Canford Bridge
Masonry Repairs
Project DN473166
PROCUREMENT PROCEDURE: UK OPEN

Appendix B
Contract Data Part 1

Status:	Issued
Version:	1.00
Date:	12/05/2020

CONTRACT DATA PART ONE

Part one – Data provided by the *Employer*

Statements given in all contracts

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X7, X16, Y(UK)2,Y(UK)3 and Z of the NEC3 Engineering and Construction Contract April 2013

- The *works* are

  Canford Bridge Masonry Repairs

- The *Employer* is

  Name Bournemouth Christchurch and Poole Council

  Address: Town Hall, Bourne Avenue, Bournemouth BH2 6DY

- The *Project Manager* is

  Name Steve Wait

  Address: Town Hall Annexe, St Stephens Road Bournemouth BH2 6EA

- *The Supervisor* is

  Name Tony Parfett

  Address: Civic Centre, Poole BH15 2RU

- *The Adjudicator is*

  To be appointed in accordance with W2.2(3)

- The *Works* Information is in:
- Appendix A Specification
- Appendix C Drawings
- Appendix D Pre Construction Information

- The *Site* Information is in:
- Appendix A Specification
- Appendix C Drawings
- Appendix D Pre Construction Information

- The *boundaries* of the site are shown on Drawings

  WZ0048-102 Haul Road Site Compound
  WZ0048-103 Area of Works
- The *language* of this contract is English

- The *law* of the contract is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
- The period for reply to a communication is 1 week.
- The *Adjudicator* nominating body is the Institution of Civil Engineers

- The tribunal is arbitration

- The following matters will be included in the Risk Register

  - Availability of specialist plant/equipment,
  - availability of specialist sub-contractors,
  - delivery of materials/plant/personnel to site,
  - programme,
  - construction risks,
  - environmental risks,

3 Time

- The *starting* date is to be 6th July 2020
- The *access* dates are

Part of the Site	**Date**
The whole site	From the start date

4 Testing and Defects

- The *defects* date is 52 weeks after Completion of the whole of the works.

- The defect correction period is 4 weeks except those defects listed below for which the defects correction period is 24 hours
  - Any defect where there is a risk to public safety

5 Payment

- The *currency* of this contract is the pound sterling
- The assessment interval is 4 weeks
- The interest rate is 2% per annum above the Bank of England base lending rate.

6. Weather

- The place where the weather is to be recorded is Poole, Dorset
- The weather measurements to be recorded for each calendar month are
  - The cumulative rainfall (mm)
  - The number of days with rainfall more than 5mm
  - The number of days with minimum air temperature less than 0 degrees Celsius
  - The number of days with snow lying at 08.00 hours GMT
- The weather data are the records of weather measurements for each calendar month which were recorded at Poole, Dorset and which are available from the Met Office.

8 Risks and insurance

- The minimum limit of indemnity for insurance in respect of 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*) caused by activity in connection with this contract for any one event is £ 10,000,000
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of an in the course of their employment in connection with this contract for any one event is £10,000,000

Optional Statements

The arbitration procedure is the Institution of Civil Engineers' Arbitration Procedure (2006) or any amendment or

modification in force when the Arbitrator is appointed.

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 an appointed officer of the Institution of Civil Engineers

The *completion date* for the whole of the *works* is 23 October 2020.

The *Contractor* is to submit a first programme for acceptance within four weeks of the Contract Date.

The period for payment is 28 days

Where the *Contractor* produces a design or provides advice to the *Employer* in respect of the design of the *works*, the *Contractor* shall provide professional indemnity insurance with a minimum limit of indemnity for insurance in connection with this Contract for any one event of £5,000,000

<u>X7 Delay Damages</u>

Delay damages for Completion of the whole of the *works* are £150 per day

<u>X16 Retention</u>

The *retention free amount* is zero

The *retention percentage* is 5%

Option Y(UK)3

term	person or organisation
None	None

Option Z: Additional Conditions of Contract

The NEC3 Engineering and Construction Contract (Option A: Priced Contract with Activity Schedule), published in April 2013 by the Institution of Civil Engineers, shall be amended by the addition of the following Additional Conditions of Contract.

Clause Z1: Interpretation

For the avoidance of doubt, wherever there is any conflict or inconsistency between the provisions of the NEC3 Engineering and Construction Contract (Option A: Priced Contract with Activity Schedule), published in April 2013 by the Institution of Civil Engineers, and these Additional Conditions of Contract, then the latter shall prevail.

