

DATED 2022

MINISTRY OF DEFENCE (1)

and

MCLAUGHLIN & HARVEY (2)
CONSTRUCTION LIMITED

**PRE-CONSTRUCTION SERVICES
AGREEMENT BASED ON NEC3 PSC
OPTION A APPOINTMENT
in relation to the
[REDACTED] STORAGE EXPANSION
PROJECT [REDACTED]**

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THIS AGREEMENT is made on 2022 (the "**Contract Date**")
BETWEEN:

- (1) **MINISTRY OF DEFENCE** whose principal offices are at Whitehall, London, SW1A 2HB, United Kingdom ("**Employer**" which expression shall include its successors in title and assigns); and
- (2) **MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED** [(company number SC150486)] whose principal office is at Heathfield House, Phoenix Crescent, Strathclyde Business Park, ML4 3NJ ("**Consultant**").

WHEREAS:

- (A) The *Employer* wishes the *Consultant* to Provide the Services on the terms set out in this contract.
- (B) The *Consultant* has examined the *Employer's* requirements identified in the Scope and is satisfied that it can meet those requirements.

NOW IT IS AGREED THAT:

1 Services

The *Consultant* Provides the Services in accordance with the terms and conditions of the NEC3 Professional Services Contract Option A (April 2013 Edition) as modified by this Agreement and its Schedules (together referred to as the contract).

2 Price

The *Employer* pays the *Consultant* the amount due under the contract and carries out his duties in accordance with the contract.

3 Conditions

The terms and conditions of the NEC3 Professional Services Contract Option A (April 2013 Edition) have effect as modified by this Agreement and its Schedules. In the event of a conflict between this Agreement and its Schedules the following order of precedence shall apply:

This Agreement (conditions 1 to 11)

Schedule 2 - Contract Data Parts 1 and 2

Schedule 3 - Option Z (additional conditions of contract)

Schedule 4 – Proposed Contract Documents

Schedule 1 - NEC 3 Professional Services Contract Option A (April 2013 Edition)

Schedule 66 - Draw Down Schedule

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Schedule 55 – Scope

Schedule 8 – Security Aspects Letter

Schedule 7 – Programme

4 Complete agreement

The contract comprises this Agreement and all Schedules and appendices and is the complete and entire agreement between the *Employer* and the *Consultant* for the services in relation to the [REDACTED] Storage Expansion Project and supersedes all other oral and/or written communications. The parties are not bound by, or liable for, any statement, representation, promise, inducement or understanding not contained in the contract. No amendments or modifications of the contract are valid unless recorded in writing and executed as a deed by both parties, save for instructions and any other changes permitted by the contract. Nothing in the *Consultant's* offer shall operate to exclude the liability of the *Consultant*.

5 The Public Contract Regulations 2015 ("PCR 2015")

- 5.1 Without prejudice to Clause 90 of the NEC3 Contract, the *Employer* may terminate the *Consultant's* obligation to Provide the Works if any of the provisions of paragraph 73(1) of the PCR 2015 apply.
- 5.2 If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the PCR 2015 as a result of information not disclosed by the *Consultant* at the Contract Date, the procedure and amounts due on termination are the same as if the *Consultant* has substantially failed to comply with his obligations.
- 5.3 If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the PCR 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.
- 5.4 The *Consultant* does not appoint a Sub-Contractor or supplier if there are compulsory grounds for excluding the Sub-Contractor or supplier under regulation 57 of the PCR 2015.
- 5.5 The *Consultant* includes in any Sub-contract awarded by him provisions requiring that:
- Payment due to the Sub-Contractor or supplier under the Sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Consultant* to make earlier payment to the Sub-Contractor or supplier;
 - Invoices for payment submitted by the Sub-Contractor or supplier are considered and verified by the *Consultant* in 30 days from the date when the invoice was received;
 - Undue delay in considering and verifying invoices is not a sufficient justification for failing to regard an invoice as valid and undisputed;

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- Where the Sub-Contractor has design responsibility, the Subcontract provides a collateral warranty in favour of the *Employer* and such warranty shall be in the form set out in the Proposed Contract Documents; and
- Any contract awarded by the Sub-Contractor or supplier for work included in this contract includes provisions to the same effect as this Clause 5.

