

**A11**

**ENABLING WORKS DELIVERY AGREEMENT**

**NEC SHORT CONTRACT**

*The following Delivery Agreement template is drafted on the basis that the law of England and Wales applies.*

*The amendments required to comply with Northern Ireland Law, contained within Appendix A2, shall be used for all Northern Ireland Delivery Agreements.*

## **Introduction**

### **NEC Short Contract**

This Delivery Agreement incorporates the NEC 3<sup>rd</sup> edition engineering and construction short contract April 2013 (the **NEC Short Contract**), including the additional public sector Z Clauses published by NEC to comply with the requirements of The Public Contracts Regulations 2015.

The following rules apply to the incorporation of clauses into a Delivery Agreement:

- a) The conditions of contract set out below shall be incorporated unless varied by an incorporated amendment to contract or as otherwise agreed in writing by the *Employer* and Places for People;
- b) The amendments to contract clauses set out below shall be incorporated unless otherwise agreed in writing by the *Employer* and Places for People.

This Delivery Agreement will only be used for Enabling Works as defined in the Framework Agreement.

## Enabling Works Delivery Agreement

THIS AGREEMENT is made on 202[ ]

BETWEEN:

(1) **Secretary of State for Health and Social Care of 39 Victoria Street, London, SW1H 0EU (the 'Employer')**

AND

(2) **Willmott Dixon Construction Limited (registration number 00768173) whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Herts SG6 4ET (the 'Contractor')**

for the Services of the design and refurbishment of the existing Seventh floor office areas, staircase areas and toilet areas of Quarry House, Leeds, LS2 7UE. The Services under this Enabling Works Delivery Agreement shall be limited to the Disconnection and Isolation of the existing services and the Soft Strip and Demolition of the existing building fabric to facilitate the future refurbishment works and the a to be completed under a full Delivery Agreement.

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated 9th May 2018 made between **PLACES FOR PEOPLE GROUP LIMITED** and the Contractor (the 'Framework Agreement') and incorporates those provisions of the Model Delivery Agreement set out in Appendix A11 of the Framework Agreement.

**IT IS AGREED** as follows:-

1. **The Contractor's obligations**

The *Contractor* provides the services and comply with his obligations in accordance with the conditions of contract set out in the Contract Data herein.

2. **The Employer's obligations**

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

3. **Document Incorporation**

The documents forming part of this Delivery Agreement are listed at Annex A – List of Incorporated Documents and are all contained on the attached compact disk titled 'QH7 Enabling Contract'.

## Contract Data

The following details the Contract Data which will be provided by the *Employer* and the *Contractor* for each Delivery Agreement.

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.

The *Employer* is **Secretary of State for Health and Social Care**

Name	REDACTED
Address	Quarry House, Quarry Hill, Leeds, LS2 7UE
Telephone	REDACTED
E-mail address	REDACTED

The *Employer's* delegate is **Faithful+Gould Limited**

Name	REDACTED
Address	3100 Century Way, Thorpe Park, Leeds, LS15 8ZB
Telephone	REDACTED
E-mail address	REDACTED

The *Employer's* delegate is authorised to perform all duties and responsibilities of the *Employer* up to defects date excluding the following:

- Termination
- The making of payments on the *Employer's* behalf

The *works* are **the Disconnection and Isolation of the existing services and the Soft Strip and Demolition of the existing building fabric and the site establishment.**

The *site* is ***Seventh and Sixth (Part) Floors, Quarry House, Leeds.***

The *starting date* is ***11 August 2022***

The *completion date* is ***21 November 2022***

The *period for reply* is ***2 weeks***

The *defects date* is ***not applicable***

The *defect correction period* is 24 hours for 'Emergency Defects', 7 days for 'Serious Defects' and 4 weeks for 'Routine Defects' as defined by the *Employer* in accordance with Clause 40.3

The *delay damages* are ***Nil*** per day

The *assessment day* is the ***last working*** day of each month

The *retention* is ***0%***

Does the United Kingdom Grants, Construction and Regeneration Act (1996) apply? **Yes**

**If Clause 100 The Contracts (Rights of Third Parties) Act is used**

- Term person or organisation

**ALL TERMS**

**NO THIRD PARTY**

.....

.....

The *Adjudicator* is

***Adjudicator nominating body* is as stated below namely the Royal Institution of Chartered Surveyors]**

The interest rate on late payments is **0.2%** per complete week of delay

The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer's* property in excess of **£10,000,000 (Ten Million Pounds)** for any one event.

The *Employer* provides this insurance - Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to 'self-insure' such existing buildings and property and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such 'self-insurance'. In accordance with an *Employer's* decision to 'self-insure' they do not accept any additional insurance premium/cost from the *Contractor*.

