

PRE-CONSTRUCTION AGREEMENT

BETWEEN

Defence Science and Technology Laboratory (Dstl)

AND

Bouygues Energies and Services

**FOR THE DELIVERY OF PRE-CONSTRUCTION SERVICES
IN RELATION TO AUTOCLAVES REPLACEMENT**

PRE CONSTRUCTION AGREEMENT

THIS AGREEMENT is made the 09 April 2025 | 13:24:47 BST
BETWEEN

Dstl of Dstl Porton Down (hereinafter called (“**the Commissioning Organisation**”) of the one part

and

Bouygues Energies and Services (hereinafter called (“**the Provider**”) of the other part.
Collectively referred to as “**the Parties**”

WHEREAS

- A) The Provider is a party to the Framework Agreement and the Commissioning Organisation is entitled to enter into Underlying Contracts pursuant to the Framework Agreement.
- B) The Commissioning Organisation and the Provider enter into this Agreement for the provision of the Pre-Construction Services, as more particularly described in Appendix 2 hereto and the Commissioning Organisation is desirous that such Pre-Construction Services should be provided in accordance with the Two-Stage Open Book model under the Framework Agreement.
- C) The Commissioning Organisation has accepted the First Stage Tender submitted by the Provider for the provision of the Pre-Construction Services and the parties agree the Provider shall carry out the Pre-Construction Services in accordance with the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Framework Agreement except that the following words and expressions shall have the following meanings here:

“**Additional Conditions**” means that Commissioning Organisation’s additional conditions relating to this Agreement and the Construction Contract which are designed to refine and supplement the terms of the Framework Agreement and are appended as Appendix 3;

“**Agreement**” means this Pre-Construction Agreement between the Commissioning Organisation and the Provider comprising these terms and conditions together with all Appendices attached hereto;

“**Change Control Procedures**” means the procedures for the control of change to the Specification resulting from a change to the specification for the Works as set out in Appendix 6;

“**Construction Act**” means the Local Democracy, Economic Development and Construction Act 2009;

“**Construction Contract**” means the contract for the implementation of the Works in the form specified by the Commissioning Organisation as more particularly described in Appendix 3

Due Date for payment means as provided for in Clause 10

“Emergency” means an event or situation which threatens serious damage to national security; or to human welfare and/or the environment in the geographical areas in which performance of the Underlying Contracts takes place;

“Fee” means the fee to be paid to the Provider for the proper performance of the Pre-Construction Services and calculated in accordance with Appendix 4;

“Framework Agreement” means the framework agreement dated 2nd March 2023 and entered into between the Provider and the Framework Organisations on their behalf and on behalf of all of the Commissioning Organisations referenced in the Framework Agreement;

“First Stage Tender” means the Provider’s tender for the Pre-Construction Services which is contained in Appendix 4;

“Intellectual Property Rights” or IPR means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

“Pre-Construction Agreement” means this Agreement between the Commissioning Organisation and the Provider for the provision of Pre-Construction Services;

“Pre-Construction Documents” means any drawings, plans, designs, diagrams, specifications, technical data models, bills of quantities, reports, calculations or other documents or recorded information whatsoever prepared by or on behalf of the Provider for use by and the benefit of the Commissioning Organisation and its assigns and partners, in connection with this Agreement;

“Pre-Construction Services” means the pre-construction services in respect of the Works, to be undertaken by the Provider and detailed in the Specification;

“Project Manager” means the Commissioning Organisation’s representative properly authorised to act in performance of the Agreement and whose details shall be notified to the Provider in writing;

“Specification” means the Commissioning Organisation’s specification of the Pre-Construction Services contained in Appendix 2;

“Standards” means any standards, policies and procedures applicable to the Pre-Construction Services as specified by the Commissioning Organisation in the Specification or its Additional Conditions;

“Third Party Documents” means any drawings plans designs diagrams specifications technical data models bills of quantities reports calculations or other documents or recorded information whatsoever which are owned by any third party;

“Underlying Contracts” means those contracts for the delivery of construction works and services called-off under the Framework Agreement, being either a Construction Contract or a Pre-Construction Agreement;

“Works” means the construction works that it is intended will be undertaken by the Provider pursuant to the Underlying Contract.

“Commissioning Organisations Security Procedures” shall mean any security procedure specific to any Commissioning Organisation’s premises or data.

“Foreground Information” means all Information in Documents which is generated in the performance of the services under this contract.

“Background Information” means all Information in Documents which is not Foreground Information.

“Commissioning Organisation’s IT Systems” means the computer hardware and software and networks used by the *Commissioning Organisation* in the course of its business.

“Prohibited Materials” means materials not in conformity with the law of the contract, European and/or British standards, codes of practice or which at the date of use are deleterious to the health and safety and/or to the durability of buildings and/or in the particular circumstances in which those materials are to be used.

“A Subcontractor” is a person or organisation who has a contract with the Consultant to provide part of the service, except for the supply of people paid for by the Consultant according to the time they work.

“Statutory Requirements” are any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Pre-Construction Services, the Works or the performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Pre-Construction Services or the Works or with whose systems the Works are, or are to be, connected.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a gender includes any other gender;

1.2.4 a reference to a ‘person’ includes any individual, firm, partnership, company and any other body corporate;

1.2.5 a reference to a statute, statutory instrument or other subordinate legislation (‘legislation’) is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and

1.2.6 a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.

1.3 In the event of any conflict or discrepancy between the provisions of this Agreement and the Framework Agreement, the conflicting/discrepant provisions of this Agreement will prevail over the conflicting/discrepant provisions of the Framework Agreement and the parties will be excused compliance with the conflicting/discrepant provisions of the Framework Agreement in so far as they apply, or would otherwise have applied to this Agreement.

