**BLACKPOOL BOROUGH COUNCIL**

**and**

**[CONTRACTOR]**

**YEADON WAY PHASE 2 PROJECT**

|  |  |  |
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|  | **ADDITIONAL CONDITIONS OF CONTRACT (OPTION Z)** |  |

**ADDITIONAL CONDITIONS OF CONTRACT (OPTION Z)**

The following modifications and additions will apply to the NEC3 Engineering and Construction Contract Option A core clauses (April 2013 edition).

**Z1 SCHEDULE OF AMENDMENTS TO CORE CLAUSES**

The Conditions of Contract are part of these additional conditions of contract (z clauses) and are supplemented and/or amended as follows.

# **NEW CLAUSE 29 Performance Bond**

# The *Contractor* shall, forthwith upon entering into this Contract, deliver to the *Employer* a performance bond, in the form set out in Appendix 2 duly executed as a deed by the *Contractor* and its surety.”]

# **CLAUSE 60.1** Delete clause 60.1(13)

**Z2 SCHEDULE OF AMENDMENTS TO OPTIONAL CLAUSES**

1. **OPTION Y(UK)2** Delete the second paragraph in Y.2.2 and insert "The final date for payment is the later of:
* 21 days from the due date; and
* 14 days from receipt of a valid VAT certificate.''

**Z3 ADDITIONAL CONDITIONS OF CONTRACT**

# **NEW CLAUSE Z.3.1** **Key Subcontractors**

# "The *Contractor* shall obtain the *Employer's* prior written approval to the identity of and the terms and conditions of engagement of any Key Subcontractor prior to the Key Subcontractor starting work (or commencing any design works as the case may be) and the *Contractor* acknowledges that the *Employer* may reject such proposed Key Subcontractor and/or reasonably require amendments to those terms and conditions as a condition of providing such written approval.”

# **NEW CLAUSE Z.3.2 Details Confidential**

# "The *Contractor* shall treat the Contract and everything contained therein as private and confidential. The *Contractor* shall not take, publish, circulate or otherwise distribute any information drawing or photograph concerning the Site or the *works* for any purpose other than to obtain tenders or quotations from potential Subcontractors or suppliers except with the prior written consent of the *Project Manager*. The *Contractor* shall take all reasonable steps (including requiring like for like confidentiality undertakings) to ensure that such persons maintain the confidentiality of such information to prevent such persons and their subcontractors (of any tier) from carrying out such activities."

# **NEW CLAUSE Z.3.3 Freedom of Information**

Z.3.3.1 The *Contractor* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the *Employer* (at the *Contractor's* expense) to enable it to comply with these Information disclosure requirements.

Z.3.3.2 The *Contractor* shall and shall procure that its Subcontractors shall:

Z.3.3.2.1 transfer any Request for Information to the *Employer* as soon as practicable after receipt and in any event within two business days of receiving a Request for Information;

Z.3.3.2.2 provide the *Employer* with a copy of all Information in its possession or power that it holds on behalf of the *Employer* in the form that the *Employer* requires within five business days (or such other period as the *Employer* may specify) of the *Employer* requesting that Information; and

Z.3.3.2.3 provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

## Z.3.3.3 The *Employer* shall be responsible for determining at its absolute discretion whether any Information:

## Z.3.3.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

## Z.3.3.3.2 is to be disclosed in response to a Request for Information, and

## Z.3.3.3.3 in no event shall the *Contractor* respond directly to a Request for Information unless specifically authorised to do so by the *Employer*.

## Z.3.3.4 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

## Z.3.3.4.1 following consultation with the *Contractor* and having taken its views into account; or

## Z.3.3.4.2 without consulting the *Contractor*.

## Z.3.3.5 The *Contractor* shall ensure that all information produced in the course of the Contract or relating to the Contract (including to avoid doubt but not limited to, copies of any consents, licences, permits, safety procedures, approvals and building or other permissions) are retained for disclosure and shall permit the *Employer* (and others authorised by the *Employer*) to inspect such records as requested from time to time and this obligation shall ensure for such period of time as reflects the obligation imposed on the *Employer*.

