A12

CONSTRUCTION DELIVERY AGREEMENT

NEC4 ENGINEERING AND CONSTRUCTION CONTRACT - OPTIONS A OR C

Introduction

NEC Engineering and Construction Contract - Options A and C

This Delivery Agreement incorporates the NEC 4th edition engineering and construction contract June 2017 (the **NEC ECC**), including the amendments published in January 2019 and October 2020.

Any subsequent amendments to the NEC4 ECC shall apply to this Model Delivery Agreement, if agreed in writing by Places for People and the *Contractor*, but shall only be incorporated into Delivery Agreements executed after such amendments are published and their inclusion has been agreed accordingly with Places for People.

The following rules apply to the incorporation of clauses into a Delivery Agreement:

The contract clauses are varied by the incorporation of option clauses, a Z clause or as otherwise agreed in writing by the *Client* and Places for People;

The option clauses defined as ‘**Shall apply’** in the table below will be incorporated unless otherwise agreed by the *Client* and Places for People;

The option clauses defined as **‘May apply’** in the table below, may apply following agreement between the *Client* and Contractor

The Z clauses set out in the Delivery Agreement shall be incorporated unless otherwise agreed in writing by the *Client* and Places for People.

The *Client* and *Contractor* shall indicate within the Delivery Agreement whether the clauses below shown in italics are to be incorporated.

For the avoidance of doubt, *Clients* not wishing to use clauses specified as ‘may apply’, should ‘strike-through’ the clause reference in Contract Data Part 1, when completing Delivery Agreements.

**MAIN OPTION CLAUSES [Delete as applicable]**

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

**Option C: Target contract with activity schedule**

**SECONDARY OPTION CLAUSES AND ADDITIONAL OPTIONS**

|  |  |  |
| --- | --- | --- |
| **OPTION NUMBER** | **OPTION TITLE** | **APPLICABLE?** |
| **Secondary Options** |
| W2 | Resolving and avoiding disputes | Shall apply |
| X2 | Changes in the law |
| X7 | Delay damages |
| X15 | The *Contractor’s* design |
| X18 | Limitation of liability |
| X1 | Price adjustments for inflation | May apply |
| X4 | Ultimate trading holding company guarantee |
| X5 | Sectional Completion |
| X12 | Multiparty collaboration |
| X13 | Performance bond |
| X14 | Advanced payment to the *Contractor* |
| X17 | Low performance damages |
| X23 | BIM |
| **Option Y** |
| Y(UK)1 | Project Bank Accounts | May apply |
| Y(UK)2 | The Housing Grants, Construction and Regeneration Act 1996 | Shall apply |
| Y (UK) 3  | Contract (Rights of Third Parties) Act 1999 | Shall apply  |

Construction Delivery Agreement

**THIS AGREEMENT** is dated

BETWEEN:

(1) [insert Client details] (**the ‘*Client’***)

 AND

1. [ ] of [ ] (**the ‘*Contractor’***)

for the *works* [insert headline description of the Works]

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated [ ] made between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* (the ‘Framework Agreement’) and incorporates those provisions of the Model Delivery Agreement set out in Appendix [A12] of the Framework Agreement.

**IT IS AGREED** as follows:-

1. **The *Contractor’s* obligations**

 The *Contractor* Provides the Worksand complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

2. **The *Client’s* obligations**

The *Client* pays the amount of money and complies with its obligations in accordance with the *conditions of contract* set out in the Contract Data herein.

**3. The documents forming part of this agreement are**:

1. the Model Delivery Agreement incorporating the amendments to the NEC4 Engineering and Construction Contract
2. the *conditions of contract* (NEC 4th edition engineering and construction contract June 2017 (the **NEC ECC**), including the additional public sector Z Clauses published by NEC to comply with the requirements of The Public Contracts Regulations 2015)
3. the *Contractor's* Offer
4. the Contract Data part one (and any appendices of schedules referred to therein)
5. the Contract Data part two (and any appendices or schedules referred to therein)
6. the Scope
7. the Activity Schedule
8. the Site Information
9. The Framework Agreement

The *Contractor* has checked the documents listed at paragraph 3 above and confirms that there are no discrepancies, inconsistencies or errors within or between any of those documents.

Where there is any conflict or inconsistency within or between the documents listed at paragraph 3 above the contents of the document appearing earlier in the preceding list shall prevail over any document appearing later in the preceding list.

1. **Entire Agreement**

The contract represents the entire agreement between the Parties in relation to the *works* and supersedes all and any prior agreements and/or representations between the Parties.