2 THE PRE-CONSTRUCTION AGREEMENT

2.1 The following documents shall be deemed to form and be read and construed as part of the Pre-Construction Agreement:

2.1.1 These terms and conditions of the Pre-Construction Agreement;

- 2.1.2 Appendix 1 – The terms and conditions of the Framework Agreement;
 - 2.1.3 Appendix 2 – Mini-Competition Information issued by the Commissioning Organisation, (including award criteria, project information and the Specification for the Pre-Construction Services);
 - 2.1.4 Appendix 3 – Commissioning Organisation's Form of Construction Contract and Special Conditions;
 - 2.1.5 Appendix 4 – The Provider's Bid;
 - 2.1.6 Appendix 5 – Fee Schedule (in the form specified by the Commissioning Organisation);
 - 2.1.7 Appendix 6 – Change Control Procedure;
 - 2.1.8 Appendix 7 – Performance Bond (where required) Collateral Warranty;
- 2.2 Should there be any ambiguity or conflict in or between the documents comprising this Contract, the priority of the documents is in accordance with the following sequence:
- ;
- 2.2.1 These terms and conditions of the Pre-Construction Agreement
 - 2.2.2 Commissioning Organisation's Form of Construction Contract and Special Conditions
 - 2.2.3 Mini-Competition Information
 - 2.2.4 The terms and conditions of the Framework Agreement
 - 2.2.5 The Provider's Bid
 - 2.2.6 Fee Schedule
 - 2.2.7 any other Contract Appendix forming part of this Agreement and the order of precedence of such documents shall be decided by the Project Manager
- 2.3 This Agreement shall commence (the "Commencement Date") on the date upon which the Provider commences performance of the Pre-Construction Services or the execution of this Agreement (whichever is earlier) and shall continue in force until satisfactory completion of the Pre-Construction Services unless terminated in accordance with this Agreement.

3 COMPLIANCE WITH THE FRAMEWORK AGREEMENT

- 3.1 Subject to clause 1.3 above, both parties agree that they will comply with the terms of the Framework Agreement and will work together in an open, co-operative and collaborative manner and in the spirit of mutual trust and respect in performance of this Agreement.

4 STANDARDS

- 4.1 The Provider shall at all times meet the Framework Standards and the Standards during the term of this Agreement and the term of any subsequent Construction Contract between the Parties in connection with the Works and projects to which this Agreement relates.
- 4.2 The Commissioning Organisation shall be satisfied that Underlying Contracts performed by the Provider under the Framework have been satisfactorily completed in accordance with their terms or, where that has not occurred, the reason or reasons why that has not occurred in relation to any such contract, will not recur in the performance of any Underlying Contract to be awarded by the Commissioning Organisation under the Framework Agreement.

- 4.3 The Commissioning Organisation may assess whether the Provider meets or continues to meet the Standards during the Mini-Competition process and at anytime during the term of this Agreement and any subsequent Construction Contract entered into between the Parties. The Parties acknowledge that failure by the Provider to maintain the Framework Standards in accordance with the terms of the Framework Agreement may render the Provider ineligible for participation in a Mini-Competition.

5 PROVISION OF THE PRE-CONSTRUCTION SERVICES

- 5.1 The Provider shall provide the Pre-Construction Services in conformity in all respects with the provisions of this Agreement and as may be agreed between the Parties. The Provider shall maintain the organisational and technical ability, reliability and capacity to provide the Pre-Construction Services and Construction Contract in accordance with this Agreement. Where appropriate, the Commissioning Organisation may satisfy itself that the Provider continues to meet the Minimum Standards and Standards by:
- 5.1.1 monitoring the Provider's performance under past or on-going Underlying Contracts performed by the Provider pursuant to the Framework Agreement or any other contract between the Provider and the Commissioning Organisation to satisfy itself that such performance has been or is being carried out satisfactorily and in accordance with the terms of those contracts;
 - 5.1.2 where there is evidence that the performance of the Provider under other Underlying Contracts has not been carried out to the expected standards, satisfying itself that the reasons for any such failure will not recur under this Agreement or the Construction Contract.
- 5.2 The Provider shall perform all of its obligations under this Agreement in a timely manner and shall provide the Pre-Construction Services in accordance with the outputs and due dates identified in the Specification or as agreed by the Parties and meet or exceed the Minimum Standards.
- 5.3 The Provider warrants that the Pre-Construction Services shall be provided with all reasonable skill, care and diligence. The Provider further warrants that the Pre-Construction Services meet and shall continue to meet the requirements of the Commissioning Organisation as set out in the Specification and shall comply with all relevant Statutory Requirements.
- 5.4 The Provider shall if required to do so attend all meetings convened by the Commissioning Organisation subject to reasonable notice being given, in relation to the provision of the Pre-Construction Services.
- 5.5 The Provider shall not be excused liability under this Clause 5 by reason of the fact that he may have exercised all due skill and care in the selection of those to whom he has delegated or sub-contracted the Pre-Construction Services.
- 5.6 Where it is considered necessary in the opinion of the Commissioning Organisation, the Provider shall procure that any sub-Providers appointed in relation to the performance of the Pre-Construction Services shall sign a confidentiality undertaking, in a form to be agreed by the Commissioning Organisation, the Provider and sub-Provider, before commencing work in connection with the Pre-Construction Services.

6 HARMONISATION OF SUPPLY CHAIN

- 6.1 Each Provider shall implement the procedures to establish effective relationships with other relevant persons including without limitation suppliers, and the Commissioning Organisation's own Providers, Providers and agents engaged in the implementation of the construction projects to which this Agreement relates.
- 6.2 The Provider shall where required participate in joint initiatives with other Providers to establish a common and harmonised supply chain. The common and harmonised supply chain may be designed to secure:
- 6.2.1 a clear methodology for surveys, design (as applicable), manufacture, supplies, installation, delivery and other activities including achieving sustainability;
 - 6.2.2 best value, improved prices, warranties and other added value;
 - 6.2.3 integrated briefs and a consistent approach to ordering;
 - 6.2.4 structures of joint performance reviews agreed KPIs and targets;
 - 6.2.5 long-term commitments in the achievement of agreed KPI targets;
 - 6.2.6 the operation of full processes and procedures for continuous improvement for the Works;
 - 6.2.7 terms and conditions reasonably acceptable to the Providers and other relevant persons including without limitation any suppliers;
 - 6.2.8 reduced number of material components used and move towards standardisation to reduce subsequent maintenance
 - 6.2.9 the application of any discount that the Provider may receive in relation to any project or Works carried out in its Lot, to all works carried out by the Provider in another Lot; and
 - 6.2.10 the delivery of efficiency savings.

In order to further the objectives in clause 6.2 the Provider shall provide and share such information regarding its own supply chain (subject always to the duty of confidentiality).

7. CHANGES TO PRE-CONSTRUCTION SERVICES

- 7.1 The Commissioning Organisation shall be entitled by written notice to vary the Specification and the Provider shall comply with such notice provided that if within 14 days of receiving the notice the Provider considers that compliance with the notice will lead to extra cost or delay in providing the Pre-Construction Services it shall give notice of that cost or delay to the Commissioning Organisation and the parties shall use all reasonable endeavours, acting in good faith, to agree on an appropriate increase in the time for provision of the Pre-Construction Services and/or an appropriate increase in the Fee. In the absence of agreement between the Parties within 28 days of the Provider's notice, the Provider shall be entitled to a reasonable extension of time for provision of the Pre-Construction Services and the extra cost (if any) shall be valued at fair rates and prices in accordance with the "Change Control Procedure" set out in Appendix 6.
- 7.2 Where the Commissioning Organisation or the Provider sees a need to vary the Pre-Construction Agreement or Underlying Contract as a result of a change to the Specification of the Works the Commissioning Organisation may at any time request, and

the Provider may at any time recommend, such change only in accordance with the Change Control Procedure.