Clause Z2: Service Standards

The *Contractor* shall Provide the Works, or procure that they are provided, with reasonable skill and care and in accordance with all applicable law. Where a British Standard Specification or British Standard Code of Practice or other recognised standard (e.g. a Eurocode) is laid down by a regulatory body for the industry concerned and applies to the *Contractor*'s workmanship or to any goods and materials used or supplied by the *Contractor*, the workmanship and the goods and materials used or supplied shall be at minimum to such standard.

Clause Z3: Compliance

Definitions

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for Providing the Works.

Contractor Personnel: all employees, staff, other workers, agents and consultants of the *Contractor* and of any Sub-contractors who are engaged in Providing the Works from time to time.

3.1 The *Contractor* shall ensure that all Necessary Consents are in place to Provide the Works and the *Employer* shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

3.2 Wherever there is any conflict or inconsistency between the provisions of this contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the *Contractor* has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the works and the *Contractor* has notified the *Employer* in writing.

3.3 The *Contractor* shall (and shall procure that the Contractor Personnel shall) perform its obligations under this contract (including those in relation to the works) in accordance with:

(a) all applicable law regarding health and safety; and

(b) the *Employer*'s health and safety policies.

3.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this contract. The *Contractor* shall

instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

3.5 Without limiting the general obligation set out in Clause Z3 on Service Standards, the *Contractor* shall (and shall procure that the Contractor Personnel shall):

(a) perform its obligations under this contract (including those in relation to the *works*) in accordance with:

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

(ii) any other requirements and instructions which the *Employer* reasonably imposes in connection with any equality obligations imposed on the *Employer* at any time under applicable equality law;

(b) take all necessary steps, and inform the *Employer* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

(c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this contract. The *Contractor* shall also undertake, or refrain from undertaking, such acts as the *Employer* requests so as to enable the *Employer* to comply with its obligations under the Human Rights Act 1998.

3.6 In the performance of this contract the *Contractor* shall comply with the *Employer*'s Financial Regulations and Procurement Rules. Where the *Contractor* purchases goods, works or services on behalf of the *Employer* in the course of Providing the Works under the contract, it shall comply with the European Public Procurement Directives, the Public Contracts Regulations 2015 and the *Employer*'s policies and procedures as though it were an employee of the *Employer*. The *Contractor* shall ensure that the *Employer* receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services, either directly or through a collateral warranty agreement (as applicable).

3.7 The *Contractor* shall make best efforts to secure compliance with the provisions in this clause by its employees, agents and Sub-contractors employed in the execution of this contract.

<u>Clause Z4: CDM Regulations</u>

Definition

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51)

4.1 The *Contractor* is the principal contractor for the purposes of the CDM Regulations in respect of the *works* and performs all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.

4.2 The *Contractor* warrants and undertakes that it has and will maintain in all respects the skills, knowledge, experience and organisational capability to perform all of its duties and functions as required by the CDM Regulations and set out in the pre-construction

information and undertakes to allocate and maintain sufficient resources and personnel having the required experience and skills to perform such duties and functions.

4.3 The *Employer* shall perform the role of client for the purposes of the CDM Regulations.

4.4 The *Contractor* shall at its own cost supply to the *Employer* one electronic copy and one hard copy of the health and safety file, which shall comply with the requirements of the CDM Regulations.

Clause Z5: Publication of Spend

5.1 The *Contractor* is advised that local authorities are required by the Government to publish details for every item of expenditure that exceeds £500 and details of each invitation to tender (for contracts to provide goods or services) with a value of £5,000 or more.

5.2 The *Contractor* is advised that the *Employer* may therefore publish details (to the extent and in the manner required by the Government) of the tender process and any contract awarded.

5.3 The *Contractor* must comply with any reasonable request from the *Employer* in order to assist the *Employer* in complying with its obligations in respect of this requirement.

Clause Z6: The *Employer* as a Local Authority

Nothing in the contract shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the *Employer* in the exercise of its statutory powers as a local authority, local planning authority, highway authority, fire authority or statutory undertaker.

Clause Z7: Sub-contracting and Assignment

7.1 The *Employer* may assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of the contract if it has a requirement to do so and shall inform the *Contractor* of any such dealing.

7.2 The *Contractor* shall not sub-contract, assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of the Contract without the *Employer*'s prior written agreement.

