DATED 2023

**THE WEST OF ENGLAND COMBINED AUTHORITY**

**and**

**[CONTRACTOR]**

|  |
| --- |
| NEC4 ENGINEERING AND CONSTRUCTION CONTRACT  RELATING TO A PROJECT TO DESIGN, SUPPLY, CARRY OUT WORKS TO CREATE A NUMBER OF MOBILITY HUBS AND THEIR SUBSEQUENT MAINTENANCE, IN LOCATIONS THROUGHOUT THE WEST OF ENGLAND COMBINED AUTHORITY |

S

Weightmans LLP

No 1 Spinningfields

Hardman Square

Manchester

M3 3EB

[Weightmans logo](http://intranet/default.aspx?page=0)

**THIS AGREEMENT** is dated **2023**

1. PARTIES:
   1. The **WEST OF ENGLAND COMBINED AUTHORITY** incorporated and registered in England and Wales with company number [NOT APPLICABLE] whose registered office is at [70 REDCLIFFE STREET, REDCLIFFE, BRISTOL, BS1 6AL] (***Client***);
   2. **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (***Contractor***);
2. BACKGROUND:
   * + 1. The *Client* wishes to appoint the *Contractor* on the terms of the contract.
3. AGREED TERMS:

In the contract, words and expressions have the meaning assigned to them in the *conditions of contract* referred to below.

The following documents form part of the contract:

* this form of agreement;
* the NEC4 engineering and construction contract (June 2017) with amendments dated (Insert date) ("the ECC") incorporating Option B: Priced contract with a bill of quantities; Dispute Resolution Option W2; Secondary Options X5, X7, X9, X10, X11, X12, X16, X18 and X21 and Option Z (Additional *conditions of contract* which are included in the schedule attached hereto). The intent of X Options X4, X8, X13 and X15 is dealt with by the bespoke Z Clause amendments which contain equivalent and/or extended obligations.

[Drafting Note : The Mobility Hubs are to be developed in multiple areas. Contractors are invited to submit proposals to provide the works concurrently or in phased batches. Sectional Completion will therefore apply TBC. The Contractor will also have to deal with proposals to demobilise any and all of the Mobility Hubs within the defects period and include a price and programme for the same. Some further drafting about instruction of the same and the time for completion (and having no liability to instruct etc) may ned to be added during the contract finalisation phase, but this drafting is dependent on the proposals on programme being submitted by the Contractor]

* the Contract Data Parts One and Two and the documents referred to therein;
* any other documents included within the contract documents initialled by the parties.

The *Contractor* will Provide the Works in accordance with the contract.

The *Client* will pay to the *Contractor* the amounts due under and in accordance with the contract.

Subject to the above provisions of clause W2, the English courts shall have exclusive jurisdiction in respect of all matters arising under or in connection with the contract.”

**IN WITNESS** of which the parties have executed this deed on the date set out above.

[Insert Execution Clauses]

