

**Form of Agreement incorporating the NEC4**

**Engineering and**

**Construction Contract**

**Option A: Priced Contract with activity schedule**

**June 2017**

For works comprising

Clearbrook House, Plymouth

Crown Commercial Service, Department for Work and Pensions Framework dated 28th June 2018.

Schedule 2 - Part 2 (Lot 2 Contract Option A)

Contract Reference - 1004541

between

(1) **The Secretary of State for Work and Pensions**

and

(2) **Speller Metcalfe (Malvern) Ltd**

Dated 11th November 2020

**Contents**

In this contract the core clauses are the ECC core clauses and the clauses set out in the ECC as main Option clauses; Option A.

|  |  |  |  |
| --- | --- | --- | --- |
| **Form of Agreement**  Date |  |  |  |
| Parties |  |  |  |
| Recitals |  |  |  |
| Operative clauses |  |  |  |
| Execution page |  |  |  |
| **Schedule A** |  | Contract Data Part One |  |
| **Schedule B** |  | Option Z: Additional Conditions of Contract |  |
| **Schedule C** |  | Contract Data Part Two |  |
| **Schedule D** |  | Scope |  |
| **Schedule E** |  | Activity Schedule |  |
| **Schedule F** |  | Site Information |  |
| **Schedule G** |  | Collateral Warranties |  |
| **Schedule H** |  | Security Schedule |  |
| **Schedule I** |  | Management Information |  |
| **Schedule J** |  | Key Performance Indicators |  |
| **Schedule K** |  | TUPE |  |
| **Schedule L** |  | Governance |  |
| **Schedule M** |  | Equality |  |
| **Schedule N** |  | Forms of Ultimate Holding Company  Guarantee and Performance Bond |  |
| **Schedule O** |  | Third Party Agreements |  |
| **Schedule P** |  | Data Protection |  |
| **Schedule Q** |  | Financial Distress |  |

45302701.2

**This agreement is made the 11th day of November 2020**

**Between:**

1. **The Secretary of State for Work and Pensions** of Caxton House, Tothill Street, London, SW1H 9NA acting as part of the Crown (the ***Client***); and Speller Metcalfe (Malvern) Ltda company registered in England and Wales with company registration number **06740881** and whose registered office is at **Maple Road, Enigma Business Park, Malvern, Worcestershire, WR14 1GQ.**

**Background**

1 The *Client* established a national and regional framework divided into lots for projects Contracts of varying values for the benefit of public sector bodies.

2 The *Contractor* was appointed to Lot **2** of the framework and has executed the framework agreement dated 28th June 2018 (the Framework Agreement).

3 The Client acting as part of the Crown, by direct call off instructed the Contractor for the Design and construction of replacement boilers and system controls and has completed the Contract Data Part 1.

4 On the 25th September 2020, the *Contractor* submitted a tender response and was subsequently selected by the *Client* to provide the *works*.

5 The *Contractor* has agreed to Provide the Works in accordance with this contract and the Framework Agreement.

It is agreed as follows:

1 **Contract for the *works***

1.1 The contract for the *works* comprises the terms and conditions of the NEC4

Engineering and Construction Contract Option A: Priced contract with activity schedule June 2017 which is supplemented and amended in accordance with such information and supplementary provisions as are provided in the Schedules.

1.2 The **Schedules** means any one or all of the schedules appended to this contract.

2 **Priority of documents**

2.1 If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:

2.1.1 this Agreement;

2.1.2 the completed Contract Data;

2.1.3 the *additional conditions of contract*;

2.1.4 the other *conditions of contract*;

2.1.5 the Scope; and

2.1.6 any other document forming part of the contract.

3 **Entire Agreement**

3.1 This contract is the entire agreement between the parties in relation to the *works* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

3.2 Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.

3.3 Nothing in this clause 3 shall exclude any liability in respect of misrepresentations made fraudulently.

**In witness whereof** the parties have caused this contract to be executed as a deed by their duly authorised representatives and delivered on the date first above written.

**Signature page to the Agreement between the *Client* and the *Contractor***

**Executed as a Deed for and on behalf of** ) **The Secretary of State for Work and** ) **Pensions** by affixing hereto its common seal ) in the presence of: )

Signature:..................................................... Name: ..................................................... Title: Authorised signatory

Date: .....................................................

**Executed as a deed by Speller Metcalfe (Malvern) Ltd** acting by:

Signature:..................................................... Name: ..................................................... Title: Director

Date: .....................................................

)

)

)

)

Signature:..................................................... Name: ..................................................... Title: Director/Company Secretary

Date: .....................................................

**Schedule A**

**Contract Data Part One – Data provided by the *Client***

**1 General**

The *conditions of contract* are the core clauses of the NEC4

Engineering and Construction Contract June 2017 Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017:

Option for resolving and avoiding W2 disputes:

Secondary Options:

|  |  |  |
| --- | --- | --- |
|    | X2 | Changes in the Law |
|  |  |  |
|  | X5 | Sectional Completion |
|  | X7 | Delay Damages |
|  | X8 | Undertakings to the *Client* or  *Others* |
|  | X10 | Information Modelling |
|  | X11 | Termination by the Client |
|  |  |  |
|  | X15 | Limitation of the *Contractor's* |
|  |  | liability for his design to |
|  |  | reasonable skill and care |
|  | X16 | Retention |
|  | X18 | Limitation of liability |
|  | X20 | Key Performance Indicators |
|  | X21 | Whole Life Cost |
|  | Y(UK)2 | The Housing, Grants, Construction and |
|  |  | Regeneration Act 1996 |

Option Z: *Additional conditions of contract*

 Z1 – Z55

The *works* are the Design and construction of replacement boilers and system controls.



|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| * The *Client* is | | As defined in the form of agreement to which this schedule is annexed. | | |
|  | | Name: **REDACTED**  Address for communications:  **Department for Work and Pensions**  **Caxton House**  **Tothill Street**  **London SW1H 9NA**  Address for electronic communications:  **REDACTED** | | |
|  | |  | | |
| * The *Project Manager* is | | Name: **REDACTED**  Address for communications:  **Department for Work and Pensions**  **Caxton House**  **Tothill Street**  **London SW1H 9NA**  Address for electronic communications:  **REDACTED** | | |
| * The *Supervisor* is | | Name: **REDACTED** | | |
|  | | Address for communications:  **Department for Work and Pensions**  **Caxton House**  **Tothill Street**  **London SW1H 9NA** | | |
|  | | Address for electronic communications:  **REDACTED** | | |
| * The Scope is in | | **Schedule D** | | |
|  | | * The Site Information is in | | Schedule F as may be amended from time to time |
|  | | * The *boundaries of the site* are | | Clearbrook House Main Building, Bickleigh Down Business Park, Towerfield Drive, Plymouth, PL6 7TN  Schedule F |
|  | | * The *language of the contract* is | | English |
|  | | * The *law of the contract* is the law of | | The law of England and Wales, and includes all statute, primary and secondary legislation, and other regulations, orders and by-laws having the force of law. |
|  | | * The *period for reply* is | | One week |
|  | | * The following matters will be included in the Early Warning Register | | Refer to Early Warning Register |
|  | | * Early warning meetings are to be held at intervals no longer than: | | Two weeks |

**2 The *Contractor's* main responsibilities**

The *key dates* and *conditions* to be met are:

*condition* to be met *key* date

1.Completion **29th March 2021**

2.

3.

**3 Time**

|  |  |  |
| --- | --- | --- |
|  | * The *starting date* is | 11/11/2020 (Award) |
|  | * The access dates are: | 25/01/2021 |
|  | Part of the Site   1. Not applicable 2. Not applicable 3. Not applicable |  |
|  | The *Contractor* submits revised programmes at intervals no longer than | Two Weeks |
|  | * The completion date for the whole of the *works* is | 29th March 2021 |
|  |  |  |
|  | * The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is: | One Week |

1.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **4** | **Quality Management** | | | | |
|  |  The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is: **One week** | | | | |
|  |  The period between Completion of the whole of the *works* and the *defects date* is: **One year** | | | | |
|  | Urgent: Within 48 hours  **Not urgent: One week** | | | | |
|  | | |  | * The *defect correction* period is |  |
|  | | |  | * + The *defect correction* period for Urgent Repairs/ Replacement |  |
|  | | |  | Is | **48 Hours** |
|  | | |  | * + The *defect correction* period for Routine Repairs/ Replacements |  |
|  | | |  | Is | **One Week** |
|  | **5 Payment** | | | | |
|  |  The *currency of this contract* is the GB pounds sterling | | | | |
|  |  The *assessment interval* is **Monthly** | | | | |
|  |  The *interest rate* is three per cent (3%) per annum above the base rate of the Bank of England | | | | |
|  | The period within which payments  are to be made is: **30 Days** | | | | |
|  |  | | | | |
|  | **6 Compensation events** | | | | |



|  |  |  |  |
| --- | --- | --- | --- |
|  |  | * The place where weather is to be recorded is | The closest Met Office recording station to the site. |
|  |  | * The *weather measurements* to be recorded for each calendar month are: |  |
|  |  | * + the cumulative rainfall (mm) |  |
|  |  | * + the number of days with rainfall more than 5mm |  |
|  |  | * + the number of days with minimum air temperature less than 0 degrees Celsius |  |
|  |  | * + the number of days with snow lying at | The closest Met Office recording station to the site**.** |
|  |  | * + and these measurements |  |
|  |  | * The *weather measurements* are supplied by | **The Contractor** |
|  |  | * The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at | The closest Met Office recording station **to the site.** |
|  |  | and which are available from | The Met Office |
|  |  | **Where no recorded data are available** | |
|  |  | * Assumed values for the ten year return weather data for each *weather measurement* for each calendar month are | **Not applicable** |
|  |  | * The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is: | **Not applicable**  **0% and** **not incentivised** |
|  |  | * 60. 1 (21) These are additional compensation events:   Any change to the minimum hourly rate of pay set by Government which applies to workers.  Any change to the rate of *Client*’s National Insurance contribution.  Any introduction of a compulsory Living Wage or London Living Wage or any change thereto which applies to workers.  A change to the pension *Client* contribution rate for Transferring Former Contractor Employees or Transferring Client Employees.  A change to the pension auto-enrolment costs for Transferring Former Contractor Employees or  The compensation events set out at 60.1(22), 60.1(23) and 60.1(24)  Transferring Client Employees |  |

**8 Liabilities and Insurance**

These are additional *Client's* liabilities:

a) A difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Employer Employees and the equivalent rates of pay used by the *Contractor* and/or a Notified Contractor at to calculate the Prices under the Framework. Such difference, if any, shall be calculated and accounted for in accordance with Contract Schedule K, Part 2.

b) A Transferring Former Contractor Employee and/or any Transferring Employer Employee is made redundant by the *Contractor* as a result of an economic technical organisational reason entailing changes to the workforce and the *Contractor* has followed a fair dismissal procedure and complied with all contractual and legislative requirements. Any resultant redundancy costs shall be calculated and accounted for in accordance with paragraph 1.6 of Contract Schedule K, Part 2.

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

the amount required by law

**If the *Client* is to provide Plant and Materials**

 The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by

£[ ]

the *Client* for an amount of:

**If the *Client* is to provide any of the insurances stated in the**

**Insurance Table**

 The *Client* provides these insurances from the Insurance Table

1. Insurance against Cover / indemnity is The deductibles are

2. Insurance against Cover / indemnity is The deductibles are

3. Insurance against Cover / indemnity is The deductibles are

**If additional insurances are to be provided**

 The *Client* provides these additional insurances

1. Insurance against Cover / indemnity is The deductibles are

2. Insurance against Cover / indemnity is The deductibles are

|  |  |
| --- | --- |
| * The *Contractor* provides these insurances from the Insurance Table |  |
| 1. Insurance against | Professional Indemnity Insurance |
| Cover / indemnity is | £5,000,000 any one claim the number of claims being unlimited in any annual period of insurance |
| The deductibles are | Deductibles to be in line with market at the time of a liability issue being raised. |
| 1. Insurance against | |  | | --- | | Environmental claims, pollution  contamination | |
| Cover / indemnity is | £5,000,000 any one claim the number of claims being unlimited in any annual period of insurance |
| The deductibles are | Deductibles to be in line with market at the time of a liability issue being raised. |



**Resolving and avoiding disputes**

|  |  |  |
| --- | --- | --- |
|  | * The *tribunal*  is | The Courts of England and Wales |
|  | * The place where the arbitration is to be held is | TBC |
|  | * The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is: | The Client |
|  | If Option W1 or W2 is used |  | |
|  | * The *Senior Representatives* of the Client are |  | | |
|  | Name (1): | REDACTED | | |
|  | Address for Communications: | **Department for Work and Pensions**  **Caxton House**  **Tothill Street**  **London SW1H 9NA** | | |
|  | Address for electronic communications: | REDACTED | | | |
|  | Name (2): | REDACTED | |
|  | Address for Communications: | **Department for Work and Pensions**  **Caxton House**  **Tothill Street**  **London SW1H 9NA** | |
|  | Address for electronic communications: | REDACTED | |
|  | * The *Adjudicator* is: | TBC | |
|  | Address for Communications: |  | |
|  | Address for electronic communications: | TBC | |
|  | * The Adjudicator nominating body is: | The Royal Institution of Chartered Surveyors | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Option X5** | | | **[is not used]** | |
|  The *completion date* for each *section* of | | | the *works* is | |
| *section* description | | | *completion date* | |
| 1 | | |  | |
| 2 | | |  | |
| 3 | | |  | |
| 4 | | |  | |
| **Option X7** | | | **[is used]** | |
|  Delay damages for Completion of the whole of the *works* are | | |  | |
|  | | | £\_\_NIL\_\_\_\_\_ per week | |
| **Clause X8**  **Clause X10**  **Clause X13** | | | **[is used/not used] [is ~~used/~~not used]**  **[is not used]** | |
|  The amount of the performance bond is | | |  | |
| **Clause X14** | | | **[is not used]** | |
|  | | * The amount of the advanced payment is | Nil | |
|  | | * The *Contractor* repays the instalments in assessments starting not less than | Not applicable  weeks after the Contract Date | |
|  | | * The instalments are | Not applicable  (either an amount or a percentage of the payment otherwise due) | |
|  | | * An advanced payment bond | is not required | |

|  |  |
| --- | --- |
| **Clause X15** | **[is used]** |
|  The *period for retention* following Completion of the whole of the *works* or earlier termination is: | 12 months and release of Defects Liability Certificate |
|  The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim:  The period following Completion of the whole of the *works* or earlier termination for which the  *Contractor* maintains insurance for  claims made against it arising out of its failure to use the skill and care is: | Not less than £2,000,000 any one claim the number of claims being unlimited in any annual period of insurance but £2,000,000 any one claim and in the annual aggregate in respect of pollution and contamination and £1,000,000 any one claim and in the annual aggregate in respect of asbestos.  12 years |
| **Clause X16** | **[is used]** |
|  The *retention fee amount* is | 100% |
|  The *retention percentage* is | 0% |
| **Clause X18** | **[is used]** |

|  |  |  |
| --- | --- | --- |
|  | *Client's* property is limited to  The *Contractor's* liability for | Twenty five million pounds  £25,000,000 |
|  | Defects due to his design which are not listed on the Defects | Two million pounds  £2,000,000 |
|  | Certificate is limited to |  |
|  | The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded | Ten million pounds £10,000,000 |
|  | matters is limited to |  |
|  | The *end of liability date* is | Twelve (12) years after the |

end of the whole of the *works*

|  |  |
| --- | --- |
| **Option X20** | **is used** |
|  A report of performance against each Key Performance Indicator is  provided at intervals of One (1) month | |
|  The value of a single Service  Credit is |  |
|  The *Service Credit Cap* is | 1% of the total of the Prices. |
| **Option Y(UK)2** | |
|  The period for payment is **30** days after the date on which payment becomes due |  |
| **Option Z is used** | |
| The *additional conditions of contract* Identified above and in are: Contract Schedule B | |
| **Option Z17 CDM Regulations** | |
|  The Principal Designer is | **REDACTED** *- McBains Ltd* |
| **Option Z26 SMEs** | |
|  the SME Percentage is | 20% |
| **Option Z27 Apprenticeships** | |
|  the Apprenticeship Percentage | is 5% |
| **Option Z29 Collateral Warranties**  **The following parties are to be beneficiaries of collateral warranties:** | |
|

 Parties for whom collateral warranties are provided:

 The *Client* (save in respect of collateral warranties from the

*Contractor*)

 (where not the *Client*) each owner of the Site or any property on the site or any part of it

 (where not the *Client*) each landlord of the Site or any property on the Site or any part of it

 any person who purchases a freehold or long leasehold interest in the Site or any part of it

 any person who has entered into a lease or an agreement for the grant of a leasehold interest in the Site or any part of it

 Subcontractors from whom collateral warranties are required:

 Any Subcontractor with design responsibility

**Schedule B**

**Option Z: Additional Conditions of Contract**

The following provisions supplement, modify or replace the published provisions of the NEC4

Engineering and Construction Contract Option A: Priced contract with activity schedule (June

2017)

**Actions**

**Option Z1 Governance**

Insert new clause:

Additional clause 10.3

10.3 The parties comply with the provisions of Contract Schedule L in relation to the management and governance of this contract.

**Option Z2 Identified and defined terms**

Supplement to clause 11.1

11.1 At the end of clause 11.1 add:

Terms defined in the form of agreement to which this Schedule is annexed apply to this contract. Terms with capital initials not defined in this contract (excluding the Framework Agreement) have the meaning given to them in the Framework Agreement. Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

Amend clause

11.2 (5)

11.2 (5) Replace existing clause 11.2 (5) with the following: "A Corrupt Act means:

.1 to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body a financial or other advantage to:

 induce that person to perform improperly a relevant function or activity; or

 reward that person for improper performance of a relevant function or activity;

.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;

.3 committing any offence:

 under the Bribery Act 2010 (or any legislation repealed or revoked by such Act):

 under legislation or common law concerning fraudulent acts; or

 defrauding, attempting to defraud or conspiring to defraud the

*Client*; or

.4 any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK";

Amend clause

11.2 (6)

11.2(6) In the first bullet point, before "Scope", insert "contract and/or the";

In the second bullet point, delete "which the *Project Manager* has accepted" and replace with "or the other requirements of this contract and/or the Scope";

Amend clause

11.2 (12)

11.2(12) At the end of the clause, insert ", and include any parties identified in the Scope as related to, contracting with or as providing a service to or receiving a service from the *Client* or ";

Amend clause

11.2 (18)

Additional

11.2(18) In the first bullet point, after the words "describes the Site", insert: "including the physical and other conditions (including the sub-surface conditions) of or affecting the Site";

Insert new clauses:

clause 11.2(33) 11.2(33) Affiliate is in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control

with, that body corporate from time to time;

Additional

clause 11.2(34) 11.2(34) Authority Supply Chain is the *Contractor* and the principal suppliers to the

*Client* of the following services:

 landlord and lease management;

 furniture fittings & equipment;

 security; and

 project works

Additional

each an **Authority Supply Chain Member**;

clause 11.2(35) 11.2(35) Baseline Security Requirements means the relevant *Client*'s Policy as the

*Client* may notify to the *Contractor* from time to time;

Additional

clause 11.2(36) 11.2(36) CDM Regulations means the Construction (Design and Management)

Regulations 2015 and any modification or replacement of the same, together

with the guidance set out in the most recently published approved code of practice thereto;

Additional

clause 11.2(36A) 11.2(36A) Coronavirus Change is a change in: (i) the Health Guidance; and/or (ii) the Site Operating Procedures issued by or on behalf of the Construction Leadership Council; that occurs after the Contract Date, which directly results from Coronavirus and where such change:

* directly affects the Site; and
* imposes additional restrictions on working practices on the Site which are materially more onerous than those set out in any Health Guidance and/or guidance issued by or on behalf of the CLC applicable as at the Contract Date (to the extent that it is relevant for the Works and the Site); and

provided that such change:

* materially affects the ability of the *Contractor* to Provide the Works or materially delays the progress of the *works* ormaterially increases the costs to Provide the Works or
* stops the Contractor completing the works or
* stops the Contractor completing the works by the date shown on the Accepted Programme,

and has not been dealt with under another compensation event stated in this contract.