The minimum amount of cover for the third insurance stated in the Insurance Table is **£10,000,000**

The minimum amount of cover for the fourth insurance stated in the Insurance Table is **£10,000,000**

The *Adjudicator nominating body* is **Royal Institution of Chartered Surveyors**

The *tribunal* is the **Courts of England and Wales**

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions, amendments, alterations, additions and deletions which take priority over the standard form short contract:

## AMENDMENTS TO CONTRACT

The provisions of the *additional conditions of contract* prevail over all other provisions of this contract.

The following clauses of this contract shall be amended:

### 1 General

- 11.2 (1) **After Works Information insert: 'including the execution of any collateral warranties stated in the Works Information and'.**
- 11.2 (14) Insert a new definition:
- 'Framework Agreement' is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* dated 9<sup>th</sup> May 2018
- 11.2 (15) Insert a new definition:
- Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed in the ABI standard wording
- 11.2(31) **Fire Safety Strategy** means the specifications and drawings setting out the detailed design for the *works* and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the *works* including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in."

### 2 Providing the Works

- 20.3 Insert new clause 20.3
- 20.3.1 Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract it is hereby expressly agreed and acknowledged that: -
- a) no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
  - b) the Contractor in delivering the Works and complying with the requirements of the Contract and any documents forming part of the Contract shall exercise reasonable skill and care and shall have the like liability to the Client, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Client, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.'
- Insert a new clause 20.3.2
- 20.3.2 Where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Strategy Document and/or in any Specification, information or Drawings prepared by or on behalf of the Client have been installed and fitted by the Contractor and building regulation approval has been issued then the issue of such building regulation approval on practical completion of the works shall be deemed conclusive evidence that such method, system, design products or materials comply with such requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Control Regulations.'
- 20.4 Insert a new clause 20.4:
- 'The *Contractor* executes or procures the execution of Collateral Warranties from the warrantors specified in the Works Information in favour of the beneficiaries as are identified (whether by name or description) in the Works Information. Collateral Warranties forms will be as specified in the Works Information.'

20.5	<p>Insert a new clause 20.5:</p> <p>‘The <i>works</i> when completed comply with all appropriate requirements of any relevant local or other relevant authority and all relevant statutory requirements.’</p>
20.6	<p>Insert new clause 20.6</p> <p><i>“Notwithstanding any other provision of this contract where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Strategy Document and/or in any Specification, information or Drawings prepared by or on behalf of the Employer have been installed and fitted by the Contractor and building regulation approval has been issued then the issue of such building regulation approval on practical completion of the Works shall be deemed conclusive evidence that such method, system, design products or materials comply with such requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Control Regulations”</i></p>
21.4	<p>Insert a new clause 21.4:</p> <p>‘The <i>Contractor</i> in relation to any subletting of any portion of the <i>works</i> (or the design of them):</p> <ul style="list-style-type: none"> <li>• procures that the relevant sub-contract contains such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract;</li> <li>• warrants each sub-contractor’s compliance with this contract’s Modern Slavery Act requirements;</li> <li>• warrants that all Subcontractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations;</li> <li>• procures that all relevant sub-contracts shall be executed and delivered as a deed; and provides to the <i>Employer</i> a certified copy of any sub-contract (save for particulars of the cost of such sub-contract works unless other provisions of this contract or the Framework Agreement oblige the <i>Contractor</i> to disclose them).</li> </ul> <p>The <i>Contractor</i> notifies the <i>Employer</i> of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The <i>Contractor</i> does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.</p>
<b>4</b>	<b>Defects</b>
40.3	<p>Insert a new clause 40.3:</p> <p>‘The <i>Contractor</i>:</p> <ol style="list-style-type: none"> <li>(1) makes good any Defects which the <i>Employer</i> reasonably considers need making good as a matter of urgency within 24 hours of receiving the <i>Employer’s</i> instruction (‘Emergency Defects’); and</li> <li>(2) makes good any Defects which the <i>Employer</i> reasonably considers to be serious defects or faults within seven days of receiving the <i>Employer’s</i> instruction (‘Serious Defects’); and</li> <li>(3) makes good all other Defects notified to the <i>Contractor</i> within four weeks of receipt of the <i>Employer’s</i> instructions (‘Routine Defects’);</li> </ol> <p>Where due to the non-availability of parts or materials or other circumstances beyond the <i>Contractor’s</i> control it is not possible to correct any Defect within the required timescale the <i>Contractor</i> makes an appropriate temporary repair and corrects the Defect as soon as possible thereafter and the <i>Contractor</i> keeps the <i>Employer</i> informed about the position from time to time.’</p>
42.1	Add to the end of the existing clause:

'The *Employer* informs the *Contractor* of the amount which it actually cost the *Employer* to have the Defect corrected by other people within a reasonable time of that being known. If the actual cost differs from that amount assessed and paid by the *Contractor* to the *Employer* either the *Employer* repays promptly the *Contractor* any overpayment or the *Contractor* promptly pays to the *Employer* any underpayment.'