- 7.3 Neither the Commissioning Organisation nor the Provider shall unreasonably withhold its agreement to any change.
- 7.4 Until such time as a change to the Specification is made in accordance with the Change Control Procedure, the Provider shall, unless otherwise agreed in writing, continue to supply the Pre-Construction Services specified in the Specification as if the request or recommendation had not been made.
- 7.5 Any discussions which may take place between the Commissioning Organisation and the Provider in connection with a request or recommendation before the authorisation of a resultant change to the Specification shall be without prejudice to the rights of either Party.
- 7.6 Any work undertaken by the Provider, its sub-Providers or agents which has not been authorised in advance by a change to the Specification and which has not been otherwise agreed in accordance with the provisions of Clause 7.2 shall be undertaken entirely at the expense of the Provider.

8 PRE-CONSTRUCTION DOCUMENTS

- 8.1 Where necessary for the performance of the Pre-Construction Services, the Provider shall prepare all the Pre-Construction Documents as is its responsibility under this Agreement as set out in the Specification.
- 8.2 The Provider warrants that the Pre-Construction Documents shall be prepared with reasonable skill, care and diligence and shall be in accordance with the First Stage Tender document and the Commissioning Organisation's requirements as set out in the Specification.
- 8.3 The Provider shall provide to the Project Manager a copy of all the Pre-Construction Documents produced pursuant to this Agreement both electronically and in hard copy, on completion of each output set out in Appendix 4.
- 8.4 The Parties shall not enter into the Construction Contract until:
 - 8.4.1 the Project Manager has examined the Pre-Construction Documents and has confirmed in writing that he does not intend to raise any questions thereon; or
 - 8.4.2 the Project Manager has confirmed in writing that the questions he has raised about the Pre-Construction Documents have been answered to his satisfaction.
- 8.5 Nothing in this clause shall relieve the Provider of any liability under this Agreement for any defect in any Pre-Construction Document, or for any inconsistency or lack of co-ordination between any Pre-Construction Documents.
- 8.6 The Provider, shall procure the right for the Commissioning Organisation to possess, make use of and take copies of the Third Party Documents for the purposes of this Agreement and/or the Underlying Contract.
- 8.7 The Commissioning Organisation shall supply to the Provider, without charge and in such reasonable time as not to delay or disrupt the performance by the Provider of the Pre-Construction Services, all necessary and relevant data and information in the possession of the Commissioning Organisation or its servants, agents or sub-Providers and the

Commissioning Organisation shall give and shall procure that such persons give such assistance as shall reasonably be required by the Provider in the performance of the Pre-Construction Services.

- 8.8 The Commissioning Organisation shall give a decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly referred to it by the Provider in such reasonable time as not to delay and disrupt the performance of the Pre-Construction Services under this Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the Commissioning Organisation on their creation.

9.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the Commissioning Organisation, the Provider shall with full title guarantee, assign or procure the assignment to the Commissioning Organisation of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

9.3 The Commissioning Organisation hereby grants to the Provider for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subcontractors, to use such of the Foreground Information as the Provider reasonably requires for the purposes of performing the services. The Provider hereby grants to the Commissioning Organisation, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

9.4 The Provider shall highlight to the Commissioning Organisation any third party intellectual property rights which appear to be relevant to the Commissioning Organisations use of the Foreground Information and/or the Documents, and following consultation with the Commissioning Organisation and insofar as reasonably practicable the Provider shall secure a licence on behalf of the Commissioning Organisation to use the third party intellectual property rights.

9.5 The Provider shall, following consultation with the Commissioning Organisation and insofar as reasonably practicable, secure a licence on behalf of the Commissioning Organisation to use any third party software (except for commonly used and commercially available software) used by the Provider and its Subcontractors in performing the services,

9.6 All licences shall be purchased in consultation with the Commissioning Organisation so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

9.7 The Provider shall indemnify the Commissioning Organisation and keep the Commissioning Organisation fully indemnified against all losses which the Commissioning Organisation may sustain or incur that arise out of allegations that the Commissioning Organisation has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

9.8 The Provider shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

10 PAYMENT PROCEDURES

- 10.1 In consideration of the provision of the Pre-Construction Services in accordance with this Agreement the Commissioning Organisation agrees to pay to the Provider the Fee in accordance with the payment schedule set out in Appendix 5 to this Agreement. The Fee excludes Value Added Tax which shall be paid at the prevailing rate.
- 10.2 The Due Date for payment of the Fee shall be the day 14 (fourteen) days after the date of receipt by the Project Manager (or his representative nominated for that purpose) of the Provider's valid invoice for sums to which the Provider has become entitled and as agreed with the Project Manager, whether in accordance with the schedule in Appendix 5 or otherwise and in the case of any outputs or milestones listed in Appendix 5, valid invoices can be submitted on completion of each output or milestone].¹ The Provider's invoice shall be deemed to be an Interim Application (as defined below) for the purposes of the Construction Act.
- 10.3 In relation to payment of the Fee, the Provider shall send an invoice ("Interim Application") to the Project Manager or a person nominated by the Commissioning Organisation for that purpose, which Interim Application shall:
- 10.3.1 be submitted no later than 1 month after the Commencement Date of the Pre-Construction Services and thereafter on a monthly basis, or where applicable, in accordance with the milestones and outputs specified by the Commissioning Organisation in Appendix 5;
 - 10.3.2 state the sum that the Provider 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;
 - 10.3.3 include all supporting documentation reasonably required for the computation of any amount due.
- 10.4 Not later than 5 days after the Due Date, the Commissioning Organisation shall give a written notice ("the Interim Certificate") to the Provider which shall specify what he considers to be the total value as at the Due Date of the payment to be made in accordance with the Agreement and which shall cover:
- 10.4.1 work properly executed, including amounts ascertained or agreed; and
 - 10.4.2 where applicable, any materials and goods which have reasonably been used in the provision of the Pre-Construction Services.
- 10.5 If an Interim Certificate is not issued by the Commissioning Organisation in accordance with clause 10.4, the sum to be paid by the Commissioning Organisation shall, subject to any notice subsequently given by it under Clause 10.7, be the sum stated in the Interim Application.
- 10.6 Subject to any other rights powers and remedies it may have under this Agreement, the Commissioning Organisation shall be entitled to withhold (or where appropriate, reduce) payment of sums due under this Agreement in the following circumstances:
- 10.6.1 the Pre-Construction Services or any part of them are not provided to the agreed Standards, or in accordance with the Specification, this Agreement or the terms

¹ Commissioning Organisations may amend and specify their own payment scheme/deadlines which shall be consistent with the Construction Act

of the Framework Agreement (subject to the Provider's duty to rectify any defect in the Pre-Construction Services);

10.6.2 the Pre-Construction Services or any part of them fall behind the approved programme provided that the delay was not caused by the acts or omissions of the Commissioning Organisation;

10.6.3 Reports and monitoring information are not delivered as specified by the Commissioning Organisation;

10.6.4 the Provider is subject to an Insolvency Event (as defined in the Framework Agreement).