6A Single Source Contract Regulations 2014

6A.1 The parties acknowledge that the Single Source Contract Regulations 2014 may apply to the Contract and in the event that this is the case, the following DEFCONs will apply:

- DEFCON 800
- DEFCON 801
- DEFCON 802
- DEFCON 804

6 Modern Slavery Act 2015

- 6.1 “Supply Chain” means the *Consultant*, any Sub-Contractor or supplier engaged to Provide (or contribute to Providing) the Services (or any part of the Services) together with any employee, officer, partner or agent of the *Consultant*, Sub-Contractor or supplier.
- 6.2 When asked, the *Consultant* promptly gives the *Employer* such information and documentation about the *Consultant* and the Supply Chain as the Employer reasonably requires to show the steps the Consultant and the Supply Chain have taken to ensure that the neither the *Consultant* nor the Supply Chain has engaged in slavery or human trafficking as defined in section 54(12) of the Modern Slavery Act 2015. The *Consultant* warrants that any information and documentation supplied in response to such a request is materially accurate and complete.
- 6.3 The *Consultant* warrants that, when Providing the Services, neither it nor any other member of the Supply Chain has committed or will commit any act, or make any omission, that, if it took place in England, would be an offence under English law at the relevant time.

7 Contract

Subject to the *Employer's* sole discretion and approval, it is intended that this Appointment will be superseded by the Contract in the form set out in Schedule 4 (the “**Proposed Contract Document**”). For avoidance of any doubt, there is no obligation

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on the *Employer* to enter into the Proposed Contract Document with the *Consultant* in this Appointment.

8 Tort

The contract shall be without prejudice to any rights either party may have against the other in tort.

9 Contracts (Rights of Third Parties) Act

Save as expressly stated herein the Contracts (Rights of Third Parties) Act 1999 is excluded from applying to the contract and nothing in it confers or purports to confer on any third party, any benefit or right to enforce any of its terms and conditions.

10 Disputes and governing law

The contract is governed by, and construed and interpreted in accordance with, English law.

11 Execution as a deed

The contract is executed as a deed and was delivered when it was dated.

IN WITNESS whereof the contract has been executed as a deed by the parties hereto the day and year first before written.

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Executed as a deed by the affixing of the)
common seal of **THE SECRETARY OF**
STATE FOR DEFENCE in the presence of:)

)

)

.....

Authorised signatory

.....

Authorised signatory

Signed as a deed by **MCLAUGHLIN &**
HARVEY CONSTRUCTION LIMITED acting
by either a director and its secretary or two
directors

.....

Director

.....

PRINT NAME

.....

Director/Secretary

.....

PRINT NAME

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Schedule 1

NEC 3 Professional Services Contract Option A (April 2013 Edition)

The NEC 3 Professional Services Contract Option A (April 2013 Edition) is amended by the terms of Schedule 2 to Schedule 4, and supplemented by the terms of Schedule 5 to Schedule 7. A copy of the unamended NEC 3 Professional Services Contract Option A (April 2013 Edition) can be provided if requested by the *Consultant*.

Schedule 2

Contract Data Parts 1 and 2

Part one – Data provided by the *Employer*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**Statements given
in all contracts**

1 General

The *conditions of contract* are the core clauses and:

Main option clauses:

- Option A (Priced contract)
- Dispute resolution option W2 (The Housing, Grants, Construction and Regeneration Act 1996 applies)

Secondary option clauses:

- X11 (Termination by *Employer*)
- X18 (Limitation of liability)
- Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996)
- Option Z (*Additional conditions of contract*).