## 5 **Payment**

50.8 Insert a new clause 50.8:

'If the *Contractor* has not procured and submitted to the *Employer* for acceptance the collateral warranties together with a certified copy of the underlying sub contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due to the *Contractor* for services or work of subcontractors from whom the *Contractor* is obliged to procure warranties and has not done so.'

50.9 Insert a new clause 50.9:

"The Employer is an "end user" or an "intermediary supplier" who is "connected" with the expected "end user" for the purposes of section 55A VAT Act 1994 reverse charge for building and construction services. The Employer shall not account for the reverse charge. If, at any time during the term of the Contract, the Employer ceases to be an end user or an intermediary supplier for these purposes it shall promptly notify the Contractor in writing that this is the case. From the date of receipt of such notification, the Contractor shall cease to charge the Employer VAT in accordance with section 55A VAT Act 1994."

## 6 **Compensation Events**

60.1 (12) Amend clause 60.1(12) by adding to the end of the third bullet point: "and for the avoidance of doubt the impact of coronavirus shall remain within the scope of this definition"

60.1(15) Insert new clause 60.1(15):

Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the execution of the Works shall be a Client's risk.

60.1(16) Insert new clause 60.1(16)

"a delay in the procurement or transportation of any goods or materials which has a direct and adverse effect upon the whole of the Works or a programme critical element of the Works caused as a consequence of any limitation on the free movement of goods and materials to the United Kingdom from the European Union provided that the Contractor has used all practicable steps to minimise and mitigate any delay arising from the events contemplated in this clause 60.1.(16) including placing orders for such goods or materials within a reasonable time based on any relevant lead in times that could be reasonably anticipated at the Contract Date and provided further that there shall be no increase to the Prices arising from a compensation event under this clause 60.1.(16)".

## 8 **Indemnity, insurance and liability**

82.1 **Add to the Insurance Table – after 'loss of or damage to the works' insert:-**

*'save as caused by*

- *Terrorism to the extent not insured under the Pool Re Arrangement*
- *Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds'.*

*(Z clause 82.1 (i.e. the above insertions only) may be deleted at the Employer's sole discretion).*

82.2 insert a new clause 82.2



## 82.2 Professional Indemnity

'The following provisions shall apply unless the *Contractor* has no design responsibilities under this contract.

- 82.2.1 The *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract for the given insurance policy year in the event that it breaches this contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £5,000,000.00 (Five million pounds) in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of Completion or termination of the Contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance ('Reasonable Rates and Terms').
- 82.2.2 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 Reasonable Rates and Terms.
- 82.2.3 The *Contractor* shall immediately inform the *Employer* if such insurance ceases to be available upon Reasonable Rates and Terms in order that the *Contractor* and the *Employer* can discuss means of best protecting their respective positions in respect of this contract and the service in the absence of such insurance.
- 82.2.4 The *Contractor* shall co-operate fully 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 Reasonable 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 Reasonable Rates and Terms.
- 82.2.5 When reasonably requested to do so by the *Employer* the *Contractor* shall produce promptly for inspection and or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- 82.2.6 The *Contractor* shall notify the *Employer* in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of this contract and within seven days of the *Employer's* request at any time the *Contractor* will produce for inspection documentary evidence as to compliance with this Clause.
- 82.2.7 If the *Contractor* fails to comply with its obligations under this Clause the *Employer* may take out insurance to cover some or all of the loss or damage which could result from a breach of the *Contractor's* obligations under this contract and may recover the costs and expenses of taking out such insurance from the *Contractor* as a debt.'

*Insert the following new section:*

## '100 The Contracts (Rights of Third Parties) Act 1999

- 100.1 A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.'
- 100.2 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.'

## The Contractor's Offer

The Contractor is

**Willmott Dixon Construction Ltd**

Name	REDACTED
Address	<b>Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Herts SG6 4ET</b>
Telephone	REDACTED
E-mail address	REDACTED

The percentage for overheads and profit added to the Defined Cost for 'Fee Percentage Subcontracted' is

**as set out in the Framework Commercial Model** REDACTED

The percentage for overheads and profit added to other Defined Cost for 'Fee Percentage Direct' is

**as set out in the Framework Commercial Model** REDACTED

The offered total of the Prices is

£351,148.45 (Three Hundred and Fifty-One Thousand, One Hundred and Forty-Eight Pounds and Forty-Five Pence.
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## Price List

Entries in the first four columns in the Price List are made either by the Employer or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate Columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is to be the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