1. **Retrospective Effect**

Notwithstanding the date of this contract it shall have effect as if it had been executed upon the date the *Contractor* first performed any work (including design, enabling or temporary works) or activities in relation to the *works* (whether under letters of intent or otherwise) and accordingly the duties and obligations contained in the contract shall be deemed to have applied to the carrying out of any of those works and/or the *works* prior to the date of the contract. All payments made in respect of works carried out prior to the date of the contract shall be treated as payments on account of sums due under the contract.

1. **Disputes**

Any difference or dispute arising under or out of or in connection with the contract shall be resolved in accordance with the *conditions of contract*.

**In witness whereof** the contract has been executed by the following parties as a deed and delivered on the date stated above

[Execution blocks to be updated as appropriate]

Executed as a deed by )

[*Client*] )

acting by: )

Director

Director/Secretary

Executed as a deed by )

[*Contractor*] )

acting by: )

Director

Director/Secretary

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

**The following details the Contract Data which will be provided by the *Client* for each Delivery Agreement.**

**Certain defined terms and information in the Contract Data will be common to all Delivery Agreements; other information included in the Contract Data will be specific to individual Projects.**

**Part one - Data to be provided by the *Client***

**1. General**

The *conditions of contract* are the core clauses and the clauses for main option **[A/C]**, dispute resolution Option W2, and secondary Options X2, **[X4]**, **[X5]**, X7, **[X12]**, **[X13]**, **[X14]**, X15, **[X17]**, X18, **[X23]**, **[Y(UK)1]**, Y(UK)2 AND Y(UK)3, of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019).

* The works are **[insert description of the works]**
* The *Client* is:

|  |  |
| --- | --- |
| Name |  |
| Address for communications |  |
| Telephone |  |
| Address for electronic communications |  |

* The *Project Manager* is

|  |  |
| --- | --- |
| Name |  |
| Address for communications |  |
| Telephone |  |
| Address for electronic communications |  |

* The *Supervisor* is

|  |  |
| --- | --- |
| Name |  |
| Address for communications |  |
| Telephone |  |
| Address for electronic communications |  |

* The *Adjudicator* is

|  |  |
| --- | --- |
| Name |  |
| Address for communications |  |
| Telephone |  |
| Address for electronic communications |  |

* The *Adjudicator nominating body* *is* the Royal Institution of Chartered Surveyors.
* The Scope is in **[insert location]**
* The Site Information is in **[insert location]**
* The *boundaries of the site* are **identified on [insert drawing title and ref]**
* The *language of this contract* is **English**;
* The *law of the contract* is the law of **England and Wales**;
* The *period for reply* is **2 weeks** except that
	+ The *period for reply* for [ ] is [ ]
	+ The *period for reply* for [ ] is [ ]
* The following matters will be included in the Early Warning Register
* Early warning meetings are to be held at intervals no longer than

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

* The key dates and conditions to be met are:

Condition to be met key date

1 ……………………………….. ……………………….

2……………………………….. ……………………….

3……………………………….. ……………………….

**3. Time**

* The *starting date* is
* The *access dates* are

 Part of the Site Date

 1 …………………………. ……………………….

 2 .………………………… ……………………….

 3 ………………………… ……………………….

* The *Contractor* submits revised programmes at intervals no longer than **5 weeks**.
* The *completion* date for the whole of the works is **[to be agreed on a project specific basis].**
* The *Client* is/is not willing to take over the works before the Completion Date **[To be agreed on a project specific basis]** .
* 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 quality plan is: ………………………………

* The period between Completion of the whole of the *works* and the *defects date* is **52** weeks.
* The *defect correction period* is **4 weeks for ‘Routine Defects’** except that
* The *defect correction period* for ‘**Serious Defects’ is 7 days**
* The *defect correction period* for **‘Emergency Defects’ is 24 hours**

as defined by the Project Manager in accordance with this contract

**5. Payment**

* The *currency of this contract* is the pound sterling (£).
* The *assessment interval* is **monthly**
* The *interest rate* is 3**%** per annum above the base rate in force from time to time of the Bank of England
* The period within which payments are made is **14 days**

If Option C is used

• The *Contractor’s* share percentages and the share ranges are:

 Share range Contractor’s share percentage

 Less than 95% 10%

 95% to 100% 40%

 100% to 102.5% 40%

 Above 102.5% 100%

• The *Contractor* prepares forecasts of Defined Cost for the works at intervals no longer than 5 weeks.