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| **Contract Data** | |  |  | |  |  | |  | |  | |
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| **PART ONE - DATA PROVIDED BY THE *CLIENT*** | | | |  |  |  | |  | |  | |
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|  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | | | | |
| **1 General** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 with update October 2020. | | | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Main option | B | Option for resolving and avoiding disputes | | | | | | | W2 | |
|  |  |  |  | |  |  | |  | |  | |
|  | Secondary Options | X5, X7, X15, X16 and X18 |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *works* are | Deliver Mobility Hubs across Bristol and South Gloucestershire at the following currently identified locations:  Abbeywood Retail Park;  Arnside Road, Southmead;  Bristol & Bath Science Park;  Church Road, Filton;  Conygre Road, Filton;  Filton Avenue (Horfield Library);  Gainsborough Square, Lockleaze;  Lyde Green P&R;  Portway P&R;  Ridingleaze, Lawrence Weston;  Southmead Hospital;  St James Place; Mangotsfield;  The University of the West of England (UWE)  The Mobility Hubs will include the installation of transport and non-transport components to enhance the interchange experience and encourage and facilitate multi-modal journeys.  The proposal also includes the ability at the end of the trial period to demobilise selected, or all components at selected or all mobility hubs if required under this contract. | | | | | | | | | |
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|  | The *Client* is |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | Name |  |  | | West of England Combined Authority | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Address for communications | | |  | 70 REDCLIFFE STREET,  REDCLIFFE,  BRISTOL,  BS1 6AL | | | | | | |
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|  |  |  |  | |
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|  |  |  |  | |  |  | |  | |  | |
|  | Address for electronic communications | | | | Amanda.edmondson@westofengland-ca.gov.uk | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Project Manager* is |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | Name |  |  | | David Garcia-Cuerva Aranda | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Address for communications | | |  | PPS Infrastructure UK and Ireland  Aecom  Aldgate Tower,  2 Leman St,  London  E1 8FA | | | | | | |
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|  |  |  |  | |
|  |  |  |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | Address for electronic communications | | | | [david.garciacuervaaranda@aecom.com](mailto:david.garciacuervaaranda@aecom.com) | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Supervisor* is |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | Name |  |  | | TBA | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Address for communications | | |  | TBA | | | | | | |
|  |  |  |  | |  | | | | | | |
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|  |  |  |  | |  |  | |  | |  | |
|  | Address for electronic communications | | | | TBA | | | | | | |
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|  | The Scope is in |  | ITT Appendix A – Specification Description: Project Scope | | | | | | | | |
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|  | The Site Information is in | | | ITT Appendix A2 – Site Information pack and the supplied Reference designs, Statutory Undertaker’s Infrastructure, and Topographical Surveys | | | | | | | |
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|  | The *boundaries of the site* are | | |  | Identified within the Reference Designs in the ITT Appendix A2 – Site information pack | | | | | | |
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|  | The *language of the contract* is | | |  | English | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *law of the contract* is the law of | | |  | The Law of England and Wales | | | | | | |
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|  | The *period* for reply is | 14 Days | | | | except that | | | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *period* for reply for | Not applicable | | | | is | | Not applicable | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *period* for reply for | Not applicable | | | | is | | Not applicable | | | |
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|  | The following matters will be included in the Early Warning Register | | | | | | | |  | |  |
|  |  |  |  | |  |  | |  | |  | |
|  | [To be identified in due course] | | | | | | | | | | |
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|  | Early warning meetings are to be held at intervals no longer than | | | | | | | | At Least Once a Month | | |
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| **2 The Contractor's main responsibilities** | | | |  |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *key dates* and *conditions* to be met are  [To be identified in due course] The Contractor should identify key events as part of its procurement submission. | | | |  |  | |  | |  | |
|  | *condition* to be met |  |  | |  |  | | *key date* | |  | |
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| **3 Time** |  |  |  | |  |  | |  | |  | |
|  | The *starting* *date* is |  |  | |  |  | | [To be identified in due course] | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *access* dates are |  |  | |  |  | | [To be identified in due course] | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | part of the Site |  |  | |  |  | | date | |  | |
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|  | The *Contractor* submits revised programmes at intervals no longer than | | | | | | | | At least once per month | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *completion* *date* for the whole of the *works* is | | | |  |  | | [To be identified in due course] | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Client* **is not** willing to take over the works before the Completion Date | | | | | | | | | | |
|  | The *period* after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is | | | | | | | |  | |  |
| 2 Weeks | | |
| **4 Quality management** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and a quality plan is | | | | | | | |  | |  |
|  | On the Contract Date | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The period between Completion of the whole of the *works* and the *defects date* is | | | | | | | |  | |  |
|  | 3 Calendar Months | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *defect correction period* is | | | Set out in the Scope and there shall be a tiered approach to correction based on the significance of the defect and the timescale required. The Scope includes some operation and maintenance to be conducted by the Contractor during the 12 Calendar Months after Completion. | | | | |  | | |