10.7 If the Commissioning Organisation intends to pay less than the sum stated as due in the Interim Certificate or the Interim Application as the case may be, the Project Manager or a person authorised by him, shall no later than 5 days before the Final Date for Payment (as defined in the Construction Act) give the Provider notice (a **"Pay Less Notice"**) of that intention, specifying any amount proposed to be withheld and/or deducted from the amount due, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground, and the sum which the Commissioning Organisation considers to be due to the Provider at the date it gives the Pay Less Notice. Where the Commissioning Organisation serves a Pay Less Notice, the payment to be made on or before the Final Date for Payment shall be not less than the amount stated in the Pay Less Notice.

10.8 If the Commissioning Organisation fails to pay the Fee, or any part of it, properly due to the Provider under this Agreement by the Final Date for payment, the Provider may charge simple interest on all outstanding sums at a rate of 2% over the base rate from time to time of [Barclays Bank plc] (or such other reasonable interest rate as the Parties may agree) for the period until such payment is made.

10.9 The Parties agree that the Final Date for payment of any monies due to the Provider from the Commissioning Organisation shall be 30 days after the date of the Interim Application.

11 GUARANTEES

11.1 Without prejudice to any rights, powers and remedies it may have under the Framework Agreement or any Underlying Contract, the Commissioning Organisation may at any time ask the Provider to validly execute and deliver to the Commissioning Organisation a Performance Bond, or provide a collateral warranty to an appropriate beneficiary nominated by the Commissioning Organisation:

11.1.1 if the award of an Underlying Contract to the Provider is conditional upon the execution and delivery of such Performance Bond or Collateral Warranty as specified in the Mini-Competition documentation; or

11.1.2 if during the Framework Term or the term of an Underlying Contract, whichever is later, the Commissioning Organisation considers that actual or potential risks associated with a project or with the Provider's financial standing or its professional and technical ability require that such bond, guarantee or warranty be provided.

11.2 Where a Performance Bond or a Collateral Warranty is required, they shall be provided in the form attached at Schedule 7 or in the form specified in the Mini-Competition documentation issued by the Commissioning Organisation.

- 11.3 Where Clause 11.1 applies, the Provider shall satisfy, or procure the satisfaction of such condition promptly. In the event that the requirement under Clause 11.1 is not satisfied within 20 working days after the last day for delivery specified by the Commissioning Organisation, unless the requirement for a bond, guarantee or collateral warranty is waived by the Commissioning Organisation in writing, the Commissioning Organisation shall be entitled to terminate the Underlying Contract or suspend the Provider's performance under such contract until such time as the requirement is satisfied. No compensation shall be payable to the Provider as a result of the Commissioning Organisation exercising its right to not enter into, terminate or suspend an Underlying Contract pursuant to this clause.

12 TERMINATION

- 12.1 Subject to any other rights and remedies under this Agreement, either Party may by notice in writing at any time terminate this Agreement with immediate effect if the other Party is in breach of any of its obligations under the Agreement and fails to remedy such breach within a reasonable period or the period specified by the other Party after being advised of the breach.
- 12.2 The Commissioning Organisation shall be entitled by giving not less than one month's notice in writing to the Provider to:
- 12.2.1 terminate this Agreement; or
 - 12.2.2 suspend the provision of the Pre-Construction Agreement and upon any such suspension the Provider shall be entitled to such part of the Fee as is commensurate with the Pre-Construction Services rendered by the Provider up to the date of such suspension PROVIDED THAT:
 - 12.2.2.1 if the Commissioning Organisation so requires at any time within the period of 6 months of a suspension of the Agreement under this clause, the Provider shall resume the performance of the Pre-Construction Services under this Agreement; or
 - 12.2.2.2 if any such suspension extends beyond the period of 6 months the Provider shall not be required to resume the Pre-Construction Services under the Agreement other than on terms to be agreed between the Parties.
- 12.3 subject to Clause 10.8, the Provider may, upon giving 7 days' written notice, suspend the provision of the Pre-Construction Services if it is entitled to terminate this Agreement under Clause 12.1 for failure by the Commissioning Organisation, to pay undisputed Fees in accordance with this Agreement. The Provider shall resume the performance of the Pre-Construction Services immediately on settlement of the outstanding balance.
- 12.4 Subject to Clause 12.5 below, termination of this Agreement shall have no effect on the rights, remedies or liabilities of either Party already accrued prior to the date on which termination takes effect.
- 12.5 Under no circumstance shall the Provider 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.

13 SUSPENSION FOR SPECIFIC BREACHES

13.1 The Provider shall not do anything which:

- 13.1.1 may place the Commissioning Organisation in breach of any Health and Safety requirement;
- 13.1.2 may cause the Commissioning Organisation to suffer significant economic loss;
- 13.1.3 may cause the Commissioning Organisation to suffer damage to its reputation;
- 13.1.4 may cause the Commissioning Organisation to be in breach of or to suffer delays in meeting its statutory duties

which may occur as a result of the Provider's or its supply chain's poor performance; delays; non performance; failure to meet services levels or key performance indicators; bad working practices; or Insolvency Event or any other failure to comply with this Agreement, relevant legislation or good working practice.