**6. Compensation events**

* The place where weather is to be recorded is
* The *weather measurements* to be recorded for each calendar month are:-
* the cumulative rainfall (mm);
* the number of days with rainfall more than 5 mm;
* the number of days with minimum air temperature less than 0 degrees Celsius;
* the number of days with snow lying at 0900 hours GMT;
* and these measurements:

* The *weather measurements* are supplied by the Meteorological Office.
* The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **[insert location]** and which are available from the Meteorological Office.

 **Where no recorded data are available**:

* Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are: does not apply
* The value engineering percentage is 50%, unless another percentage is stated here, in which case it is
* These are additional compensation events
1. [ ] [[1]](#footnote-1)
2. ……….
3. ………

**7. Number not used**

**8. Liabilities and Insurance**

* These are additional *Client’s* liabilities[[2]](#footnote-2)
1. ………
2. ………
* 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 or to death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is £10 million on an each and every basis.
* The amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is £10 million on an each and every claim basis.
* If the *Client* is to provide Plant and Materials. The insurance against loss or damage to the works, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of **[ insert amount** **]**

Additional clause

* The minimum level of indemnity for insurance for claims made against him arising out of the *Contractor’s* failure to use the skill and care normally used by professionals providing services similar to the *works* in respect of each claim is£5 million on an each and every basis.
* The *Client* provides these insurances from the Insurance Table
1. Insurance against - Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Client* he may elect to ‘self-insure’ such existing buildings and property and in doing so accepts all of the *Client’s* associated risks arising out of or in relation to such ‘self-insurance’. In accordance with an *Client’s* decision to ‘self-insure’ they do not accept any additional insurance premium/cost from the *Contractor*.

 (2) Insurance against Minimum amount of cover is The deductibles are

 (3) Insurance against Minimum amount of cover is The deductibles are

* The *Client* provides these additional insurances

 (1) Insurance against Minimum amount of cover is The deductibles are

 (2) Insurance against Minimum amount of cover is The deductibles are

 (3) 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

(2) Insurance against Minimum amount of cover is The deductibles are

(3) Insurance against Minimum amount of cover is The deductibles are

**Resolving and avoiding disputes**

* The *tribunal* is the Courts of England;

If the *tribunal* is arbitration

* The arbitration procedure is ………………………………………………………….
* The place where arbitration is to be held is ………………………………………………………..

 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

* …………………………………………………………………………….

 Option W2

* The Senior Representatives of the Client are

Name (1) Address for communications Address for electronic communications

Name (2) Address for communications Address for electronic communications

* The Adjudicator is

Name Address for communications Address for electronic communications

* The Adjudicator nominating body is

**X5: Sectional Completion**

If Option X5 is used

* The *completion date* for each *section* of the *works* is

|  |  |  |
| --- | --- | --- |
| *section* | description | *completion date* |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (1) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (2) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (3) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (4) |  |   |  |   |

**X7: Delay damages**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| If Option X7 is used without Option X5 |  | Delay damages for Completion of the whole of the *works* are |   | per day |
|  |

|  |  |  |
| --- | --- | --- |
| If Option X7 is used with Option X5 |  | Delay damages for each *section* of the *works* are |

|  |  |  |
| --- | --- | --- |
| *section* | description | amount per day |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (1) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (2) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (3) |  |   |  |   |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (4) |  |   |  |   |

|  |  |  |
| --- | --- | --- |
| The delay damages for the remainder of the *works* are |  |   |

**X12: Multiparty collaboration (not used with Option X20)**

If Option X12 is used

The *Promoter is*

|  |
| --- |
|  |

The Schedule of Partners is in

|  |
| --- |
|  |

The *Promoter’s objective* is

|  |
| --- |
|  |

The Partnering Information is in

|  |
| --- |
|  |

**X13: Performance bond**

If Option X13 is used

* The amount of the performance bond is a sum equal to **10%** of the Defined Cost.

**X14: Advanced payment to the *Contractor***

If Option X14 is used

* The amount of the advanced payment is
* The period after the Contract Date from which the *Contractor* repays the instalments in

assessments is ……………..………………..

* The instalments are …………………………………

(either an amount or a percentage of the payment otherwise due)

Advanced payment bond

* An advanced payment bond is/is not required (Delete as applicable)

**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 ………………..
* The minimum amount of insurance cover for claims made against the *Contractor* arising

out of its failure to use the skill and care normally used by professionals designing

works similar to the *works* is, in respect of each claim …………………………………………

* The period following Completion of the whole of the *works* or earlier termination for

which the *Contractor* maintains insurance for claims made against it arising out of its

failure to use the skill and care is ………………………………………

**X17: Low performance damages**

If Option X17 is used

* The amounts for low performance damages are

amount performance level

 ………………………………….. for ……………………………………….

amount performance level

 ………………………………….. for ……………………………………….

amount performance level

………………………………….. for ……………………………………….