Additional

clause 11.2(37) 11.2(37) Client Confidential Information means all Personal Data and any information,

however it is conveyed, that relates to the business, affairs, developments,

trade secrets, know-how, personnel, and contractors of the *Client*, including all

IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

Additional

clause 11.2(38) 11.2(38) Client Data means

 the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

a. supplied to the *Contractor* by or on behalf of the *Client*; or

b. which the *Contractor* is required to generate, process, store or transmit pursuant to this Contract; or

 any Personal Data for which the *Client* is the Data Controller;

Additional

clause 11.2(39) 11.2(39) Client's Policies means the policies of the *Client* as published from time to time

at the *Client*'s tendering website https://dwp.bravosolution.co.uk current at the

date of this contract and as may be amended from time to time;

Additional

clause 11.2(40) 11.2(40) Client's System means the *Client's* computing environment (consisting of

hardware, software and/or telecommunications networks or equipment) used

by the *Client* or the *Contractor* in connection with this contract which is owned by the *Client* or licensed to it by a third party and which interfaces with the

Contractor System or which is necessary for the *Client* to receive the *works*;

Additional

clause 11.2(41) 11.2(41) Commercially Sensitive Information is the information agreed between the

parties to be commercially sensitive (if any);

Additional

clause 11.2(42) 11.2(42) Confidential Information means the Client Confidential Information and/or the

Contractor Confidential Information;

Additional

clause 11.2(43) 11.2 (43) Contracting Body means any Contracting Body as defined in Regulation 5(2) of

the Public Contracts (Works, Service and Supply) (Amendment) Regulations

2000 other than the *Client*;

Additional

clause 11.2(44) 11.2(44) Contractor Confidential Information means any information, however it is

conveyed, that relates to the business, affairs, developments, trade secrets,

know-how, personnel and contractors of the *Contractor*, including IPRs,

together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;

Additional

clause 11.2(45) 11.2(45) Contractor Personnel are persons employed or engaged by the *Contractor*

together with the *Contractor*’s servants, agents, suppliers, consultants and

Subcontractor's (and all persons employed by any Subcontractor together with the Subcontractor’s servants, consultants, agents, suppliers and sub- subcontractors);

Additional

clause 11.2(46) 11.2(46) Contractor System means the information and communications technology

system used by the *Contractor* in implementing and performing the *works*

including software, the equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client's System);

Additional

clause 11.2(47) 11.2(47) Control means that a person possesses, directly or indirectly, the power to

direct or cause the direction of the management and policies of the other

person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

Additional

clause 11.2(47A) 11.2(47A) Coronavirus is the outbreak and/or spread of the virus strain known or previously known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and any mutations thereof;

Additional

clause 11.2(48) 11.2(48) Critical Performance Failure means more than four (4) Serious or Severe KPI

Failures in a three month period;

Additional

clause 11.2(49) 11.2(49) Crown Body means any department, office or agency of the Crown;

|  |  |  |
| --- | --- | --- |
| Additional  clause 11.2(50) | 11.2(50) | Defects Protocol is the protocol set out in the Scope setting out timeframes within which the *Contractor* is to respond to specific categories of Defect; |
| Additional  clause 11.2(51) | 11.2(51) | Data Controller has the meaning given in the Data Protection Legislation; |
| Additional clause 11.2(52) | 11.2(52) | Data Processor has the meaning given in the Data Protection Legislation; |
| Additional clause 11.2(53) | 11.2(53) | Data Protection Legislation means the Data Protection Act 1998 and any |
|  |  | replacement legislation coming into effect from time to time including (without |
|  |  | limitation) the GDPR together with any codes of practice or other guidance |
|  |  | issued by any competent Regulatory Body; |
| Additional clause 11.2(54) | 11.2(54) | Data Subject has the meaning given in the Data Protection Legislation; |
| Additional clause 11.2(55) | 11.2(55) | DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a |
|  |  | promoter of tax schemes to tell HM Revenue & Customs of any specified |
|  |  | notable arrangements or proposals and to provide prescribed information on |
|  |  | those arrangements or proposals within set time limits as contained in Part 7 of |
|  |  | the Finance Act 2004 and in secondary legislation made under vires contained |
|  |  | in Part 7 of the Finance Act 2004 and as extended to National Insurance |
|  |  | Contributions by the National Insurance Contributions (Application of Part 7 of |
|  |  | the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A |
|  |  | Social Security Administration Act 1992; |
| Additional clause 11.2(56) | 11.2(56) | DWP Enterprise Security Risk Management Strategy means the relevant  *Client*'s Policy; |
| Additional  clause 11.2(57) | 11.2(57) | DWP Information Security Policy means the relevant *Client*'s Policy; |
| Additional  clause 11.2(58) | 11.2(58) | DWP Offshoring Policy means the relevant *Client*'s Policy; |
| Additional  clause 11.2(59) | 11.2(59) | Environmental Information Regulations is the Environmental Information  Regulations 2004 and any guidance and/or codes of practice issued by the |
|  |  | Information Commissioner in relation to such regulations; |
| Additional  clause 11.2(60) | 11.2(60) | FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes |
|  |  | of practice issued by the Information Commissioner in relation to such |
|  |  | legislation; |
| Additional  clause 11.2(61) | 11.2(61) | Former Contractor is the contractor supplying works to the *Client* before the  Relevant Transfer Date that are the same as or substantially similar to the |
|  |  | *works* (or any part of the *works*) and shall include any subcontractor of such |
|  |  | supplier (or any sub-contractor of any such subcontractor); |
| Additional  clause 11.2(62) | 11.2(62) | GDPR means the General Data Protection Regulation (EU) 2016/679 of the |
|  |  | European Parliament and of the Council on the protection of natural persons |
|  |  | with regard to the processing of personal data and on the free movement of |
|  |  | such data; |

Additional

clause 11.2(63) 11.2(63) General Anti-Abuse Rule means:

 the legislation in Part 5 of the Finance Act 2013; and

Additional

 any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;

clause 11.2(64) 11.2(64) Good Industry Practice means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a

leading company within the relevant industry or business sector;

Additional

clause 11.2(65) 11.2(65) Government Digital Service Open Standards means the relevant *Client*'s

Policy;

Additional

|  |  |  |
| --- | --- | --- |
| clause 11.2(66) | 11.2(66) | Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02  Halifax and others; |
| Additional  Clause 11.2(66A) | 11.2(66A) | Health Guidance is guidance or direction published by any ministerial department or other executive agency of the government of the United Kingdom of Great Britain and Northern Ireland and/or any local authority and/or any local government body which has any jurisdiction with regard to the *works* to the extent that such guidance or direction affects and/or relates to the carrying out and performance of the *works* and arises as a consequence or result of Coronavirus; |
| Additional clause 11.2(67) | 11.2(67) | HMG Cyber Essentials Scheme means the relevant *Client*'s Policy; |
| Additional  clause 11.2(68) | 11.2(68) | HMG Security Policy Framework means the relevant *Client*'s Policy; |
| Additional  clause 11.2(69) | 11.2(69) | ICT Environment has the meaning given it in Contract Schedule H; |
| Additional  clause 11.2(70) | 11.2(70) | Improvement Notice has the meaning given in clause 67.2; |
| Additional  clause 11.2(71) | 11.2(71) | Improvement Plan the plan to address the impact of and prevent the reoccurrence of a Notifiable Event; |
| Additional  clause 11.2(72) | 11.2(72) | Improvement Plan Failure has the meaning given in clause 67.9; |
| Additional  clause 11.2(73) | 11.2(73) | Information has the meaning given under section 84 of FOIA; |
| Additional  clause 11.2(74) | 11.2(74) | Integrator means the Supplier named in the Integrator Agreement; |
| Additional  clause 11.2(75) | 11.2(75) | Integrator Agreement means the agreement entered into by the *Client* and the  Integrator dated 13 June 2017; |
| Additional  clause 11.2(76) | 11.2(76) | Intellectual Property Rights or "IPRs" are: |

a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know- How, trade secrets and other rights in Confidential Information;

b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

Additional

c) all other rights having equivalent or similar effect in any country or jurisdiction;

clause 11.2(77) 11.2(77) Intervention Period has the meaning given to it at clause 68.5;

Additional

clause 11.2(78) 11.2(78) Intervention Trigger Event is more than three (3) Serious KPI Failures or

Severe KPI Failures in a three month period;

Additional

clause 11.2(79) 11.2(79) Key Performance Indicator is a Performance Indicator stated to be "Key" in

column 7 of Contract Schedule J;

Additional

clause 11.2(80) 11.2(80) KPI Failure is a failure to meet the Target Performance Level stated in

Contract Schedule J in respect of a Key Performance Indicator;

Additional

clause 11.2(81) 11.2(81) Law means the law of the Contract and any revision, re-enactment of such law

from time to time;

|  |  |  |
| --- | --- | --- |
| Additional  clause 11.2(82) | 11.2(82) | Licence is any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver or licence which must be obtained from any |
|  |  | person (including both private persons and public sector entities) in order to  lawfully Provide the Works and for any goods to be transported, imported or exported; |
| Additional  clause 11.2(83) | 11.2(83) | Malicious Software has the meaning given it in Contract Schedule H; |
| Additional  clause 11.2(84) | 11.2(84) | Material KPI Failure |

 a Serious KPI Failure; or

 a Severe KPI Failure;

Additional

clause 11.2(85) 11.2(85) Material SPI Failure

 a Serious SPI Failure; or

 a Severe SPI Failure;

Additional

clause 11.2(86) 11.2(86) Notifiable Event means:

 a default by the *Contractor* which is material and is capable of remedy;

or

 any KPI Failure which relates to the same Key Performance Indicator and which occurs more than three (3) times in a three month period;

 more than two (2) KPI Failures in any month; and/or

 more than one (1) Material SPI Failure in successive months;

Additional

clause 11.2(87) 11.2(87) Occasion of Tax Non-Compliance is:

 where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 June 2017 to be incorrect as a result of:

 A Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

 The failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or

 where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 June 2017, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion;

Additional clause 11.2(88)

11.2(88) Performance Failure means a KPI Failure or a SPI Failure;

Additional clause 11.2(89)

Additional clause 11.2(90)

11.2(89) Performance Indicators means the Key Performance Indicators and the

Subsidiary Performance Indicators;

11.2(90) Personal Data (as defined in the Data Protection Legislation) is data which is:

 processed by the Contractor or any Subcontractor on behalf of the

Client; or

 for which one or both of the parties is Data Controlle, pursuant to or in connection with this contract;

Additional clause 11.2(91)

11.2(91) Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, damage, unauthorised disclosure of, or access to, Personal Data;

Additional clause 11.2(92)

11.2(92) Process has the meaning given to it under the Data Protection Legislation and

"Processed" and "Processing" shall be construed accordingly;

Additional clause 11.2(93)

11.2(93) Regulatory Bodies are those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the *Client* and "Regulatory Body" shall be construed accordingly;

Additional clause 11.2(94)

11.2(94) Proscribed Conduct is:

 agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by this contract to carry out the *works* provided to the *Client* under the Integrator Agreement, either as Integrator or as any part of the Integrator's supply chain;

 receiving or being entitled to receive any benefit. financial, commercial or otherwise which is derived expressly or impliedly from the Integrator save as expressly permitted by this contract;

 being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this contract), joint venture or otherwise) in the Integrator or its Affiliates or its Subcontractors;

 allowing the Integrator, its Affiliates or Subcontractors to exercise any control or influence over the *Contractor* or a Subcontractor save as required in the performance of the Integrator's duties under the Integrator Agreement;

 exercising any control or influence over or permitting any Subcontractor to exercise and control or influence over the Integrator or its supply chain; or

 appointing the Integrator or any Affiliate of the Integrator as a

Subcontractor;

Additional clause 11.2(95)

11.2(95) Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

Additional clause 11.2(96)

11.2(96) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established;

Additional clause 11.2(97)

11.2(97) Relevant Transfer means a transfer of employment to which the Employment

Regulations (as defined in Contract Schedule K) applies;

Additional clause 11.2(98)

11.2(98) Relevant Transfer Date means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Additional clause 11.2(99)

11.2(99) Remedial Adviser means the person appointed pursuant to clause 68;

Additional clause

11.2(100)

Additional clause

11.2(101)

11.2(100) Remedial Adviser Failure has the meaning given to it in clause 68.9;

11.2(101) Request for Information is a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

Additional clause

11.2(102)

11.2(102) Required Action has the meaning given to it at clause 69.1;

Additional clause

11.2(103)

11.2(103) Serious KPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Contract Schedule J;

Additional clause

11.2(104)

11.2(104) Serious SPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Contract Schedule J;

Additional clause

11.2(105)

11.2(105) Service Credit means the amounts that may be payable by the *Contractor* as a consequence of the occurrence of one or more KPI Failures, and calculated by reference to the value of a single Service Credit stated in the Contract Data multiplied by the number of Service Failure Points accrued for such KPI Failure stated in Contract Schedule J;

Additional clause

11.2(106)11.2(106) Service Credit Cap is the *service credit cap* stated in the Contract Data part one;

Additional clause

11.2(107)

11.2(107) Service Failure Points means in relation to a:

 KPI Failure; or

 SPI Failure,

the number of points that are set out against the relevant Key Performance Indicator and/or Subsidiary Performance Indicator (as the case may be) in Contract Schedule J;

Additional clause

11.2(108)

11.2(108) Severe KPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Contract Schedule J;

Additional clause

11.2(109)

11.2(109) Severe SPI Failure means a SPI Failure which is indicated as a Serious Performance Failure against the relevant Performance Level in Contract Schedule J;

Additiional clause 11.2(109A)

11.2(109A) Site Lockdown is the implementation after the Contract Date by the UK Government and/or any local authority of nationwide and/or local restrictions that directly result from Coronavirus and where such restrictions require the *Contractor* to close the Site provided that such lockdown measures:

* materially affect the ability of the *Contractor* to Provide the Works or materially delay the progress of the *works or* increase the costs to Provide the Works or
* stop the *Contractor* completing the works or
* stop the *Contractor* completing the works by the date shown on the Accepted Programme,

and have not been dealt with under another compensation event stated in this contract;

Additional clause

11.2(109B)

11.2(109B) Site Operating Procedures are the site operating procedures as published by the Construction Leadership Council from time to time save for the matters listed under the heading “When to Travel to Work”, being as at the Contract Date version 6 of the Construction Leadership Council’s Site Operating Procedures;

Additional clause

11.2(110)

11.2(110) Software has the meaning given to it in Contract Schedule H;

|  |  |  |
| --- | --- | --- |
| Additional clause  11.2(111) | 11.2(111) | SPI Failure means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator; |
| Additional | 11.2(112) | Specific Change in Law means a change in Law relating specifically to the |
| clause |  | business of the *Client* and which would not affect a supply of works or services |
| 11.2(112) |  | to another customer of the *Contractor* that is the same or similar to the *works*; |
| Additional clause | 11.2(113) | Step-In Notice has the meaning given to in clause 69.1; |
| 11.2(113) |  |  |
| Additional clause | 11.2(114) | Step-In Trigger Event means: |
| 11.2(114) |  | a) any event giving rise to a right to terminate this Contract; |

b) a default by the *Contractor* which is materially preventing or delaying the performance of the *works* or a material part of them;

c) circumstances which the *Client* consider to amount to an emergency notwithstanding there is no breach of the contract by the *Contractor*;

d) the *Client* being advised by a Regulatory Body that the exercise of its step-in rights is necessary;

e) the need for the *Client* to exercise its step-in rights to discharge a statutory duty; and/or

f) fire, leaks, act of god, storm damage, floods or similar events of force majeure;

Additional clause

11.2(115)

11.2(115) Step-Out Date has the meaning given to it in clause 69.5;

Additional clause

11.2(116)

11.2(116) Step-Out Notice has the meaning given to it in clause 69.5;

Additional clause

11.2(117)

11.2(117) Step-Out Plan has the meaning given to it in clause 69.6;

Additional clause

11.2(118)

11.2(118) Subsidiary Performance Indicator means a Performance Indicator which is identified as a Subsidiary Performance Indicator in Contract Schedule J;

Additional clause

11.2(119)

11.2(119) Target Performance Level means the minimum level of performance for a Performance Indicator which is required as set out against the relevant Performance Indicator in the column headed 'Target Performance' in the tables in Contract Schedule J;

Additional clause

11.2(120)

11.2(120) Third Party Agreements are the third party agreements entered into by the *Client*, copies or relevant extracts of which are annexed at Contract Schedule O;

Additional clause

11.2(121)

11.2(121) Third Party Software has the meaning given it in Contract Schedule H;

Additional clause

11.2(122)

11.2(122) Transferring Client Employees are those employees of the *Client* to whom the Employment Regulations (as defined in Contract Schedule K) will apply on the Relevant Transfer Date;

clause

|  |  |  |
| --- | --- | --- |
| Additional clause  11.2(123) | 11.2(123) | Transferring Former Contractor Employees are, in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations (as defined in Schedule Contract K) will apply on the Relevant Transfer Date; |
| Additional clause | 11.2(124) | TUPE Surcharge has the meaning given in Contract Schedule K; |
| 11.2(124) |  |  |
| Additional | 11.2(125) | Working Day is any day other than a Saturday or Sunday or public holiday in |
| 11.2(125) |  | England and Wales; |
| Additional clause | 11.2(126) | Works Exclusion Notice has the meaning given to it in clause 94.1; |
| 11.2(126) |  |  |
| Additional clause | 11.2(127) | Works Exclusion Cause has the meaning given to it in clause 94.1. |
| 11.2(127) |  |  |
| **Option Z3** |  | **Communications** |
|  |  | Insert new clauses: |
| Additional | 13.9 | The *Contractor* does not: |
| clause 13.9 |  |  |

 make any press announcements or publicise this Contract or its contents in any way; or

 use the *Client's* name or brand in any promotion or marketing or announcement of orders,

|  |  |  |
| --- | --- | --- |
| Additional | 13.10 | without the prior written consent of the *Client*.  Each party acknowledges to the other that nothing in this contract either |
| clause 13.10 |  | expressly or by implication constitutes an endorsement of any products or  works of the other party (including the *works*) and each party agrees not to  conduct itself in such a way as to imply or express any such approval or endorsement. |
| Additional clause 13.11 | 13.11 | Each party takes reasonable steps to ensure that its employees, agents, subcontractor's, suppliers, professional advisers and consultants comply with clauses 13.9 and 13.10. |

**Option Z4 Integrator**

Insert new clauses:

Additional clause 14.6

14.6 The *Contractor* provides to the Integrator copies of all documents and/or information required by this Contract to be provided:

 to the *Client*, instead of the *Client*; and

 to the *Service Manager,* as well as the *Service Manager,*

unless in either case instructed otherwise by the *Client.*

|  |  |
| --- | --- |
| **Option Z5** | **Early warning** |
|  | Insert new clause: |
| Additional clause 15.5 | 15.5 The *Contractor* complies, and procures compliance by its Subcontractors and other suppliers, with the risk management process described in the Scope as updated from time to time by the *Client* or (with the *Client's* approval) the *Contractor*. Reasons for updating the risk management process include reflecting the requirements of insurers. Any update of the risk management process by the *Client* shall be deemed to be an instruction from the *Project Manager* changing the Scope. Any update to the risk management process by the *Contractor* shall not be treated as a compensation event under this Contract. |
| **Option Z6** | **Ambiguities and Inconsistencies** |
| Supplement to clause 17.1 | 17.1 At the beginning of the second sentence, replace "The" with: "Subject to clause  2.1 of the Form of Agreement, the". |
|  | Insert new clauses: |
| Additional clause 17.3 | 17.3 Where an ambiguity or inconsistency in the *Contractor's* design accepted by the *Project Manager* or between the *Contractor's* design and the Scope, the *Contractor* provides the *Project Manager* with proposals to remove the same which are acceptable to the *Project Manager* acting reasonably. Such acceptance shall not be treated as an instruction changing the Scope. |
|  | Where this clause 17.3 applies, in the event of any discrepancies being discovered in the documents, the *Contractor* shall at once notify the *Project Manager* in writing. If amendments to the design or methods of work are required as a result of discrepancies in the documents, such amendments shall not be regarded as a compensation event. The *Contractor* shall pay all fees and costs in connection therewith. |
|  | The *Contractor* accepts entire responsibility for the design contained within the Scope for the *Contractor’s* design and for any mistake, inaccuracy, discrepancy or omission contained in the same. Nothing contained in the Scope for the *Contractor’s* design shall affect in any way the obligations of the *Contractor* under the Contract. |
| Additional clause 17.4 | 17.4 If any term, condition or provision contained in this Contract is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will not affect the validity, legality or enforceability of the remaining parts of this Contract. |
| **Option Z7** | **Corrupt Acts** |

Insert new clauses:

Additional clause 18.4

18.4 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

 committed a Corrupt Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt Act; and/or

 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or Contracts on the grounds of a Corrupt Act.

Additional clause 18.5

18.5 During the carrying out of the *works* the *Contractor* does not do or suffer anything to be done which would cause the *Client* or any of the *Client’s* employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

Additional clause 18.6

18.6 During the carrying out of the *works* the *Contractor*:

 establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Corrupt Act;

 keeps appropriate records of its compliance with this contract and make such records available to the *Client* on request;

 provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Contractor*’s employees or any person acting on the *Contractor*'s behalf from committing a Corrupt Act.

Additional clause 18.7

18.7 The *Contractor* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 18.1 or 18.5, or has reason to believe that it has or any of the its employees or Subcontractors have:

 been subject to an investigation or prosecution which relates to an alleged Corrupt Act;

 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Corrupt Act; and/or

 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contractor otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Corrupt Act.

Additional clause 18.8

18.8 If the *Contractor* makes a notification to the *Client* pursuant to clause 18.7, the *Contractor* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this Contract.

Additional clause 18.9

18.9 If the *Contractor* breaches clause 18.1 or 18.5, the *Client* may by notice require the *Contractor* to remove from Providing the Works any *Contractor* employee whose acts or omissions have caused the *Contractor*’s breach.

Additional clause 18.10

18.10 The *Contractor* shall, as soon as reasonably practicable after becoming aware of the same, notify the *Client* in writing if:

 any investigations are instituted into the affairs of the *Contractor* or any Subcontractors, other approved sub-contractors or suppliers of any of its or their directors or key managers, under the Companies, Financial Services or Banking Acts;

 any police or Serious Fraud Office enquiries into possible fraud, or any involvement in Department of Trade and Industry investigations, and enquiries into the affairs of others which might result in public criticism of, or action against the *Contractor* or any Subcontractors or any other subcontractors or suppliers.

Additional clause 18.11

18.11 The *Contractor* shall supply the *Client* with a copy of any notice, order or proposal for a notice or order affecting the Site served on the *Contractor* by any competent authority (or received by the *Contractor* from any of its Subcontractors or suppliers or other person) as soon as reasonably practicable after it is received by the *Contractor* and shall without delay take all steps necessary to comply with any such notice or order.

**Option Z8 Providing the Works**

Replace clause

20.1

20.1 Delete and replace with:

"The *Contractor* provides the *works* in a proper and workmanlike manner and in accordance with this Contract, the Scope, the Licences, the applicable Health Guidance and Site Operating Procedures insofar as the matters referred to therein are within the immediate control of the *Contractor* and are a direct responsibility of the *Contractor* and all applicable Law."

Insert new clauses:

Additional clause 20.2

20.2 The *Contractor* undertakes to the *Client* that:

.1 in the carrying out of the works the *Contractor* shall procure that only materials and goods of sound and satisfactory quality and which have been manufactured or prepared in compliance with the specifications and quality plans;

.2 the *Contractor* shall (and shall procure that it Subcontractors and suppliers shall) at all times comply with the lawful requirements of the Relevant Authorities and comply with any Statutory Requirement either in carrying out the *works* or where design, development, workmanship, methods of construction, materials, plant, commissioning, testing or maintenance are to be reviewed by the *Project Manager* or any Relevant Authorities;

.3 it shall use its reasonable endeavours to ensure that all sub-contracts, equipment rental or lease agreements and all other (non-employment) contracts which are necessary to the performance of the *works*, are assignable to the *Client* or its nominee (without any transfer or charge);

.4 the *Client* shall acquire such title as the encumbrances created by or against the *Contractor* and the *Client* shall have the right of quiet possession thereof.

Additional clause 20.3

20.3 The *Contractor* performs its obligations under this Contract (including those in relation to the *works*) in accordance with:

 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

 the *Client's* Policies;

 any other requirements and instructions which the *Client* reasonably imposes in connection with any equality obligations imposed on the *Client* at any time under applicable equality Law; and

 the provisions of Contract Schedule M.

Additional clause 20.4

20.4 The Official Secrets Act 1989 and, where appropriate, the provisions of section

11 of the Atomic Energy Act 1946 apply to this contract from the starting date until Completion of the *works* or until a termination certificate has been issued.

The *Contractor* notifies his employees and his Subcontractors of their duties

under these Acts.

Additional clause 20.5

20.5 The *Contractor*:

 carries out and completes the works in conformity with the *Client*'s obligations under the Third Party Agreements, and without infringing any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site and which is notified by the *Client* to the *Contractor*.

 undertakes to the *Client* that he has performed and will perform his obligations under this contracting such a manner and at such times that no act, omission or default by the *Contractor* or any of the Subcontractors or their respective employees or agents causes or contributes to any breach by the *Client* of any of his obligations under

the Third Party Agreements and, to the extent that the *Contractor* causes or contributes to any breach by the *Client* of any of his obligations under the Third Party Agreements, the *Contractor* indemnifies the *Client*

against any liability, claims, damages, costs, and losses that the *Client* may incur as a result of or arising out of a breach by the *Contractor* of his obligations under this clause 20.7.

**Option Z9 Tax Compliance**

Additional

Insert new clauses:

clause 20.6 20.6 The *Contractor* represents and warrants that as at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any

litigation that it is involved in that is in connection with any Occasions of Tax

Non-Compliance.