|  |  |  |  | |  |  | |  | |  | |
|  |  | | | Refer to Section 6 of ITT Appendix A – Specification Description | | | | |  | |  |
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| **5 Payment** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *currency* of the *contract* is the | | | £ Sterling | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *assessment* *interval* is | | | Monthly | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *interest rate* is | 2 | | | % per annum (not less than 2) above the | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Base Rate | | | rate of the | | | Bank of England | | | | bank |
|  |  |  |  | |  |  | |  | |  | |
|  | The period within which payments are made is | | | | | | As Set out in Y(UK)2 | | | | |
|  |  |  | |  |  | |  | |  | |
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| **6 Compensation Events** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | The place where weather is to be recorded is | | | | | | Filton, South Gloucestershire | | | | |
|  | The *value engineering* percentage is 50%, unless another percentage is stated here, | | | | | | | | | |  |
|  |  |  | |  |  | |  | |  | |
|  | These are additional compensation events | | |  |  |  | |  | |  | |
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| **8 Liabilities and insurance** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | These are the additional *Client's* liabilities | | |  |  | (1)  (2)  (3) | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
|  | the minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is | | | | | | | | | | |
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|  |
|  |
|  |  |  |  | |  |  | | £5 million | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | 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 | | | | | | | | | | |
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|  |  |  |  | |  |  | |  | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The insurance against loss of or damage to the *works*, Plant and Materials is to include over for Plant and Materials provided by the *Client* for an amount of | | | | | | | | | | |
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|  |  |  | |  |  | |  | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Client* provides these insurances from the Insurance Table | | | | | | | |  | |  |
|  |  |  | |  |  | |  | |  | |
| (1) Insurance against |  |  | | | | | | | | |
|  |  |  | |  |  | |  | |  | |
|  | Minimum amount of cover is | | |  | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The deductibles are |  |  | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Contractor* provides these additional insurances | | | | | | | |  | |  |
|  |  |  |  | |  |  | |  | |  | |
|  | (1) Insurance against |  |  | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Minimum amount of cover is | | |  | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The deductibles are |  |  | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The Tribunal is |  | Arbitration | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *arbitration procedure* is | | |  | The current version of the Arbitration Process for Construction Disputes that is in use as at the Contract Date. | | | | | | |
|  |  |  | |  |  | |  | |  | |
|  | The place where arbitration is to be held is | | | |  |  | |  | |  | |
|  | London | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | 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 | | | | | | | | | | |
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|  |  |  |  | |  |  | |  | |  | |
|  | Royal Institute of Chartered Surveyors | | | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
| If Option W1 or W2 is used | The *Senior Representatives* of the *Client* are | | | | | |  | |  | |  |
|  |  |  | |  |  | |  | |  | |
|  | Name (1) |  | Peter Mann OR Alistair Kirk | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | Address for communications | | | 70 REDCLIFFE STREET,  REDCLIFFE,  BRISTOL,  BS1 6AL | | | | | | | |
|  |  |  |  | | | | | | | | |
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|  |  |  |  | |  |  | |  | |  | |
|  | Address for electronic communications | | | directorlegal@westofengland-ca.gov.uk | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Adjudicator* is to be nominated by the President of the Royal Institute of Chartered Surveyors |  |  | |  |  | |  | |  | |
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| **X5: Sectional Completion** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X5 is used | The *completion date* for each *section* of the *works* is | | | | | |  | |  | |  |
|  |  |  | |  |  | |  | |  | |
|  | Section | description | | | |  | | completion date | | | |
|  |  |  |  | |  |  | |  | |  | |
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| **X7: Delay Damage** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X7 is used without Option X5 | Delay damages for Completion of the whole of the works are | | | | | |  | |  | |  |
| To be advised during the Tender Period, but the suggested figure for tender is £1000 | | | | per day or part of a day |
|  |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X7 is used with Option X5 | Delay damages for each section of the *works* are | | | |  |  | |  | |  | |
|  |  |  | |  |  | |  | |  | |
| section | description | | | |  | | amount per day | | | |
|  |  |  |  | |  |  | |  | |  | |
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|  | The delay damages for the remainder of the *works* are | | | | | |  | |  | | |
|  |  |  |  | |  |  | |  | |  | |
| **X8: Undertakings to the Client or Others** | | | | |  |  | |  | |  | |
| **Not in use.** |  |  |  | |  |  | |  | |  | |
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| **X15: The Contractor's design** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X15 is used | The *period for retention* following Completion of the whole of the *works* or earlier termination is | | | | | |  | |  | |  |
|  | | 12 Months | | |
|  |  |  |  | |  |  | |  | |  | |
|  | 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 *Work*s is, in respect of each claim | | | | | | | | | | |
|  |
|  |
|  |  |  |  | |  |  | | £5,000,000 each and every claim. | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance claims made against it arising out of its failure to use the skill and care is | | | | | | | | | | |
|  |
|  |
|  |  |  |  | |  |  | | 12 Years | | | |
| **X16: Retention** | | | |  |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X16 is used | The retention free amount is | | | NA |  |  | |  | |  | |
|  |  |  | |  |  | |  | |  | |