**X18: Limitation of liability**

If Option X18 is used

* The *Contractor’s* liability to the *Client* for indirect or

consequential loss is limited to £[ ]

* For any one event, the *Contractor’s* liability to the *Client* for loss of or damage to the *Client’s* property is limited to the higher of:
	+ £ …………..or
	+ 120% of the tendered total of the Prices subject to a maximum of £ ……………………………

* The *Contractor’s* liability for Defects due to its design which are not listed on the Defects Certificate is limited to the higher of
	+ £ …………or
	+ 120% of the tendered total of the Prices subject to a maximum of £……………………..
* The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the higher of:
	+ £ …………… or
	+ 120% of the tendered total of the Prices subject to a maximum of £………………………………….
* The end of liability date is 12 years after Completion of the whole of the *works*

 **Y(UK)1: Project Bank Account**

If Option Y(UK)1 is used:

• The *Client* is to pay any charges made and is paid any interest paid by the project bank.

**Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996**

|  |  |  |  |
| --- | --- | --- | --- |
| 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 |   |  days after the date on which payment becomes due |
|  |
|  |
|  |

**Y(UK)3: The Contract (Rights of Third Parties) Act 1999**

If Option Y(UK)3 is used

term *beneficiary*

|  |  |  |
| --- | --- | --- |
|  |  |  |

|  |  |  |
| --- | --- | --- |
|  |  |  |

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| --- | --- | --- |
|  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3 | term |  | *beneficiary* |
|  |
| The provisions of Options Y(UK)1 |  | Named Suppliers |
|  |  |

**Z: *Additional conditions of contract***

The *additional conditions of contract* are

11.2(31) Insert new definition:

'Fire Safety Strategy’ means the specifications and drawings setting out the detailed design for the works and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the works including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in.

11.2 (32) Insert a new definition:

‘Framework Agreement’ is the framework agreement between PLACES FOR PEOPLE GROUP LIMITED and the *Contractor* dated [ ]

11.2 (33) Insert a new definition:

Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed in the ABI standard wording.

11.2 (34) Insert a new definition:

'CDM Regulations' means the Construction (Design and Management) Regulations 2015 and any subsequent amendments or re-enactments.

11.2 (35) Insert a new definition:

HMRC means HM Revenue & Customs.

11.2 (36) Insert a new definition:

Order is the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892).

11.2 (37) Insert a new definition:

Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier.

11.2 (38) Insert a new definition:

Supply is a supply made for VAT purposes under or in connection with this contract by the Contractor and "Supplies" shall be construed accordingly.

11.2 (39) Insert a new definition:

VAT is value added tax chargeable under the Value Added Tax Act 1994 and any similar or replacement tax.

11.2 (40) Insert a new definition:

Intellectual Property Rights are all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, applications for any of the foregoing, patents, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights

11.2(41) Insert a new definition:

Documents means any documents, drawings, plans, models, specifications, schedules, reports, calculations, information and/or similar in any media prepared by or on behalf of the *Contractor* in connection with the *works*.

11.2(42) Insert a new definition:

Delivery Agreement means any delivery agreement entered into by the *Client* and the *Contractor* under the Framework Agreement.

11.2(43) Insert a new definition:

Law is any act of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them, any European Directives or Regulations legally enforceable in England and Wales and any rules, regulations, orders, bye-laws or codes of practice of any local or other competent authority.

12.1 Delete clause 12.1 and replace with:

'In this contract, except where the context requires otherwise:

• words in the singular also mean in the plural and the other way round,

• words in the masculine also mean in the feminine and neuter,

• references to a document include any revision made to it in accordance with this contract,

• 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.

12.5 Insert new clause 12.5:

12.5.1 The *Contractor* complies with the Law.

12.5.2 The *Contractor* complies with the following provisions of the Framework Agreement as if such provisions were included in this contract mutatis mutandis:

(a) Schedule 6, Part 1 (Legal Requirements)

(b) Schedule 6, Part 2, paragraph 1 (Confidentiality)

(c) Appendix 4 (Data Protection)

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

20.6 Insert a new clause 20.6:

‘In executing this contract, the *Contractor* accepts that all obligations and duties owed by it, acting as:

* the ‘*Consultant’* in the provision of the Services under a preceding design Delivery Agreement relating to the *works*; and/or
* the ‘*Contractor’* in the provision of the Works under a preceding enabling works Delivery Agreement relating to the *works*,

are deemed to be obligations and duties owed by the *Contractor* under this contract.

All and any of the *Contractor's* duties and obligations under such previous Delivery Agreements shall determine and cease to have any effect.