Additional clause 20.7

20.7 If, at any point during the Provision of the Works, an Occasion of Tax Non- Compliance occurs, the *Contractor* shall:

 notify the *Client* in writing of such fact within five (5) days of its occurrence;

and

 promptly provide to the *Client*:

 details of the steps which the *Contractor* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

 such other information in relation to the Occasion of Tax Non- Compliance as the *Client* may reasonably require.

|  |  |  |
| --- | --- | --- |
| **Option Z10** | | **Change of Control and conflicts** |
| Insert a new clause: |
| Additional clause 20.8 | 20.8 | The *Contractor* promptly notifies the Project Manager in writing on each occasion of the occurrence of any change of control as defined by section 416 |
|  |  | of the Income and Corporation taxes Act 1988 (any such case being a **Change** |
|  |  | **of Control**). The *Client* is permitted to exercise its rights pursuant to this |
|  |  | clause for only six (6) months after service of each and any notice by the |
|  |  | *Contractor* pursuant to this clause and is not permitted to exercise such rights |
|  |  | where the *Client* has agreed in advance in writing to the particular Change of |
|  |  | Control provided such Change of Control takes place as agreed. |
| Additional | 20.9 | The *Contractor* discloses to the *Project Manager* any actual or potential conflict |
| clause 20.9 |  | of interest arising from the *Contractor*’s provision of the *works* as soon as |
|  |  | practicable after becoming aware of such actual or potential conflict. |
| Additional | 20.10 | The *Contractor* immediately notifies the *Project Manager* of any circumstances |
| clause 20.10 |  | giving rise to or potentially giving rise to conflicts of interest relating to the |
|  |  | *Contractor* and/or the *Client* (including without limitation its reputation and |
|  |  | standing) of which it is aware or anticipates may justify the *Client* taking action |
|  |  | to protect its interests. |
| Additional | 20.11 | The *Contractor* carries out (and procures that the Contractor Personnel carry |
| clause 20.11 |  | out) the *works* in the *Client*'s best interests. |
| Additional | 20.12 | Without prejudice to the *Contractor's* obligations under clauses 20.8 to 20.11 |
| clause 20.12 |  | (inclusive), the *Contractor* does not and procures that Subcontractors and any |
|  |  | *Contractor* Personnel do not engage in Proscribed Conduct and notifies the |
|  |  | *Client* immediately on any breach of this requirement. |

Additional clause 20.13

20.13 Without Prejudice to the *Client's* rights under clauses 91 and 92 where the *Contractor* is in breach of any of clauses 20.8 – 20.12 (inclusive) the *Contractor* within five (5) day of any breach becoming apparent to it, provides proposals to the *Client* for remedying and/or mitigating such breach. Upon any breach of clauses 20.8 – 20.12 (inclusive) becoming apparent to the *Client* (whether or

not notified by the *Contractor*), the *Client* may at the *Contractor's* cost:

 remove any or all of the *works* from the scope of this Contract and

carry out such works itself and/or employ a third party to carry out such works;

 require the *Contractor* to put such measures in place (including but not limited to information barriers) as required by the *Client* in its absolute discretion to rectify and/or mitigate the effect of any breach of clauses

20.8 – 20.12 (inclusive); and/or

 instruct or commence increased monitoring.

Additional clause 20.14

20.14 Save in the event of removal of the relevant element of the *works* or termination of all or part of the *works*, where as a result of the matters leading or contributing to a breach of clauses 20.8 – 20.12 (inclusive) the *Contractor* or a Contractor Personnel realises a profit or other financial benefit:

 the *Contractor* accounts to the *Client* in respect of each assessment period; and

 the *Client* is entitled to set off an amount equivalent to that financial benefit (as accounted for by the *Contractor* or otherwise as the *Client* may determine) from any amount due to the *Contractor* under this contract or under any other agreement between the *Contractor* and the *Client*.

|  |  |
| --- | --- |
| **Option Z11** | **The *Contractor*'s Design** |
| Supplement to clause 21 | 21.1 Insert a new second sentence as follows: "In the design and construction of the  *works*, the *Contractor* takes all proper account of: |
|  |  the considerations of health and safety contained in the CDM Regulations  (and his design will include adequate health and safety information); and |
|  |  the geological, geo-technical and sub-surface conditions affecting the Site." |
|  | 21.2 Delete "the Scope" in the first line and replace with "any requirement of this Contract". Delete the second sentence and replace with "Reasons for not accepting the *Contractor*'s design include: |
|  |  that it does not comply with either the Scope or the applicable Law; and |
|  |  that it has an impact on the Prices which is not necessary in order to comply with this Contract. |
| **Option Z12** | **People** |
| Additional | Insert new clauses 24.3 to 24.6: |
| clause 24.3 –  24.6 |  |

24.3 The *Contractor* ensures that the *key persons* named in the Contract Data fulfil the relevant jobs specified in the Contract Data at all times during the *Provision of the Works*. The *Contractor* appoints the key people to fill those jobs at the *starting date.*

24.4 The *Client* identifies any further jobs and, following agreement to the same by the *Contractor* the list of key people in the Contract Data includes the relevant person selected to fill those jobs.

24.5 The *Contractor* does not remove or replace any key person unless:

 the *Client* requests that the *Contractor* does so;

 the key person concerned resigns, retires or dies or is on maternity or long-term sick leave;

 the key person’s employment or Contractual arrangement with the *Contractor* or a Subcontractor is terminated for material breach of contract by the employee; or

 the *Contractor* obtains the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).

24.6 The *Contractor*:

 notify the *Client* promptly of the absence of any key person(s) (other than for short-term sickness or holidays of two (2) weeks or less, in which case the *Contractor* shall ensure appropriate temporary cover for that *key person*);

 ensures that any *key person's* job is not vacant for any longer than ten (10) Working Days;

 gives as much notice as is reasonably practicable of its intention to remove or replace any key person and, except in the cases of death, unexpected ill health or a material breach of the key person's employment contract, this will mean at least sixty (60) Working Days’ notice;

 ensures that all arrangements for planned change of a key person or key people provide adequate periods during which incoming and outgoing key people work together to

transfer responsibilities and ensures that such change does not have an adverse impact on the performance of the Services; and

 ensures that any replacement for a *key person*:

 has a level of qualifications and experience appropriate to the relevant *key person*; and

 is fully competent to carry out the tasks assigned to the key person whom he or she has replaced.

**Option Z13 Contractor Personnel**

Additional clause 24.4

24.7 If the *Client* reasonably believes that any of the Contractor Personnel are unsuitable to undertake work in respect of this Contract, it may:

 refuse admission to the relevant person(s) to the Site; and/or

 direct the *Contractor* to end the involvement in the Provision of the

Works of the relevant person(s).

Additional clause 24.8

24.8 Where:

 the commencement of the provision of the *works* or any part thereof results in one or more Relevant Transfers, Contract Schedule K, Part 1 shall apply as follows:

a) where the Relevant Transfer involves the transfer of Transferring Client Employees, Section A of Contract Schedule K, Part 1 shall apply;

b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Section B of the Contract Schedule K, Part 1 shall apply;

c) where the Relevant Transfer involves the transfer of Transferring Client Employees and Transferring Former Contractor Employees, Sections A and B of Contract Schedule K, Part 1 shall apply; and

d) Section C of Contract Schedule K, Part 1 shall not apply;

 commencement of the provision of the *works* or a part of thereof does not result in a Relevant Transfer, Section C of Contract Schedule K, Part 1 shall apply and Sections A and B of Contract Schedule K, Part 1 shall not apply; and

 expiry or termination of the *works* or any part of thereof occurs

Section D of Contract Schedule K, Part 1 shall apply.

**Option Z14 Working with the *Client* and Others**

Insert new clauses:

Additional clause 25.4

25.4 .1 Compliance by the *Contractor* with clause 25.4.2 is without additional cost to the *Client*. The *Contractor* shall not be entitled to a Compensation Event or otherwise to additional time or cost as a consequence of failure by it to observe this clause nor by the failure of Others to observe similar provisions in their contracts with the *Client*.

.2 The *Contractor*:

a) provides access and co-operation to Others as required by the

*Project Manager*;

b) co-ordinates and integrates the execution of the *works* with works of Others including those engaged by the *Client* under any contract which the *Client* may enter into in relation to the Site;

c) complies with such instructions as issued by the *Project Manager* to co-ordinate the *Contractor*'s execution of the *works* with the work of Others;

d) plans and coordinates the *works* in accordance with the requirements of the *Project Manager*, taking into account the presence of Others and acknowledging in particular the need to communicate and cooperate with Others so that the *works* and the works provided by Others are delivered in a coordinated and efficient manner without delay or disruption to the *works* and avoiding unnecessary disruption or inconvenience to the users of the Site through lack

observance of the requirements of this clause;

e) affords reasonable facilities for Others who are properly authorised or who are statutory bodies employed in the execution on or near the Site of any *works* not in the contract or which is required under any contract which the *Client* may enter into in relation to the Site;

f) provides or assists in provision of all information, data, know- how and calculations necessary for the *Client* and/or any person appointed by the *Client* to carry out any works or services in a timely, economic and efficient manner without delay and disruption and keeps the *Client* informed at all times of all relevant matters pertaining to the Site;

g) is fully responsible for identifying and obtaining all information, data, know-how, calculations, drawings, documents, reports, investigations and surveys used for or in connection with the Site the provision of which is undertaken by Others in order that the *works* are executed in a timely, economic and efficient manner without delay and disruption to the business of the *Client*;

h) jointly and severally with Others engaged by the *Client* co- operates and manages the interface of the *works* with the works of such Others and provides all management services, labour, materials, goods, plants and works necessary for the *Contractor*'s cooperation and management; and

i) updates the latest programme as appropriate to reflect any matter set out in this clause.

Additional clause 25.5

Additional

25.5 It is agreed and declared that the *Contractor* could reasonably foresee the activities of Others engaged by the *Client* and statutory undertakers referred to in the Scope on or near the Site.

clause 25.6 25.6 The *Contractor* provides attendance for Others as may be directed by the

*Client*. For this purpose attendance shall be deemed to cover all expenses

incurred by the *Contractor* in:

 planning, programming and co-ordinating the *works* with that of Others;

and

 accepting delivery, unloading and storing material for Others as required.

Additional

clause 25.7 25.7 The *Contractor* shall ensure that the *Client's* business is not interrupted,

hindered or prevented due to the act, neglect or omission of the *Contractor* or

any person for whom it is responsible or as a result of any industrial action or interruption in utilities supplies, provided that this clause 25.7 shall not apply in relation to interruption in utilities supplies caused directly by the *Client*.

**Option Z15 Subcontracting**

Amendment to clause 26

26.2 Delete clauses 26.2 and 26.3 and replace with the following:

26.2 The *Contractor* exercises due skill and care in the selection and appointment of any Subcontractor to ensure that the *Contractor* is able to:

 manage any Subcontractors in accordance with Good Industry

Practice;

 comply with its obligations under the contract in the delivery of the

*works*; and

 assign, novate or otherwise transfer to the *Client* any of its rights and/or obligations under each sub-contract that relates to this Contract.

26.3 Prior to sub-contracting any of its obligations under this Contract, the

*Contractor* notifies the *Client* in writing of:

 the proposed Subcontractor's name, registered office and company registration number;

 the scope of any *works* to be provided by the proposed Subcontractor;

and

 where the proposed Subcontractor is an Affiliate of the *Contractor*, evidence that demonstrates to the reasonable satisfaction of the *Client* that the proposed Sub-contract has been agreed on an arms-length basis,

and provides the *Client* with a copy of the proposed sub-contract and any other information reasonably required by the *Client*.

Insert new clauses:

Additional clause 26.4

26.4 The *Client* may within ten (10) days of receipt of the *Contractor*'s notice issued pursuant to clause 26.3 (or if later receipt of any further information requested pursuant to clause 26.3) object to the appointment of the relevant proposed Subcontractor if it considers that:

 the appointment of a proposed Subcontractor may prejudice the provision of the *works* and/or may be contrary to the interests of the *Client*;

 the proposed Subcontractor is unreliable and/or has not provided reasonable services to its other customers;

 the proposed Subcontractor employs unfit persons; and/or

 the proposed Subcontractor should be excluded in accordance with clause 26.5.

Additional clause 26.5

26.5 Where the *Client* considers whether there are grounds for the exclusion of a Subcontractor under Regulation 57 of the Public Contracts Regulations 2015, then:

 if the *Client* finds there are compulsory grounds for exclusion, the

*Contractor* replaces or does not appoint the proposed Subcontractor;

 if the *Client* finds there are non-compulsory grounds for exclusion, the *Client* may require the *Contractor* to replace or not to appoint the Subcontractor and the *Contractor* complies with such a requirement.

Additional clause 26.6

26.6 The *Contractor* shall not and shall procure that any Subcontractor, other approved sub-contractors and suppliers shall not place or cause to be placed any orders with suppliers, or otherwise incur liabilities in the name of the *Client* or any representative of the *Client*.

**Option Z16 Other responsibilities**

Supplement to clause 27

27.1 Re-number clause 27.2 as clause 27.6 and insert the following after clause

27.7:

.2 The *Client* obtains the Licences required to Provide the Works which the Scope states are to be provided by the *Client*. The *Contractor* obtains all other Licences required to Provide the Works.

.3 The *Contractor* obtains the Licences required for use of the completed *works* which the Scope states are to be obtained by the *Contractor*. The *Client* obtains any other Licences required for use of the completed *works*.

.4 In relation to Licences which it is the *Client's* responsibility to obtain, the *Contractor* (without taking the risk that such Licences are not obtained, save to the extent that this is caused by the *Contractor*'s failure to provide the support required by this Contract):

 provides such support as the Scope states the *Contractor* is to provide to the *Client* in applying for and obtaining such Licences; and

 provides such other support as the *Client* reasonably requires, not entailing excessive cost to the *Contractor* (or if entailing such cost, provided the same is reimbursed by the *Client*).

.5 The *Contractor* ensures that the *works* comply with all Licences and Laws. The *Contractor*'s duty to Provide the Works includes providing all work necessary to satisfy the requirements of any agreement entered into by the *Client* and/or the *Contractor* with Others pursuant to the requirements of a Licence, unless (in relation only to work which is not situated on or adjacent to the Site) the *Client*, acting reasonably, agrees otherwise in writing.

|  |  |  |
| --- | --- | --- |
| **Option Z17** |  | **CDM Regulations**  Insert new clauses: |
| Additional clause 27.5 | 27.5 | Where stated in the Contract Data, the *Contractor* is the Principal Designer, Principal Contractor, and a designer for the *works* for the purposes of the CDM Regulations. |
| Additional clause 27.6 | 27.6 | The *Contractor* takes full responsibility for the adequacy, stability and safety of all site operations (so far as the Site is under his control) and methods of construction in relation to the *works* and obeys the requirements of the CDM Regulations. |

**Option Z18 Freedom of Information and Transparency**

Additional

Insert new clauses:

clause 27.7 27.7 The *Contractor* acknowledges that unless the *Project Manager* has notified the

*Contractor* that the *Client* is exempt from the provisions of the FOIA, the *Client*

is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Contractor* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

Additional

clause 27.8 27.8 The *Contractor*:

 transfers to the *Project Manager* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

 provides the *Project Manager* with a copy of all Information in its possession, or power in the form that the Project Manager requires within five (5) Working Days (or such other period as the *Project Manager* may specify) of the *Project Manager’s* request;

 provides all necessary assistance as reasonably requested by the Project Manager to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

 procures that its Subcontractors do likewise.

Additional

clause 27.9 27.9 The *Client* is responsible for determining in its absolute discretion whether any

information is exempt from disclosure in accordance with the provisions of the

FOIA or the Environmental Information Regulations.

Additional clause 27.10

27.10 The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Project Manager*.

Additional clause 27.11

27.11 The *Contractor* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged to disclose Information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.

Additional clause 27.12

27.12 The *Contractor* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Project Manager* to inspect such records as and when reasonably requested from time to time.

Additional clause 27.13

27.13 The parties acknowledge that:

 reports generated by the *Contractor* pursuant to the terms of this contract; and

 the content of this contract, including any changes to this contract agreed from time to time,

except for:

 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the *Client*; and

 commercially sensitive information;

(together the **Transparency Information**) are not Confidential Information.

Additional clause 27.14

27.14 Notwithstanding any other provision of this contract, the *Contractor* hereby gives its consent for the *Client* to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The *Client* shall, prior to publication, consult with the *Contractor* on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

Additional clause 27.15

27.15 The *Contractor* shall assist and co-operate with the *Client* to enable the *Client*

to publish the Transparency Information.

Additional clause 27.16

27.16 If the *Client* believes that publication of any element of the Transparency Information would be contrary to the public interest, the *Client* shall be entitled to exclude such information from publication. The *Client* acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the *Client* acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to

the *Contractor*.

Additional clause 27.17

27.17 The *Client* shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this contract is being performed, having regard to the context of the wider commercial relationship with the *Contractor*.

**Option Z19 Records and reports**

Insert new clauses:

Additional clause 27.18

Additional

27.18 All records created pursuant to this contract including without limitation financial records, sub-contract agreements, supply agreements, progress reports,

quality monitoring and health and safety documents shall be retained and maintained for a period of six (6) years by the *Contractor* in sufficient detail, an organised manner and generally in such manner to enable the *Contractor* to

comply with its obligations under the contract and shall be made available for inspection to the *Client* upon request.

clause 27.19 27.19 Where records are maintained as provided in clause 27.18 and the period for

their retention has expired, the *Contractor* shall notify the *Client* with regards to

its retention in relation to such records and if it intends to dispose of them or subsequently decides to dispose of them it shall notify the *Client* and if the *Client*, within sixty (60) business days of such notice elects to receive certain of those records, the *Contractor* shall deliver such records to the *Client* in the manner and at the location as the *Client* shall reasonably specify.

Additional

clause 27.20 27.20 The *Contractor* shall on request afford the *Client* all such rights of access to

those records required to be kept by the *Contractor* under clauses 27.18 and 27.21 as may be required for the purpose of examination and certification of the *Client's* accounts or any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources. The Comptroller and Auditor General (both as defined by the National Audit Act 1983) may examine documents evidencing expenditure and income by the *Client* which are owned, held or otherwise within the control of the *Contractor* and may require the *Contractor* to produce such oral or written explanations as the *Client* considers necessary.

Additional

Clause 27.21 27.21 During the period of the Provision of the Works and for a period of 6 years

following such period the *Contractor* shall maintain and retain, and disclose and allow the *Client* and its agents access to, complete and accurate financial and non-financial information which is sufficient to enable the *Client* to verify any amounts paid or payable and any amounts forecast or estimated to be paid in connection with the compensation events set out at 60.1(22), 60.1(23) and 60.1(24) (the “Open Book Data*”*), including details and all assumptions relating to:

(a)

**Option Z20 Malicious Software**

Additional

Insert new clauses:

clause 27.21 27.21 The *Contractor* shall, as an enduring obligation throughout the Provision of the

Works, use the latest versions of anti-virus definitions and software available

from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).

Additional

clause 27.22 27.22 Notwithstanding the above clause, if Malicious Software is found, the parties

shall co-operate to reduce the effect of the Malicious Software and, particularly

if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the service to their desired operating efficiency.

Additional

clause 27.23 27.23 Any cost arising out of the actions of the parties taken in compliance with the

provisions of the above clause shall be borne by the parties as follows:

 by the *Contractor* where the Malicious Software originates from the *Contractor's* own software, the Third Party Software supplied by the *Contractor* (except where the *Client* has waived the obligation) or the Client Data (whilst the Client Data was under the control of the *Contractor*) unless the *Contractor* can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the *Client* when provided to the *Contractor*; and

 by the *Client* if the Malicious Software originates from the *Client's* Software (in respect of which the *Client* has waived its obligation) or the Client Data (whilst the Client Data was under the control of the *Client*).

**Option Z21 Public and private nuisance**

Additional

Insert new clause:

clause 27.24 27.24 The *Contractor*, at all times, prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working

operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of Providing the Works or the performance of any obligation pursuant to clause 44 and assists the *Client* in defending any action or proceedings which may be instituted in relation thereto.

Additional

clause 27.25 27.25 The *Contractor* ensures that there is no trespass on or over any adjoining or

neighbouring property arising out of or in the course of Providing the Works or

the performance of any obligation pursuant to clause 44. If Providing the Works or the performance of any obligation pursuant to clause 44 is likely to necessitate any interference (including, without limitation, the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Client*, is to obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement is subject to the approval of the *Client* before execution. The *Contractor* is to comply in every respect with any conditions contained in any such agreement.

**Option Z22 Client Data**

Insert new clauses:

Additional clause 27.26

27.26 The *Contractor* shall not delete or remove any proprietary notices contained within or relating to the Client Data.

Additional clause 27.27

27.27 The *Contractor* shall not store, copy, disclose, or use the Client Data except as necessary to Provide the Works or as otherwise expressly authorised in writing by the *Client*.

|  |  |  |
| --- | --- | --- |
| Additional clause 27.28 | 27.28 | To the extent that Client Data is held and/or processed by the *Contractor*, the *Contractor* shall supply that Client Data to the *Client* as requested by the *Client* and in the format specified in this contract (if any) and in any event as specified by the *Client* from time to time in writing. |
| Additional clause 27.29 | 27.29 | The *Contractor* shall take responsibility for preserving the integrity of Client  Data and preventing the corruption or loss of Client Data. |
| Additional clause 27.30 | 27.30 | The *Contractor* shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with: |

 any business continuity and/or disaster recovery plan created as part of the contract (if any);

 the *Client’s* requirements set out in this contract (if any);

 Good Industry Practice; and

 such reasonable instructions in relation to business continuity and disaster recovery as the *Client* may notify to the *Contractor* from time to time.

|  |  |  |
| --- | --- | --- |
| Additional | 27.31 | (together the **BCDR Requirements**)  The *Contractor* ensures that such back-ups are available to the *Client* at all |
| clause 27.31 |  | times upon request and delivers to the *Client* at regular intervals prescribed by  the *Client* from time to time acting reasonably. The *Contractor* delivers all existing Client Data not previously provided to the *Client* within ten (10) days of termination of this Contract. |
| Additional clause 27.32 | 27.32 | The *Contractor* shall ensure that any system on which the *Contractor* holds any  Client Data, including back-up data, is a secure system that: |

 complies with the DWP Information Security Policy;

 complies with the Baseline Security Requirements;

 is capable of implementing and enforcing appropriate security standards as specified by DWP from time to time including but not limited to the result of any information risk assessment undertaken pursuant to the DWP Enterprise Security Risk Management Strategy;

 as part of HMG Security Policy Framework, complies with and shall have certificated the HMG Cyber Essentials Scheme or approved equivalent as defined under the HMG Cyber Essentials Scheme (further details available at: [www.cyber-essentials-scheme.co.uk](http://www.cyber-essentials-scheme.co.uk));

 complies with all relevant aspects of the Government Digital Service

Open Standards.

Additional clause 27.33

27.33 If the Client Data is corrupted, lost or sufficiently degraded as a result of an action, error, breach or default of the *Contractor* so as to be unusable, the *Client* may:

 require the *Contractor* (at the *Contractor*'s expense) to restore or procure the restoration of Client Data to the extent and in accordance with the BCDR Requirements and the *Contractor* shall do so as soon as practicable but in any event not later than such date as is notified to the *Contractor* by the *Client* acting reasonably; and/or

 itself restore or procure the restoration of Client Data, and shall be repaid by the *Contractor* any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified the by BCDR Requirements.

Additional clause 27.34

27.34 If at any time the *Contractor* suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the *Contractor* shall notify the *Client* immediately and inform the *Client* of the remedial action the *Contractor* proposes to take.

Additional clause 27.35

27.35 The *Contractor* complies with the requirements of Contract Schedule H.

Additional clause 27.36

27.36 The *Contractor* and its Subcontractors comply with the DWP Offshoring Policy.

Additional clause 27.37

27.37 In accordance with the DWP Offshoring Policy and without limiting any other provision of this contract, the *Contractor* and any of its Subcontractors, do not offshore Client Data outside the United Kingdom without the prior written consent of the *Client*. Where the *Client* gives consent, the *Contractor* complies with any reasonable instructions notified to it by the *Client* in relation to the Client Data in question.