|  | The retention percentage is | | | 5 | | | | | % | |  |
|  |  |  |  | |  |  | |  | |  | |
| Retention bond | The Contractor **shall not** give the *Client* a retention bond. | | | | | | | | | | |
|  |  |  |  | |  |  | |  | |  | |
| **X18: Limitation of liability** | |  |  | |  |  | |  | |  | |
|  |  |  |  | |  |  | |  | |  | |
| If Option X18 is used | The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to | | | | | |  | |  | |  |
| £[xxx] each and every claim. | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | For any one event, the *Contractor's* liability to the C*lient* for loss of or damage to the *Client's* property is limited to | | | | | |  | |  | |  |
|  |  | |  | |  |
|  |  |  |  | |  | £[xxx] each and every claim | | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to | | | | | |  | |  | |  |
|  |  | |  | |  |
|  | £2[xxx] each and every claim | | | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to | | | | | |  | |  | |  |
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|  |  | | TBC | | |
|  |  |  |  | |  |  | |  | |  | |
|  | The end of liability date is |  | 12 | | | years after the Completion of the whole of the *works* | | | | | |
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| **Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996** | | | | | | | | | | |  |
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| If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due | The period for payment is |  | 21 | | | days after the date on which payment becomes due | | | | | |
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| If Option Z is used | The *additional conditions of Contract* are | | |  |  |  | |  | |  | |
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|  | Those that are included in the Schedule that forms part of the Contract. | | | | | | | | | | |
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| **PART TWO - DATA PROVIDED BY THE CONTRACTOR** | | | | | | | | |  | |  |
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|  | Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | | | | |
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| **1 GENERAL** | |  |  | |  |  | |  | |  | |
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|  | The *Contractor* is |  |  | |  |  | |  | |  | |
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|  | Name |  |  | |  | | | | | | |
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|  | Address of communications | | |  |  | | | | | | |
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|  | Address for electronic communications | | |  |  |  | | | | | |
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|  | The *fee percentage* is |  |  | | | % | |  | |  | |
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|  | The *working areas* are |  |  | |  | | | | | | |
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|  | The *key persons* are |  |  | |  |  | |  | |  | |
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|  | Name (1) |  |  | | | | | | | | |
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|  | Job |  |  | | | | | | | | |
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|  | Responsibilities |  |  | | | | | | | | |
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|  | Qualifications |  |  | | | | | | | | |
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|  | Experience |  |  | | | | | | | | |
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|  | Name (2) |  |  | | | | | | | | |
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|  | Job |  |  | | | | | | | | |
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|  | Responsibilities |  |  | | | | | | | | |
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|  | Qualifications |  |  | | | | | | | | |
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|  | Experience |  |  | | | | | | | | |
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|  | The following matters will be included in the Early Warning Register | | | | | | | | | |  |
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| **2 The Contractor's main responsibilities** | | | |  |  |  | |  | |  | |
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| If the Contractor is to provide Scope for its design | The Scope provided by the *Contractor* for its design is in | | | | | |  | | | | |
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| **3 Time** |  |  |  | |  |  | |  | |  | |
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| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is | | | |  |  | | | | | |
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| If the *Contractor* is to decide the *completion date* for the whole of the *works* | The *completion dat*e for the whole of the works is | | | | | |  | | | | |
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| **5 Payment** |  |  |  | |  |  | |  | |  | |
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| Option B | The tendered total of the Prices is | | | |  |  | | | | | |
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| **Resolving and avoiding disputes** | | | |  |  |  | |  | |  | |
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| If Option W1 or W2 is used | The *Senior Representative* of the Contractor are | | | |  |  | |  | |  | |
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|  | Name (1) |  |  | |  | | | | | | |
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|  | Address of communications | | |  |  | | | | | | |
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|  | Address for electronic communications | | |  |  | | | | | | |
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|  | Name (2) |  |  | |  | | | | | | |
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|  | Address of communications | | |  |  | | | | | | |
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|  | Address for electronic communications | | |  |  | | | | | | |
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| If Option W3 is used | The *Contractor's* nomination for the Dispute Avoidance Board is | | | | | | | |  | |  |
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|  | Name |  |  | |  | | | | | | |
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|  | Address for electronic communications | | |  |  | | | | | | |
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| **X10: Information modelling** | |  |  | |  |  | |  | |  | |
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| If Option X10 is used |  |  |  | |  |  | |  | |  | |
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| If an information execution plan is to be identified in the Contract Data | The *information execution* *plan* identified in the Contract Data is | | | | | |  | |  | |  |
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**THE SCHEDULE**