- The *Employer* is:

Catherine Gregory

Ministry of Defence, Abbey Wood, Cedar 3A, #3362, Bristol,
BS34 8JH

Catherine.Gregory113@mod.gov.uk

- The *Service Manager* is:

Liam Copsey

CBRE | UK Project Management and Building Consultancy
6th Floor, Toronto Square | Leeds, LS1 2HJ

liam.copsey@cbre.com

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- The *Adjudicator* is to be appointed by the Adjudicator nominating body.
- The *services* are described in the Scope.
- The Scope is set out in Schedule 5.
- The *project* is the design and construction of the [REDACTED] Storage Expansion Project, a new 823,769 sqft MOD Storage building to be located at MOD [REDACTED].
- The *language of this contract* is English.
- The *law of the contract* is the law of England.
- The *period for reply* is 2 weeks.
- The *period for retention* is 12 years following Completion or earlier termination.
- The *Adjudicator nominating body* is TECSA.
- The *tribunal* is the Courts of England and Wales.
- The following matters will be included in the Risk Register:

None

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things:

None

3 Time

- The *starting date* is 11th July 2022.
- The *Consultant* submits revised programmes at intervals no longer than 4 weeks.

4 Quality

- The quality policy statement and quality plan are provided within 4 weeks of the Contract Date.
- The *defects date* is 52 weeks after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is 1 calendar month.
- The *currency of this contract* is pounds sterling.
- The *interest rate* is 3% per annum above the base rate of the

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Bank of England at the Contract Date.

8 Indemnity,
insurance and
liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	Cover	period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	██████████ in respect of any one claim or series of claims arising from one source or originating cause	12 years
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	██████████ in respect of each claim, without limit to the number of claims	12 years
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	██████████ in respect of each claim, without limit to the number of claims	12 years

- The *Employer* provides the following insurances: None.

Optional
statements

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is 29th November 2022.

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If no programme is identified in part two of the Contract Data

- N/A

If the *Employer* has identified work which is to meet a stated condition by a key date

- The *key dates* and *conditions* to be met are
None

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is set out in clause Y(UK)2.

If Option A is used

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks.

If Option X18 is used

- The *Consultant's* liability: See clause X18.1.
- The *end of liability date* is 12 years after Completion of the whole of the *services*.

If Option Z is used

- The *additional conditions of contract* are set out in Schedule 3 of the Agreement.

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Part two – Data provided by the *Consultant*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Statements given
in all contracts

- The *Consultant* is

MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED (company number SC150486)

Registered office: **Heathfield House, Phoenix Crescent, Strathclyde Business Park, ML4 3NJ**

Principal place of business: **Heathfield House, Phoenix Crescent, Strathclyde Business Park, ML4 3NJ**

- The *key people* are:

(1) Name: Martin Whitton, Bid Director / Pre-Construction Lead

(2) Name: Grant Cunliffe, Project Director

(3) Name: Peter Barker, Head of Design

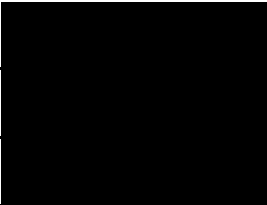
(4) Name: Carl Rushton, Head of Building Services

- The *staff rates* for the *key people* are set out below:

name/designation	rate
Project Manager	
Pre-Construction Manager	
Commercial Manager	
Planner	
Quantity Surveyor	
Estimator	
Design Manager	
Document controller	
Operations Manager	
Senior Estimator	

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Senior Estimator Building Services	
Senior Estimator Civils	
Trainee Quantity Surveyor	

- The following matters will be included in the Risk Register:

See Schedule 6 for the form of *project* risk register which is a live document and which it is envisaged will change throughout the *project* to include risks as they arise.

If a programme is to be identified in the Contract Data


- The programme identified in the Contract Data is the attached programme entitled included in Schedule 7.