13.2 If the Commissioning Organisation, acting reasonably considers that there is or is likely to be a breach of clause 13.1 by the Provider or its Subcontractors; or if there is any risk to any person; or if there is an accident or other event which in the opinion of the Commissioning Organisation necessitates urgent remedial action, or if the Provider's circumstances or past performance under the Framework Agreement leads to the reasonable conclusion that the Provider no longer meets the Standards and Minimum Standards relating to financial standing, capacity and reliability, the Commissioning Organisation:

- 13.2.1 shall be entitled to suspend the performance of Pre-Construction Services or any Task or part thereof. The Provider shall not resume provision of the services until the Commissioning Organisation is satisfied that the failure or non-compliance will be rectified. Any such suspension shall not absolve the Provider from meeting other obligations under any on-going Underlying Contract; and/or
- 13.2.2 may inform the Provider in writing what action it requires the Provider to take to remedy that breach or abate that risk and may also state any timescales within which such steps are to be taken; and/or
- 13.2.3 may itself take such steps or remedial action (or pay or employ others to do the same) as may in the reasonable opinion of the Commissioning Organisation be necessary to remedy that breach or abate that risk, provided that it shall tell the Provider of the action required as soon as it is reasonably practicable to do so. If such steps or remedial action are necessary because of the default of the Provider then the extra costs incurred by the Commissioning Organisation together with any administration charge will be immediately payable by the Provider and recovered as a debt or in such other way as the Commissioning Organisation deems fit; and/or

12.4 Other remedies the powers of a Commissioning Organisation pursuant to the preceding clauses are in addition to its ability to obtain any other remedy for any breach or non-observance of the this Agreement by the Provider. The Commissioning Organisation shall be entitled to recover from the Provider all reasonable extra costs and expenses incurred by the Commissioning Organisation as a result of the Provider's breach or other non-observance of the Agreement.

14 BUSINESS CONTINUITY AND DISASTER RECOVERY

- 14.1 The Provider shall have in place procedures and arrangements to ensure continuity of business processes and operations following any major failure or disruption of any element of the Pre-Construction Services or Works and their recovery in the event of a Disaster.
- 14.2 In the event of emergencies arising from a Disaster, wherever and however arising, the Provider shall fully co-operate with the Commissioning Organisation in meeting the provisions of the Commissioning Organisation's emergency plan and in the exercises of the Organisation's duties under the Civil Contingencies Act 2004 as amended.

15 INSURANCE

- 15.1 The Provider shall take out and maintain with reputable insurers, public liability insurance, employers liability insurance cover as required by the Framework Agreement or where the Commissioning Organisation has specified different levels of insurance, in accordance with the levels specified in the Mini-Competition documentation.
- 15.2 Unless stated otherwise in the Mini-Competition documentation or Specification, (which may specify an increase in the required level of insurance), the Provider shall maintain the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers on the basis and in an amount not less than that stated in the Framework Agreement or the Mini-Competition documentation, provided always that such insurance is available at commercially reasonable rates. The Provider must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers. Where in the Mini-Competition documentation the minimum level of PI insurance is varied (having due regard to the complexity and risks associated with a project), the limitation of liability shall be adjusted accordingly.
- 15.3 If, without the approval of the Commissioning Organisation the Provider fails to effect and maintain any insurance that it is required to effect and maintain under the Underlying Contract or the Framework Agreement, or obtains a different policy of insurance or fails to provide a copy of insurances or certificates when required to do so, the Commissioning Organisation may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the Provider under this Agreement or the Construction Contract, or recover such sum from the Provider as a debt.
- 15.4 The Provider shall not without the prior written approval of the Commissioning Organisation settle or compromise with the insurers any claim which the Provider may have against the insurers and which relates to a claim by the Commissioning Organisation against the Provider nor by any act or omission lose or prejudice the Provider's right to make or proceed with such a claim against the insurers
- 15.5 The Provider shall immediately informs the Commissioning Organisation if the professional indemnity insurance ceases to be available at rates and on terms that it considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the Provider's own claims record or other acts, omissions, matters or things particular to the Provider shall be deemed to be within commercially reasonable rates.
- 15.6 The above obligation in respect of professional indemnity insurance shall continues for a minimum of 12 years notwithstanding suspension, expiry or termination of this

Agreement for any reason whatsoever, including (without limitation) breach by the Commissioning Organisation.

- 15.7 Where the Mini-Competition documentation requires public liability insurance to be obtained in the joint names of the Provider and the Commissioning Organisation but the terms of the relevant insurance policy are such that the Provider is unable to effect insurance jointly, the Provider ensures that the policy includes an “Indemnity to Principal” provision in standard insurance industry terms.
- 15.8 Nothing in this clause shall relieve the Provider from any of its obligations and liabilities under this Agreement

16 DISCRETION TO PROCEED WITH THE WORKS

- 16.1 The Commissioning Organisation shall have absolute discretion whether or not to proceed with the Works, with or without the Provider. Upon completion of the Pre-Construction Services or, at the sole discretion of the Commissioning Organisation, prior to such completion, the Commissioning Organisation shall notify the Provider that:
- 16.1.1 it has decided not to proceed with the Works; or
- 16.1.2 it intends to enter into the Construction Contract for the Works with the Provider; or
- 16.1.3 it intends to enter into a Construction Contract with another provider. In the event that the Commissioning Organisation exercises this option the Provider under this Pre-Construction Agreement shall be entitled to be paid any balance in respect of the execution of the Pre-Construction Services and in accordance with Appendix 5
- 16.2 Where the Commissioning Organisation notifies the Provider that it intends to enter into the Construction Contract with the Provider then both parties shall execute all such documents as are necessary to enable the Provider to proceed with the Works in accordance with the Construction Contract.
- 16.3 The rights and obligations under this Agreement shall, unless otherwise agreed, insofar as they subsist or have not been fulfilled, continue after the execution of Construction Contract for the Works if the Construction Contract for the Works is entered into with another provider. The Provider shall continue to carry out the Pre-Construction Services diligently and in a timely manner until they are completed

17 DISPUTE RESOLUTION

- 17.1 The parties confirm and agree that if any dispute or difference arises between them in relation to this Agreement such dispute or difference shall be resolved in accordance with the dispute resolution provisions of the Framework Agreement.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 18.1 None of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contract (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement.

19 WORKING WITH THE COMMISSIONING ORGANISATION AND OTHERS

19.1 The Provider shall carry out the services, to the extent reasonably practical considering their nature, so as to cause minimum disruption to the Commissioning Organisations' activities on their premises and elsewhere. If the Provider anticipates any such disruption, the Provider will issue an early warning notice to enable the Commissioning Organisation to plan in advance, if necessary, for such disruption.

19.2 The Provider shall co-operate with the requirements of all Commissioning Organisation boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Sub Providers who may be invited by the Commissioning Organisation to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the services. The Commissioning Organisation shall reimburse the Provider their reasonable external costs of such attendance.

19.3 The Provider acknowledges that it will not have exclusive rights to occupy any accommodation provided by the Commissioning Organisation and that any such accommodation will only be used for the purpose of the services.