Additional clause 27.38

27.38 Where the *Client* has given its prior written consent to the *Contractor* to process, host or access Client Data from premises outside the United Kingdom (in accordance with clause 27.37):

 the *Contractor* notifies the *Client* (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or have gained access to such Client Data; and

 the *Contractor* takes all necessary steps in order to prevent any access to, or disclosure of, any Client Data to any regulatory bodies outside

the United Kingdom unless required by Law without any applicable exception or exemption

Additional clause 27.39

27.39 The *Client* notifies the *Contractor* of any changes or proposed changes to the Baseline Security Requirements. The *Contractor* complies with any such changes required by the *Client*.

Additional clause 27.40

27.40 The *Contractor* retains throughout the period for retention:

 copies of drawings, specifications, reports, calculations and other documents which record the *works*; and

 documents and information obtained or prepared by the *Contractor* or any Subcontractor in connection with this Contract.

Additional clause 27.41

27.41 The copies are retained in the form stated in the Scope and:

 in accordance with the requirements of the National Archives and Good

Industry Practice;

 in chronological order;

 in a form capable of audit; and

 at its own expense.

Additional clause 27.42

27.42 The *Contractor* permits the *Project Manager* and/or the *Client* to examine documents held or controlled by the *Contractor* or any Subcontractor.

Additional clause 27.43

27.43 The *Contractor* provides such oral or written explanations as the *Project*

*Manager* and/or the *Client* considers necessary.

|  |  |  |
| --- | --- | --- |
| Additional clause 27.44 | 27.44 | This clause does not constitute a requirement or agreement for the purposes of section 6 (3) (d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Contractor*. |
| Additional clause 27.45 | 27.45 | The *Contractor* acknowledges that all Client Data is owned by the *Client*. The *Project Manager* and/or the *Client* may request the *Contractor* to deliver up to the *Client* and/or *Project Manager* (in a format notified by the *Client* and/or *Project Manager* and at no cost) any and all Client Data and the *Contractor* delivers up such Client Data within seven (7) days following a request. |
| Additional clause 27.46 | 27.46 | The *Contractor* ensures that (at no additional cost to the *Client*) the Contractor System on which the *Contractor* holds any Client Data fully integrates and interoperates with any system of the *Client* and *Project Manager* (including but not limited to the Client's System) such that the Client Data is available to the *Client*, the Integrator and the *Project Manager* via the systems of the *Client* and the Integrator (including but not limited to the *Client*s System). The *Contractor* does not store or process any Client Data on its own systems alone without such Client Data being also available to the *Client* and the *Project Manager* through the interface with the system of the *Client* and *Project Manager* (including but not limited to the Client's System). The *Contractor* and the  *Project Manager* work together to ensure that their respective systems on which Client Data is stored and processed interface and interoperate appropriately. |

**Option Z23 Protection of Personal Data**

Additional

Insert new clauses:

clause 27.42 27.47 The parties acknowledge that during the Provision of the Works the *Contractor*

will Process Personal Data on behalf of the *Client* in connection with the

Provision of the Works and may also, from time to time, Process Personal Data for its own purposes as a Data Controller in connection the Provision of the Works.

Additional clause 27.48

27.48 In all cases when the *Contractor* is Processing Personal Data in connection with this contract as a Data Controller the *Contractor* shall (and shall procure that all Subcontractors shall):

 take such steps identified by the *Client* to assist the *Client* to comply with the Data Protection Legislation;

 comply with the Data Protection Legislation;

 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in clause 27.26-27.46 and Contract Schedules H and P);

 provide all reasonable co-operation and assistance as may be requested by the *Client* from time to time to enable the *Client* to comply with the Data Protection Legislation, including providing input into and carrying out data protection impact assessments and assisting with consultations with the Information Commissioner's Office;

 notify the *Client* promptly if a data security breach occurs, if any complaints are made or if a regulatory investigation is commenced (in each case in connection with the Personal Data) and provide all such information as may be requested by the *Client* in relation to such breach, complaint or notification (as applicable);

 provide the *Client* with such information as the *Client* may from time to time require to satisfy itself that the *Contractor* and its Subcontractors have complied with the obligations of clauses 27.47-27.50 (inclusive); and

 not:

a) do anything to cause the *Client* to contravene any provisions of the Data Protection Legislation;

b) carry out any Processing of *Client*'s Data, or any Personal Data obtained in the course of this contract at or from a location outside of the United Kingdom without the *Client's* prior consent; or

c) allow Authority Data to be accessed from outside of the

United Kingdom without the *Client's* prior consent;

|  |  |  |
| --- | --- | --- |
| Additional clause 27.49 | 27.49 | Without limiting clause 27.48 or any applicable standards, policies, procedures and regulations specified in the Client's Policies, the parties shall comply with their respective obligations as set out in Contract Schedule P. |
|  | 27.50 | The *Contractor*, via the Contractor System or otherwise, has systems and processes in place to receive and process requests from the helpdesk operated by the Integrator in accordance with and within the timescales stipulated in the Scope. |
| **Option Z24** |  | **Income Tax and National Insurance Contributions** |
|  |  | Insert new clause |

27.51 Where the *Contractor* or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this contract, the *Contractor*:

.1 at all times complies with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

.2 indemnifies the *Client* against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the Provision of the Works by the *Contractor* or any Contractor Personnel.

**Option Z25 Assignment**

Delete clause 28.1 and replace with the following new clauses 28.1 – 28.5:

Amendment to clause 28.1

28.1 The *Client* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:

 any Contracting Body;

 any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*; or

 to a devolved government or assembly (or agency thereof) which performs any of the functions that previously had been performed by the *Client*.

Additional clause 28.2

28.2 The *Contractor* does not, without the written consent of the *Project Manager*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Project Manager*’s written consent no sum of money becoming due under this contract is payable to any person other than the *Contractor*.

Additional clause 28.3

28.3 The *Client* is entitled to, and the *Contractor* gives consent and agrees to give effect to, the novation of this contract or any part thereof to:

 any Contracting Body; or

 any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Client*;

upon such terms as the *Client* proposes, provided that where such novation increases the burden on the *Contractor* pursuant to this contract, the novation shall be a compensation event. The *Contractor* shall do all things required to give effect to such novation including executing a deed of novation at the request of the *Client*.

Additional clause 28.4

28.4 Any change in the legal status of the *Client* such that it ceases to be a Contracting Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Client*.

Additional clause 28.5

28.5 If this contract is novated to a body which is not a Contracting Body or if a successor body which is not a Contracting Body becomes the *Client* (both such bodies being referred to in the remainder of this clause as the **Transferee**) the Transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of

the *Contractor*.

**Option Z26 Small and Medium Sized Enterprises (SMEs)**

Insert new clauses:

Additional clause 29.3

Additional

29.3 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no fewer than the percentage of the Subcontractors stated in the Contract Data (the **SME Percentage**) are SMEs or that a similar proportion of the Defined Cost of the *works* is undertaken by SMEs.

clause 29.4 29.4 The *Contractor* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as

Subcontractors and the value of the Defined Cost of the *works* that has been undertaken by SMEs.

Additional

clause 29.5 29.5 Where available and if required by the *Client*, the *Contractor* is required to

tender its sub-contracts using the same online electronic portal as was

provided by the *Client* for the purposes of tendering this Contract.

Additional

clause 29.6 29.6 The *Contractor* is to ensure that the terms and conditions used to engage

Subcontractors are no less favourable than those of this contract. A reason for

the *Project Manager* not accepting Sub-Contract conditions proposed by the

*Contractor* is that they are unduly disadvantageous to the Subcontractor.

**Option Z27 Apprenticeships**

Insert new clauses:

Additional clause 29.7

29.7 The *Contractor* is required to take all reasonable steps to employ apprentices, and report to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *works*.

Additional clause 29.8

29.8 The *Contractor* is required to take all reasonable steps to ensure that no fewer than the percentage of its employees stated in the Contract Data (the **Apprenticeship Percentage**) are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the *works*, (which may

include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.

Additional clause 29.9

29.9 The *Contractor* is required to make available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.

Additional clause 29.10

29.10 The *Contractor* is to provide any further skills training opportunities that are appropriate for its employees engaged in Providing the Works.

Additional clause 29.11

29.11 The *Contractor* is to provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the *Project Manager*:

 the number of people during the reporting period employed on the contract, including support staff and Subcontractors;

 the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;

 the percentage of all employees taking part in an apprenticeship programme;

 if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;

 actions being taken to improve the take up of apprenticeships;

 other training/skills development being undertaken by employees in relation to this contract, including:

a. work experience placements for 14 to 16 year olds;

b. work experience /work trial placements for other ages;

c. student sandwich/gap year placements;

d. graduate placements;

e. vocational training;

f. basic skills training; and

g. on site training provision/ facilities.

**Option Z28 IPR and Confidentiality**

Insert new clauses:

Additional clause 29.12

29.12 In clause 29.13 – 29.19 only:

**Document** means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this Contract.

|  |  |  |
| --- | --- | --- |
| Additional clause 29.13 | 29.13 | The Intellectual Property Rights in all Documents prepared by or on behalf of the *Contractor* in relation to this Contract and the *works* executed from them remains the property of the *Contractor*. The *Contractor* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the Site. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence provided always that the *Contractor* shall not be liable to any licensee  for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Contractor*. |
| Additional clause 29.14 | 29.14 | In the event that the *Contractor* does not own the copyright or any Intellectual Property Rights in any Document the *Contractor* uses all reasonable endeavours to procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Contractor* is unable to procure the right to grant to the *Client* in accordance with the foregoing the *Contractor* procures that the third party grants a direct licence to the *Client* on industry acceptable terms. |
| Additional clause 29.15 | 29.15 | The *Contractor* waives any moral right to be identified as author of the  Documents in accordance with section 77, Copyright Designs and Patents Acts  1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*. |
| Additional clause 29.16 | 29.16 | In the event that any act unauthorised by the *Client* infringes a moral right of the *Contractor* in relation to the Documents the *Contractor* undertakes, if the *Client* so requests and at the *Client’s* expense, to institute proceedings for infringement of the moral rights. |
| Additional clause 29.17 | 29.17 | The *Contractor* warrants to the *Client* that he has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents. |
| Additional clause 29.18 | 29.18 | The *Contractor* supplies copies of the Documents to the *Project Manager* and to the *Client’s* other Contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or the *works*. |
| Additional clause 29.19 | 29.19 | After the termination or conclusion of the *Contractor*’s employment hereunder, the *Contractor* supplies the *Project Manager* with copies and/or computer discs of such of the Documents as the *Project Manager* may from time to time request and the *Client* pays the *Contractor*’s reasonable costs for producing such copies or discs. |
| Additional clause 29.20 | 29.20 | In Providing the Works the *Contractor* does not infringe any Intellectual  Property Rights of any third party. The *Contractor* indemnifies the *Client* against  claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party. |

|  |  |  |
| --- | --- | --- |
| Additional clause 29.21 | 29.21 | The *Client* grants to the *Contractor* a limited, non-exclusive, non-transferable, non-sub licensable licence during the Provision of the Works to use the *Client's* systems, and software solely for the purpose of providing the *works* to the *Client* under this contract and for no other use. The licence granted by the *Client* terminates on termination of this contract howsoever arising. The *Contractor* indemnifies and keeps indemnified the *Client* on demand from and against all and any losses, cost or expenses (including management costs and professional fees) whatsoever arising out of or in connection with any liability arising in respect of the *Contractor*'s use of the *Project Manager*'s systems and software licenced to the *Contractor* by the *Client* under this clause 29.21. |
| Additional clause 29.22 | 29.22 | The *Contractor* grants to the *Client,* the Integrator, and the *Project Manager* a perpetual, royalty free, sub-licensable and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) the Contractor System for the purpose of receiving the benefit of the *works* or otherwise in connection with this contract. The *Contractor* provides all support and maintenance services in respect of the use of the Contractor System by the *Client* and the *Project Manager.* |
| Additional clause 29.23 | 29.23 | Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall: |

 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

Additional clause 29.24

29.24 The clause above shall not apply to the extent that:

 such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

 such information was obtained from a third party without obligation of confidentiality;

 such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or

 it is independently developed without access to the other party's

Confidential Information.

Additional clause 29.25

29.25 The *Contractor* may only disclose the Client Confidential Information to the Contractor Personnel who are directly involved in the provision of the *works* and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality. The *Contractor* shall not, and shall procure that the Contractor Personnel do not, use any of the *Client* Confidential Information received otherwise than for the purposes of this Contract.

|  |  |  |
| --- | --- | --- |
| Additional clause 29.26 | 29.26 | In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the *Contractor* shall provide such evidence to the *Client*  as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate  steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to  confidentiality. |
| Additional clause 29.27 | 29.27 | At the written request of the *Client*, the *Contractor* shall procure that those members of the Contractor Personnel identified in the *Client's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract. |
| Additional clause 29.28 | 29.28 | Nothing in this Contract shall prevent the *Client* from disclosing and the *Client*  may disclose the Contractor Confidential Information: |

 on a confidential basis to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;

 to Parliament and Parliamentary Committees or if required by any

Parliamentary reporting requirement;

 to any consultant, contractor or other person engaged by the *Client*;

 for the purpose of the exercise of its rights under this Contract;

 for the purpose of the examination and certification of the *Client's*

accounts;

 on a confidential basis to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or

 for any examination pursuant to Section 6(1) of the National Audit Act

1983 of the economy, efficiency and effectiveness with which the *Client*

has used its resources.

and for the purposes of the foregoing, disclosure of the Contractor Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those

placed on the *Client* under this clause 29.28.

Additional clause 29.29

29.29 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Subcontractor to whom the Contractor Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

Additional clause 29.30

29.30 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

Additional clause 29.31

29.31 The *Contractor* warrants to the *Client* that:

 to the best of the *Contractor*'s knowledge, all information, representation and other matters of fact communicated in writing to the *Client* or its agents or employees in connection with the *Contractor*'s response to the invitation to tender in respect of the *works* or in the course of the subsequent negotiations in respect of this contract are true, complete and accurate in all material respects at the time communicated to the *Client* or its agents or employees;

 it is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;

 it has full power and authority to enter into this contract and to carry out the *works* and this contract is executed by duly authorised representatives;

 the entry into and performance by it of this contract does not and will not:

a. conflict with its constitutional documents; and

b. conflict with any document which is binding upon it, or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the *Contractor* to perform its obligations under this Contract.

|  |  |  |
| --- | --- | --- |
| **Option Z29** |  | **Collateral warranty agreements** |
|  |  | Insert new clauses: |
| Additional clause 29.32 | 29.32 | The *Contractor* enters into the collateral warranty agreements in the relevant formats appended in Contract Schedule G in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Project Manager* no later than ten (10) Working Days after the *Project Manager* has provided the *Contractor* with appropriate collateral warranty agreements suitable for execution. |
| Additional clause 29.33 | 29.33 | The *Contractor* procures from the Subcontractors identified in the Contract Data collateral warranty agreements in the relevant formats appended in Contract Schedule G in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Project Manager* no later than  fifteen (15) Working Days after the *Project Manager* has provided the *Contractor* with appropriate collateral warranty agreements suitable for execution. |

|  |  |  |
| --- | --- | --- |
| Additional clause 29.34 | 29.34 | If the *Contractor* fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Works Provided to Date is retained in assessments of the amount due until the *Contractor* has remedied the failure. |
| **Option Z30** |  | **Starting, Completion and Key Dates** |
|  |  | Insert new clause: |
| Additional clause 30.4. | 30.4 | Before Completion, the *Contractor* supplies to the *Client*, without additional charge, such documents, deliverables and other related information as may be specified in the Scope or as the *Client* may request, showing or describing the *works* as constructed and concerning the maintenance and operation of the *works* including any Plant. Notwithstanding any provision to the contrary in this contract, the *Contractor* is not entitled to any payment of any amount retained pursuant to clause X16 that would (but for this provision) become due and payable until the provisions of this clause 30.4 have been complied with. If, prior to the issue of the Defects Certificate, errors are discovered in the documents, drawings and information supplied by the *Contractor* in accordance with this clause 30.4 or, if as a result of any revision or remedial work carried  out prior to the issue of the Defects Certificate, the said documents, drawings and information no longer show or describe the *works* as required by this  clause 30.4, then the *Contractor* is to amend the said documents, drawings and  information so that they comply with the requirements of this clause 30.4. |

**Option Z31 Revising the programme**

Additional clause 32.3

32.3. Insert new clause 32.3 as follows: "The *Contractor*:

.1 provides at least seven (7) days' in advance of any admission to the Site a list of the names of all Contractor Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the *Client* reasonably requires;

.2 ensures that all Contractor Personnel:

a. are appropriately qualified, trained and experienced to Provide the Works with all reasonable skill, care and diligence;

b. are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in the Scope and Contract Schedule H; and

c. comply with such rules, regulations and requirements (including those relating to security arrangements) as are in force from time to time for the conduct of personnel and all reasonable requirements of the Site conduct at or outside of the Site, including the security requirements as set out in Contract Schedule H;

.3 subject to Contract Schedule I, retains overall control of the

Contractor Personnel at all times so that the Contractor Personnel are not deemed to be employees, agents or Contractors of the *Client*;

.4 is liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of a member of any Contractor Personnel which results in a default under this contract is a default by the *Contractor*;

.5 uses all reasonable endeavours to minimise the number of changes in Contractor Personnel;

.6 replaces (temporarily or permanently, as appropriate) any Contractor Personnel as soon as practicable if any Contractor Personnel have been removed or are unavailable for any reason whatsoever;

.7 bears the programme familiarisation and other costs associated with any replacement of any Contractor Personnel; and

.8 procures that the Contractor Personnel vacate the Site immediately upon the termination or expiry of this Contract."

|  |  |
| --- | --- |
| **Option Z32** | **Access to and use of the Site** |
| Supplement to clause 33 | 33.1 After the words "each part of the Site to the *Contractor*", insert "in accordance with the Scope". Before the words "Access and use", insert: "The *Contractor* acknowledges that access to and use of the Site may be shared with Others in accordance with the Scope." |
|  | Insert new clauses: |
| Additional clause 33.2  Additional clause 33.3  Additional clause 33.4 | 33.2 The *Contractor* submits to the *Project Manager* details of people who are to be employed by him and his Subcontractors in connection with the *works*. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Project Manager*.  33.3 The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to the Site. The instruction is a  compensation event if the measures are additional to those required by the  Scope.  33.4 Employees of the *Contractor* and his Subcontractors are to carry a *Client’s*  pass whilst they are on the parts of the Site identified in the Scope. |
| Additional clause 33.5 | 33.5 The *Contractor* submits to the *Project Manager* for acceptance a list of the names of the people for whom passes are required. The *Project Manager* issues the passes to the *Contractor*. Each pass is returned to the *Project Manager* when the employee no longer requires access to that part of the Site or after the *Project Manager* has given notice that the employee is not to be admitted to the Site. |
| **Option Z33** | **Acceleration** |
| Supplement to clause 36 | 36.1 After the words "A quotation for an acceleration comprises proposed changes to the Prices" insert "(unless the acceleration is required to recover delay beyond the Completion Date not resulting from a compensation event, in which case the Prices are not adjusted)." |
| **Option Z34** | **Correcting Defects** |

Supplement to clause 43

43.2 After the words "the *Contractor* corrects a notified Defect" insert "in accordance with any applicable timeframes set out in the Defects Protocol, and in any event".

|  |  |
| --- | --- |
| **Option Z35** | **Uncorrected Defects** |
| Amendment to clause 46 | 46.1 Delete clauses 46.1 and 46.2 and replace with the following: |
|  | "If the *Contractor* fails to correct any Defect within the *defect correction period*, the *Client* may employ or pay others to correct such Defect and the *Contractor* pays to the *Client* the following: |
|  |  the reasonable and proper costs incurred by the *Client* in employing and paying others to correct such Defect; and |
|  |  any other losses incurred by the *Client* as a consequence of the *Contractor*'s failure to correct such Defect within the *defect correction period*." |
| **Option Z36** | **Assessing the amount due** |
| Supplement to clause 50 | 50.1 Change the first word from "The" to "the" and insert at the beginning: "Provided the *Project Manager* has received all substantiation necessary or reasonably required by the *Project Manager* and the *Contractor* has complied with its obligations under clause 26, clause X4 and clause X13". |
| **Option Z37** | **Payment certificates** |

 a period for payment of the amount due to the Subcontractor not greater than five (5) days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this Contract,

|  |  |  |
| --- | --- | --- |
| Additional | 56.1 | Insert new clauses:  The issue of any payment certificate or the payment of any amount by the |
| clause 56.1 |  | *Client* to the *Contractor* does not constitute or imply or be evidence of the |
|  |  | *Project Manager*'s, the Supervisor's, or the *Client's* approval or acceptance of |
|  |  | any design, work, Plant and Materials forming part of the *works* or relieve the |
|  |  | *Contractor* of any of his obligations under this Contract. |
| Additional  clause 56.2 | 56.2 | The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*. |
| Additional  clause 56.3 | 56.3 | The *Contractor* includes in the contract with each Subcontractor: |

 a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than nine (9) days after the final date for payment in this contract; and

 a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Additional

clause 56.4 56.4 The *Client* may set off any liability of the *Contractor* to:

 the *Client*;

 any Contracting Body; or

 any Crown Body

against any liability of the *Client*, any Contracting Body or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this Contract.

**Option Z38 Compensation Events**

Supplement to clause 60

60.1(2) In the first line, after "Site", insert "within the time periods stated in the Scope as being the time periods during which access to the Site will be available to the *Contractor*."

60.1(10) At the end of the sentence, insert "or where, although the search fails to disclose non-compliance with this contract and/or the Scope, such search was instigated as a result of problems or failures having been discovered in similar items of Plant, Materials or the *works*, and the *Project Manager* or the *Supervisor* had reasonable grounds to believe that such a problem or fault existed in the items of Plant, Materials or the *works* on which the search was carried out."

60.1(22) Insert new clause: “a Coronavirus Change.”

60.1(23) Insert new clause: “a Site Lockdown.”

60.1(24) Insert new clause: “the expiry of the implementation period on IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) and any subsequent new trading arrangements between the UK and the European Union coming into effect at IP completion day (“Brexit”).”

Additional clauses 63.17 to 63.19

Insert new clauses:

63.17 A compensation event which:

 arises from a difference between the rates of pay of Transferring Former Contractor Employees and/or Transferring Client Employees and the equivalent rates of pay used by the *Contractor* and/or Notified Sub-contractor to calculate the Prices under the Framework Agreement, the change to the Prices is the TUPE Surcharge assessed in accordance with Contract Schedule K, Part 2; or

 arises where a Transferring Former Contractor Employee and/or any Transferring Client Employee is made redundant by the *Contractor* and/or any Notified Sub-Contractor as a result of an economic technical organisational reason entailing changes to the workforce and the *Contractor* and/or the Notified Sub-Contractor has followed a fair dismissal procedure and complied with all contractual and legislative requirements, the change to the Prices is the Redundancy Surcharge assessed in accordance with Contract Schedule K, Part 2.

63.18 Any compensation event under clauses 60.1(22) or 60.1(23) (a “Covid CE”) shall give rise to a change to the Prices to reflect 50% of the costs (whether direct or indirect) incurred by the *Contractor* in order to Provide the Works due to the occurrence of the Covid CE, including the Fee in relation to such costs but excluding any administration and management costs. For the avoidance of doubt, the

*Contractor’s* entitlement to an extension to the Completion Date and/or to a Key Date shall not be restricted in such manner.