As per 'QHL7 Enabling Works Contract Sum Analysis' herein attached to this Delivery Agreement

Item number	Description	Unit	Quantity	Rate	Price
Services	Isolations and Disconnections of existing services	Item	1	REDACTED	REDACTED
BWIC	Fire Stopping to Level 7 Structural floor to allow demolition to be completed	Item	1	REDACTED	REDACTED
Demolition	Demolition & Alteration to existing building Fabric	Item	1	REDACTED	REDACTED
WDI People & Equipment	WDI People & Equipment Costs	Item	1	REDACTED	REDACTED
Subcontracted Prelim Items	Site Establishment & on site Prelim Items	Item	1	REDACTED	REDACTED
EMPLOYERS RISK ALLOWANCE	Employers Risk Allowance Relocation of Site Accommodation and sundry items from Level 7 to Level 6. (Subject to Instruction and reassessment of actual cost)	Item	1	REDACTED	REDACTED
MAIN CONTRACTORS RISK ALLOWANCE	Main Contractors Risk Allowance for Enabling Works scope	Item	1	REDACTED	REDACTED
MAIN CONTRACTORS FEE	Framework fee on above works	Item	1	REDACTED	REDACTED

The total of the Prices **£351,148.45**

## Works Information

The Works Information should be a complete and precise statement of the *Employer's* requirements.

If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer's* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer's* requirements and is consistent with other parts of the Works Information.

### 1 Description of the works

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

The Contractor is to carry out and complete the isolation and disconnection of the existing services to the Level 7 of Quarry House, Leeds. The isolations and diversions are as identified within the Validation reports prepared by K2 as part of the Preconstruction Services Agreements.

Demolition works to the existing building to facilitate the future refurbishment of the floor. Works are to be as detailed on the Demolition plan drawing.

Fire stopping to be installed at floor level to the existing risers to ensure that fire protection is maintained to the remainder of the building whilst works are completed.

The Contractor is to further move their site establishment to level 6 to facilitate the above works.

### 2 Drawings

List the drawings that apply to this contract.

Drawing number	Revision	Title
DOHQH-WDI-XX-07-DR-A-1100	P05	Demolition Plan
DOHQH-WDI-XX-07-DR-A-1200	P05	Demolition Reflected Ceiling Plan
DOHQH-WDI-XX-07-DR-A-2100	P03	Fire Strategy

### 3 Specifications.

List the specifications which apply to this contract.

Title	Date of revision	Tick if publically available
Level 7 Validation Reports	11-02-22	
QH Level 7 Demo - Revised	21-3-2022 rev A	
Quotation re Quarry House		
Level 7 Enabling Isolation Works	15.3.22	

Schedule 13 (Template Works Information) is deemed to be included in the Works Information

### 4 Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.

Methodology to consider all works to be carried out in an occupied building.

Access / Use of Level 6 will be required from commencement

## 5 Requirements for the programme.

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in clause 11.2(1)

All programmes shall be in a Gantt chart format. They shall contain the following information, as a minimum:-

- The *starting date* and Completion Date
- The latest forecast of the *Contractor's* planned Completion
- The order and timing of the operations which the *Contractor* plans to do in order to Provide the Works
- Other information which the Works Information requires the *Contractor* to show on the programme

The first programme is to be submitted to the *Employer* two weeks prior to the *starting date*. The programme is to be updated and similarly distributed each month until the date of Completion.

## 6 Services and other things provided by the *Employer*

Describe what the *Employer* will provide, such as services (including water and electricity) and 'free issue' Plant and Materials and equipment.

Item	Date by which it will be provided
<i>Access to the Site</i>	8 <sup>st</sup> August 2022
<i>Water</i>	8 <sup>st</sup> August 2022
<i>Electricity</i>	8 <sup>st</sup> August 2022
<i>Car Parking for 6nr vehicles</i>	8 <sup>st</sup> August 2022

## Site Information

Give information about the *site* such as ground conditions and other information which is likely to affect the *Contractor's* work such as limitations on access and the position of adjacent structures.

Title	Date of revision	Tick if publically available
QH7 Site Information	06-07-22	

Executed as a deed for and on behalf of  
**Secretary of State for Health & Social Care** )  
by )

.....  
Director

.....  
Full name (BLOCK CAPITALS)

.....  
Position/title

.....  
Director/ Secretary

.....  
Full name (BLOCK CAPITALS)

.....  
Position/title

Executed as a deed for and on behalf of )  
**WILLMOTT DIXON CONSTRUCTION LIMITED** )  
by )

.....  
Director

.....  
Full name (BLOCK CAPITALS)

.....  
Position/title

.....  
Director/ Secretary

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Full name (BLOCK CAPITALS)

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Position/title