7.3 Assigning or sub-contracting the whole or any part of the contract shall not relieve the *Contractor* of any obligation or duty attributable to the *Contractor* under the contract and the *Contractor* shall be responsible for the acts omissions defaults and negligence of its assignees and Sub-contractors as though they are its own. The *Contractor* shall include a term in its contract with its Sub-contractors requiring them to comply with the terms of this contract. The *Contractor* shall not use the services of self-employed individuals without the *Employer*'s prior written agreement.

7.4 Where the *Contractor* enters into a sub-contract with a third party for the purpose of performing the contract, it shall include a term in such sub-contract that the Sub-contractor shall comply with the terms of the *Contractor*'s Contract with the *Employer* and a term that provides that payment shall be made by the *Contractor* to the Sub-contractor of undisputed sums within a specified period not exceeding 30 days from the receipt of a valid invoice (as defined in the terms of the sub-contract).

Clause Z8: Provision of Certificates of Insurance

Fourteen (14) days before the starting date and fourteen (14) days before each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor*'s insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with his contract.

Clause Z9: Freedom of Information

Definitions

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

9.1 The *Contractor* acknowledges that the *Employer* is subject to the requirements of the FOIA and the EIRs. The *Contractor* shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the *Employer* to enable the *Employer* to comply with its obligations under the FOIA and EIRs;

(b) transfer to the *Employer* all Requests for Information relating to this contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the *Employer* with a copy of all Information belonging to the *Employer* requested in the Request For Information which is in its possession or control in the form that the *Employer* requires within 5 Working Days (or such other period as the *Employer* may reasonably specify) of the *Employer*'s request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by the *Employer*.

9.2 The *Contractor* acknowledges that the *Employer* may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the *Contractor*. The *Employer* shall take reasonable steps to notify the *Contractor* of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this contract) the *Employer* shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Clause Z10: Publicity

10.1 The *Contractor* shall not give information concerning the *works* for publication in the Press or on radio, television, screen, social media, the Internet or any other medium without the written consent of the *Employer*.

10.2 The terms of the contract are confidential and the *Contractor* shall ensure that it does not disclose the terms of the Contract to any third party save with the prior written express permission of the *Employer* or as required by operation of law.

Clause Z11: Confidentiality

Definition

Confidential Information: all information, whether written or oral (however so recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; or (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential.

11.1 Subject to Clause Z11.2, each Party shall:

(a) treat all Confidential Information which it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

(b) not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this contract.

11.2 Notwithstanding Clause Z11.1, a Party may disclose Confidential Information which it receives from the other Party:

(a) where disclosure is required by applicable law or by a court of competent jurisdiction;

(b) to its auditors or for the purposes of regulatory requirements;

(c) on a confidential basis, to its professional advisors;

(d) to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

(e) where the receiving Party is the *Contractor*, to the staff on a need to know basis to enable performance of the *Contractor*'s obligations under this contract provided that the *Contractor* shall procure that any staff to whom it discloses Confidential Information pursuant to this Clause Z11.2(e) shall observe the *Contractor*'s confidentiality obligations under this contract;

(f) where the receiving Party is the *Employer*:

i. on a confidential basis to the employees, agents, consultants and contractors of the *Employer*;

ii. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the *Employer* transfers or proposes to transfer all or part of any business;

iii. to the extent that the *Employer* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

iv. in accordance with Clause Z9: Freedom of Information.

11.3 The *Contractor* shall not, and shall take reasonable steps to ensure that its staff do not, make any press announcement or publicise this contract or any part of this contract in any way, except with the prior written consent of the *Employer*.

Clause Z12: Intellectual Property

Definitions

Contractor Personnel: all employees, staff, other workers, agents and consultants of the *Contractor* and of any Sub-contractors who are engaged in Providing the Works from time to time.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

12.1 In the absence of prior written agreement by the *Employer* to the contrary, all Intellectual Property Rights created by the *Contractor* or Contractor Personnel:

(a) in the course of Providing the Works; or

(b) exclusively for the purpose of Providing the Works,

shall vest in the *Employer* on creation.

12.2 The *Contractor* shall indemnify the *Employer* against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the *works*, except to the extent that they have been caused by or contributed to by the *Employer*'s acts or omissions.

Clause Z13: Prevention of Corruption

13.1 The *Employer* may immediately terminate this contract and recover in full any loss sustained as a consequence of a breach of this Clause Z13, in the event that the *Contractor*, its employees or anyone acting on the *Contractor*'s behalf does any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other contract of the *Employer* (even if the *Contractor* does not know what has been done); or

(b) commit an offence under the Bribery Act 2010 or under Section 117(2) of the Local Government Act 1972; or

(c) commit any fraud in connection with this or any other order or contract of the *Employer* whether alone or in conjunction with members or employees of the *Employer*.