If the *Consultant* states any expenses

- The *expenses* stated by the *Consultant* are:

item	amount
not used	not used

Option A is used and

- There is an *activity schedule* in this contract and it will form part of the draw down schedule.
- The *draw down schedule* is set out in Schedule 6 and such draw down schedule will include a monthly draw down sum and any additional sums which are linked to the successful completion of any deliverables identified on the schedule.
- The tendered total Price is  (which sum **excludes VAT**).

Schedule 3

Option Z (additional conditions of contract)

Schedule of Amendments to the NEC3 Professional Services Contract Option A (April 2013 Edition).

The *conditions of contract* are amended:

1 Z1 Additional conditions of contract - Incorporation

- 1.1 The following *additional conditions of contract* shall be incorporated as part of the *conditions of contract* and in the event of a conflict with any other term, the terms of this Schedule 3 shall take precedence.

2 Z2 Additional conditions of contract – Precedence of documents

- 2.1 The terms of the Proposed Contract Documents are incorporated by reference to the extent that they are relevant to Providing the Services and are amended by the terms of this Schedule 3.

3 Z3 Additional conditions of contract – Option X8: Collateral warranty agreements

- 3.1 Option X8 is renamed: “*Collateral warranty agreements*”.
- 3.2 Clause X8.1 has inserted at the end before the full stop “at the *Employer’s* request in favour of beneficiaries identified by the *Employer*”.

4 Z4 Additional conditions of contract - Option X11: Termination by Employer

- 4.1 Clause X11.1 has the words "on 30 days' prior written notice to the *Consultant*" inserted after "Services" in the second line.
- 4.2 Clause X11.2 is deleted and replaced: "If the *Employer* terminates for a reason not stated in this contract, the *Consultant* shall be entitled to the payments set out at clause 92.1 but shall not be entitled to any further payment, whether for loss of profit or otherwise."

5 Z5 Additional conditions of contract – Option X18: Limitation of liability

- 5.1 Delete clauses X18.1, X18.2 and X18.3 and insert clause X18.1: “The *Consultant’s* liability under or in connection with this Agreement shall be limited to [REDACTED] pounds (£[REDACTED]) in the aggregate. This limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause X18.1 shall not exclude or limit the *Consultant’s* liability for death or personal injury caused by the *Consultant’s* negligence or fraud or fraudulent misrepresentation.”

6 Z6 Additional conditions of contract - Option Y(UK)2: The Housing Grants Construction and Regeneration Act 1996

- 6.1 Delete “seven” from the first line of clause Y2.2 and replace with “fourteen”.
- 6.2 A new clause Y2.5 is inserted: "Notwithstanding any other term of this clause Y(UK)2, and notwithstanding any other provision of this contract, if the *Consultant* becomes insolvent (as set out in clause 90.1) after the end of the prescribed period, the *Employer* shall not be required to pay the *Consultant* any further sums until such time as any losses, costs and expenses incurred by the *Employer* arising as a direct or indirect result of the *Consultant's* insolvency are finally assessed and determined and it is established whether, having deducted those sums, there is a balance due to the *Consultant*."

7 Z7 Additional conditions of contract - General

- 7.1 A new clause 10.2 is inserted: "The appointment of the *Consultant* commences from the earlier of the *starting date*, the Contract Date or from the date on which the *Consultant* starts to Provide the Services whichever is the earlier."
- 7.2 Clause 11.2(14) is deleted and replaced: "The Draw Down Schedule is the *draw down schedule* unless later changed in accordance with this contract."
- 7.3 Clause 11.2(18) is deleted and replaced: "The Prices are the lump sum prices set out in the *draw down schedule* for the *services* unless later changed in accordance with this contract."
- 7.4 Clause 21.2 has inserted a new second sentence: "The *Consultant* uses this level of skill and care to see that there is no specification or use in the *project* of, any building practice, technique or materials which are generally known within his profession to be deleterious to health and safety and/or to the durability of the *project* in the particular circumstances in which they are so specified or used (and immediately informs the *Employer* if he becomes aware of the same)."