**NEC4 ENGINEERING AND CONSTRUCTION CONTRACT, JUNE 2017 UPDATED OCTOBER 2020**

The contract is amended as follows and shall be construed accordingly:

**Part 1: Amendments to core clauses**

Z1 The core clauses are amended as follows:

**CORE CLAUSES**

**1 General**

**Identified and defined terms**

11.2(12) At the end of the sentence add:

“Reference to Others shall expressly include and of any other authorised authorities or statutory corporations or statutory bodies who may be employed in the execution on or near the site of any work not in the Contract or for any contract which the *Client* may enter into in connection with or ancillary to the *works* or any early fit out works that the *Client* requires.”

11.2(13) Insert the following after “*Client*”:

“(which expression shall include it successors in title and permitted assigns)

11.2(15) In line 2, after “contract” add:

“and in accordance with Statutory Requirements,”

11.2(18A) Add:

“Skill and Care is, in relation to any design (which expression includes the preparation of any specifications and the selection of the type of any Plant or Materials), the reasonable skill and care to be expected of a suitably qualified designer experienced in the design of *works* similar in scale and character to the *works* or the relevant part of the *works*.”

11.2 Insert new definitions as follows:

“(19) Funder means any party providing finance in connection with the *works* or the purchase of the whole or any part of the *works*;

(20) Statutory Requirements means all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *works* or performance of any obligations under the contract, and any regulation, byelaw, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the *works* or whose systems the *works* are, or are to be, connected.

(21) Consents means approval of reserved planning matters or details pursuant thereto, building regulations approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to any Statutory Requirements or otherwise for the carrying out of the *works* save that the Contractor shall have no responsibility for the obtaining any planning consent, but the contractor has an obligation to Provide the Works fully in accordance with the planning consent.

(22) Contractor’s Design Documents are the drawings, design details and specifications of work, Plant and Materials prepared by the *Contractor* for the *works*.

(23) Material means the Contractor’s Design Documents and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the *works* (and completed *works*) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the *works* (and completed *works*).

(24) Permitted Uses means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of the Property and the *works* (and completed *works*).

(25) Property means any and all of the properties on which the *works* are to be undertaken as set out in the Site Information and or the Scope.

(26) Personal Data is any data relation to an identified or identifiable individual who can be identified from that data (or from those data and other information from that data (or from those data and other information in possession of the *Client*).

(27) CDM Regulations means the Construction (Design and Management) Regulations 2015 and any other regulations amending, supplementing or replacing the same.

**Interpretation and the law**

12.1 At the end of existing clause 12.1 add the following bullet points:

“In the contract, except where the context shows otherwise:

* references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it, and
* references to a standard include any current relevant standard that replaces it.”

**2 The *Contractor*’s main responsibilities**

**The *Contractor*’s design**

21.1 Delete and substitute:

“21.1 The *Contractor* designs the whole of the *works*. The *Contractor* warrants that the whole of the *works* will be designed with Skill and Care.”

21.10 Insert a new clause as follows:

(1) Where there is an inadequacy or discrepancy or divergence in or between any of the following documents:

* the Scope
* the Site Information
* any drawings or documents issued by the *Contractor* under the contract

the *Contractor* shall immediately inform the *Client* in writing of his/her/their proposed amendment to remove the inadequacy, discrepancy or divergence; and (subject always to compliance with applicable law) the *Client* shall decide between the discrepant or divergent items or otherwise may accept the *Contractor*’s proposed amendment and the *Contractor* shall be obliged to comply with the decision or acceptance by the *Client* without cost to the *Client* and/or an extension of time.

(2) The *Contractor* accepts entire responsibility for the Scope and/or Site Information (and the *Contractor* warrants the adequacy of any design in the Scope in accordance with the contract) and for any mistake, inaccuracy or omission in them, whether or not the whole or any part of them has been prepared by or on behalf of the *Client*. Any mistake, inaccuracy or omission in such documents or in any drawings, details, documents or information provided by the *Contractor* in accordance with the contract or otherwise shall be corrected by the *Contractor* without cost to the *Client*.

(3) The *Contractor* shall not have or make any claim for a compensation event, where and to the extent that the cause of the progress of the *works* having been delayed, affected or suspended is any such inadequacy, discrepancy, divergence, mistake, inaccuracy, or omission as is referred to in clause 21.10 (1) and (2) or any failure by the *Contractor* to provide necessary drawings or documents in due time.

(4) If the *Contractor* or the *Client* finds any such inadequacy, discrepancy or divergence as is referred to in clause 21.10 (1) or any such mistake, inaccuracy or omission as is referred to in clause 21.10 (2), he/she/they shall immediately give the other written notice specifying the discrepancy, mistake, inaccuracy or omission.

(5) If the *Contractor* or the *Client* becomes aware of any divergences between the Statutory Requirements (as may be amended) and/or Consents (as may be amended) and the Scope they shall immediately inform the other and the *Contractor* shall inform the *Client* in writing of his/her/their proposed amendment to remove the discrepancy; and (subject always to compliance with applicable law) the *Client* shall decide between the discrepant items or otherwise may accept the *Contractor*’s proposed amendment and the *Contractor* shall be obliged to comply with the decision or acceptance by the *Client* without cost to the *Client*.

**People**

24.3 Insert a new clause 24.3 as follows:

“The contract is personal to the *Contractor* and he/she/they shall not assign charge or transfer any right or obligation under the contract to any other person or party.”