13.2 The *Contractor* shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff and the *Contractor* (including its shareholders, members and directors) in connection with this contract and shall notify the *Employer* immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Clause Z14: Right to Purchase Elsewhere

14.1 If the *Contractor* fails to Provide the Works or any part thereof within the time or times specified in this contract, the *Employer* may, without prejudice to any other remedy for breach of contract, reserve the right to either:

(a) terminate the contract either wholly or in respect of that part of the contract for which the *Contractor* is in default; and/or

(b) purchase the relevant *works* of the same or similar description to make good the default; or in the event of the contract being wholly determined to procure the *works* required from any third party without any obligation to the *Contractor* in respect of the contract.

Clause Z15: Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Clause Z16: *Employer*'s Access to the Site

The *Contractor* shall permit appropriate and properly authorised and trained representatives of the *Employer* to enter on the Site at any reasonable time and have free and unfettered access to each and every part of the area covered by the contract of work affected thereby.

Clause Z17: Amendment to Clause 60.1(4)

In Clause 60.1(4) of the NEC3 Engineering and Construction Contract (Option A: Priced Contract with Activity Schedule), there shall be inserted the following phrase between the words “Key Date” and the final full stop: “unless the instruction is caused by the application of the Construction (Design and Management) Regulations 2015 or any clause of the ‘Construction Phase Plan’.”

Clause Z18: Data Processing

Definitions

Contractor Personnel: all employees, staff, other workers, agents and consultants of the *Contractor* and of any Sub-contractors who are engaged in Providing the Works from time to time

Controller, Processor, Process, Processing, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, take the meanings given to them in the GDPR and their cognate terms shall be construed accordingly.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the *Contractor* under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the DPA; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426); the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: the Data Protection Act 2018.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Law: any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the *Contractor* is bound to comply.

LED: the Law Enforcement Directive (Directive (EU) 2016/680).

Protective Measures: appropriate technical and organisational measures which may include: pseudonym-ising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: means any person appointed to Process Personal Data on behalf of the *Contractor* related to this contract.

18.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is the Processor. The only Processing

that the *Contractor* is authorised to do is listed in Appendix 1 by the *Employer* and may not be determined by the *Contractor*.

18.2. Both Parties will comply with all applicable requirements of the Data Protection Legislation.

18.3. This Clause Z18.3 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

18.4. Appendix 1 sets out the scope, nature and purpose of Processing by the *Contractor*, the duration of the Processing and the types of Personal Data and categories of Data Subject.

18.5. The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer*'s instructions infringe the Data Protection Legislation and shall not knowingly or negligently do or omit to do anything which places the *Employer* in breach of the *Employer*'s obligations under the Data Protection Legislation.

18.6. The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to commencing any Processing or at any time. Such assistance may, at the discretion of the *Employer*, include:

(a) a systematic description of the envisaged Processing operations and the purpose of the Processing;

(b) an assessment of the necessity and proportionality of the Processing operations in relation to providing the Goods;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

18.7. The *Contractor* shall, in relation to any Personal Data Processed in connection with its obligations under this contract:

(a) Process that Personal Data only in accordance with Appendix 1, unless the *Contractor* is required to do otherwise by Law. If it is so required, the *Contractor* shall promptly notify the *Employer* before Processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures to ensure a level of security appropriate to the risks, including, as appropriate, the measures referred to in Article 32(1) of the GDPR, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:

i. nature and scope as well as context and purposes of the Personal Data to be protected;

ii. harm that might result from a Data Loss Event;

iii. state of technological development; and

iv. cost of implementing any measures;

(c) ensure that:

i. the Contractor Personnel do not Process Personal Data except in accordance with this contract (and in particular Appendix 1);

ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

a. are aware of and comply with the *Contractor*'s duties under this clause;

b. are subject to appropriate confidentiality undertakings with the *Contractor* or any Sub-processor;

c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and

d. have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU or European Economic Area unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:

i. the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Employer*;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Employer* in meeting its obligations); and

iv. the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the Processing of the Personal Data;

(e) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of this contract unless the *Contractor* is required by Law to retain the Personal Data.

18.8. Subject to Clause Z18.6, the *Contractor* shall notify the *Employer* immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this contract;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

18.9. The *Contractor*'s obligation to notify under Clause Z18.5 shall include the provision of further information to the *Employer* in phases, as details become available.