19.4 All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the Commissioning Organisation premises shall remain the property of the Commissioning Organisation.

20 Disclosure

20.1 Except with the written consent of the Commissioning Organisation, the Provider shall not disclose the services to any person other than a person employed by the Provider or a Subcontractor. Disclosure shall be confined to those members of staff whose access to the information is essential for performance of the services.

20.2 Subject to clause 20.5, 20.6 and 20.7, each Party:

- a) shall treat in confidence all Information it shall receive from the other;
- b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that the Provider may disclose Information in confidence, without prior consent, to such persons as and to such extent as may be necessary for the performance of the services;
- c) shall not use any of that information otherwise than for the purpose of performing the services; and
- d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this agreement.

20.3 The Provider shall take all reasonable precautions necessary to ensure that all the Information disclosed to the Provider by or on behalf of the Commissioning Organisation under or in connection with this agreement:

- a) is disclosed to its employees and Subcontractors only to the extent necessary for the performance of the services;
- b) is treated in confidence by them and not disclosed except with prior written consent or used
- c) otherwise than for performing work or having work performed for the Commissioning Organisation under this agreement or any subconsultancy agreement.
- d) is returned to the Commissioning Organisation by the Provider on Completion of the whole of the Services

20.4 The Provider shall ensure that its employees, and its Subcontractors and their employees, are aware of its arrangements for discharging the obligations under clause 20.1, 20.2 and 20.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

20.5 Clause 20.2 and 20.3 shall not apply to the Information to the extent that either Party:

- a) exercises rights of use or disclosure granted otherwise than in consequence of, or, this agreement;
- b) has the right to use or disclose the Information in accordance with other conditions of this agreement
- c) can show:
 - i. that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this agreement or any other agreement between the Parties;
 - ii. that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the services;
 - iii. that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
 - iv. from its records that the same information was derived independently of that received under or in connection with the services; provided the relationship to any other Information is not revealed.

20.6 Neither Party shall be in breach of this Clause 20 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosures shall in no way diminish the obligations of the Parties under this Clause.

20.7 The Commissioning Organisation shall not be in breach of this Clause 20 where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance with the Act or the Regulations, the Commissioning Organisation shall consult the Provider where the Commissioning Organisation is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Provider of any decision to disclose the Information. The Provider acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Commissioning Organisation shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this condition shall affect the Provider's rights at law.

20.8 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

21 ADDITIONAL CONDITIONS

21.1 The additional conditions of contract stated in the Contract Data are part of this contract.

- 21.2 The Provider warrants that they have not done and will not do anything that would result in a breach of the Commissioning Organisation's Security Procedures or the Official Secrets Act.
- 21.3 The Provider warrants that it has not done and will not do any of the following (hereafter referred to as "Prohibited Acts"):
- 21.4
- a) offered, given or agreed to give to any Crown servant any gift or consideration of any kind as an inducement or reward;
 - i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
 - ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;
 - b) entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Commissioning Organisation, and in respect of any breach of any of the above warranties and undertakings the Provider acknowledges that the Commissioning Organisation will be entitled to claim damages against the Provider.
- 21.5 In performing the services the Provider shall not use Prohibited Materials or produce designs that may use Prohibited Materials.
- 21.6 The Provider shall inform the Commissioning Organisation, as soon as practicable, in writing of any Change of Control.
- 21.7 Where any proceedings are brought which arise directly or indirectly out of any act or omission of the Provider, its agents or Subcontractors, or key people, and where there is a finding against the relevant party in such proceedings, the Provider shall be liable to the Commissioning Organisation with respect to all foreseeable and mitigated costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such proceedings including such other financial redress to cover any payment the Commissioning Organisation is ordered or required by a tribunal to pay to a third party.
- 21.8 The Provider shall ensure at no extra cost to the Commissioning Organisation that for the purposes of carrying out any audit, the Commissioning Organisation's internal and nominated external auditors are given access to inspect and examine such documents as may reasonably be required which are owned, held or otherwise within the control of the Provider. The Provider shall also promptly provide such oral and written explanations as it is considered necessary in order to assist the auditors referred to above to carry out their functions.
- 21.9 The Provider shall for the purpose of carrying out any audit provide, at no additional cost to the Commissioning Organisation, such facilities for representatives of the Commissioning Organisation as the Commissioning Organisation may reasonably require.
- 21.10 Fraud

At all stages of its involvement under and in connection with the services, the Provider shall take all practicable steps to prevent fraud and/or the risk of fraud arising. If in the reasonable opinion of the Commissioning Organisation the Provider commits any fraud (as defined by the Law of the Contract) in relation to the services or any contract with the Commissioning Organisation or any other public body then the Commissioning Organisation may terminate the services for the Provider's default by giving 10 Working Days' notice to the Provider. The

Provider shall keep and maintain all relevant records, invoices, approvals, notes; minutes of meetings and all such other original documents as may be required to verify the services carried out by the Provider and its Subcontractors so that they may be provided upon request by the Commissioning Organisation. The Provider shall immediately report to the Commissioning Organisation any circumstances giving rise to fraud within its own organisation, that of its Subcontractors, the Commissioning Organisation or otherwise in relation to the services and shall provide all such relevant information which may assist the Commissioning Organisation in dealing with such report efficiently and effectively. The Commissioning Organisation shall be entitled to set-off, deduct, abate or recover as a debt against the Provider all losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.

21.11 Use of Information Technology (IT)

The Provider and its Subcontractors may use any of the Commissioning Organisation's IT Systems including connections to the internet or intranet services, with express permission from the Commissioning Organisation, and appropriate security clearance and only for the performance of the services. Use of a third party's computer equipment and software, including any connections to the internet or intranet services, on the Commissioning Organisation's premises, is subject to the approval of the Commissioning Organisation and said third party. The Provider shall procure that its employees, and its Subcontractors and their employees, comply with the Commissioning Organisation's policies, procedures and instructions in respect of computer hardware and software, including any connections to the internet or intranet services. The Commissioning Organisation may on reasonable notice from time to time make reasonable or necessary amendments to such policies, procedures and instructions. The Provider shall take all reasonably practicable precautions to ensure that its employees, and its Subcontractors and their employees, do not use computer hardware or software, including any connections to the internet or intranet services, unlawfully or for unlawful purposes. The Provider shall not cause or allow any of its employees, or its Subcontractors and their employees, to bring the reputation of the Commissioning Organisation into disrepute by any action, activity or behaviour in connection with computer hardware or software. Failure by the Provider to comply with this Clause shall constitute a material breach of this agreement which may lead to termination.