8 Z8 Additional conditions of contract – Payment

- 8.1 The first bullet point in clause 50.3 is deleted and replaced with “the relevant instalment of the Price in the *draw down schedule*,”.

9 Z9 Additional conditions of contract – Insurances

- 9.1 Clause 82.2 is deleted and replaced: "The *Consultant's* liability is limited as set out in Option X18."

10 Z10 Additional conditions of contract - Pre-Construction Period, Notice to Proceed, Procurement and Work Orders

Pre-Construction Period

- 10.1 In this clause Z10, the following definitions shall apply:

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- 10.1.1 “**Contract**” means the final building contract (if any) to be entered into between the *Employer* and the *Consultant* in relation to the Works and the Project in the form of (or based on) the Proposed Contract Documents;
- 10.1.2 “**Early Works**” means any works or orders instructed under clause 10.24;
- 10.1.3 “**Notice to Proceed**” means a notice to proceed issued by the *Employer* to the *Consultant* under this agreement in the form set out in **Error! Reference source not found.**;
- 10.1.4 “**Package**” means a subcontract package for the Works, as identified in the Scope and/or the Programme;
- 10.1.5 “**Pre-Construction Period**” means that period of the Project up to and including the date of issue of any Notice to Proceed;
- 10.1.6 “**Professional Consultants**” means the professional consultants from time to time engaged by the Employer in connection with the Project;
- 10.1.7 “**Proposed Contract Documents**” means the documents listed in Schedule 4 together with any amendments, alterations or variations to them agreed between the parties;
- 10.1.8 “**Proposed Package Price**” means a fixed lump sum price for a Package;
- 10.1.9 “**Target Costs**” means the total construction cost forecast to be agreed between the parties within 2 weeks of appointment and the parties agree that such amount is based on the risk profile set out in the Proposed Contract Documents;
- 10.1.10 “**Target Date**” means 29th December 2023 and
- 10.1.11 “**Works**” means the works and the services required for the design, construction, completion and commissioning of the Project.
- 10.2 The *Consultant* shall carry out and complete the Services in accordance with this agreement.
- 10.3 The *Consultant* and the *Employer* shall act in good faith with regard to the provisions of this agreement and the delivery of the Services and shall act reasonably and fairly with honest intention.
- 10.4 The *Consultant* and the *Employer* shall resolve and agree any issues that may arise from time to time in connection with this agreement expeditiously and in a reasonable and fair manner.
- 10.5 The *Consultant* warrants and undertakes that it shall:
 - 10.5.1 submit the Proposed Package Price and shall carry out and complete the Services on or before the relevant Key Date;

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- 10.5.2 comply with this agreement and the Proposed Contract Documents when carrying out the Services;
 - 10.5.3 carry out the Services in order to ensure that the Proposed Contract Price does not exceed the Target Costs;
 - 10.5.4 carry out the Services regularly and diligently;
 - 10.5.5 ensure that the Key Personnel maintain an involvement for the duration of the Pre-Construction Period;
 - 10.5.6 carry out and fulfil, in all respects, the duties of a principal Consultant under the CDM Regulations; and
 - 10.5.7 allocate personnel of sufficient numbers and qualifications to perform the Services.
- 10.6 The *Consultant* shall advise, assist, collaborate, liaise and co-operate fully in all matters with the *Employer* and all of the Professional Consultants in the performance of their duties and co-ordinate the provision of the Services in relation to the Project including but not limited to:
- 10.6.1 the progress of the Services by reference to the Target Date and the Target Costs;
 - 10.6.2 with a view to identifying potential cost savings; and
 - 10.6.3 using reasonable endeavours to ensure buildability of the Project.
- 10.7 The *Consultant* may suggest to the *Employer* economically viable changes to the Works which may result in the improvement of environment performance in the carrying out of the Works or of the completed Project. The *Consultant* shall provide the *Employer* with all reasonable information requested regarding the environmental impact of the supply and use of any materials, substances and goods selected by the *Consultant*.
- 10.8 Nothing in this agreement shall prevent or restrict the *Employer* from entering into negotiations, tendering, commencing a procurement exercise for or contracting with any other *Consultant* at any time in relation to the Works, the design and/or the Project.
- 10.9 The *Employer* shall within a reasonable time:
- 10.9.1 comply with any reasonable request from the *Consultant* for information in the *Employer's* possession or control, which is relevant to the *Consultant's* obligations under this agreement and which has not previously been provided to the *Consultant*; and
 - 10.9.2 give instructions or approvals and make decisions as reasonably requested by the *Consultant*, to allow the *Consultant* to comply with its obligations under this agreement.