18.10. Taking into account the nature of the Processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under Clause Z18.8 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:

(a) the *Employer* with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the *Employer* to enable the *Employer* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the *Employer* following any Data Loss Event;

(e) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

18.11. The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause under the obligation in Articles 28(3)(h) and 30(2) GDPR. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:

(a) the *Employer* determines that the Processing is not occasional;

(b) the *Employer* determines (or the *Contractor* is aware that) the Processing includes special categories of Personal Data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and/or

(c) the *Employer* determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

18.12. The *Contractor* shall allow for audits of its Data Processing activity by the *Employer* or the *Employer*'s designated auditor.

18.13. The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.

18.14. Before allowing any Sub-processor to Process any Personal Data related to this contract, the *Contractor* must:

(a) notify the *Employer* in writing of the intended Sub-processor and Processing;

(b) obtain the written consent of the *Employer*;

(c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause Z18.14 such that they apply to the Sub-processor; and

(d) provide the *Employer* with such information regarding the Sub-processor as the *Employer* may reasonably require.

18.15. The *Contractor* shall remain fully liable for all acts and omissions of any Sub-processor.

18.16. The *Employer* may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract) per Articles 28(6), 28(7) and 28(8) GDPR.

18.17. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on notice to the *Contractor* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

18.18. Without prejudice to the rest of this Clause Z18.18, the *Contractor* shall, in relation to any Personal Data Processed in connection with the performance by the *Contractor* of its obligations under this contract Process that Personal Data only on the written instructions of the *Employer* unless the *Contractor* is required by the laws of any member of the European Union or by the laws of the European Union applicable to the *Contractor* to Process Personal Data (Applicable Laws). Where the *Contractor* is relying on laws of a member of the European Union or European Union law as the basis for Processing Personal Data, the *Contractor* shall promptly notify the *Employer* of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the *Contractor* from so notifying the *Employer*.

18.19. The *Contractor* shall fully indemnify the *Employer* in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the *Contractor*, its employees, agents or any Sub-contractor or anyone acting on its or their behalf.

18.20. The Parties agree that on the termination of this contract, the Processor and any Sub-Processor shall, at the choice of the *Controller*, return all Personal Data and copies thereof to the *Employer* or shall destroy all the Personal Data and certify to the *Employer* that it has done so, unless legislation imposed on the data importer prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the

Personal Data transferred and will not actively Process the Personal Data transferred anymore.

18.21. The *Contractor* shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Personal Data, as strictly necessary for the purposes of this contract, and to comply with the Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Obligations after the termination of this contract

18.22. The provisions of this Clause Z18.22 shall apply both during the term of this contract and indefinitely after this contract’s expiry or termination.

18.23. The Parties agree that on the termination of this contract, the Data Processor and any Sub-processor shall, at the choice of the Data Controller, return all the Personal Data transferred and the copies thereof to the Data Controller or shall destroy all the Personal Data and certify to the Data Controller that it has done so, unless legislation imposed on the Data Processor prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the Data Processor warrants that it will guarantee the confidentiality of the Personal Data transferred and will not actively Process the Personal Data transferred anymore.

Appendix 1

GDPR – The General Data Protection Regulation

Appendix of Data Processing, Personal Data and Data Subjects

1. The *Contractor* shall comply with any written instructions with respect to Processing by the *Employer*.
2. Any such further instructions shall be incorporated into this Appendix 1.

PROCESSING BY THE *CONTRACTOR*

A. Scope Description Details

Subject matter of the Processing.

The *Contractor* shall Process Personal Data in order to Provide the Works. The Personal Data shall comprise the names and contact information of *Employer* staff members.

B. Duration of the Processing

The *Contractor* shall Process Personal Data for the duration of the contract.

C. Nature and purposes of the Processing

The names and contact information of *Employer* staff members will be Processed. This could involve collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying the Personal Data (whether or not by automated means). The purpose of the Processing will be to Provide the Works pursuant to the contract.

D. Type(s) of Personal Data

- Title
- First and middle names
- Surname
- Email address
- Telephone numbers
- Full office address

E. Categories of Data Subject

Staff of the *Employer*.

F. Termination Provision

The *Contractor* shall destroy and return to the *Employer* the Personal Data and copies thereof once the Processing is complete UNLESS there is a requirement under UK or Applicable Law or a written direction of the *Employer* that the *Contractor* stores the Personal Data.

The *Contractor* shall keep the Personal Data for no longer than is necessary for the purposes for which the Personal Data are processed.