63.19 Any compensation event under clause 60.1(24) (a “Brexit CE”) shall give rise to a change to the Prices to reflect 50% of the direct costs and indirect costs (as defined below) incurred by the *Contractor* in order to Provide the Works due to the occurrence of the Brexit CE, including the Fee in relation to such costs but excluding any administration and management costs of the Contractor. For the avoidance of doubt, the *Contractor’s* entitlement to an extension to the Completion Date and/or to a Key Date shall not be restricted in such manner. In this clause 63.19:

(a) “direct costs” shall mean the direct costs of the Contractor, including in respect of preliminary works;

(b) “indirect costs” shall mean the indirect costs of the Contractor, including in respect of:

(i) changes in costs of materials required for the Works;

(ii) changes in tariffs, duties and VAT on imports of materials required for the Works on or following IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020);

(iii) additional storage costs, where the Contractor has been given prior written approval to such storage and costs.

63.20 Without prejudice to any other obligation of the *Contractor*, the *Contractor* shall at all times take all reasonable steps to minimise and mitigate the impact of any Covid CE or Brexit CE, including with respect to any delays and any additional amounts payable as a result of such Covid CE or a Brexit CE.

63.21 Notwithstanding clause 63.1, the *Project Manager* may, at any time prior to a quotation being accepted in relation to any Covid CE or Brexit CE, instruct that any change to the Prices as a result of the Covid CE or Brexit CE shall, in whole or in part, be assessed as the actual costs incurred by the Contractor (to the extent recoverable pursuant to clause 63.18 or 63.19 (as appropriate)). Such costs shall be assessed at the assessment intervals, unless the parties otherwise agree.

63.22 Where the election under clause 63.21 does not relate to all of the change to the Prices in relation to the relevant Covid CE or Brexit CE the Project Manager may instruct the Contractor to issue a quotation in respect of any element of the change to the Prices not included within such election. Where the election relates to all of the relevant change to the Prices no quotation is instructed or accepted.

**Option Z39 Improvement Plan Process**

Insert new clauses:

Additional clause 67.1

67.1 The *Contractor* notifies the *Client* of a Notifiable Event within three (3) days of becoming aware of the same and in such notice sets out details of the actual or anticipated effect of the Notifiable Event.

Additional

clause 67.2 67.2 If the *Client* considers that a Notifiable Event has occurred or the *Client*

receives a notice from the *Contractor* under clause 67.1, the *Client* may serve

notice (an **Improvement Notice**) on the *Contractor* setting out sufficient detail to make it clear what the *Contractor* has to rectify.

Additional

clause 67.3 67.3 Where an Improvement Notice is served under clause 67.2 the *Contractor*

submits to the *Client* a draft Improvement Plan and the *Client* reviews it as

soon as possible and in any event within ten (10) days (or such other period as the parties agree) of the original notification under clause 67.1 or 67.2. The *Contractor* submits a draft Improvement Plan even if it disputes that it is responsible for the Notifiable Event.

Additional

clause 67.4 67.4 The draft Improvement Plan sets out:

 full details of the Notifiable Event; and

 the steps the *Contractor* proposes to take to rectify the Notifiable Event (if applicable) and to prevent such Notifiable Event from recurring, including timescales for such steps.

Additional

clause 67.5 67.5 The *Contractor* provides the *Client* with such additional information or

documentation as the *Client* reasonably requires.

Additional

clause 67.6 67.6 The *Client* notifies the *Contractor* that:

 it agrees the draft Improvement Plan; or

 it rejects the draft Improvement Plan because it is inadequate for example because it is not detailed enough to evaluate, will take too long to complete, will not prevent reoccurrence of the Notifiable Event or is otherwise unacceptable to the *Client*. Where the *Client* does so it shall set out its reasons for doing so.

Additional

clause 67.7 67.7 Where the *Client* accepts the Improvement Plan the *Contractor* immediately

implements the actions in the Improvement Plan.

Additional

clause 67.8 67.8 Where the *Client* rejects the Improvement Plan the *Contractor* resubmits its

draft Improvement Plan taking into account the *Client's* comments within five

(5) days of notice that the *Client* rejects the preceding Improvement Plan.

Additional

clause 67.9 67.9 In relation to a KPI Failure, the *Client* may terminate this contract because the

*Contractor* fails:

 to submit a draft Improvement Plan to the *Client* in accordance with clause 67.4 or 67.8;

 to submit a draft Improvement Plan which the *Client* acting reasonably does not approve;

 to rectify a Notifiable Event capable of remedy within the later of:

a. thirty (30) days of notification pursuant to clause 67.1; or b. where the parties agree an Improvement Plan and the

*Contractor* is implementing the same, the date for rectification

stipulated in the Improvement Plan.

 following successful implementation of a Improvement Plan the same event occurs within a period of 6 months for the same (or substantially the same) root cause as that original Notifiable Event,

(each an **Improvement Plan Failure**).

Additional

Clause

66.10

67.10 Where the *Client* accepts the Improvement Plan, the *Contractor* immediately implements the actions in the Improvement Plan.

**Option Z40 Increased Monitoring**

Insert new clauses:

Additional clause 68.1

Additional

68.1 At any time the *Client* may notify the *Contractor* that it is increasing its level of monitoring of the *Contractor* and/or (at the *Client's* option) of the *Contractor*'s monitoring of its own performance under this Contract until such time as the *Contractor* demonstrates to the reasonable satisfaction of the *Client* that is performing its obligations under this Contract.

clause 68.2 68.2 Where the *Client* issues a notice under clause 68.1 as a result of any failure by the *Contractor* to perform its obligations under this contract, the *Contractor*

bears its own costs and indemnifies and keeps indemnified the *Client* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Client* (including management costs and professional fees) in relation to such increased monitoring.

Additional

clause 68.3 68.3 Where the *Client* issues a notice under 68.1 other than as a result of any failure

by the *Contractor* to perform its obligations under this contract, the *Client* bears

its own costs and indemnifies and keeps indemnified the *Contractor* at all times from and against all reasonable costs and expenses incurred by or on behalf of the *Contractor* in relation to such increased monitoring.

**Option Z41 Remedial Adviser**

Insert new clauses:

Additional clause 68.4

68.4 Without prejudice to any right to terminate this contract the *Client* may have, if an Intervention Trigger Event occurs or, in the *Client's* reasonable opinion, is likely to occur the *Client* gives notice to the *Contractor* with reasonable details in the Intervention Trigger Event and requiring:

 a meeting between the *Client* and the *Contractor* to discuss the

Intervention Trigger Event; and/or

 the appointment as soon as practicable of a Remedial Adviser.

Additional clause 68.5

68.5 If the *Client* notifies the *Contractor* that it requires a Remedial Adviser to the appointed:

 the *Contractor* shall select and the *Client* shall approve within tem (10) days, a person to be appointed as Remedial Adviser or if no such person is approved the *Client* shall identify the person to be appointed as Remedial Adviser;

 the terms of engagement and start date agreed with the Remedial

Adviser are approved by the *Client*; and

 any right of the *Client* to terminate this contract in respect of the relevant Intervention Trigger Event is suspended for sixty (60) days from the date of the notice issued pursuant to this clause 68.5 (the **Intervention Period**).

Additional clause 68.6

68.6 The Remedial Adviser's overall objective is to mitigate the effects of, and (to the extent possible) remedy the relevant Intervention Trigger Event and avoid the recurrence of the same. In order to achieve that objective the parties agree that the Remedial Adviser may:

 observe the conduct of and work alongside the Contractor Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the relevant Intervention Trigger Event;

 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

 write reports and provide information to the *Client* in connection with the steps being taken by the *Contractor* to remedy the relevant Intervention Trigger Event;

 make recommendations to the *Client* and/or the *Contractor* as to how the relevant Intervention Trigger Event might be mitigated or avoided in the future; and/or

 take any other steps that the *Client* and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the relevant Intervention Trigger Event.

Additional clause 68.7

68.7 The *Contractor*:

 works alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the *works* recommended by the Remedial Adviser;

 ensures that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Site;

 submits to such monitoring as the *Client* and/or the Remedial Adviser considers reasonable and proportionate in respect of the relevant Intervention Trigger Event;

 implements all reasonable recommendations made by the Remedial Adviser and approved by the *Client* within the timescales stipulated; and

 shall not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the *Client's* consent, not to be unreasonably withheld.

|  |  |  |
| --- | --- | --- |
| Additional clause 68.8 | 68.8 | The *Contractor* is responsible for the costs of appointing, and the fees charged by, the Remedial Adviser. The *Contractor* bears its own costs in connection with any action required by the *Client* and/or Remedial Adviser pursuant to this clause 68. |
| Additional clause 68.9 | 68.9 | If the *Contractor* fails to comply with the instructions given in any notice issued pursuant to clause 68.4 or defaults on its obligations under clause 68.7 or if the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period (each a **Remedial Adviser Failure**) the *Client* is entitled to terminate this Contract. |
| **Option Z42** |  | **Step in rights** |
|  |  | Insert new clauses: |
| Additional clause 69.1 | 69.1 | On the occurrence of a Step-In Trigger Event the *Client* serves notice on the *Contractor* (a **Step-In Notice**) that it will take action under this clause 69 either itself or via a third party specifying: |

 the action that the *Client* wishes to take and in particular the *works* that it wishes to control (the **Required Action**);

 the Step-In Trigger Event that has occurred and whether the *Client*

believes that the Required Action is due to a default by the *Contractor*;

 the date on which it wishes to commence the Required Action;

 the time period which it believes will be necessary for the Required

Action; and

 to the extent practicable, the impact that the *Client* anticipates the Required Action will have on the *Contractor*'s obligations to Provide the Works during the period that the Required Action is being taken

Additional

clause 69.2 69.2 Following service of a Step-In Notice the *Client*:

 takes the Required Action(s) and any consequential additional actions as it reasonably believes is necessary to achieve the Required Action;

 keeps records of the Required Action(s) taken and provide information about the same to the *Contractor*;

 co-operates wherever reasonable with the *Contractor* in order to enable the *Contractor* to continue to Provide the Works in relation to which the *Client* is not assuming control;

 acts reasonably in mitigating the cost that the *Contractor* will incur as a result of the exercise of the *Client's* rights under this clause 69.

Additional

clause 69.3 69.3 For so long as and to the extent that the Required Action is continuing, then:

 the *Contractor* shall not be obliged to Provide the Works to the extent that they are the subject of the Required Action;

 no deductions shall be applicable in relation to amounts due under this contract in respect of *works* that are the subject of the Required Action; and

 the *Client* shall deduct its additional costs of providing the Required

Action(s) from amounts otherwise due under this contract.

Additional

clause 69.4 69.4 If the *Contractor* demonstrates to the reasonable satisfaction of the *Client* that

the Required Action is resulting in the degradation of any *works* not subject to

the Required Action beyond that which would be the case if the *Client* was not taking the Required Action, then the *Contractor* shall be entitled to an agreed adjustment of the Price.

Additional

clause 69.5 69.5 Before ceasing to exercise its right to step-in, the *Client* delivers a written

notice to the *Contractor* (a **Step-Out Notice**), specifying:

 the Required Action it has actually taken; and

 the date on which the *Client* plans to end the Required Action (the **Step-Out Date**) subject to the *Client* being satisfied with the *Contractor*'s ability to resume the provision of the *works* and the *Contractor* providing a satisfactory Step-Out Plan.

Additional

clause 69.6 69.6 The *Contractor*, following receipt of a Step-Out Notice and not less than twenty

(20) day prior to the Step-Out Date, develops for approval a draft plan (a **Step-**

**Out Plan**) relating to the resumption by the *Contractor* of the *works*, including any action the *Contractor* proposes to take to ensure that the affected *works* satisfy the requirements of this Contract.

Additional

clause 69.7 69.7 If the *Client* does not approve the draft Step-Out Plan, the *Client* informs the

*Contractor* of its reasons for not doing so. The *Contractor* shall then revise the

draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the *Client* for approval. The *Client* shall not withhold or delay approval of the draft Step-Out Plan unnecessarily.

Additional

clause 69.8 69.8 The *Contractor* shall bear its own costs in connection with any step-in by the

*Client* under this clause 69, provided that the *Client* shall reimburse the

*Contractor*'s reasonable additional expenses incurred directly as a result of any step-in action taken by the *Client* other than as a result of a default of threat of default by the *Contractor*.

|  |  |  |
| --- | --- | --- |
| **Option Z43** |  | **Liabilities and insurance** |
|  |  | Insert new clauses: |
| Additional | 83.4 | The *Contractor* does not without the prior written approval of the *Project* |
| clause 83.4 |  | *Manager* settle or compromise with the insurers any claim which the *Contractor* |
|  |  | may have against the insurers and which relates to a claim by the *Client* |
|  |  | against the *Contractor*, nor by any act or omission lose or prejudice the |
|  |  | *Contractor*’s right to make or proceed with such a claim against the insurers. |
| Additional  clause 83.5 | 83.5 | The *Contractor* shall discharge in full all duties and obligations in respect of the  Insurance Act 2015 when procuring, maintaining or amending any insurance(s) |
|  |  | required by this Contract, including in circumstances where the *Contractor* is |
|  |  | required to name the *Client* on any such insurance policies to protect the |
|  |  | *Client’s* separate interests. |
| Additional  clause 83.6 | 83.6 | Where the minimum limit of indemnity required in relation to any of the |
|  |  | Insurances is specified as being "in the aggregate": |

 if a claim or claims which do not relate to this contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the *Contractor* shall immediately submit to the *Client*:

a) details of the policy concerned; and

b) its proposed solution for maintaining the minimum limit of indemnity specified; and

 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this contract are paid by insurers, the *Contractor* shall:

a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this contract; or

b) if the *Contractor* is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the *Client* full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

Additional

clause 83.7 83.7 Except where the *Client* is the claimant party, the *Contractor* gives the *Client*

notice within twenty (20) working days after any insurance claim in excess of

fifty thousand pounds (£50,000) relating to this contract on any of the insurances required by this contract or which, but for the application of the applicable policy excess, would be made on any of the insurances required by this contract and (if required by the *Client*) provides full details of the incident giving rise to the claim. The *Contractor* co-operates with the *Client* and assist it in dealing with such claims including without limitation providing information

and documentation in a timely manner.

Additional

clause 83.8 83.8 The public liability insurance required by this contract is in the joint names of

the *Client* and such other person as the *Project Manager* may reasonably

require including, without limitation, the *Client’s* consultants and contractors, the *Contractor* and all Subcontractors.

Additional

clause 83.9 83.9 All insurances required to be effected and maintained under this contract are

placed with reputable insurers, to whom the other party has no reasonable

objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the European insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers.

Additional

clause 83.10 83.10 Nothing in this clause 83 relieves the *Contractor* from any of its obligations and

liabilities under this Contract.

**Option Z44 Termination**

Supplement to clause 90

|  |  |  |  |
| --- | --- | --- | --- |
| **TERMINATION TABLE** | | |  |
| **Terminating** | **Reason** | **Procedure** | **Amount due** |
| **Party** |
| The *Client* | A reason | P1, P2 and P4 | A1, A2 and |
| other than | A4 |
| R1-R32 |  |
|  | R1-R15, R18 | P1, P2, P3 and P4 | A1, A2 and |
|  | or R22-R38 | A3 |
|  | R17 or R20 | P1 and P4 | A1 and A2 |
|  | R21 | P1, P3 and P4 | A |
|  | 1 |
|  | a |
|  | n |
|  | d |
|  | A |
|  | 2 |
| The *Contractor* | R1-R10, R16 | P1, P2 and P4 | A1, A2 and |
| or R19 | A4 |
|  | R17 or R20 | P1, P2 and P4 | A1 and A2 |
|  | R23 | P1, P2, P3 and P4 | A1, A2 and |
|  | A3 |

90.2 Delete the Termination Table and replace with:

Replace clause 91.8 with the following:

Additional clause 91.8

91.8 The *Client* may terminate if:

.1 the *Contractor* does a Corrupt Act, unless it was done by a

Subcontractor or supplier and the *Contractor*:

 was not and should not have been aware of the Corrupt

Act, or

 informed the *Project Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it, or

breaches clause 18.7, 18.8 or 18.9 (R22);

.2 the Parties are unable to either remove a conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level (R23); or

.3 the warranty given by the *Contractor* in relation to Occasions of Tax

Non-Compliance is materially untrue (R24); or

.4 the *Contractor* commits a material breach of its obligation to notify the

*Client* of any Occasion of Tax Non-Compliance (R25); or

.5 the *Contractor* fails to provide details of proposed mitigating factors in accordance with this contract in relation to any Occasion of Tax Non- Compliance which in the reasonable opinion of the *Client*, are acceptable (R26).

.6 the *Contractor*:

a) is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession (R27); or

b) commits or is found to have committed an act of grave misconduct in the course of its business or profession (R28); or

c) fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (R29); or

d) has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (R30); or

e) fails to obtain any necessary licences or to obtain or maintain membership of any relevant body (R31); or

f) demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”) and, in any such Change of Control, there are reasonable grounds for the *Client* to withhold its consent relating to the financial standing of the new entity through

which it is proposed that the *works* will be delivered or there

are security concerns arising from the provision of the *works* by

the new entity (R32); or

g) breaches clauses 20.11 or 20.12 (R33);

.7 on the occurrence of a:

a) Remedial Adviser Failure;

b) Improvement Plan Failure; or

c) Critical Performance Failure (R34).

.8 the *Contractor* fails to notify the *Client* of an event of the kind contemplated by Paragraph 2.1 to Contract Schedule Q (R35);

.9 the Client and the Contractor fail to agree a Financial Distress Recovery Plan (or any updated Financial Distress Recovery Plan) in accordance with Paragraphs 3.3.2 (a) and 3.5 to 3.9 of Contract Schedule Q (Financial Distress) (R36);

.10 the Contractor fails to comply with the terms (in whole or in part) of the Financial Distress Recovery Plan (or any updated Financial Distress Recovery Plan) in accordance with Contract Schedule Q (Financial Distress) (R37); and/or

.11 the *Contractor* fails to comply with or defaults on its obligations under

Paragraph 3.9 to Contract Schedule Q (Financial Distress) (R38).

**Option Z45 Termination of Subcontracts**

Insert new clauses:

Additional clause 91A

92.3 The *Contractor* terminates a contract with a Subcontractor where the *Client*

requires the *Contractor* to do so for a reason (1) to (4) below:

 the acts or omissions of the relevant Subcontractor have caused or materially contributed to the *Client's* right of termination pursuant to clause 90 (Termination);

 the relevant Subcontractor or any of its Affiliates have embarrassed the *Client* or otherwise brought the *Client* into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the *Client*, regardless of whether or not such act or omission is related to the Subcontractor's obligations in relation to the *works* or otherwise;

 the relevant Subcontractor has failed to comply in the performance of its sub-contract with legal obligations in the fields of environmental, social or labour Law; and/or

 there is a breach of clauses 20.8 – 20.10 (inclusive) and/or 20.12 by the Subcontractor or by the *Contractor* as a result of the Subcontractors involvement in the delivery of the *works*.

**Option Z46 Works exclusion**

Insert new clauses:

Additional clause 94.1

94.1 Where the *Contractor*:

 breaches clauses 20.8 – 20.10 (inclusive) and/or 20.12 or the *Client* reasonably believes that a breach of clauses 20.8 – 20.10 (inclusive) and/or 20.12 has or is likely to occur; and/or

 a material breach in relation to part of the *works*,

(each a **Works Exclusion Cause**) the *Client* may give notice to the *Contractor* (a **Works Exclusion Notice**) giving reasonable details of the Works Exclusion Cause.

Additional clause 94.2

94.2 Following service of a Works Exclusion Notice:

 the *Client* takes and/or procure that a third party takes the action set out in the Works Exclusion Notice and any consequential additional action as it reasonably believes is necessary to ensure that the *works* (or relevant part thereof) are delivered to the standard required pursuant to the terms of this contract and so that the *Client* is not in breach of any applicable Law, the Client's Policies and/or its statutory duties;

 without double counting the *Contractor* is responsible for the *Client's* reasonable and properly incurred costs and expenses (including any internal management time and/or procurement cost associated with appointing a third party) relating to the exercise of the *Client's* rights under this clause 94; and

 the Price is adjusted to reflect the removal of the relevant part of the

*works* identified in the Works Exclusion Notice.

**Option Z47 Changes in Law**

Supplement to clause X2

X2.1 Delete X2.1 and replace with:

X2.1 The *Contractor* is not relieved of its obligations pursuant to this Contract and is not entitled to claim that a compensation event has occurred as the result of:

 a change in Law which is of a general legislative nature including taxation or duties of any sort affecting the *Contractor*; or

 any other change in Law which an experienced Contractor ought to have foreseen as at the Contract Date.

Insert new clause:

Additional clause X2.2

X2.2 Subject to clause X2.1 A change in the Law in the country in which the Site is located is a compensation event if it is a Specific Change in Law which:

 occurs after the Contract Date;

 impacts on the performance of the *works* in a material way; and

 it is not one of the other compensation events stated in this Contract.

Additional clause X2.3

|  |  |  |
| --- | --- | --- |
| Supplement to clause X15 | X15.1 | Delete "reasonable skill and care" and replace with "all the reasonable skill care and diligence of a competent design consultant experienced in work of a similar size, scale and complexity as the *works*." |
| Supplement to clause X15.5 |  | At the end of the clause, insert "The *Contractor* obtains and maintains the professional indemnity insurance upon customary and usual 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 on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers." |

X2.3 The *Project Manager* may notify the *Contractor* of a compensation event for a change in the Law and instruct him to submit quotations. If the effect of a compensation event which is a change in the Law is to reduce the total Defined Cost, the Prices are reduced.

|  |  |
| --- | --- |
| **Option Z48** | **Ultimate holding company guarantee** |
| Supplement to clause X4 | X4.1 Delete the words "the Scope" and replace with "Contract Schedule N Part 1". |
|  | At the end of the clause, insert the following: "Until the *Contractor* discharges its obligations under this clause, the *Project Manager* when certifying payment deducts from the Price for Work Done to Date a sum being 10% of the Price for Work Done to Date." |
| **Option Z49** | **Option X7: Delay damages** |
| Supplement to clause X7.1 | X7.1 After the second bullet point, add a new sentence as follows: “The *Contractor* hereby acknowledges that such delay damages are not the *Client*’s sole remedy.” |
| **Option Z50** | **Performance bond** |
| Supplement to clause X13 | X13.1 Insert at the beginning of the clause the following sentence "The Contractor complies with this clause where an ultimate holding company does not own the *Contractor*." |
|  | Replace the words "the Scope" with the words "Contract Schedule N Part 2". |
|  | At the end of the clause, insert the following: "Until the *Contractor* discharges its obligations under this clause, the *Project Manager* when certifying payment deducts from the Price for Work Done to Date a sum being 10% of the Price for Work Done to Date." |
| **Option Z51** | **The *Contractor*'s design** |

|  |  |
| --- | --- |
| **Option Z52** | **Retention** |
|  | Insert new clause: |
| Additional clause X16.3 | X16.3 The *Client's* interest in the amount retained shall not be fiduciary, either as trustee for the *Contractor* or any other person. The relationship of the *Client* and the *Contractor* with regard to the amount retained shall be solely that of debtor and unsecured creditor and subject to the terms of this contract. The *Client* shall have no obligation to invest the amount retained or any part thereof. The *Client* shall have no obligation to place the amount retained or any part thereof in a separate banking account nor shall the *Client* be required to identify any amount retained as being held by the *Client* on trust and the *Client* shall be entitled to the full beneficial interest in any interest accruing on such amount retained and shall be under no duty to account for any such interest to the *Contractor*. |
| **Option Z53** | **Limitation of liability** |
| Supplement to clause X18.4 | X18.4 Delete the text of the third bullet point and replace with "any amounts payable by the contract pursuant to clause X20." |
| **Option Z54** | **Performance Indicators (not used with Option X12)** |

Supplement to clause X20

Delete X20 and replace with:

X20.1 From the starting date until the date of the issue of the Defects Certificate, the

*Contractor* reports to the *Project Manager*:

.1 the management and performance information required by

Schedule I and J respectively;

.2 his performance against each of the Key Performance Indicators and the Subsidiary Performance Indicators.

