) require the Supplier to remove from performance of the Contract any sub-contractor, Contractor Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract;

2.1.7.13 shall, if the Contractor or the Employer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Employer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains);

For the purposes of this clause 21.1.7, supply chain means all persons who are

performing works or services in connection with, or which will or may be used in performing or to support the performance of this Contract and the Works in any part of the world.

Insert the following as a new clause 2.1.8:

2.1.8 The Contractor acknowledges that completion of the MER rooms by the required date is a critical part of the Works and the Works Programme. Accordingly, the

2.1.8 Contractor shall carry out the Works so that the First Stage and Key Date deadline of [REDACTED] for the MER rooms is met, the task details being as set out in the attached document "ICT MER Employer's Requirements". Failure by the

Contractor to meet this requirement in full shall entitle the Employer to deduct [REDACTED] plus Vat, if applicable, from the Contract Sum

and the Employer may deduct such sum from an Interim Payment further to the provisions of clause 4.

INSERT the following as a new clause 2.1A:

2.1A "Additional requirements, Carbon Reduction and GDPR"

In performing its obligations under this Contract, the Contractor shall at all times comply with the provisions set out in Appendix 7, Appendix 8 and Appendix 9 to the Schedule of Amendments."

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 2.2.7 and 2.2.8:

"2.2.7 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).

2.2.8 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.”

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:

“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 or the workmen of the Employer or 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:

2.13.2.1 any such discrepancy or divergence as is referred to in clause 2.13; or

2.13.2.2 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” at the end of the clause 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 was not foreseen by the Contractor at the Base Date and 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 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:

2.17.1.1 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.

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

2.17.1.2.1 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

2.17.1.2.2 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 Provider 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 Provider 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 Providers 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 Providers may require at its 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 Providers 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;
- 2.17.10.4 any data protection breaches pursuant to the terms of Schedule 9; or
- 2.17.10.5 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 Providers 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.

2.17.12 Acceptance by the Employer of any models, information and/or data as per the BIM Protocol shall not amount to confirmation that such models, information and/or data are compliant with the requirements and terms of this Contract. Any such acceptance shall not constitute or imply or be evidence of the Employer’s approval or acceptance of any design, work, materials or equipment forming part of the Works nor shall it in any way lessen or otherwise affect the Contractor’s responsibilities and liabilities under this Contract.”

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.”

2.24.4 In line 4 after “notification” insert “(or such longer period as is agreed by the Parties, each acting reasonably)”

Fixing Completion Date

2.25

- 2.25.2 In line 4 and the second last line delete "8 weeks" and insert "12 weeks".
- 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"
- 2.26.9 At the end of clause 2.26.9 insert the following:
- ", but always subject to clauses 2.17.7 and 2.17.8"
- 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 2.26.11 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 or 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:

2.27.4.1 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;

2.27.4.2 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;

2.27.4.3 copies of all manufacturers’ guarantees and/or warranties which are available or should be available in respect of the Works;

2.27.4.4 the collateral warranties and certified copy sub-contracts and design appointments required by this Contract;

2.27.4.5 completion certificates from the Local or Public Authority or, where applicable, a building inspector;

2.27.4.6 two copies of the fire, gas safety and electrical certificates;

2.27.4.7 keys for all locks at the site, individually labelled indicating their location; and

2.27.4.8 all Models, Materials or Specific Models as required by the BIM Protocol.”

2.29 **Payment or allowance of liquidated damages**

Insert the following as a new clause 2.29A

The Contractor shall provide all reasonable assistance required by the Employer to facilitate the deduction of liquidated damages, including but not limited to revising invoices to reflect the deducted amount. The Contractor shall, at the request of the Employer, provide all reasonable assistance to the Employer should it exercise

its right under clause 2.29.1 including, but not limited to, producing, amending, or receipting any invoices at the request of the Employer, and/or otherwise assisting the Employer in taking steps to withhold or deduct such sums and in ensuring the correct tax treatment.

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:

3.35A.3.1 if specified by the Employer as 'Emergency Works' within 24 hours of receipt of such schedule or instruction but made safe within 4 hours of receipt of such schedule or instruction (or, if it is not practicable to carry out such works of making good within 24 hours, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

3.35A.3.2 if specified by the Employer as 'Essential Works' within 48 hours of receipt of such schedule or instruction (or, if it is not practicable to carry out such works within 48 hours, within such period agreed in writing by the Employer as may be reasonable in the circumstances);

3.35A.3.3 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);

3.35A.3.4 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."

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 Provider 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, but shall be entitled to an 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 its part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

CONDITIONS Section 3: Control of the Works

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:

3.4A.1.1 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;

3.4A.1.2 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);

3.4A.1.3 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;

3.4A.1.4 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;

3.4A.1.5 ensure that each Design Consultant or Key Sub-Contractor is contractually required to adopt open book contracting; and

3.4A.1.6 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 subcontractor or designer.

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 its obligations pursuant to clause 8.4.2."

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 its 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 the Employer from exercising” with “The Employer may exercise”

Listed Items

4.15.2.1 Insert at the end of the clause:

"and, where requested by the Employer, has provided evidence of such in the form of a vesting certificate as provided or approved by the Employer."

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

4.19.1 In line 4 after "subject to" **delete** "4.10.2" and **insert** "this clause 4.19.1, clause 4.19.2 and clause 4.19.3" and **insert** the following at the end of this clause:

"In relation to the Relevant Matters set out in clauses 4.21.6 and 4.21.7, the Contractor shall only be entitled to the reimbursement of 50% of the direct loss and/or expense which it would otherwise be entitled to under the provisions of this clause 4.19. In complying with the requirements of clause 4.20, the Contractor shall provide information to the Employer enable the full loss and/or expense incurred to be assessed to facilitate calculation of the entitlement to reimbursement of 50% of such loss and/or expense."

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."

CONDITIONS Section 6: Injury Damage and 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"

Professional Indemnity Insurance

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;

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:

6.15.6.1 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

6.15.6.2 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 save for the Key Sub-Contractor(s) providing mechanical and electrical services who shall maintain professional indemnity insurance of not less than £10,000,000 (ten million pounds) in the annual aggregate,

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 its 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, assignment to a Crown Body (or a body other than a Crown Body (including any private sector body) which performs any of the functions that previously have been performed by the Employer) 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:

7.3.2.1 be in an amount no less than ■% of the Contract Sum;

7.3.2.2 have an expiry date no earlier than three months after the issue of the Notice of Completion of Making Good; and

7.3.2.3 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 7.7 to 7.11 - Preliminary

Delete clauses 7.4 to 7.6

Third Party Rights from Contractor

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

“7.7 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.

7.8 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.

7.9 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.

7.10 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.

7.11 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.

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 £[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 their associated documents have been satisfactorily executed and delivered to the Employer with its or their associated documents.

8.4 Default by Contractor

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 its 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, ”

8.9.3 **Delete** clause 8.9.3 and **insert** the following:

“If a specified default or a specified suspension event continues for 28 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may not less than 28 days but no more than 35 days after service of the notice, by a further notice to the Employer terminate the Contractor’s employment under this Contract. If the Employer ends the specified default or the specified suspension event ceases within 28 days of service of notice under clause 8.9.1 or 8.9.2, the Contractor may not give the further notice.”

8.9.4 **Delete** this clause.

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 3 INSURANCE OPTIONS

Insurance Option C

C.2 Delete the existing paragraph and **insert** the following:

The Contractor will effect and for the period specified in clause 6.7.2 maintain a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (or where applicable, Sections) plus any percentage stated in the Contract Particulars to cover professional fees.

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.”