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- 10.10 In the event that the *Consultant* identifies any substantial potential saving, then he may propose such saving to the *Employer*, and the *Employer* may in its absolute discretion accept or refuse such proposal.

Notice to Proceed

- 10.11 Once the *Employer* and *Consultant* have reached agreement on the Proposed Contract Price, Programme and the Scope (as defined in the Proposed Contract Documents), the *Employer* may, by issuing a Notice to Proceed, at its sole option and discretion appoint the *Consultant* to perform the Works and the *Consultant* agrees to accept that appointment on the basis set out in this agreement. On receipt of the Notice to Proceed, the *Consultant* shall:

- 10.11.1 execute (or procure the execution of) within 10 Business Days the Proposed Contract Documents and return the executed Proposed Contract Documents to the *Employer* (without amendment of the Conditions other than the correction of errors in a manner agreed between the parties);
- 10.11.2 commence, carry out and complete the Works in accordance with the Proposed Contract Documents and, when executed and completed, the Contract; and
- 10.11.3 comply in all respects with the Proposed Contract Documents and, when executed and completed, the Contract.

- 10.12 If the *Employer* issues a Notice to Proceed (which for the avoidance of doubt may only be issued when all documents necessary to form the Contract are agreed between the parties), the Contract will be on the terms of the Proposed Contract Documents (subject to any changes to the Proposed Contract Documents and those particulars agreed between the parties) and incorporating the Price agreed between the parties.

- 10.13 Upon the execution of the Contract the parties' respective rights and liabilities in respect of all matters with which this agreement is concerned (including any orders under clause **Error! Reference source not found.**) shall be subsumed into the Contract.

- 10.14 Where the *Employer* and the *Consultant* have been unable to agree the Price and/or the Proposed Contract Price exceeds the Target Costs, the *Employer* shall have absolute discretion to invite further tenders for the Project from other parties.

Procurement

- 10.15 The *Consultant* shall prepare and submit to the *Employer* a list of not less than three (3) (or fewer where agreed between the parties) suitable sub-Consultants and suppliers to tender for each of the packages required by the *Employer*.
- 10.16 The *Consultant* shall amend the lists prepared pursuant to clause 10.15 in consultation with the *Employer* and shall submit such lists, as so amended, to the *Employer* for approval.