Reports are provided at monthly intervals. X20.2 Subject to clause X20.3, if:

.1 a KPI Failure occurs, Service Credits accrue in respect of such KPI Failure and may be deducted from an amount due to the *Contractor* or are paid by the *Contracto*r in accordance with clause X20.4;

.2 a Material KPI Failure occurs, the Contractor complies with the Improvement Plan process if the failure is a Notifiable Event and Service Credits accrue in accordance with clause X20.4;

.3 a SPI Failure occurs, the *Contractor* notifies the *Project Manager* of the action (if any) it proposes to take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring; and/or

.4 a Material SPI Failure occurs:

 the *Contractor* complies with the Improvement Plan Process if the failure if a Notifiable Event; and

 the *Project Manager* withholds a proportionate sum (calculated on the same basis as Service Credits are calculated by reference to the Service Failure Points for the relevant SPI Failure) from the amount due until the relevant Material SPI Failure is rectified to the reasonable satisfaction of the *Project Manager*, at which point the *Project Manager* shall pay the amount withheld.

X20.3 Without prejudice to the *Contractor's* obligation to report in accordance with clause X20.1, no Service Credits accrue, are paid or withheld and no right to terminate in respect of a KPI Failure or a SPI Failure to the extent that the same arises as a consequence of or is caused by:

a) a compensation event; or

b) any matter which is outside the reasonable control of the *Contractor*.

X20.4 Service Credits are calculated on the following basis:

 the amount of any applicable Service Credit is calculated by:

a) multiplying the number of Service Failure Points stated in Contract Schedule J in relation to the category of KPI Failure (Minor, Serious or Severe) for the relevant KPI Failure by the value of a single Service Credit stated in the Contract Data; and

b) multiplying the product of the calculation in X20.4 (a) by the higher of one and number of consecutive months over which the KPI Failure has occurred (the **Ratchet**).

 The *Project Manager* sets off and/or withholds the value of Service Credits calculated under this clause X20.4 as a proportionate sum from the amount due under clause 50.2 or a sum equal to the value of the Service Credits may be recovered by the *Client* as a debt due from the *Contractor* provided always that the maximum sum in respect of Service Credits relating to any month that may be withheld or recovered by the *Client* shall not exceed the Service Credit Cap.

X20.5 **Critical Performance Failure**

Subject to clause 67.9, if, a Critical Performance Failure occurs, the *Client* may exercise its rights to terminate this contract in whole or in part.

**Option Z55 Financial Distress**

Insert new clause 10.4 as follows:

10.4 The *Client* and the *Contractor* comply with Contract Schedule Q.

**Contract Schedule C**

**Contract Data Part Two – Data provided by the *Contractor***

|  |  |  |  |
| --- | --- | --- | --- |
| **1.**   | **Statements given in all Contracts**  The *Contractor* is **Speller Metcalfe Malvern Ltd** | [defined in the form of agreement to which this Schedule is annexed] |  |
|  |  |  |
|  | The *fee percentage* is |  | **5%** |
|  | The *subcontracted fee percentage* is |  | **5%** |
|  | The *working areas* are the Site and **Speller Metcalfe Malvern Ltd, Maple Road, Enigma Business Park, Malvern, Worcestershire, WR14 1GQ** |  |  |
|  | The *Framework Manager* is **Matthew Bailey** |  |  |
|  | The key people are |  |  |

|  |
| --- |
| 1. Name – REDACTED |
| Job - Contracts Manager |
| Responsibilities - Control of the contract including Programme Planning, Health and Safety, Environmental, Quality and Client/Design team liaison |
| Qualifications – See CV issued with submission |
| 1. Name – **REDACTED** |
| Job – **Senior Quantity Surveyor** |
| Responsibilities – **Contract commercial management** |
| Qualifications- **BSc (Hons) Commercial Management & Quantity surveying** |
| Experience- **REDACTED** |

The following matters will be included in the Early Warning Register – **See risk register issued at submission**

**2. The Contractor's main responsibilities**

**If the *Contractor* is to provide Scope for his design**

 The Scope for the *Contractor's* design is in **Speller Metcalfe Contractors Proposals**

**3. Time**

**If a programme is identified in the Contract Data**

 The programme identified in the

Contract Data is

**If the *Contractor* is to decide the *completion date* for the whole of the *works***

 The *completion date* for the whole of the *works* is **29th March 2021**

**5. Payment**

 The *activity schedule* is **Plymouth, Clearbrook House, Activity Schedule**

 The tendered total of the Prices is **£493,079.90**

**Resolving and avoiding disputes**

**If Option W1 or W1 is used**

**Data for the Shorter Schedule of Cost Components**

|  |  |  |
| --- | --- | --- |
|  | The people rates are:  category of person | unit |
|  | 1. **See schedule F cost components issued with framework submission** |  |
|  | 2. |  |
|  | 3. |  |
|  | The published list of Equipment is the last edition of the list published by – **Laxtons** **2020** |  |
|  | The percentage for adjustment for  Equipment in the published list is |  |
|  | The rates for other Equipment are |  |

rate

**+10% (state plus or minus)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | Equipment  1. **See schedule F Cost components issued with framework submission**  2.  3. | size or capacity | | rate |
|  |  | The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the Contractor are: | | | |
|  |  | category of person rate  1. **See schedule F Cost components issued with framework submission** | | | |
| R |  | The rates for Defined Cost of design outside the Working Areas are | | | |
|  |  | category of employee  1. **See schedule F Cost components issued with framework submission**  2.  3. | | hourly rate | |
|  |  | The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are: | |  | |

hourly rate

**Contract Schedule D**

**Scope**

**Contract Schedule E Activity Schedule**

**Contract Schedule F Site Information**

**Contract Schedule G Collateral Warranties**



**Deed of Warranty**

(1) [●Contractor] (2) [●Beneficiary] (3) [●Client]

Dated 20

One Redcliff Street

Bristol BS1 6TP

+44 (0)333 006 0000

+44 (0)333 006 0011

DX 7815 Bristol

[www.TLTsolicitors.com](http://www.TLTsolicitors.com)

46901509.1

**Contents**

**Clauses**

1 Definitions and interpretation ........................................................................................... 2

2 Contractor's warranties .................................................................................................... 3

3 Use of Design Documents ............................................................................................... 4

4 Assignment ...................................................................................................................... 4

5 Insurance ......................................................................................................................... 4

6 Other remedies ................................................................................................................ 5

7 Limitation.......................................................................................................................... 5

8 Notices ............................................................................................................................. 5

9 Governing law and disputes ............................................................................................ 6

10 Third Party Rights ............................................................................................................ 6

**This deed** is made the day of 20

**Between:**

(1) [●**Contractor**] (Company number [●]) whose registered office is at [●] (the **Contractor**); (2) [●**Beneficiary**] (Company number [●]) whose registered office is at [●] (the

**Beneficiary**); and

(3) [●**Client**] (Company number [●]) whose registered office is at [●] (the **Client**).

**Background:**

(A) The Client has entered into or is about to enter into a Contract with the Contractor regarding the Works;

(B) The Beneficiary is [*insert nature of Beneficiary's interest*];

(C) Under the terms of the Contract the Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.

**Operative provisions:**

1 Definitions and interpretation

1.1 In this deed, unless the context otherwise requires, the following words have the following meanings:

**Beneficiary** includes any person to whom the benefit of this Deed and/or any rights arising under it shall have been validly assigned in accordance with clause 4

**Client** includes any person to whom the benefit of the Contract has been validly assigned in accordance with its terms

**Contract** the contract entered into or about to be entered into between the Client and the Contractor in relation to the Works

**Design Documents** all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information (and any designs, ideas, concepts and inventions contained in them whether patentable or not) which may be prepared, conceived or developed by or on behalf of the Contractor in the course of or as a result of carrying out the Works

**Practical Completion** taking over of the Works as certified or otherwise evidenced pursuant to the terms of the Contract

**Site** the location of the Works being [●]

**Statutory Requirements** any requirements imposed by

(a) any act of parliament, statutory instrument, rule or order made under any act of parliament;

(b) any regulation or bye law or approved code of practice of any local authority, statutory undertaker or other body which has

jurisdiction with regard to the Works or to whose systems the Works are or will be

connected; or

(c) the terms of any planning permission, building regulation approval or other consent or approval required for the execution of the Works

**Works** the design and construction of the *works* as detailed in the Contract

1.2 In this deed, unless the context otherwise requires:

1.2.1 any obligation on a party to this Deed to do any act includes an obligation to procure that it is done;

1.2.2 the clause and paragraph headings in this Deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer;

1.2.3 unless the contrary intention appears, references:

(a) to numbered clauses and schedules are references to the relevant clause in, or schedule to, this Deed; and

(b) to a numbered paragraph in the schedule are references to the relevant paragraph in the schedule;

1.2.4 words in this Deed denoting the singular include the plural meaning and vice versa;

1.2.5 references in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it;

1.2.6 words in this Deed importing one gender include both genders and may be used interchangeably, and words denoting persons, where the context allows, include corporations and vice versa.

2 Contractor's warranties

2.1 The Contractor warrants and undertakes to the Beneficiary that it has observed and performed and will continue to observe and perform each and all of the obligations on its part to be observed and performed under the Contract in accordance with the terms of the Contract, provided always that:

2.1.1 the Contractor shall owe no greater obligations to the Beneficiary under this Deed than it would have owed had the Beneficiary been named as a joint employer with the Client under the Contract; and

2.1.2 the Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works.

2.2 The Contractor extends to the Beneficiary the benefit of all warranties and undertakings on the part of the Contractor contained in the Contract.

2.3 The Contractor acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties and undertakings given by the Contractor under this clause 2.

2.4 The Contractor acknowledges to the Beneficiary that, at the date of this Deed, the Contract remains in full force and effect and the Client has paid all sums properly due to the Contractor under the Contract.

3 Use of Design Documents

3.1 The copyright in the Design Documents shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty-free non-exclusive license to use and to reproduce any or all of the Design Documents for any purpose connected with the Works and/or the Site including, but without limitation, the execution and completion of the Works and the maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Site.

3.2 The license referred to in clause 3.1 shall carry the right to grant sub-licenses and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor's employment under the Contract, provided always that the Contractor shall not be liable for the consequences of any use of the Design Documents for any purpose other than that for which it was prepared.

3.3 Insofar as the Contractor is the author of the Design Documents and of the Works, the Contractor waives any moral rights which it might otherwise be deemed to possess in respect of them. The Contractor shall not exercise his moral rights against the Beneficiary and the Contractor agrees that the Beneficiary is entitled to make any reasonable changes or amendments to the design prepared by or on behalf of the Contractor.

3.4 The Contractor shall procure for the Beneficiary a waiver corresponding to that in

clause 3.3 from any sub-contractor or consultant employed by the Contractor who is an author of any part of the Design Documents and of the Works in respect of them.

3.5 The Contractor shall indemnify the Beneficiary against any liability which the Beneficiary may incur by reason of the Contractor's infringing or being held to have infringed any copyright or other intellectual property rights of any person.

3.6 The Contractor shall within 28 days of the Beneficiary's request provide a complete set of copies of the Design Documents to the Beneficiary without charge.

4 Assignment

4.1 The Beneficiary may assign the benefit of this Deed and/or any rights arising under it on notice to the Contractor at any time without the Contractor's consent.

4.2 The Contractor shall not be entitled to contend that any person to whom this Deed is assigned is precluded from recovering any loss incurred by such assignee from any breach of this Deed (whenever occurring) by reason that such a person is an assignee and not a named Beneficiary under this Deed.

5 Insurance

5.1 The Contractor undertakes to the Beneficiary to maintain with reputable insurers carrying on business in the United Kingdom, from the date of this Deed and for a period expiring no earlier than 12 years after the date of Practical Completion and notwithstanding the determination for any reason of the Contractor's employment under the Contract, professional indemnity insurance, with a limit of indemnity of not less than

£10,000,000 (10 million pounds) in respect of each and every claim, provided always that such insurance continues to be available in the United Kingdom market upon

reasonable terms and at commercially reasonable premium rates.

5.2 As and when it is reasonably required to do so by the Beneficiary, the Contractor shall produce for inspection by the Beneficiary documentary evidence that such insurance is being properly maintained.

5.3 The Contractor shall notify the Beneficiary immediately if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Contractor is unable to continue to maintain such insurance.

5.4 The Contractor shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under this Deed without the prior written consent of the Beneficiary provided that nothing in this clause 5.4 shall preclude the Contractor's insurers from taking over (in the name of the Contractor) the defence of any claim made by the Beneficiary under this Deed and (in that capacity) from conducting and settling it as they see fit.

6 Other remedies

6.1 Nothing in this Deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this Deed.

6.2 The liability of the Contractor under this Deed shall not be released, diminished or in any other way affected by:

6.2.1 the appointment by the Beneficiary of any person to survey the Site or to monitor the carrying out of the Works or to inspect any documents relating to them on behalf of the Beneficiary or the failure to appoint such a person;

6.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or

6.2.3 any other independent inquiry into any relevant matter which the

Beneficiary may make or fail to make.

7 Limitation

No action or proceedings for any breach of this Deed shall be commenced against the

Contractor after the expiry of 12 years following Practical Completion of the Works.

8 Notices

8.1 Any notice or consent required or permitted under this Deed shall be in writing and shall be sent by first class post, hand delivery or fax. There shall be no right to serve notices or consents by email.

8.2 Any such notice, consent or other document shall be deemed to have been duly received:

8.2.1 if despatched by first class post - 48 hours from the time of posting to the relevant party; or

8.2.2 if despatched by hand delivery - at the time of actual delivery; or

8.2.3 if despatched by fax - 24 hours after the time of the despatch.

8.3 In proving service by post it will be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope containing the notice was duly stamped addressed and posted to the addresses given for a party in this Deed or such other addresses subsequently notified in writing as being the registered office or principal address of business of the relevant party. In proving service by fax it shall be sufficient to prove that it was properly addressed and dispatched to the numbers as notified in writing by the relevant party to other parties.

8.4 A party shall not attempt to prevent or delay the service on it of a notice under this

Deed.

9 Governing law and disputes

The application and interpretation of this Deed shall in all respects be governed by the laws of England and any dispute or difference arising under this Deed shall be subject to the jurisdiction of the courts of England.

10 Third Party Rights

10.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed.

10.2 The parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

**In witness** this deed has been executed and delivered on the date appearing at the top of page

Signature page to the Deed of Warranty between [●Contractor], [●Beneficiary] and [●Client].

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Contract Schedule H Security Provisions**

**Contract Schedule H**

**Security Provisions (Lot 2/3)**

**1 Definitions**

1.1 For the purposes of this schedule the following terms shall have the meanings given below:

**Breach of Security** in accordance with the Security Requirements and the Security Policy, the occurrence of:

(a) any unauthorised access to or use of the works, the Client Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Client Data) used by the *Client* and/or the *Contractor* in connection with this contract; and/or

(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Client Data), including any copies of such information or data, used by the *Client* and/or the *Contractor* in connection with this contract.

**ISMS** the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the works;

**Security Management Plan** the *Contractor*'s security plan prepared pursuant to paragraph 4.2 of this Contract Schedule H;

**Security Policy Framework** means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);

**Security Tests** shall have the meaning set out in paragraph 4.5.1 of this Contract Schedule H;

**Service Levels** the levels of *service* required to be provided, as prescribed in this contract (if any) or as otherwise agreed by the parties;

**2 Introduction**

2.1 This schedule covers:

2.1.1 principles of protective security to be applied in Providing the Works;

2.1.2 wider aspects of security relating to Providing the Works;

2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;

2.1.4 the creation and maintenance of the Security Management Plan;

2.1.5 audit and testing of ISMS compliance with the Security Requirements;

2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;

2.1.7 obligations in the event of actual, potential or attempted breaches of security.

**3 Principles of Security**

3.1 The *Contractor* acknowledges that the *Client* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.

3.2 The *Contractor* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

3.2.1 is in accordance with Good Industry Practice, the *law of the contract* and this contract;

3.2.2 complies with the Security Policy;

3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);

3.2.4 meets any specific security threats to the ISMS; and

3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 3.2 of this schedule;

3.2.6 complies with the Security Requirements; and

3.2.7 complies with the *Client*’s information and communications technology standards.

3.3 The references to standards, guidance and policies set out in paragraph 3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Contractor* gives an early warning to the *Project Manager* of such inconsistency immediately upon becoming aware of the same, and the *Project Manager* shall, as soon as practicable, advise the *Contractor* which provision the *Contractor* shall be required to comply with.

**4 ISMS and Security Management Plan**

4.1 Introduction:

4.1.1 The *Contractor* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 3.2, be approved, by the *Project Manager*, tested and, periodically updated and audited in accordance with ISO/IEC 27001.

4.1.2 The *Contractor* shall develop and maintain a Security Management Plan in accordance with this Schedule.

4.1.3 The *Contractor* shall comply with its obligations set out in the Security

Management Plan.

4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Client*, aim to protect all aspects of the *works* and all processes associated with Providing the Works, including the Affected Property, the *Contractor* System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the *Client* or the *Contractor* in connection with this contract.

4.2 Development of the Security Management Plan:

4.2.1 Within sixty (60) Working Days prior to the *starting date* and in accordance with paragraph 4.4 (Amendment and Revision), the *Contractor* will prepare and deliver to the *Project Manager* for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan. The format and content of the Security Management Plan shall be agreed between the *Client* and the *Contractor* during the early stages of the Mobilisation Period.

4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision), is approved by the *Project Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved by the *Project Manager* the *Contractor* shall amend it within ten (10) day or such other period as the parties may agree in writing of a notice of non-approval from the *Project Manager* and

re-submit to the *Project Manager* for approval. The parties will use all

reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the *Project Manager*. If the *Project Manager* does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with clause W2. No approval to be given by the *Project Manager* pursuant to this paragraph 4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.3.4 shall be deemed

to be reasonable.

4.3 Content of the Security Management Plan:

4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the *Contractor* in relation to all aspects of the *works* and all processes associated with Providing the Works and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *works* comply with the provisions of this schedule (including the principles set out in paragraph 3);

4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the *Contractor*’s ISMS at the date notified by the *Project Manager* to the *Contractor* for the *Contractor* to meet the full obligations of the Security Requirements.

4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.

4.3.4 The Security Management Plan shall be written in plain English in

language which is readily comprehensible to the staff of the *Contractor* and the *Client* engaged in the *works* and shall only reference documents which

are in the possession of the *Client* or whose location is otherwise specified in this schedule.

4.4 Amendment and Revision of the ISMS and Security Management Plan:

|  |  |  |
| --- | --- | --- |
|  | 4.4.1 | The ISMS and Security Management Plan will be fully reviewed and updated by the *Contractor* annually or from time to time to reflect: |
| (a) | emerging changes in Good Industry Practice; |
| (b) | any change or proposed change to the Contractor System, the *works* |
|  | and/or associated processes; |
| (c) | any new perceived or changed security threats; and |
| (d) | any reasonable request by the *Project Manager*. |
| 4.4.2 | The *Contractor* will provide the *Project Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Client*. The results of the review should include, without limitation: |
| (a) | suggested improvements to the effectiveness of the ISMS; |
| (b) | updates to the risk assessments; |
| (c) | proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and |
| (d) | suggested improvements in measuring the effectiveness of controls. |
| 4.4.3 | On receipt of the results of such reviews, the *Project Manager* will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 4.2.2. |
| 4.4.4 | Any change or amendment which the *Contractor* proposes to make to the ISMS or Security Management Plan (as a result of a *Project Manager’s* request or change to the *works* or otherwise) shall be subject to the early warning procedure and shall not be implemented until approved in writing by the *Project Manager*. |
| 4.5 | Testing |  |
|  | 4.5.1 | The *Contractor* shall conduct tests of the ISMS (**Security Tests**) on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Project Manager.* |
|  | 4.5.2 | The *Project Manager* shall be entitled to witness the conduct of the Security Tests. The *Contractor* shall provide the *Project Manager* with the results of such tests (in a form approved by the *Client* in advance) as soon |
|  |  | as practicable after completion of each Security Test. |
|  | 4.5.3 | Without prejudice to any other right of audit or access granted to the *Client* pursuant to this contract, the *Project Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Contractor*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Contractor*'s  compliance with the ISMS and the Security Management Plan. The *Project manager* may notify the *Contractor* of the results of such tests after  completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the *service*. If |

such tests adversely affect the *Contractor*’s ability to deliver the *works* to the agreed Service Levels, the *Contractor* shall be granted relief against any resultant under-performance for the period of the tests.

4.5.4 Where any Security Test carried out pursuant to paragraphs 4.5.2 or 4.5.3 above reveals any actual or potential Breach of Security, the *Contractor* shall promptly notify the *Project manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Contractor* proposes to make in order to correct such failure or weakness. Subject to the *Project Manager*'s approval in accordance with paragraph 4.1.1, the *Contractor* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable

agreed with the *Project Manager* or, otherwise, as soon as reasonably

possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or Security Requirements the change to the ISMS or Security Management Plan shall be at no cost to the *Client*.

**5 Compliance with ISO/IEC 27001**

5.1 Unless otherwise agreed by the parties, the *Contractor* shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) months of the Contract Date and shall maintain such certification for the duration of the contract.

5.2 In the event that paragraph 5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the *Contractor* reasonably believes that it is not compliant with ISO/IEC 27001, the *Contractor* shall promptly notify the *Project Manager* of this and the *Client* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

5.3 The *Project Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

5.4 If, on the basis of evidence provided by such audits, it is the *Project Manager*'s reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Contractor*, then the *Project Manager* shall notify the *Contractor* of the same and give the *Contractor* a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Contractor* does not become compliant within the required time then the *Project Manager* has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 the

*Contractor* is found to be non-compliant with the principles and practices of ISO/IEC

27001 then the *Contractor* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Client* in obtaining such audit.

**6 Breach of Security**

6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the *Contractor* shall:

6.2.1 immediately take all reasonable steps necessary to:

(a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

(b) prevent an equivalent breach in the future.

such steps shall include any action or changes reasonably required by the

*Project Manager*; and

6.2.2 as soon as reasonably practicable provide to the *Project Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

**Contract Schedule I Management Information**

The *Contractor* MI Reports are to include the following information

**1. Programme**

 Summary of *works* in progress

 Key Dates completed in the month

 Progress Reports

 Programme Forecasts including critical path

 Current or anticipated delays and mitigation measures

**2. Risk & Compliance**

 Early Warning Register

 Early Warning Register at a Programme level (where applicable)

 Notices and Licences applied for and obtained in Providing the Works

 Outstanding approvals

 BIM reports

 Proportion of SME’s supporting delivery of projects

 Apprenticeship schemes supporting delivery of projects

**3. H&S / Incident reporting**

 Incidents including near misses

 Tool box talks undertaken in the period

**4. Commercial**

 Variations status report

 Payment Applications status report

**5. Quality**

 Snagging status report

 Defects status reports

**6. Performance**

 Performance reports via the Integrator Performance Management System

**Contract Schedule J**

**Key Performance Indicators**

**Contract Schedule K TUPE surcharge**

**Contract Schedule K (Lot 2/3)**

**TUPE Surcharge**

**1 Introduction**

1.1 This schedule sets out the process for determining the:

1.1.1 TUPE Surcharge, if a Relevant Transfer takes place; and

1.1.2 Redundancy Surcharge in the event that, following a Relevant Transfer, a Transferring Former Contractor Employee and/or a Transferring Client Employee is made redundant by the *Contractor* as a result of an economic technical organisational reason entailing changes to the workforce and the *Contractor* has followed a fair dismissal procedure and complied with all contractual and legislative requirements.