**Working with the *Client* and Others**

25.3 At the end of the penultimate sentence of this clause, insert:

“or by such later date as it is reasonably practicable for the *Project Manager* to complete his/her/their assessment”. Delete last sentence.

25.3A Add as clause 25.3A:

“The *Client* may also recover from the *Contractor* any other cost or loss incurred or to be incurred by them as a result of any breach by the *Contractor* of an obligation to which clause 25 refers, and the *Project Manager* may include such cost or loss in any assessment under clause 25.3.”

**Regulatory requirements**

27.4A Add as clause 27.4A:

“Subject to any provisions of the Scope, the *Contractor* obtains all Consents for or in connection with Providing the Works.”

**Disclosure**

29. Delete this clause and insert:

29 Insert a new clause 29:

.1 The *Contractor* keeps (and ensures that its employees and Subcontractors keep) confidential and does not disclose to any person

* the terms of this contract and;
* any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Works;

except that the *Contractor* may disclose information

* to its legal or other professional advisers;
* to its employees and Subcontractors as needed to enable the *Contractor* to Provide the Works;
* where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that (unless the *Contractor* is prohibited by law from doing so) prior to disclosure the *Contractor* consults the *Project Manager* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed;
* which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
* which is in the public domain at the time of disclosure other than due to the fault of the *Contractor*; or
* with the consent of the *Project Manager*.

.2 The *Contractor* does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.

.3 The *Contractor* may publicise the works only with the *Client*'s agreement.

**CDM Regulations**

29A Insert a new clause 29A:

“.1 In this clause CDM Regulations means the Construction (Design and Management) Regulations 2015.

.2 The *Client* appoints the *Contractor* to be the principal designer and principal for the purposes of the *works*.

.3 Each Party undertakes to the other that it has complied and will comply with its statutory duties under the CDM Regulations in relation to the *works*.

.4 By the Completion Date the *Contractor* is to provide to the principal designer such information as the principal designer reasonably requires the *Contractor* to provide for inclusion in the health and safety file.

**Site conditions**

29B Insert a new clause 29B:

“The *Contractor* shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied themselves before the date of the contract as to the nature of the ground, the sub-surface conditions and sub-soil (any information in connection therewith which may have been provided by or on behalf of the *Client* being provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness), the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the *works*, the means of communication with and restrictions of access to the Site, the accommodation he/she/they may require, and in general to have obtained for themselves all necessary information as to risks, contingencies and all other circumstances influencing or affecting the *works*. The *Contractor* shall not be entitled to any compensation event on the grounds of any misunderstanding or misinterpretation of any such matter, nor shall the *Contractor* be released from any of the risks accepted or obligations undertaken by them under the contract on the ground that he/she/they did not or could not have foreseen any matter which might affect or have affected the execution of the *works*.”

**Approvals**

29C Insert a new clause 29C:

“No inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the *Client* shall diminish any duty or liability hereunder of the *Contractor*.

**Bribery Act 2010**

29D Insert a new clause:

“.1 The *Contractor* warrants that no offence under the Bribery Act 2010 (“the Act”) has been or will be committed by:

* the *Contractor*; or
* any associated person of the *Contractor*,

in connection with the procurement or implementation of this contract.

.2 For the purposes of clause 29M.1, the definition of associated person in section 8 of the Act applies.

.3 If at any time the *Contractor* has knowledge of, or has reasonable grounds to suspect the occurrence of, a breach of the warranty in clause 29M.1, the *Contractor* shall promptly notify the *Client* in writing of such matters within its knowledge, or of such grounds for suspicion, and shall co-operate with the *Client* in the investigation of such breach or suspected breach of warranty.

.4 Breach of this clause is a substantial failure of the *Contractor* to comply with his/her/their obligations, for the purposes or reason for termination R11.

.5 This clause shall survive the termination (for any reason) of the contract.”

**Disclosure of information**

29E Insert a new clause 29E:

“.1 A “Disclosure Request” is a request for information relating to the contract received by the *Client* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

.2 The *Contractor* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Contractor* before doing so in accordance with the relevant code of practice. The *Contractor* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Project Manager* and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.

.3 When requested to do so by the *Project Manager*, the *Contractor* promptly provides information in its possession relating to the contract and assists and co-operates with the *Project Manager* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

.4 The *Contractor* promptly passes any Disclosure Request which it receives to the *Project Manager*. The *Contractor* does not respond directly to a Disclosure Request unless instructed to do so by the *Project Manager*.

**Data Protection**

29F Insert a new clause 29F:

.1 The Data Protection Legislation is the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018 (as amended) and any other laws or regulations relating to privacy or personal data applicable in England and Wales.