# Z.3.3.6 The *Contractor* acknowledges that any lists or schedules provided by it outlining confidential information and commercially sensitive information are of indicative value only and that the *Employer* may nevertheless be obliged to disclose confidential and/or commercially sensitive Information.”

# **NEW CLAUSE Z.3.4 Corrupt Practices** "The *Contractor* undertakes to the *Employer* that:

# Z.3.4.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;

# Z.3.4.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the *Employer* in breach of section 7(1) of the Bribery Act;

# Z.3.4.3 it shall comply with the *Employer*'s Anti-corruption Policy;

# Z.3.4.4 it shall include undertakings similar to those contained in this clause Z.3.4 in any contract it may enter into with any Subcontractors, sub-consultants and suppliers and provisions similar to those contained in clause Z.3.4.6;

# Z.3.4.5 from time to time, at the reasonable request of the *Employer*, it will confirm in writing that it has complied with its undertakings under clauses Z.3.4.1 to Z.3.4.3 inclusive and will provide any information reasonably requested by the *Employer* in support of such compliance; and

# Z.3.4.6 it shall maintain adequate records to assist in verifying compliance with the provisions of this clause Z.3.4 (including without limitation books of account showing all payments made by the *Contractor* in connection with this Contract) and shall permit the *Employer* and his third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses Z.3.4.1 to Z.3.4.3 inclusive, to access and take copies of such records and to meet with the *Contractor*'s personnel to audit the *Contractor*'s compliance with its obligations under this clause Z.3.4. The *Contractor* shall give all necessary assistance to the conduct of such audits.”

# **NEW CLAUSE Z.3.5 Modern Slavery Legislation**

# Z.3.5.1 “The *Contractor* undertakes to the *Employer* that:

# Z.3.5.1.1 his directors, officers and employees are not engaging and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

# Z.3.5.1.2 his directors, officers and employees are not engaging and shall not engage in any activity, practice or conduct which could or would place the *Employer* in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

# Z.3.5.1.3 it is maintaining and implementing and shall continue to maintain and implement:

#  Z.3.5.1.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and

#  Z.3.5.1.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;

# Z.3.5.1.4 it shall include undertakings similar to those contained in this clause Z.3.5.1 and Z.3.5.3 in any contract it may enter into with Subcontractors, sub-consultants and/or suppliers and provisions similar to those contained in clauses Z.3.5.2, Z.3.5.3 and Z.3.5.4; and

# Z.3.5.1.5 from time to time, at the reasonable request of the *Employer*, it will confirm in writing that it has complied with his undertakings under this Z.3.5 and will provide any information reasonably requested by the *Employer* in support of such compliance.

# Z.3.5.2 The *Contractor* shall maintain adequate records to assist in verifying his compliance with the provisions of this clause Z.3.5 and shall permit the *Employer* and his third party representatives, immediately upon request to access and take copies of such records and to meet with the *Contractor*'s personnel during normal business hours to audit the *Contractor*'s compliance with his obligations under this clause Z.3.5. The *Contractor* shall give all necessary assistance to the conduct of such audits.

# Z.3.5.3 The *Contractor* further undertakes to the *Employer* that:

# Z.3.5.3.1 if required by law to do so, it shall, for each and every financial year of the *Contractor*, comply with his obligations under section 54 of the Modern Slavery Act by publishing a Human Trafficking Statement; and

# Z.3.5.3.2 it shall include an undertaking similar to that contained in this clause Z.3.5.3 in any contract it may enter into with Subcontractors, sub-consultants, and/or suppliers.”

# **NEW CLAUSE Z.3.6 Materials Not to be Used**

# "The *Contractor* undertakes, represents and warrants to the *Employer* that to the extent that it shall use or specify for use substances or materials in the *works*:

## it shall act in accordance with the guidance contained in the edition of the publication "Good Practice in the Selection of Construction Materials (British Council for Offices (BCO))” current at the date of specification or use; and

## no other substance or materials generally known to be deleterious at the time of use or specification and no other materials or substances which are prohibited by the Works Information, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be used or specified for use by or on its behalf (unless specifically instructed in writing to the contrary by the *Employer*)."