21.12 Transfer

Neither Party to this contract shall give, bargain, sell, assign, or otherwise dispose of this contract or any part thereof, or the benefit or advantage of this contract or any part thereof, without the previous consent in writing of the other Party.

21.13 Mitigation

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss which the relevant Party is entitled to recover from the other Party pursuant to this contract.

21.14 Providers Personnel at Government Establishments

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss which the relevant Party is entitled to recover from the other Party pursuant to this contract.

21.15 Cyber

The Provider shall comply with DEFCON 658 (edition as at date of contract award) which can be found at www.gov.uk

21.16 Official Sensitive Security Requirements

The Provider shall comply with DEFCON 660 (edition as at date of contract award) which can be found at www.gov.uk

21.17 VAT

The Commissioning Organisation confirms that for the purposes of section 55A VAT Act 1994 reverse charge for building and construction services it is an end user in respect of the services to be supplied by the Provider pursuant to this Contract and accordingly the parties agree that the reverse charge for VAT will not apply to the services supplied under this Contract. The Commissioning Organisation will promptly inform the Provider if the Commissioning Organisation no longer qualifies as an end user.

21.20 Russian/Belarusian Suppliers

The Provider shall, and shall procure that their Sub-Providers shall notify the Commissioning Organisation in writing as soon as they become aware that:

- a. the Contract Deliverables and/or Services contain any Russian/Belarusian products and/or services; or
- b. that the Provider or any part of the Provider's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:
 - (1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or
 - (2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

The Provider shall, and shall procure that their Sub-Providers shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Commissioning Organisation to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.

The Commissioning Organisation shall consider the notification and information provided by the Provider and advise the Provider in writing of any concerns the Commissioning Organisation may have and/or any action which the Commissioning Organisation will require the Provider to take. The Provider shall be required to submit a response to the concerns raised by the Commissioning Organisation, including any plans to mitigate those concerns, within 14 business days of receipt of the Commissioning Organisation's written concerns, for the Commissioning Organisation's consideration.

The Provider shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

22 Transfer of Title

22.1 The Commissioning Organisation owns the Provider's rights over material prepared for the design of the works except as stated otherwise in the Scope. The Provider obtains other rights for the Commissioning Organisation as stated in the Scope and obtains from a Subcontractor equivalent rights for the Commissioning Organisation over the material prepared by the

Subcontractor. The Provider provides to the Commissioning Organisation the documents which transfer these rights to the Commissioning Organisation.

23 Information Modelling

23.1 The Information Execution Plan is the information execution plan or is the latest Information Execution Plan accepted by the Service Manager. The latest Information Execution Plan accepted by the Service Manager supersedes the previous Information Execution Plan.

23.2 Project Information is information provided by the Consultant which is used to create or change the Information Model.

23.4 The Information Model is the electronic integration of Project Information and similar information provided by the Client and other Information Providers and is in the form stated in the Information Model Requirements.

23.5 The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.

23.6 Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

23.7 The Provider collaborates with other Information Providers as stated in the Information Model Requirements.

23.8 The Provider and the Commissioning Organisation formally notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.

23.9 If an Information Execution Plan is not identified in the Contract Data, the Provider submits a first Information Execution Plan to the Commissioning Organisation for acceptance within the period stated in the Contract Data.

23.10 Within two weeks of the Provider submitting an Information Execution Plan for acceptance, the Commissioning Organisation notifies the Provider of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that

- it does not comply with the Information Model Requirements or
- it does not allow the Provider to Provide the Service.

23.11 If the Commissioning Organisation does not notify acceptance or non-acceptance within the time allowed, the Provider may notify the Commissioning Organisation of that failure. If the failure continues for a further one week after the Providers notification, it is treated as acceptance by the Commissioning Organisation of the Information Execution Plan.

23.12 The Provider submits a revised Information Execution Plan to the Commissioning Organisation for acceptance

23.4 within the period for reply after the Commissioning Organisation has instructed it to and
23.5 when the Provider chooses to.

23.13 The Consultant provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.

23.14 If the Information Execution Plan is altered by a CCN in accordance with Appendix 6, the Consultant includes the alterations to the Information Execution Plan in the quotation for the compensation event

23.15 The Commissioning Organisation owns the Information Model and the Providers rights over Project Information except as stated otherwise in the Information Model Requirements. The Provider obtains from a Subcontractor equivalent rights for the Commissioning Organisation over information prepared by the Subcontractor. The Provider provides to the Commissioning Organisation the documents which transfer these rights to the Commissioning Organisation.

23.16 The following are Commissioning Organisation liabilities.

- A fault in the Information Model not caused by a Defect in the Project Information.
- A fault in information provided by Information Providers other than the Provider.

The Commissioning Organisation is not liable for a Defect in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information

24.1 Neither Party will have any liability to the other Party under or in connection with the Agreement whether in contract, tort or delict (including negligence), for breach of statutory duty, or otherwise for:

- loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
- any indirect or consequential loss.

24.2 The maximum aggregate liability of the Provider under or in connection with the Agreement whether in contract, tort or delict (including negligence), for breach of statutory duty, or otherwise shall not exceed a sum equivalent to Fee, provided that this clause 24 shall not limit the liability of the Provider in respect of:

- any liability in relation to any death or personal injury arising from the Provider's negligence; or
- any liability arising by reason of fraud or fraudulent misrepresentation on the part of the Provider.

24.3 Neither Party shall commence any legal action against the other Party under or in connection with this Agreement more than 12 years from (a) the date of completion of the Pre-Construction Services or (b) the date of termination of this Agreement, whichever is the earlier.

25 Changes in Law

25.1 If after the date of this Agreement there is a change in Statutory Requirements which will lead to extra cost or delay in providing the Pre-Construction Services the Provider shall give notice of that cost or delay to the Commissioning Organisation and the parties shall use all reasonable endeavours, acting in good faith, to agree on an appropriate increase in the time for provision of the Pre-Construction Services and/or an appropriate increase in the Fee arising from the change in Statutory Requirements.

IN WITNESS whereof the Commissioning Organisation and the Provider have caused this Agreement to be signed with the intention that it shall have effect as a Deed.

Signed for and on behalf of the Provider

REDACTED under FOIA Section 40 - Personal Information

A large black rectangular redaction box covering the signature area of the Provider.

Signed for and on behalf of the Commissioning Organisation *(executed in accordance with Commissioning Organisation's Constitution)*

REDACTED under FOIA Section 40 - Personal Information

A large black rectangular redaction box covering the signature area of the Commissioning Organisation.