.2 “Personal Data” are any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the applicable Data Protection Legislation. “Controller”, “processor”, “data subject”, “processing” and “appropriate technical and organisational measures” are as defined in the Data Protection Legislation.

.3 For the purposes of the contract and the Data Protection Legislation

* the *Client* is the controller and
* the *Contractor* is the processor.

.4 The *Contractor* processes the Personal Data in accordance with (and so as not to put the *Client* in breach of) the Data Protection Legislation and only to the extent necessary for the purpose of performing its obligations under the contract.

.5 The *Contractor* has in place and maintains until the *defects date* appropriate technical and organisational measures (having regard to the nature of the Personal Data, the state of technological development and the cost of implementing such measures) to protect against accidental, unauthorised or unlawful processing, destruction, loss, alteration or disclosure of, or damage to, Personal Data or to any equipment used to process the Personal Data in respect of the harm that might result from such accidental, unauthorised or unlawful processing, destruction, loss, alteration, disclosure or damage.

.6 The *Contractor* immediately notifies the *Project Manager* if it receives

* a request from any person whose Personal Data it holds to access its Personal Data or
* a complaint or request relating to the *Client's* obligations under the Data Protection Legislation.

.7 The *Contractor* assists and co-operates with the *Project Manager* in relation to any complaint or request received, including

* providing full details of the complaint or request,
* complying with the request within the time limits set out in the Data Protection Legislation and in accordance with the instructions of the *Project Manager* and
* promptly providing the *Project Manager* with any Personal Data and other information it has requested.

.8 The *Contractor* allows the *Client* to conduct periodic audits of the *Contractor's* compliance with the Data Protection Legislation. The *Contractor* complies with the instructions of the *Project Manager* to enable such audits to be carried out.

.9 The *Contractor* complies with the requirements of the *Client* in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.

.10 The *Contractor* immediately notifies the *Project Manager* on becoming aware of any breach of this clause or of the Data Protection Legislation by the *Contractor* or any Subcontractor.

.11 The *Contractor* does not process the Personal Data outside the European Economic Area without the prior agreement of the *Project Manager*. Where the *Project Manager* agrees, the *Contractor* complies with the instructions of the *Project Manager* and its obligations under the Data Protection Legislation, and provides an adequate level of protection to any Personal Data that are transferred.

.12 The *Client* or the *Contractor* provides appropriate safeguards in relation to the transfer and ensures that the data subject has enforceable rights and effective legal remedies.

**Discrimination**

29G Insert a new clause 29G:

.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010 or any other applicable equality or non-discrimination laws or regulations (the "Discrimination Legislation").

.2 Where possible in Providing the Works, the *Contractor* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Legislation to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

.3 Where an employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Client's* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

.4 The *Contractor* notifies the *Project Manager* in writing as soon as it becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Legislation in connection with the contract and

* provides any information requested by the investigating body, court or tribunal in the timescale allotted,
* attends (and permits a representative from the *Client* to attend) any associated meetings,
* promptly allows access to any relevant documents and information and
* co-operates fully and promptly with the investigatory body, court or tribunal.

.5 The *Contractor* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Legislation resulting from any act or omission of the *Contractor*.

.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

**Defects Certificate**

46A Add as clause 46A:

“The Defects Certificate is not evidence that the *Contractor* has complied with clause 2 (the *Contractor*’s main responsibilities) or clause 4 (Testing and Defects).”

**5 Payment**

**Final assessment**

53.1 Delete the second bullet point and replace with the following:

* “13 weeks after the *Client* completes the *works* pursuant to clause 92.1 or decides not to complete the *works* (in the case of termination by the *Client* for a reason stated in clause 91, other than R17 or R20 or R21),
* or (in any other case) within 13 weeks after the *Project Manager* issues a termination certificate.”

53.1A Insert a new clause:

“If from before the *Project Manager* certifies a final payment under clause 53.1 the *Project Manager* is able to quantify an amount due on termination, less previous payments, he/she/they may certify an interim payment of that amount to or from the *Contractor*. The due date for payment of the certified amount is the date of the interim certificate and the final date for payment is 21 days after the due date.”

53.3 In the first sentence after “final amount due issued” insert “in accordance with clause 53.1 and”. Insert at the end of the clause “Any assessment by the *Contractor* of the final amount due in accordance with clause 53.2 shall in no circumstances be conclusive evidence of the final amount due under or in connection with the contract.”

**6 Compensation events**

**Compensation events**

60.1(10) Delete ‘only’ in line 2 and add at the end:

“or because a known Defect suggests the likely presence of a similar or related Defect elsewhere in the *works*.”