# **NEW CLAUSE Z.3.7 Procurement of materials**

# “The *Contractor* shall comply with any policy direction, including that for major projects, issued by the Government or related bodies (including but not limited to the Crown Commercial Service) in relation to the procurement of materials for public sector contracts (to the extent applicable to the *works*).”

# **NEW CLAUSE Z.3.8** **Assignment**

# "The *Contractor* shall not, without the prior consent in writing of the *Employer*, assign or transfer this Contract, or any part of it. The *Employer* may assign or transfer the benefit of this Contract (or any part of it) to any person at any time without the prior consent of the *Contractor* being required, but the *Employer* shall give the *Contractor* reasonable notice in writing prior to such assignment or transfer taking place.”

# **NEW CLAUSE Z.3.9 Laws and health and safety**

# "The *Contractor* shall comply with (and shall ensure that all its Subcontractors and suppliers comply with) the Laws and without prejudice to the foregoing all of its or their (as the case may be) obligations with regard to health and safety in the performance of and the carrying out of the *works*.

# **NEW CLAUSE Z.3.10 Signs and advertising**

# "The *Contractor* shall not erect any signs, hoardings or other advertising or publicity material at or around the Site and/or along the route of the *works* without the prior consent in writing from the *Project Manager*."

# **NEW CLAUSE Z.3.12 Social value requirements**

# “The *Contractor* shall ensure that:

# Z.3.12.1 it adopts, and shall ensure that its Subcontractors, sub-consultants and suppliers adopt, the principles of Ethical Procurement as specified by the Ethical Trading Initiatives Base Code;

# Z.3.12.2 it adopts, and shall ensure that its Subcontractors, sub-consultants and suppliers adopt payment of the Foundation Living Wage;

# Z.3.12.3 it complies, and its Subcontractors, sub-consultants and suppliers comply, with

#  Blackpool Borough Council’s Supplier Charter, a copy of which has been previously provided to the *Contractor*;

# Z.3.12.4 It shall not, and its Subcontractors, sub-consultants and suppliers shall not, use ‘zero hours contracts’ in relation to employees; and

# Z.3.12.5 it complies, and shall ensure that its Subcontractors, sub-consultants and suppliers comply, with Blackpool Borough Council’s Social Value Suppliers Guide, a copy of which has been previously provided to the *Contractor*.”

# **Appendix 1**

# **Disputes**

1. **Disputes**

Any Dispute shall be resolved in accordance with this Appendix 1.

1. **Consultation**

The *Contractor* and the *Employer* shall (without prejudice to any right they may have to refer any Dispute to adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (**"Act"**) or any replacement or amendment to such Act) consult in good faith in an attempt to come to an agreement in relation to the Dispute.

1. **Adjudication**

Without prejudice to paragraph 2 above (Consultation) and save as set out below, the *Contractor* and the *Employer* acknowledge and agree that any adjudication shall be carried out in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 (**"Scheme"**) or any replacement or amendment to such Scheme.

1. **Nominating Body**

The Parties acknowledge and agree that the nominating body in respect of any adjudication shall be the Institution of Civil Engineers.

1. **Adjudicator not Arbitrator**

Any adjudicator appointed in accordance with the Scheme shall be deemed not to be an arbitrator but shall render his decision as an adjudicator in accordance with the Act and the Scheme, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the adjudicator or his determination or the procedure by which he reached his decision.

1. **Reference to the courts**

The *Employer* and/or the *Contractor* may commence or issue a notice to the other of its intention to commence court proceedings relating to the Dispute which forms the subject matter of the decision of the adjudicator within 180 calendar days of the date of the decision of the adjudicator, but the decision of the adjudicator will remain binding and enforceable on the *Employer* and the *Contractor* until the Dispute is finally determined by the court proceedings or by agreement. If neither the *Employer* nor the *Contractor* commences or issues a notice of its intention to refer the Dispute which forms the subject matter of the adjudicator's decision to the court for determination within 180 calendar days of the date of the decision of the adjudicator such decision shall (save in respect of bad faith or fraud) be final and binding.