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- 10.17 The *Consultant* shall invite sub-Consultants and suppliers from any such agreed or approved lists to tender on an open book, "arm's-length", competitive basis for sub-contracts and supply agreements unless otherwise agreed with the *Employer*.
- 10.18 The basis for agreement of a sub-contract package within the Price will be those sub-Consultants and/or suppliers which offer the best value and which enable the Works to proceed in accordance with the *Consultant's* programme(s) for the Works (as approved by the *Employer* and as consistent with the date(s) set out in the programme), in accordance with the *Employer's* instructions and to the standard set out in the Proposed Contract Documents.
- 10.19 The *Consultant* shall consult the *Employer* in relation to the selection of listed sub-Consultants and suppliers before entering into any sub-contracts and/or supply agreements if necessary during the Pre-Construction Period in relation to the Works and shall obtain the *Employer's* written approval before any sub-contract and/or supply agreement is awarded.
- 10.20 The *Consultant* shall not sub-contract the whole or any part of the Works without the *Employer's* consent, such consent not to be unreasonably withheld or delayed. The *Employer* shall have the right to object to the *Consultant's* preferred sub-Consultant and/or supplier and the *Consultant* shall in such event agree to select an alternative sub-Consultant and/or supplier acceptable to the *Employer*.
- 10.21 The *Consultant* shall ensure that, as a condition of the sub-Consultant's engagement, any sub-Consultant with a material design responsibility is willing and able to execute, and the *Consultant* shall procure such execution of, upon the *Employer's* request, collateral substantially in the form set out in the Proposed Contract Documents (with such amendments as the parties acting reasonably shall agree).
- 10.22 Without affecting the *Consultant's* obligations under this agreement or the Proposed Contract Documents, the *Consultant* shall:
- 10.22.1 be responsible for the acts and activities of its designers, sub-Consultants and suppliers, and its liability to the *Employer* shall not in any way be reduced, qualified, released or diminished by the *Employer's* approval of any list, design, document, material, programme, sub-contract, supply agreement, order, sub-Consultant or supplier;
 - 10.22.2 ensure that any sub-contract or supply agreement entered into in relation to the Works during the Pre-Construction Period contains a clause that permits its termination if the *Employer* does not issue a Notice to Proceed;
 - 10.22.3 itself, and shall procure that any sub-Consultant and supplier appointed by it in relation to the Works during the Pre-Construction Period shall, on any termination of this agreement by the *Employer*, consent to and (if requested by the *Employer* or the *Consultant*) effect the novation of their respective sub-contract, supply agreement, order and any other similar document to the *Employer* or any person that the *Employer* nominates; and

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- 10.22.4 give the *Employer* a copy of any commercially redacted sub-contract, supply agreement, order and any other similar document within ten (10) Business Days of the *Employer's* request to do so.
- 10.23 The *Consultant* shall include in any of its sub-contracts, supply agreements, orders or any other similar documents relating to this agreement, the Works or the Project, a condition requiring that:
- 10.23.1 invoices (or applications for payment as applicable) are considered and verified by the *Consultant* in a timely fashion;
- 10.23.2 undue delay in considering and verifying invoices (or applications for payment as applicable) is not sufficient justification for failing to regard an invoice as valid and undisputed; and
- any contract awarded by the sub-Consultant or supplier relating to this agreement, the Works or the Project includes provisions to the same effect as this clause 10.23.

Work Orders

- 10.24 The *Consultant* may (with the prior written consent of the *Employer*) and shall (if so instructed by the *Employer* or the Project Manager) place a specific order or perform a specific item of work comprising part of the Works (including for example but without limitation any design of the Works or site set up, early orders or enabling works) before the issue of any Notice to Proceed provided that, the *Consultant* shall not place an order or commence any item of work until the sum forming part of the Price in respect of that order or item has been agreed in writing between the *Employer* and the *Consultant*.
- 10.25 Any order or item of work shall be carried out in accordance with the Proposed Contract Documents and the terms of the Proposed Contract Documents shall apply to such order or item of work as if the Contract had been signed.
- 10.26 Each part of the Early Works and all materials or equipment which the *Consultant* shall acquire or allocate for the purpose of being incorporated within or for the purpose of carrying out any part of the Early Works, shall vest in and become the Employer's absolute property on payment of the relevant part of the Early Works. The *Consultant* shall take all such steps as may be reasonably necessary to ensure that the Employer's title, and the exclusion of any such lien, are brought to the notice of all third parties dealing with any part of the Early Works. The *Consultant* shall ensure that from the time when any such part of the Early Works begins or as soon thereafter as is practicable they are marked or recorded where possible so that they are readily identifiable as the *Employer's* property, or where this is not possible, that such a notice shall be displayed and a record made in the *Consultant's* books (as may be necessary for the purpose of ensuring that the same are readily identifiable as being the *Employer's* property). The *Consultant* shall comply with any direction given by the Project Manager in this respect. Notwithstanding the vesting of all such parts of the Early Works and any materials and equipment pursuant to this clause 10.26, the *Consultant* shall remain responsible for any loss or damage to such parts of part the Early Works and such materials and equipment and for the cost of storing, handling and transporting such materials and equipment.