Delete clauses 60.1 (12), 60.1(13), 60.1(19), 60.2, 60.3 in their entirety.

**8 Liabilities and Insurance**

***Client*’s liabilities**

80.1 In the third bullet point insert at the end:

“unless, in the case of design, the *Contractor* agrees in the contract to take responsibility for such design”

**Insurance policies**

84.3 Delete and substitute:

“The Parties each comply with the terms and conditions of the insurance policies to be complied with on its part, and neither Party by any act or neglect causes any insurance policy to be void or voidable or entitles the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.”

**9 Termination**

**Payment on termination**

93.2 Delete A3 and substitute:

“A deduction of the [forecast] of the additional cost to the *Client* of completing the whole of the *works* and the amount of any other cost, loss or liability incurred or to be incurred by the *Client* resulting from the termination and/or from the reason for termination and/or from any other breach by the *Contractor* of the contract.”

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Y2.2 Delete the first sentence and substitute:

“The date on which a payment becomes due is 7 days after the assessment date”

In the paragraph below the third bullet point delete “fourteen days” and insert “21 days”.

**Additional Z Clauses**

**Z2 Standards of Quality**

Z2.1 Where one provision of this contract imposes upon the *Contractor* a standard, duty or obligation which is more onerous than, or additional to, that imposed by another provision, this shall not be treated as a conflict or inconsistency for the purposes of Clause 16.1. Rather the relevant standards, duties or obligations shall, so far as possible, be treated as cumulative, failing which the more onerous standard, duty or obligation shall apply.

Z2.2 The *Contractor* warrants and undertakes that it has reviewed the Scope and the services (and will review any change thereto) in order to identify any mistakes, inaccuracies, discrepancies or omissions therein using the standard of reasonable skill, care and diligence that is stated at Z3.4. In carrying out such review the *Contractor* adopts responsibility for any element of the services or Scope (including but not limited to any design contained therein) carried out or created by the *Client* itself or on behalf of the *Client* by a third party (the "Pre-Existing Services/Scope") and the *Contractor’s* obligations and liabilities in respect of the Pre-Existing Services/Scope shall be as if it had carried out or created the same itself.

**Z3 Providing the Service**

Z3.1 The *Contractor* shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Client* (including but not limited to any Pre-Existing Services/Scope and the Scope) and shall satisfy itself as to the accuracy of the same.

Z3.2 The *Contractor* proceeds regularly and diligently, using at all times all reasonable endeavours to avoid and mitigate any delay howsoever caused. If the *Contractor* is prevented or delayed in the performance of the whole or any part of the *works* for any reason (whether arising out of delay on the part of the *Client* and whether amounting to force majeure or otherwise) then the *Contractor* shall give written notice thereof forthwith to the *Client* advising the specific reason for the delay or prevention together with his/her/their best estimate of its effect on the Key Milestones and other timescales for the project and shall use his/her/their best endeavours as soon as practicable to resume and expedite the performance of the *works* so as to complete the same with all reasonable speed.

**Z4 Sub-Contracting**

Z4.1 Where the *Client* or the *Project Manager* consents to the Contractor sub-contracting any part of the Works It shall be a condition of such consent that the *Contractor*:

* procures that the relevant Sub-contractor or Sub-consultant shall in all respects be compatible with the terms of this contract; and
* provides to the *Client* on demand certified copies of any sub-contract (save for particulars of the cost of the relevant sub-contract works).

**Z5 Health and Safety**

Z5.1 The *Contractor* agrees to comply with the *Client’s* rules regarding health and safety together with all legal requirements regarding these matters.

Z5.2 The *Contractor* shall immediately notify the *Client* of any health and safety hazards which may arise in connection with the performance of the *works* and/or in the event of any incident occurring in the performance of the *works* where that incident causes any personal injury or damage to property that could give rise to personal injury.

**Z6 Documentation**

Z6.1 Without prejudice to any other obligations under this contract to provide documents (or other materials) or copies thereof to the *Client* the *Contractor* shall upon the written request of the *Client* (but subject always to reimbursement by the *Client* of the *Contractor’s* reasonable costs including photocopying charges) provide to the *Client* copies of the Documents and such other information in relation to the services, as the *Contractor* can reasonably supply.

**Z7 Severance**

Z7.1 If any court or tribunal of competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected. If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**Z8 Entire Understanding**

Z8.1 This Contract comprises the entire understanding of the parties and supersedes and extinguishes all previous contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any variation to this Contract or any of its constituent documents shall only be binding when agreed in writing by the *Client*. No variation required by the *Client* or subsequently sanctioned by the Client shall invalidate or modify this Contract beyond the scope of that variation. The Consultant agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.