1.2 **TUPE Surcharge** means:

1.2.1 the difference, on an annual basis, between:

(a) the costs to employ Transferring Former Contractor Employees and/or

Transferring Client Employees (as the case may be); and

(b) the equivalent costs to employ staff used by the *Contractor* to calculate the

Prices,

in respect of the following: (i) annual salary

(ii) annual national insurance cost

(iii) annual pension cost

(iv) holiday entitlement

(v) annual life insurance cost (vi) annual sick pay entitlement (vii) maternity/paternity costs

(viii) any other cost arising directly from the contract of employment of the Transferring Former Contractor Employee and or Transferring Client Employee for which there is an equivalent cost applicable to the employed staff used by the Contractor at Further Competition to calculate the Prices.

1.3 **Redundancy Surcharge** means, in relation to a redundancy as described in paragraph

1.1.2 above, the following costs: any tribunal awards, redundancy payments including contractual or enhanced redundancy costs and notice payments.

**2 TUPE Surcharge**

2.1 Where a Relevant Transfer takes place, or will take place, the *Contractor* shall, no later than thirty (30) days after the Relevant Transfer Date, submit to the *Project Manager,* its calculation of the TUPE Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the *Project Manager* to corroborate and assess the calculation of the TUPE Surcharge.

2.2 On receipt of the *Contractor*’s calculation of the TUPE Surcharge in accordance with paragraph 16.2.1 the *Project Manager* shall either:

2.2.1 notify the *Contractor* in writing of acceptance of the TUPE Surcharge relating to the Relevant Transfer;

2.2.2 request further information/evidence; and/ or

2.2.3 request a meeting to discuss/clarify the evidence provided.

2.3 Where the TUPE Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Project Manager* shall notify the *Contractor* in writing.

2.4 In the event that the *Contractor* and the *Project Manager* are unable to agree the TUPE Surcharge, they shall follow the agreed dispute resolution procedure.

2.5 On agreement of the TUPE Surcharge the Prices shall be changed accordingly.

**3 Annual Review of TUPE Surcharge**

3.1 The TUPE Surcharge shall be reviewed by the *Project Manager* at the commencement of each Contract Year.

3.2 The *Contractor* shall submit to the *Project Manager,* no later than thirty (30) days prior to Contract Year, evidence of any change to the TUPE Surcharge since it was last adjusted including but not limited to whether or not a Transferring Former Contractor Employee and/or a Transferring Client Employee is still employed by the *Contractor* and/or engaged on this contract. The *Client* shall cease to be liable to pay the TUPE Surcharge in respect of a particular Transferring Former Contractor Employee or a Transferring Client Employee from the date upon which he ceases to be employed by the *Contractor* or engaged on this contract (whichever occurs the earliest).

3.3 On receipt of the *Contractor*’s calculation of the TUPE Surcharge in accordance with

paragraph 3.2 the *Project Manager* shall either:

3.3.1 notify the *Contractor* in writing of acceptance of the adjusted TUPE Surcharge; or

3.3.2 request further information/evidence; and/ or

3.3.3 request a meeting to discuss/clarify the evidence provided.

3.4 Where the adjustment to the TUPE Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Project Manager* shall notify the *Contractor* in writing.

3.5 In the event that the *Contractor* and the *Project Manager* are unable to agree the adjustment to the TUPE Surcharge, they shall follow the agreed dispute resolution procedure.

**4 Adjustment to the TUPE Surcharge**

4.1 Where the adjusted TUPE Surcharge is less than the TUPE Surcharge in the previous

Contract Year, the Prices shall be adjusted to account for the lower TUPE Surcharge.

4.2 The adjusted TUPE Surcharge shall be used as the benchmark in the subsequent annual TUPE costs review.

4.3 Where the adjusted TUPE Surcharge is more than the TUPE Surcharge in the previous

Contract Year, the Prices shall not be adjusted.

**5 Right of Audit**

5.1 The *Project Manager* may review and audit the calculation of the TUPE Surcharge at any time and the *Contractor* shall repay to the *Client* any over payment between the TUPE Surcharge used to adjust the Prices and the corrected TUPE Surcharge calculated following a review and audit.

**6 Redundancy Surcharge**

6.1 Where a Relevant Transfer takes place, or will take place, the *Contractor* shall not make any Transferring Former Contractor Employee(s) and/or Transferring Client Employee(s) redundant without consulting the *Project Manager*.

6.2 The *Contractor* shall mitigate the effects of any Redundancy Surcharge by:

6.2.1 redeploying such people where it is practicable for the *Contractor* to do so;

or

6.2.2 where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and

6.2.3 complying with the law and any reasonable instructions from the *Project*

*Manager*.

6.3 The Redundancy Surcharge shall be zero unless the *Contractor* has consulted with the *Project Manager,* pursuant to paragraph 6.1, about the particular Transferring Former Contractor Employee(s) and/or Transferring Client Employee(s) within 12 months of the *starting date.*

6.4 Where redundancy is unavoidable, the *Contractor* shall provide the *Project Manager* with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the *Project Manager* to corroborate and assess the calculation of the Redundancy Surcharge.

6.5 On receipt of the *Contractor*’s calculation of the Redundancy Surcharge in accordance with paragraph 6.4 the *Project Manager* shall either:

6.5.1 notify the *Contractor* in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or

6.5.2 request further information/evidence; and/ or

6.5.3 request a meeting to discuss/clarify the evidence provided.

6.6 Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Project Manager* shall notify the *Contractor* in writing.

6.7 In the event that the *Contractor* and the *Project Manager* are unable to agree the

Redundancy Surcharge, they shall follow the agreed dispute resolution procedure.

6.8 On agreement of the Redundancy Surcharge the Prices shall be changed accordingly.

**Contract Schedule L Governance**

**Contract Schedule L (Lot 2/3)**

**Governance**

**1 Definitions**

1.1 In this Schedule, the following definitions shall apply:

**Chairperson** has the meaning given to it in Paragraph 2.1.1; and

**Project Board** has the meaning given to it in Paragraph 2.1.

**2 Project Board**

2.1 The *Project Manager,* the *Client* and the *Contractor* shall establish and maintain a project board (the **Project Board**), consisting of at least:

2.1.1 a member from the *Client*, who will be the chairperson (the **Chairperson**)

of the Project Board;

2.1.2 the *Framework Manager* appointed by the *Contractor;* and

2.1.3 the *Project Manager*.

2.2 The *Project Manager* may fulfil the *Client's* obligations and exercise the rights of the *Client,* save as otherwise notified by the *Client,* for the purposes of this Contract Schedule L.

**3 Function**

3.1 The functions of the Project Board shall be:

3.1.1 to provide a means for the joint review of all aspects of the performance of this Contract;

3.1.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract including ensuring dissemination of information and consideration of the views of all the stakeholders connected with this Contract; and

3.1.3 consideration of issues relating to: (a) the programme;

(b) health and safety performance;

(c) the Risk Register and risk management; (d) financial performance of the *Contractor*;

(e) incidents (including, without limitation, security issues (both physical and relating to IT);

(f) escalation of issues (including unresolved issues requiring escalation to the

*Client*);

(g) the quality management of delivery of the *works*; (h) innovation;

(i) performance levels;

(j) compensation events;

(k) considering the outcome of performance contract review meetings attended by the *Project Manager* and the *Contractor*;

(l) customer feedback; and

(m) any other issues that may be determined from time to time by the parties.

4 **Role**

The role of the Project Board as regards this Contract is to make recommendations to the *Client* and to the *Contractor*, which the *Client* and the *Contractor* may accept or reject at their complete discretion. Neither the Project Board itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision binding on the parties. The *Client* and the *Contractor* shall not rely on any act or omission of the Project Board, or any members of the Project Board acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the *Client* or of the *Contractor* under this Contract. No discussion, review or recommendation by the Project Board shall relieve the *Client* or the *Contractor* of any liability or vary any such liability or any right or benefit.

**5 Representatives**

The *Client* and the *Contractor* may appoint their representatives on the Project Board and remove those representatives and appoint replacements, by written notice delivered to the other party at any time. A representative on the Project Board may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

**6 Practices and Procedures**

6.1 Place and time.

6.1.1 Subject to paragraph 6.1.2, Project Board meetings will take place at such places and times as the parties shall decide. Agendas will be circulated by the *Contractor* ten days in advance (with supporting papers) and any party wishing to raise other agenda items (including an item under “Any other Business”) will notify all other parties (with supporting papers) no later three days in advance; and

6.1.2 In the event of an emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

6.1.3 The Project Board shall meet at least once every month from the *starting date* until such time as the Project Board shall agree otherwise. In the event that the parties agree that the Project Board shall meet less frequently than monthly, the Project Board shall meet not later than once each quarter.

**7 Recommendations**

7.1 Recommendations and other decisions of the Project Board must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the *Client* and not less than one (1) representative of the *Contractor*.

7.2 Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Board shall be recorded by the *Contractor* and copies circulated promptly to the *Client*, normally within ten days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the *Contractor* and shall be open to inspection by the *Client* at any time, upon request.

7.3 Each member of the Project Board shall have one (1) vote. In the event of deadlock on any issue before the Project Board, the Chairperson shall have the casting vote.

7.4 Each of the parties shall use all reasonable endeavours to ensure the regular attendance of their representatives at all meetings of the Project Board and will, unless unavoidable, ensure that their representatives are appropriately empowered to agree matters on its behalf.

7.5 Where the representatives of the Project Board consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative of the *Client* and one (1) representative of the *Contractor*) meetings may also be held by telephone call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Project Board is able to so participate.

**Contract Schedule M Equality**

**Contract Schedule M (Lot 2 & 3)**

**Equality**

**1 Interpretation**

In this Contract Schedule the following definitions shall apply:

**Equalities Legislation** the Racial and Religious Hatred Act

2006, the Civil Partnership Act 2004, the Sex Discrimination (Gender Reassignment) Regulations 1999; the Gender Recognition Act 2004; the Employment Equality (Sex Discrimination) Regulations 2005;

the Employment Equality (Age) Regulations 2006, the Equality Act

2006; and the Equality Act 2010;

**Prohibited Employment**

**Grounds**

the grounds of:

(a) colour, race, nationality, or ethnic or national origins contrary to the Equality Act

2010;

(b) sex or marital status contrary to the Equality Act 2010;

(c) disability contrary to the

Equality Act 2010;

(d) religion or belief contrary to the

Equality Act 2010;

(e) sexual orientation contrary to the Equality Act 2010; and/or

(f) age contrary to the Equality

Act 2010; and

**Prohibited Grounds** the grounds of:

(a) colour, race, nationality, or ethnic or national origins contrary to the Equality Act

2010;

(b) sex or marital status contrary to the Equality Act 2010;

(c) disability contrary to the

Equality Act 2010;

(d) religion or belief contrary to the

Equality Act 2010;

(e) sexual orientation contrary to the Equality Act 2010; and/or

(f) age contrary to the Equality

Act 2010.

**2 Anti-Discrimination and the promotion of equality**

2.1 The *Contractor* (including its agents and employees) shall not, and shall procure that any Subcontractor shall not:

2.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; and/or

2.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or

2.1.3 contravene Sections 39, 108 – 109 and 111 – 112 of the Equality Act 2010 and Section 24A of the Equality Act 2006 (or any of them),

where appropriate.

2.2 The *Contractor* (including its agents and employees) shall, and shall procure that any

Subcontractor shall, for purposes of ensuring compliance with paragraphs 2.1.1 to

2.1.3, in relation to staff engaged in the provision of the *works* observe as far as

possible the provisions of:

2.2.1 the Commission for Racial Equality's Code of Practice in Employment;

2.2.2 the Disability Rights Commission's Statutory Code of Practice on Employment and Occupation and the Code of Practice on the Disability Equality Duty; and

2.2.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation,

including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

2.3 The *Contractor* shall, and shall procure that any Subcontractor shall, in performing its/their obligations under this Contract, comply (to the extent permitted by law) with the provisions of Sections 149 and 150 of the Equality Act 2010 as if they were a body within the meaning of Schedule 19 to the Equality Act 2010.

2.4 Where in connection with this Contract the *Contractor* (including its agents and employees) or any Subcontractors are required to carry out work alongside the *Client's* employees on any other premises, they shall comply with the *Client's* own employment policy and codes of practice relating to discrimination and equal opportunities set out in the Client's Policies.

2.5 The *Contractor* shall, and shall procure that any Subcontractor shall, notify the *Project Manager* forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the *Contractor* or any Subcontractor under the Equalities Legislation.

2.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the *Contractor's* performance of its obligations under this Contract being in contravention of the Equalities Legislation, the *Contactor* shall, and shall procure that any Subcontractor shall, free of charge:

2.6.1 provide any information requested in the timescale allotted;

2.6.2 attend any meetings as required and permit any of its staff to attend;

2.6.3 promptly allow access to and investigation of any documents or data deemed by the *Client* to be relevant;

2.6.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and

2.6.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

**Contract Schedule N**

**Form of Ultimate Holding Company Guarantee and Performance Bond**

**Contract Schedule N**

**Part 1 – Form of Ultimate Holding Company Guarantee**



**Ultimate Holding**

**Company Guarantee**

Lot [1][2][3]

(1) [●Guarantor]

(2) The Secretary of State for Work and

Pensions

Dated 20

**This deed** is made the day of 20

**Between:**

(1) **[**●**Guarantor]** whose registered office is situated at [●] (the **Guarantor**) of the one part;

and

(2) **The Secretary of State for Work and Pensions** of Craxton House, Tothill Street, London, SW1H 9NA acting as part of the Crown (the **Client**) of the other part.

**Background:**

(A) The Client has entered into a contract dated [●] (Contract) with [●] (**Contractor**) to carry out and complete certain works as described in the Contract (the **Works**).

(B) The Guarantor as the ultimate holding company of the Contractor guarantees inter alia the due performance of all obligations by the Contractor under or in connection with the Contract in the terms of this Deed.

**It is agreed** as follows:

1 The Guarantor irrevocably and unconditionally:

1.1 guarantees and covenants to the Client both as guarantor and principal obligor:

1.1.1 the proper and punctual performance and observance by the Contractor of its obligations, undertakings, duties, covenants, warranties and responsibilities under or in connection with the Contract (together the **Obligations**) and payment and discharge of all liabilities due, owing or incurred or payable and unpaid by the Contractor to the Client pursuant to the Contract as a result of any breach; and

1.1.2 that it will within five (5) working days of the Client's written demand stating that the Contractor has failed to perform the Obligations proceed or cause to be proceeded with the performance and discharge of the Obligations;

1.2 undertakes as a separate and primary obligor to indemnify and keep indemnified the Client, on demand from and against all sums, liabilities, awards, losses, damages, costs, charges, interest and expenses (including any legal expenses and

disbursements plus VAT) suffered or incurred or may suffer or incur by the Client under or arising out of the Contract in accordance with its terms or for which the Contractor is otherwise liable to the Client by reason or in consequence of any failure to perform or observe the Obligations;

provided that the Guarantor's liability and obligation under this Deed shall be no greater than those of the Contractor under the Contract (except in relation to any costs incurred in enforcing this Deed) such liability and obligation to be determined on the assumption that the Contract is not void, voidable, unenforceable or ineffective against the Client.

2 Any demand for payment of a liability under this Deed may be made by the Client and the Guarantor shall pay and discharge such liability (without any set off, lien or counterclaim, deduction or withholding howsoever arising, except for those required by law) within five (5) working days of service of such demand by payment to such account as stated in the Client's demand notice.

3 Any notice given to the Guarantor under this Deed shall be in writing and shall be delivered personally or sent by recorded delivery to the registered office of the Guarantor and such notice shall be deemed to have been delivered and received at the actual time of delivery if delivered personally or at the time of receipt if sent by recorded delivery.

4 The obligations of the Guarantor under this Deed shall not be impaired, discharged or released or otherwise affected by:

4.1 any time, waiver or indulgence granted to the Contractor or any other person;

4.2 any termination of, variation of or supplement or amendment to the Contract;

4.3 any composition or arrangement made by the Client with the Contractor or any other person; or

4.4 any variation or release of, or the failure or neglect to perfect or enforce, any right, remedy or security from the Contractor or any other person;

4.5 any act, omission, matter or thing whatsoever whereby the Guarantor as guarantor only would or might have been released (in whole or in part) or which would or might have afforded the Guarantor any legal or equitable defence;

4.6 the Contractor ceasing to exist or the receivership, liquidation, insolvency, administration, reorganisation, dissolution, amalgamation, reconstruction or any analogous matter relating to the Contractor or the Contract or any of the liabilities of the Contractor under the Contract being disclaimed or any change in constitution or loss of corporate identity by the Contractor, the Guarantor or the Client;

4.7 the giving of any consent to assignment, transfer or novation or the making of any assignment, transfer or novation of the Contract (or any part thereof);

4.8 any legal limitation, disability, irregularity, defect or informality or any fact or circumstance on the part of or in relation to the Contractor (whether known to the Client or not) which would or might render any sum of money irrecoverable from the Contractor or any third party or all or any of the obligations, undertakings, duties, covenants, warranties and responsibilities under or in connection with the Contract unenforceable or any want of power or capacity of or by or on the part of the Client or want of authority of any director, manager, officer or other person appearing to be

acting for the Contractor;

4.9 any other act, neglect, event, limitation or omission which would or might but for this provision operate to impair, discharge or modify the Guarantor's liability hereunder in whole or in part and, notwithstanding all or any such matters the Obligations shall be and remain enforceable against the Guarantor as principal obligor.

5 From the date or dates upon which any claim is properly made against the Guarantor under this Deed until the amount so claimed is paid under the Contract, the Guarantor shall not:

5.1 exercise any right of contribution, set-off, counterclaim or indemnity between the Guarantor and the Contractor or exercise any other rights or legal remedies, including claiming or recovering by the institution of proceedings or the threat of proceedings or otherwise against the Contractor, any such sum from the Contractor;

5.2 claim or prove as creditor or otherwise in competition with the Client in respect of any money owing to it by the Contractor for or on account of the Guarantor's liability under this Deed, in the event of any bankruptcy, liquidation or other insolvency proceedings relating to the Contractor.

6 Any notice given to the Guarantor under this Deed shall be in writing and shall be delivered personally or sent by recorded delivery to the registered office of the Guarantor and such notice shall be deemed to have been delivered and received at the actual time of delivery if delivered personally or at the time of receipt if sent by recorded delivery.

7 The liability and obligation of the Guarantor under this Deed shall be a continuing guarantee and indemnity and shall cease (other than in respect of claims in respect of

which legal proceedings whether in court, arbitration or other tribunal have already been commenced by the Client against the Guarantor) upon the expiration of 12 years from the date of Practical Completion (as defined under the Contract) after which this Deed will be of no further effect.

8 The Guarantor shall be bound by all court judgments or arbitration awards or decisions of any other tribunal relating to the Contract or any dispute or matter between the Client and the Contractor in connection with the Contract.

9 Nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed which that third party would not have had but for the Contracts (Rights of Third Parties) Act 1999.

10 The Client shall be entitled to assign or transfer the benefit of this Deed at any time to any person without the consent of the Guarantor and any such assignment or transfer shall not release the Guarantor from its liability under this Deed.

11 This Deed shall in all respects be construed or interpreted in accordance with Law of England and Wales and the Guarantor and the Client irrevocably submit to the jurisdiction of the English Courts.

**In witness** whereof this Deed has been executed delivered on the date of this document.

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Executed as a** Deed for and on ) behalf of **The Secretary of State for Work and Pensions** by affixing hereto

its common seal in the presence of: ) Signature:.....................................................

Name: ..................................................... Title: Authorised signatory

Date: .....................................................

**Contract Schedule N**

**Part 2 – Form of Performance Bond**



**Performance Bond**

relating to Lot [2][3] – [●insert project details]

(1) [●Contractor] (2) [●Guarantor]

(3) The Secretary of State for Work and

Pensions

Dated 20

**Contents**

**Clauses**

1 Guarantee ........................................................................................................................ 1

2 Liability ............................................................................................................................. 1

3 Amendments to the Contract ........................................................................................... 1

4 Expiry of Bond.................................................................................................................. 1

5 Contractor undertaking .................................................................................................... 1

6 Assignment ...................................................................................................................... 1

7 Third Party Rights ............................................................................................................ 1

8 Governing Law................................................................................................................. 2

**Schedules**

1 Schedule 1 ....................................................................................................................... 3

**This guarantee bond** is made the day of 20[●] as a deed between the following parties whose names and registered office addresses are set out in the Schedule to this guarantee bond (the Schedule)

**Between:**

(1) the Contractor as principal

(2) the Guarantor as guarantor and

(3) the Client

**Background:**

(A) By a contract entered into or to be entered into between the Client and the Contractor (the Contract) particulars of which are set out in the Schedule the Contractor has agreed with the Client to execute works (the Works) upon and subject to the terms and conditions therein set out.

(B) The Guarantor has agreed with the Client at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this guarantee bond subject to the limitation set out in clause 2.

**Now this Deed witnesses** as follows:

1 Guarantee

The Guarantor guarantees to the Client that in the event of a breach of the Contract by the Contractor or in the event that the Contract or the employment of the Contractor is determined due to the insolvency of the Contractor the Guarantor shall subject to the provisions of this guarantee bond satisfy and discharge the damages sustained by the Client as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.

2 Liability

The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the Bond Amount) but subject to such limitation and to clause 4 the liability of the Guarantor shall be co- extensive with the liability of the Contractor under the Contract

3 Amendments to the Contract

The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Client under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this guarantee

bond

4 Expiry of Bond

Whether or not this guarantee bond shall be returned to the Guarantor the obligations of the Guarantor under this guarantee bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry

5 Contractor undertaking

The Contractor having requested the execution of this guarantee bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Client or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract

6 Assignment

This guarantee bond and the benefits thereof may be assigned or charged by the Client to any person without the prior written consent of the Guarantor or the Contractor.

7 Third Party Rights

The parties to this guarantee bond do not intend that any of its terms will be enforceable by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise by any person not a party to it

8 Governing Law

This guarantee bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder

**This guarantee bond** deed has been executed and delivered on the date appearing at the top of page

**Schedule 1**

**The Contractor**:[●] (company number [●]) whose registered office is at [●]

**The Guarantor:** [●] (company number [●]) whose registered office address is at [●]

**The Client:** The Secretary of State for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA acting as part of the Crown

**The Contract:** a contract dated [●] entered into between (1) the Client and (2) the Contractor for carrying out and completion of the Works

**The Bond Amount:** the sum of [●] (£[●])

**Expiry**: the date of the issue of Practical Completion of the Works as defined in and pursuant to the Contract which shall be conclusive for the purposes of this guarantee bond

Signature page to the Performance Bond between [●Contractors], [●Guarantor] and [●Client].

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Executed as a deed** by **[●]** ) acting by **[●]** ,a director, ) in the presence of )

Witness signature Witness name Witness address

Witness occupation

**Executed as a** Deed for and on ) behalf of **The Secretary of State for Work and Pensions** by affixing hereto

its common seal in the presence of: ) Signature:.....................................................

Name: ..................................................... Title: Authorised signatory

Date: .....................................................