11 Z11 Additional conditions of contract - Limit of Employer's liabilities

- 11.1 Unless the *Employer* has issued a Notice to Proceed, the *Employer's* liability, however that liability arises (including a liability arising by breach of contract, arising by tort, including the tort of negligence, or arising by breach of statutory duty), shall be limited to the following:
- 11.1.1 a fair and reasonable proportion of the Fee, which shall be commensurate with the Services performed by the *Consultant* to the date of issue of any notice of termination of this agreement, but which shall not in any event exceed the *Consultant's* cumulative entitlement to the Fee at the date of issue of any notice of termination;
 - 11.1.2 the value of work actually executed and orders actually placed by the *Consultant*, calculated in accordance with the Proposed Contract Documents and subject always to the approved cap on expenditure; and
 - 11.1.3 any interest due under the Proposed Contract Documents.
- 11.2 The parties acknowledge and agree that unless the *Employer* has issued a Notice to Proceed the *Employer* shall be under no obligation to the *Consultant* other than as set out in this agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project or the Works) and the *Consultant* shall have no claim against the *Employer* for:
- 11.2.1 loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
 - 11.2.2 any indirect or consequential loss.
- 11.3 Nothing in this clause 11 or elsewhere in this agreement shall exclude or limit either party's liability for death or personal injury caused by that party's negligence and/or fraud and/or fraudulent misrepresentation.

12 Z12 Additional conditions of contract - Suspension

- 12.1 The *Employer* may, at any time, suspend performance of part or all of the Services and any order or item of work by giving notice to the *Consultant*. Subject to clause 12.2, the *Consultant* shall resume performance of that part or all of the Services and any order or item of work as soon as reasonably practicable after receiving a notice from the *Employer* to do so.
- 12.2 If the *Employer* does not pay a sum due under this agreement on or before the final date for payment the *Consultant* may suspend the performance of any or all of its obligations under this agreement as if the *Employer* had not paid a sum due under the Proposed Contract Documents, by giving notice as required by the Proposed Contract Documents.
- 12.3 In the event of a suspension under clause 12.1 subject to clause 11, the *Employer* shall pay the *Consultant* any sums due under this agreement and such payment shall

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be the *Consultant's* sole compensation for suspension of the Services and any order or item of work carried out under this agreement.

13 Z13 Additional conditions of contract – Security Aspects Letter

- 13.1 The *Consultant* undertakes and warrants that it understands the requirements of the Official Secrets Act (OSA) 1911-1989, specifically the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in relation to the security conditions as set out in detail in the security conditions and the Security Aspects Letter at Schedule 8 of this Appointment.
- 13.2 The *Consultant* must acknowledge and return a signed copy of the Security Aspects Letter contained in Schedule 8 of this Appointment, confirming its undertaking and warranty to comply with the conditions as set out therein.
- 13.3 The *Consultant* shall procure and take all reasonable steps to make sure all individuals employed by the *Consultant* on any work in connection with this Appointment have notice of the specified security conditions and that the aforementioned statutory provisions apply to them and will continue to apply after completion or earlier termination of the Appointment.

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Schedule 4

Proposed Contract Documents

Schedule 5

Scope

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Schedule 6

Draw Down Schedule

NOT USED

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Schedule 7

Programme

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Schedule 8

Security Aspects Letter

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