APPENDICES

Appendix 1 – The terms and conditions of the Framework Agreement;

Appendix 2 – Mini-Competition Information issued by the Commissioning Organisation, (including award criteria, project information and the Specification for the Pre-Construction Services);

Appendix 3 – Commissioning Organisation's Form of Construction Contract and Special Conditions;

Appendix 4 – The Provider's Bid;

Appendix 5 – Fee Schedule (in the form specified by the Commissioning Organisation);

Appendix 6 – Change Control Procedure;

Appendix 7 – Performance Bond (where required) Collateral Warranty;

Appendix 1 BLANK FRAMEWORK AGREEMENT

20250327_Autoclaves_Replacement_Appendix_1_SCF5 - Lot 1 - Bouygues-O

Appendix 2 – MINI-COMPETITION INFORMATION

20240220_Autoclaves_SCF5_Call-Off_MC2_v1-OS

20240812_Appendix_2_Autoclaves_Scope_of_Services-OS

Appendix 3 – FORM OF CONSTRUCTION CONTRACT & ADDITIONAL CONDITIONS

20250311_Autoclaves_ECC_Contract-O

Appendix 4 – PROVIDER’S BID

20250327_Autoclaves_Appendix_4_Providers_Bid-O

Appendix 5 – FEE SCHEDULE

Fee RIBA 2 to RIBA 4 - Dstt Autoclave Replacement					Total Fee:	£357,186.00
Instalment	Instalment Date	Design Fee (Per Stage)	Management Fee (Per Stage)	Total Fee Incl OH&P (Per Stage)	Percentage of PCSA fee	Invoice Amount
Submission of PCSA start up documentation: Master Information Delivery Plan (MIDP) Task Information Delivery Plan (TIDP) Project Execution Plan (PEP) BIM execution Plan Quality Plan Risk and Opportunites Plan	1st May 2025	REDACTED under FOIA Section 43 - Commercial Interests				
Completion of Point Cloud Survey	TBC					
Stage 2 part way Milestone Payment (To be defined within programme)	8th May 2025					
Completion of Stage 2 Design	29th May 2025					
RIBA Stage 2 Fee						
Commencement of Stage 3 Design	5th June 2025					
Autoclave Procurement Duties* *Only include duties prior to order of Autoclaves	TBC					
Stage 3 part way Milestone Payment (To be defined within programme)	3rd July 2025					
Completion of Stage 3 Design	7th August 2025					
RIBA Stage 3 Fee						
Commencement of Stage 4 Design	14th August 2025					
Stage 4 part way Milestone Payment (To be defined within programme)	2nd October 2025					
Completion of Stage 4 Design	4th December 2025					
RIBA Stage 4 Fee						
					£357,186.23	100%
					£357,186.23	

Appendix 6 - CHANGE CONTROL PROCEDURES

1. Principles

Where the Commissioning Organisation or the Provider see a need to change the Specification as a result of a change to the specification of the Works the Commissioning Organisation may at any time request, and the Provider may at any time recommend, such change only in accordance with the formal Change Control Procedure (CCP) as set out at paragraph 2.

- 1.2 Neither the Commissioning Organisation nor the Provider shall unreasonably withhold its agreement to any change.
- 1.3 Until such time as a change to the Specification is made in accordance with the Change Control Procedure, the Provider shall, unless otherwise agreed in writing, continue to supply the Pre-Construction Services specified in the Specification as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Commissioning Organisation and the Provider in connection with a request or recommendation before the authorisation of a resultant change to the Specification shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Provider, its sub-Providers or agents which has not been authorised in advance by a change to the Specification and which has not been otherwise agreed in accordance with the provisions of paragraph 1.3 shall be undertaken entirely at the expense and liability of the Provider.

2. Procedures

- 2.1 All requests shall be considered by appropriate representatives of the Commissioning Organisation and the Provider.
- 2.2 Discussion between the representatives of the Commissioning Organisation and the Provider concerning a change to the Specification shall result in any one of the following:
 - 2.2.1 no further action being taken;
 - 2.2.2 a request to change the Specification by the Commissioning Organisation, or
 - 2.2.3 a recommendation to change the Specification by the Provider.
- 2.3 Where a written request for a change is received from the Commissioning Organisation, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note (CCN) signed by the Provider to the Commissioning Organisation within two weeks of the date of the request.
- 2.4 A recommendation to change by the Provider shall be submitted direct to the Commissioning Organisation in the form of two copies of a CCN signed by the Provider at the time of such recommendation.

2.5 Each CCN shall contain:

- 2.5.1 the title of the change;
- 2.5.2 the originator and date of the request or recommendation for the change;
- 2.5.3 the reason for the change;
- 2.5.4 full details of the change including any specifications;
- 2.5.5 the price, if any, of the change;(This should be expressed as an “Addition” of “Omission”)
- 2.5.6 a timetable for implementation together with any proposals for acceptance of the change;
- 2.5.7 a schedule of payments if appropriate;
- 2.5.8 details of the likely impact, if any, of the change on other aspects of the Specification including but not limited to:
 - 2.5.8.1 the timetable for the provision of the Pre-Construction Services;
 - 2.5.8.2 the period of this Agreement;
 - 2.5.8.3 the personnel to be provided;
 - 2.5.8.4 the Fees;
 - 2.5.8.5 the payment profile;
 - 2.5.8.8 performance levels;
 - 2.5.8.9 working arrangements;
 - 2.5.8.10 other contractual issues;
- 2.5.9 the date of expiry of validity of the CCN; and
- 2.5.10 provision for signature by the Commissioning Organisation and by the Provider.

2.6 For each CCN submitted the Commissioning Organisation shall, within the period of the validity of the CCN:

- 2.6.1 allocate a sequential number to the CCN;
- 2.6.2 evaluate the CCN and, as appropriate:
 - 2.5.2.1 request further information, or

2.5.2.2 arrange for the two copies of the CCN to be signed by or on behalf of the Commissioning Organisation and return one of the copies to the Provider;
or

2.5.2.3 notify the Provider of the rejection of the CCN.

2.7 If the Provider considers that the preparation of a CCN, requested by the Commissioning Organisation, would necessitate significant allocation of resources over and above those stated in the Specification the Provider will notify the Commissioning Organisation accordingly and, on agreement by the Commissioning Organisation, the Provider will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Commissioning Organisation's acceptance of that proposal the Provider will be relieved of his obligations to produce such CCN.

2.8 A CCN signed by the Commissioning Organisation and by the Provider shall constitute an amendment to the Specification.

Appendix 7 – MODEL PERFORMANCE BOND/ COLLATERAL WARRANTY

Not used – will be used under Appendix 4