1. **Court Proceedings**
	1. All Disputes to the extent not expressed in this Contract or agreed by the *Contractor* and the *Employer* to be final and binding pursuant to this Appendix 1 may be referred by either the *Employer* and/or the *Contractor* to the courts of England and Wales for final resolution. The Parties agree that where the nature of the Dispute so allows, the Dispute shall be tried by a judge of the Technology and Construction Court. To avoid doubt, this paragraph shall not preclude either of the Parties from commencing court proceedings to enforce any such decisions of an adjudicator.
	2. Unless this Contract and/or any document entered into between the *Employer* and the *Contractor* pursuant to it have already been repudiated or terminated, the *Employer* and the *Contractor* shall notwithstanding that any Dispute is subject to this Appendix 1, continue to comply with all of their obligations in accordance with this Contract and/or any document entered into between the *Employer* and the *Contractor* pursuant to it (as the case may be).

**Appendix 2**

**Form of Performance Bond referred to in clause** **29**

**GUARANTEE BOND**

**Yeadon Way Phase 2 Project**

**THIS GUARANTEE BOND** is made as a deed **BETWEEN** the following parties whose names and addresses are set out in the Schedule to this Bond (**“Schedule”**): -

1. The “Contractor” as principal
2. The “Guarantor” as guarantor, and
3. The “Employer”

 ***WHEREAS***

1. By a contract (the “Contract”) entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute *works* (“the “**Works**”) upon and subject to the terms and conditions therein set out.
2. The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in Clause 2.

**NOW THIS DEED WITNESSES** as follows: -

1. In the event of a breach of the Contract or in the event that the Contract or the employment of the Contractor is determined by reason of any one or more of the events set out in the Contract and notwithstanding any objection that may be raised, the Guarantor shall subject to clause 2 satisfy and discharge the damages, losses and expenses sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract or as agreed between the Employer and the Contractor provided always that to avoid doubt, the Employer shall not be required to commence proceedings and/or pursue any dispute resolution mechanism under the Contract in advance of making any demand under this Guarantee Bond.
2. The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the “Bond Amount”) but subject to such limitation and to Clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
4. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which notice in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
5. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
6. This Guarantee Bond and the benefits thereof may be assigned by the Employer to any party to whom the Contract is assigned but not otherwise.
7. This Guarantee Bond and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction to settle any dispute (including a dispute relating to non-contractual obligations) arising out of or in connection with this deed or a dispute regarding the existence, validity or termination of this deed.
8. A person who is not a party to this Guarantee Bond will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Guarantee Bond. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**THE SCHEDULE**

The Contractor: [*Insert name*] whose registered office address is at [*Insert registered address*]

The Guarantor: [*Insert name*] whose registered office address is at [*Insert registered address*]

The Employer: Blackpool Borough Council of PO Box 11, Town Hall,

Blackpool, FY1 1NB

The Contract: A contract dated the [] day of [] or to the extent not yet entered into, a contract to be entered into between the Employer and the Contractor for the construction of *works* comprising [*Insert description of the works*] for the original contract sum of [*Insert contract sum in words*] £([*insert contract sum in figures*])

The Bond Amount: The sum of [*Insert bond amount in words*] £([*insert bond amount in figures*])

Expiry: The later of the "*defects date*" (as defined in the Contract) or the last "*defects correction period*" (as defined in the Contract) which shall be conclusive for the purposes of this Guarantee Bond

**IN WITNESS** whereof the Employer, Guarantor and the Contractor have executed and delivered this Guarantee Bond as a Deed this                 day of                      201.

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| --- | --- | --- | --- |
| The common seal of**BLACKPOOL BOROUGH COUNCIL** was hereunto affixed in the presence of: | ))) |  |  |
|  |  |  |  |
|  |  | Title |  |
|  |  | Title |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Executed as adeed by**[GUARANTOR]** by a director in the presence of a witness: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
| Witness signature |  |  |
|  |  |  |
| Witness name  |  |  |
| (block capitals) |  |  |
|  |  |  |
| Witness address |  |  |
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| --- | --- | --- | --- |
| Executed as adeed by**[CONTRACTOR]** by a director in the presence of a witness: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
| Witness signature |  |  |
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