**Contract Schedule O Third Party Agreements**

**Contract Schedule P Data Protection**

**Contract Schedule P (Lot 2/3) Data Protection**

**1 General**

1.1 Any obligation in the Contract Schedule P includes a requirement to ensure that each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with the obligation and with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

1.2 Details of the Processing of Personal Data carried out by the *Contractor* under or in connection with this Contract are set out in this Contract Schedule P. Annex B is to be completed in response to each Task Order and shall include details of whether the *Contractor* is Processing Personal Data as a Data Controller (in which case the obligations set out in the Contract apply to such Processing) or as a Data Processor (in which case the obligations set out in this Contract Schedule P apply to such Processing).

1.3 The parties agree and acknowledge that where the *Contractor* is Processing Personal

Data on behalf of the *Client*:

1.3.1 the *Client* alone shall determine the purposes for which, and the manner in which, Personal Data is, or is to be, Processed in the Provision of the Service or otherwise in connection with this Contract; and

1.3.2 the parties shall comply with their respective obligations set out in this

Contract Schedule P.

1.4 The *Contractor* warrants that it has in place, and undertakes that it shall maintain, appropriate technical and organisational measures to ensure that the Processing of Personal Data by the *Contractor*, in connection with this Contract meets the requirements of the Data Protection Legislation and this Contract Schedule P, including ensuring the protection of the rights of Data Subjects in accordance with the Data Protection Legislation. Such technical and organisational measures shall include (without limitation) the measures set out in Annex A.

1.5 The *Contractor* shall indemnify and keep the *Client* indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or

in connection with, any breach by the *Contractor* or any of its personnel of this Contract

Schedule P.

**2 Restrictions**

2.1 The *Contractor* shall not publish, disclose or divulge Personal Data to any Data Subject or to a third party other than:

2.1.1 at the request of the *Client*; or

2.1.2 as provided for in this Contract; or

2.1.3 to the extent required under a court order by a court of competent jurisdiction (provided that the *Contractor* shall give notice to the *Client* of any disclosure of Personal Data that it, or any of the *Contractor*'s Subcontractors, is required to make under such a court order as soon as practicable when it is made aware of such a requirement); or

2.1.4 at the request of the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract.

2.2 The *Contractor* shall:

2.2.1 Process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including the Data Protection Legislation) in such cases the *Contractor* shall inform the *Client* of that legal requirement unless such disclosure is prevented on the grounds of public interest;

2.2.2 Process the Personal Data only to the extent, and in such a manner, as is necessary for the Permitted Purposes and in accordance with the *Client*'s written instructions from time to time and shall not Process the Personal Data for any other purposes; and

2.2.3 notify the *Client* in writing immediately if, in its reasonable opinion, it considers that any instruction infringes the Data Protection Legislation.

2.3 For the avoidance of doubt, except as expressly set out in this Contract, the *Contractor* shall not be required to ensure that its Provision of the Service or its other obligations under this Contract comply with the provisions of the GDPR until 25 May 2018, although it may expressly elect or agree in writing to become compliant before that date.

**3 Data Collection**

3.1 The *Contractor* shall ensure that it only collects Personal Data on behalf of the *Client* in the form agreed with the *Client* which will contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose or purposes for which the Data Subject's Personal Data will be processed and any other information which is

necessary to comply with the Data Protection Legislation. The *Contractor* shall not modify or alter the form in any way without the prior written consent of the *Client*.

**4 Data Security and Breach Notification**

4.1 The *Contractor* shall implement appropriate technical and organisational measures, which have been reviewed and approved by the *Client*, to ensure a level of security appropriate to the risks presented by the Processing of Personal Data pursuant to this Contract, including (without limitation) the risks presented by a Personal Data Breach. Such measures shall include (without limitation):

4.1.1 the pseudonymisation and encryption of Personal Data where appropriate in accordance with good industry practice;

4.1.2 measures to ensure the on-going confidentiality, integrity, availability and resilience of the systems used for Processing and the Provision of the Service;

4.1.3 measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;

4.1.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and

4.1.5 such other security measures as are set out in Annex C and Contract

Schedule H.

review and approval of the appropriate technical and organisational measures (the **Protective Measures**) by the *Client* shall not relieve the *Contractor* of its obligations under Data Protection Legislation including, for the avoidance of doubt, putting sufficient Protective Measures in place.

4.2 The *Contractor* will ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Even having taken account of the following:

4.2.1 nature of the Personal Data to be protected;

4.2.2 harm that might result from a Data Loss Event;

4.2.3 state of technological development; and

4.2.4 implement any Protective Measures at the Contractor’s own expense and

at no cost to the Authority;

4.3 The *Contractor* shall notify the *Client* in writing within 24 hours if it becomes aware of:

4.3.1 any Personal Data Breach (whether caused by the *Contractor* or otherwise); and/or

4.3.2 any event that results, or may result, in unauthorised access to Personal Data held by the Contractor in relation to this Contract Schedule P and/or actual or potential loss and/or alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach (a **Data Loss Event**); and/or

4.3.3 any advance in technology and methods of working or potential security threats which mean that the Parties should revise the security measures taken by the *Contractor* to comply with its obligations under this Paragraph

4 (including as set out in Annex C) or as set out in Contract Schedule H.

4.4 Where the *Contractor* notifies the *Client* of advances in technology or methods of working or potential security threats that mean the Parties should revise the security measures set out in Annex C, the Parties shall agree appropriate changes to Annex C.

4.5 Where a Personal Data Breach occurs the *Contractor* shall provide such information and assistance and take such steps as the *Client* may reasonably require to enable the *Client*:

4.5.1 to mitigate the impact of the Personal Data Breach;

4.5.2 to ensure that Personal Data Breaches of the same nature do not occur again;

4.5.3 to notify the competent regulatory body of the Personal Data Breach;

and/or

4.5.4 to notify Data Subjects of the Personal Data Breach.

**5 Co-Operation and Assistance**

5.1 The *Contractor* shall provide the *Client* with all reasonable co-operation and assistance in relation to the Processing of Personal Data, at no cost to the *Client*, to ensure that the *Client* is able to comply with all of its obligations under the Data Protection Legislation, including (without limitation):

5.1.1 implementing appropriate technical and organisational measures to assist the *Client* to fulfil its obligations to respond to requests from Data Subjects made under the Data Protection Legislation (including Data Subject Access Requests);

5.1.2 upon request putting in place measures to restrict the Processing of

Personal Data;

5.1.3 upon request providing a copy of Personal Data relating to specific Data

Subjects in a structured, commonly used and machine readable format;

5.1.4 upon request providing a copy of the record of any Processing of Personal Data it carries out on behalf of the *Client* including (without limitation) the records specified in Article 30(2) of the GDPR;

5.1.5 upon request providing information about the *Contractor*'s Processing of

*Client* Data;

5.1.6 assisting the *Client* with the preparation of data protection impact assessments and preparing data protection impact assessments on behalf of the *Client* on request including but without limitation to;

5.1.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;

5.1.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the services;

5.1.6.3 an assessment of the risks to the rights and freedoms of Data

Subjects;

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

5.1.7 upon request providing a written description of the technical and organisational methods referred to in Paragraph 4 (Data security and breach notification). Within 30 days of such a request, the *Contractor* shall provide written particulars of all such measures to a reasonable level of details such that the *Client* can determine whether, in connection with the Personal Data, the Data Protection Legislation is being complied with;

5.1.8 promptly complying with any request from the *Client* requiring the *Contractor* to amend, transfer or delete the Personal Data and/or *Client* Data; and

5.1.9 subject to the *Contractor* being required to maintain such copies by law, upon expiry or termination of this Contract (for any reason whatsoever), the *Contractor* shall at the request of the *Client* promptly return to the *Client* or destroy all Personal Data and/or *Client* Data securely (regardless of form, and whether computerised or physical) and shall certify the deletion or destruction (as applicable) to the *Client* in writing.

5.2 Wherever in this Contract Schedule P the *Contractor* is required to provide notice or information to the *Client* the *Contractor* will also promptly inform the *Client* of any further or additional information.

5.3 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this Contract Schedule P. This requirement does not apply where the Contractor employs fewer than

250 staff, unless:

5.3.1 the Authority determines the processing is not occasional;

5.3.2 the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

5.3.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**6 Individuals' Rights**

6.1 The *Contractor* shall notify the *Client* immediately if it receives a request from a Data Subject wishing to exercise any of the Data Subject's rights under the Data Protection Legislation.

6.2 The *Contractor* shall notify the *Client* immediately and provide all reasonable co- operation and assistance if:

6.2.1 it receives any complaint, notice or communication not covered under Paragraph 6.1 which relates directly or indirectly to the Processing of the Personal Data or to either Party's compliance with the Data Protection Legislation; or

6.2.2 the *Contractor* is subject to any regulatory investigation by the Information

Commissioner or any other data protection supervisory *Client*; or

6.2.3 It receives a request from third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.

6.3 The *Contractor* shall not without the prior written consent of the *Client* or as strictly necessary to Provide the Service, carry out Processing by automatic means of any

Personal Data and/or *Client* Data for the purposes of evaluating matters about a Data Subject that constitutes the sole basis for any decision that significantly affects such Data Subjects.

6.4 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under this clause 6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-

6.4.1 the Authority with full details and copies of the complaint, communication or request;

6.4.2 such assistance as is reasonably requested by the Authority to enable the

Authority to comply with a Data Subject Access Request promptly;

6.4.3 the Authority, at its request, with any Personal Data it holds in relation to a

Data Subject;

6.4.4 assistance as requested by the Authority following any Data Loss Event and/or Data Protection Breach to enable the Authority to mitigate the impact of the Personal Data Breach, to ensure that Personal Data Breaches of the same nature do not occur again, to notify the competent regulatory body of the Personal Data Breach and/or to notify the Data Subjects of the Personal Data Breach;

6.4.5 assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.

**7 Overseas Data Transfers**

7.1 The *Contractor* shall not transfer the Personal Data to a country outside the United Kingdom without the prior written consent of the *Client* and subject to compliance with such reasonable conditions as the *Client* may specify, including but not limited to the following:

7.1.1 the *Client* or the *Contractor* has appropriate safeguards in relation to the transfer;

7.1.2 the Data Subject has enforceable rights and effective legal remedies;

7.1.3 the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

7.1.4 the *Contractor* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data.

**8 *Contractor* Personnel**

8.1 The *Contractor* shall ensure that access to the Personal Data and/or *Client* Data is limited to:

8.1.1 the Contractor Personnel who need access to the Personal Data and/or Client Data to enable the Provision of the Service (provided that such access is subject to written terms substantially the same as, and no less stringent than, the relevant terms contained in this Contract and this Contract Schedule P); and

8.1.2 in the case of any access by any Contractor Personnel, such part or parts of the Personal Data and/or Client Data as is strictly necessary for performance of that Contractor Personnel's duties.

8.2 The *Contractor* shall ensure that all Contractor Personnel involved in the Processing of the Personal Data and/or Client Data:

8.2.1 are informed of the confidential nature of the Personal Data and/or Client

Data;

8.2.2 are subject to legally binding obligations of confidentiality in relation to the

Personal Data;

8.2.3 have undertaken reasonably adequate training in the laws relating to the care and handling of Personal Data and/or Client Data; and

8.2.4 are aware both of the *Contractor*'s duties and their personal duties and obligations under such laws and this Contract; and

8.2.5 do not process Personal Data except in accordance with this Contract and the Data Protection Legislation.

8.3 The *Contractor* shall take reasonable steps to ensure the reliability of any of the

Contractor Personnel who have access to the Personal Data and/or Client Data.

8.4 The *Contractor* shall designate a data protection officer if required by Data Protection

Legislation or by the *Client* in writing.

**9 Subcontractors**

9.1 The *Contractor* may only authorise a Subcontractor to Process the Personal Data:

9.1.1 subject to the *Client*'s prior written consent where the *Contractor* has supplied the *Client* with full details of such Subcontractor;

9.1.2 provided that such Subcontractor's contract is on terms which impose the same or equivalent data protection obligations on the Subcontractor as those imposed on the *Contractor* as set out in this Contract and this Contract Schedule P, including, but not limited to, the requirement to implement appropriate technical and organisational measures to ensure that the Processing will meet the requirements set out in the Data Protection Legislation;

9.1.3 provided that such Subcontractor shall where requested enter into a confidentiality undertaking with the *Client* (in a form specified by the *Client*);

9.1.4 provided that such *Contractor* Subcontractor's contract terminates automatically on termination of this Contract for any reason.

9.2 In accordance with Paragraph 9.1.1, the *Client* expressly consents to the Processing of

Personal Data by the *Contractor*'s Subcontractors listed in the Contract Data.

9.3 For the avoidance of doubt, the *Contractor* shall remain liable to the *Client* for the performance of the Subcontractor's obligations.

**10 Records, Information and Audit Rights**

10.1 The *Contractor* shall keep a record of any Processing of Personal Data it carries out on behalf of the *Client* including (without limitation) from and including 25 May 2018 the records specified in Article 30(2) of the GDPR.

10.2 The *Client* is entitled, on giving reasonable notice of no fewer than 5 Working Days to the *Contractor*, and the *Contractor* shall permit the *Client*, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the Processing of Personal Data by the *Contractor* for the purpose of verifying the *Contractor*'s compliance with the Data protection provisions of this Contract and this Contract Schedule P.

10.3 The requirement under Paragraph 10.2 to give notice will not apply if the *Client* reasonably believes that the *Contractor* is in material breach of any of its obligations under this Contract or the Data Protection Legislation.

10.4 The *Client* may, at any time on not less than thirty (30) Working Days’ advance notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under Article

43 of the GDPR (which shall apply when incorporated by an attachment to this

Contract).

10.5 The *Contractor* shall comply with guidance issued by the Information Commissioner’s Office. The *Client* may on not less than thirty (30) Working Days’ notice to the *Contractor* amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.

**Annex A**

**Technical and Organisational Measures to ensure compliance with Data Protection**

**Legislation**

Refer to Schedule C for any supplementary provisions provided by the *Contractor*

**Annex B**

**Details of *Contractor* Processing Activities**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Category of** | **Categories of Data**  **Subjects** | **Processing** | **Location of** | **Identity of sub- contractors** | **Purposes** | **Duration** |
| **Personal Data** | **Operations** | **Processing** |
|  |  | **Operations** |
| [S*pecify the* | [*Specify the* | [*Specify all* | [*Specify all* | [*Insert details of all permitted sub- contractors, including full legal name, registered address and location where processing of Personal Data will occur and processing operations*] | [*Specify all* | [Specify the length of time for which data processing activities will be carried out] |
| *Personal Data that* | *categories of data* | *processing activities* | *locations where the* | *purposes for which* |
| *will be processed by*  *the Contractor*] | *subjects whose*  *Personal Data will*  *be processed by the*  *Contractor*] | *to be conducted by*  *the Contractor and whether Contractor is acting as Data Processor or Data Controller*]  *Contractor* is acting as Data Processor / Data Controller [*Delete as applicable*] | *personal data will*  *be processed by the*  *Contractor*] | *the Personal Data*  *will be processed by the Contractor*] |

42079123.1

**Annex C**

**Security Measures**

**Contract Schedule Q Financial Distress**

**1 Definitions**

1.1 In this Schedule, the following definitions shall apply:

**Additional Security** either:

a) an on-demand payment and performance bond in favour of the *Client* in a form and substance and for a value and from a provider in each case satisfactory to the *Client*; and/or

b) an enforceable deed of guarantee from a New Guarantor to be approved by the *Client* in substantially the form of the Guarantee (if any) or in such other form as the *Client* may, in its absolute discretion, agree; and/or

c) any other alternative security as may be acceptable to the *Client* in its absolute discretion;

**Contract Year** the period of twelve (12) calendar months ending at each anniversary of the Contract Date;

**Financial Distress**

**Events**

has the meaning given to it in paragraph 3.1 and references to

**Financial Distress Event** shall be construed accordingly;

**Financial Distress**

**Recovery Plan**

the plan to be submitted by the Contractor pursuant to Paragraph

3.3.2 (a);

**Financial Statements** the audited consolidated accounts for the relevant Major Contractor

Party;

**Major Contractor**

**Party**

means each of the *Contractor*, the Guarantor, a New Guarantor (if an Affiliate of the *Contractor*) and references to **Major Contractor Parties** shall be construed accordingly;

**Rating Agency** a credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default; and

**New Guarantor** means in the event of a Financial Distress Event relating to the Guarantor, the provider of a new, additional or replacement enforceable deed of guarantee.

**2 Duty to Notify**

2.1 The *Contractor* shall:

2.1.1 deliver to the *Client*:

a) when required all financial information (including covenant certificates) that it is required to deliver to its lenders within the time period allowed by those lenders for doing so; and

b) the annual accounts of each Major Contractor Party as soon as they are available and in any event within ten (10) working days from publication;

2.1.2 promptly and in any event within five (5) Working Days notify the *Client (*or procure that its auditors notify the *Client* within five (5) Working Days) in respect of a Major Contractor Party of any:

a) material adverse change to such party's financial standing, including but not limited to any:

(i) profit warning to a stock exchange or the making of any other public announcement concerning a material deterioration of its financial position or prospects;

(ii) public investigation into improper financial accounting or reporting, suspected fraud or any other impropriety;

(iii) material adverse change to the organisation that might impact on its on-going financial viability;

(iv) material breach of covenant to lenders;

(v) commencement of any dispute resolution procedure against with respect to such party's financial indebtedness of more than five million pounds (£5,000,000);

(vi) non-payment of any financial indebtedness;

(vii) any financial indebtedness becoming due as a result of an event of default;

(viii) the cancellation or suspension of any financial indebtedness;

(ix) downgrade or material adverse change in the credit rating issued by a Rating Agency

b) proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes which may impact on the relevant Major Contract Party's financial viability; and/or

c) adverse change in the assets, business or financial condition of a Major

Contractor Party since the date of the most recent accounts,

provided that compliance with this paragraph 2.1 shall not require a Major Contractor

Party to breach restrictions on its performance reporting prescribed by legislation.

2.1.3 promptly and in any event within five (5) Working Days of it becoming aware notify the *Client* of any material adverse change to the financial standing of a bond provider or of a New Guarantor who is not also a Major Contracting Party.

2.2 If there is any downgrade of a credit rating issued by any Rating Agency for any Major Contractor Party, the *Contractor* shall ensure that the relevant Major Contractor Party's auditors thereafter provide the *Client* within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the *Client* with written calculations of the quick ratio for the relevant Major Contractor Party as at the

end of each Contract Year or such other date as may be requested by the *Client*. For

these purposes the “quick ratio” on any date means:

**A + B + C D**

where

**A** is the value at the relevant date of all cash in hand and at the bank of the relevant Major Contractor Party;

**B** is the value of all marketable securities held by the relevant Major Contractor Party determined using closing prices on the Working Day preceding the relevant date;

**C** is the value at the relevant date of all account receivables of the relevant Major

Contractor Party; and

**D** is the value at the relevant date of the current liabilities of the relevant Major

Contractor Party.

**3 Financial Distress Event**

3.1 Upon:

3.1.1 notification of an event under paragraph 2.1.2 or 2.1.3; and/or

3.1.2 notice from a Notified Sub-contractor to the *Client* that the *Contractor* has not satisfied any material sums properly due under a specified invoice which is not subject to a genuine dispute; or

3.1.3 the *Client* becoming aware of an event under paragraph 2.1.2 or 2.1.3 without notification and brings the event to the attention of the *Contractor*,

(i) the *Client* may in its discretion inform the *Contractor* that it considers a Financial Distress Event has occurred in which case the *Contractor* shall have the obligations and the *Client* shall have the rights and remedies set out in paragraphs 3.3 to 3.9.

3.2 In the event of a late or non-payment of a Notified Subcontractor pursuant to paragraph

3.1.2, the *Client* shall not exercise any of its rights or remedies under paragraph 3.3

without first giving the *Contractor* ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the *Client's* reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The *Contractor* shall (and shall procure that other Major Contractor Parties shall):

3.3.1 at the request of the *Client*, meet the *Client* as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Contractor*) to review the effect of the Financial Distress Event on the continued performance and delivery of the *works* in accordance with this Contract; and

3.3.2 where the *Client* reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the *Services* in accordance with this Contract:

a) submit to the *Client* for its approval, a draft Financial Distress Recovery Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Contractor* in writing); and

b) provide such financial information relating to the relevant Major Contractor Party as the *Client* may reasonably require including, without limitation, details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

3.4 Where a Financial Distress Event relates to the Guarantor and the Guarantor's credit rating issued by a Rating Agency is lower than the credit rating issued by a Rating Agency as at the date of this Contract the Financial Distress Recovery Plan shall as a minimum set out details of the Additional Security.

3.5 Following receipt of the Financial Distress Recovery Plan pursuant to Paragraph 3.3.2 (a) the *Client* may, in addition to any other rights under this Contract Schedule Q notify the *Contractor* that it is increasing its monitoring pursuant to Clause 68.1 of the Contract and the *Client* and *Contractor* acknowledge and agree that the provisions of clause 68.2 shall apply accordingly.

3.6 The *Client* shall inform the *Contractor* whether or not the draft Financial Distress Recovery Plan is approved. The *Client* shall not withhold its approval of a draft Financial Distress Recovery Plan unreasonably. If the *Client* does not approve the draft Financial Distress Recovery Plan, it shall inform the *Contractor* of its reasons and the *Contractor* shall take those reasons into account in the preparation of a further draft Financial Distress Recovery Plan, which shall be resubmitted to the *Client* within five

(5) Working Days of the rejection of the first draft.

3.7 If following resubmission of the draft Financial Distress Recovery Plan the *Client*

considers that:

3.7.1 the draft Financial Distress Recovery Plan is insufficiently detailed to be properly evaluated;

3.7.2 the draft Financial Distress Recovery Plan will take too long to complete or will not ensure the continued performance of the *Contractor’*s obligations in accordance with the Contract, or

3.7.3 in relation to:

a) the Additional Security, the *Client* does not believe that the proposed Additional Security meets the requirements set out in limbs (a) – (c) of the definition of Additional Security; or

b) the New Guarantor, the *Client* does not believe that the proposed New Guarantor is of at least the same financial standing and has at least the same credit rating from a Rating Agency as the Guarantor had as at the date of this Contract,

then the *Client* may either agree a further time period for the development and agreement of the Financial Distress Recovery Plan or escalate any issues with the draft Financial Distress Recovery Plan by referring the draft Financial Distress Recovery

Plan to the Governance Board for a recommendation under Contract Schedule L.

3.8 This process in paragraphs 3.6 and 3.7 (excluding referral to the Governance Board)

shall be repeated until;

3.8.1 the Financial Distress Recovery Plan is approved by the *Client*; or

3.8.2 the *Client* determines that its approval will not be given provided that the *Client* shall only so determine if it has escalated the matter to the Governance Board under Contract Schedule L and the Governance Board has given a recommendation or the Governance Board has failed to meet within ten working days of the referral.

3.9 Following approval of the Financial Distress Recovery Plan by the *Client*, the

*Contractor* shall:

3.9.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Recovery Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the *Services* in accordance with this Contract;

3.9.2 where the Financial Distress Recovery Plan is not adequate or up to date in accordance with paragraph 3.9.1, submit an updated Financial Distress Recovery Plan to the *Client* for its approval, and the provisions of paragraphs 3.5 to 3.8 shall apply to the review and approval process for the updated Financial Distress Recovery Plan; and

3.9.3 comply with the Financial Distress Recovery Plan (including any updated

Financial Distress Recovery Plan).

3.10 Where the *Contractor* reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the *Client* and the Parties may agree that the *Contractor* shall be relieved of its obligations under paragraph 3.9.