Any payments made by a ‘Client’ under such previous Delivery Agreements shall be treated as payments on account, pursuant to this contract.**’**

20.7 Insert a new clause 20.7:

For the purposes of the CDM Regulations, the *Contractor* is the principal contractor and the principal designer in respect of the *works* and performs all the functions and obligations required to be performed by the principal contractor and the principal designer under the CDM Regulations and confirms that it has the skills, knowledge, experience, resources and organisational capability necessary to fulfil the role of principal contractor and principal designer under and in accordance with the CDM Regulations and in a manner that secures the health and safety of any person affected by the *works*. In particular the *Contractor*:

20.7.1 complies with all CDM Regulations, including in relation to the provision and maintenance of a health and safety file;

20.7.2 supplies copies of the health and safety file to the *Employer* as soon as reasonably practicable and in the event no later than four weeks after the date of Completion.

20.8 Insert a new clause 20.8:

The *Contractor* does not use, specify, authorise, cause or allow to be used in the *works* any materials, equipment, products and/or kits that

* do not conform with British or European Standards (where appropriate) or codes of practice (or, where no such standards exists, do not confirm with British Board of Agrément Certificate) and/or
* are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use (whether by themselves or in a particular situation or in combination with other substances or materials) to health and safety and/or the durability of buildings and/or structures and/or reducing or possibly reducing the normal life expectancy of the *works* and/or any part or component of the *works* and/or
* do not comply with the guidance set out in the “Good Practice in the Selection of Construction Materials 2011” published by the British Council for Offices and/or
* are specifically prohibited by the contract.

The *Contractor* immediately notifies the *Client* if it becomes aware of any proposed or actual specification and/or use in the *works* of any products and/or materials that do not comply with this clause 20.8.

21.4 Insert new clause 21.4

Notwithstanding any contrary provision in this contract or any documents forming part of this contract it is hereby expressly agreed and acknowledged that: -

1. no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the *works* to be delivered under this contract and/or method, system, design, products and materials provided by the *Contractor*, and
2. The *Contractor* exercises in the design of the *works* the reasonable skill, care and diligence to be expected of a properly qualified and competent architect, engineer or as the case may be such other professional designer or technician of the relevant discipline experienced in carrying out the design of works similar in size, scope and complexity to the *works*.

22 Clause 22 is deleted and replaced with:

22.1 The *Contractor* grants the *Client* with immediate effect an irrevocable, royalty free, non-exclusive licence to copy and use the Documents for any purpose related to the *works* provided that the *Contractor* is not liable to the *Client* for use of the Documents for any purpose other than that for which the relevant Document was prepared or provided. Such licence carries the right to grant sub-licences, is transferrable to third parties and survives termination of the *Contractor's* obligation to Provide the Works.

22.2 The *Contractor* warrants to the *Client* that no design or document that it prepares and nothing else that it contributes to the *works* shall infringe any Intellectual Property Rights, and indemnifies the *Employer* in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

22.3 The *Contractor* waives absolutely all moral rights under Chapter IV Part 1 of the Copyright Designs and Patents Act 1988 which the *Contractor* may have in the Documents and/or the *works* and where it is not the author procures a waiver from the author of any similar moral rights the author may have in respect of the Documents and/or the *works*.

**5 Payment**

51.6 Insert a new clause 51.6 as follows:

51.6.1 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 51.6 notwithstanding any other provision of this contract.

51.6.2 Subject to clause 51.6.8, any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this contract is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:

51.6.2.1 the time for payment or provision of the consideration; and

51.6.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.

51.6.3 The Parties acknowledge that the *Client* has not confirmed in writing whether the requirements specified in article 8(1)(b) of the Order are satisfied in respect of any Supply.

51.6.4 The Parties consider that the Reverse Charge will apply to the Supplies so that it is for the *Client*, on the *Contractor's* behalf, to account for and pay VAT on the Supplies and not for the *Contractor*.

51.6.5 During such time as the Reverse Charge applies to the Supplies and no later than 15 working days before any payment by the *Client* for the Supplies, the *Contractor* will provide to the *Client* an invoice (which is not a VAT invoice and which will not include any demand for any amount in respect of VAT) showing all the information normally required to be shown on a VAT invoice in respect of the payment in question, including without prejudice to the generality of the foregoing, the amount of VAT due on the payment (subject to the Reverse Charge) and a breakdown of values by VAT rate. The *Contractor* will also annotate such invoice as follows: "Reverse charge: VAT Act 1994 Section 55A applies".

51.6.6 The *Contractor* shall promptly provide any information reasonably requested by the *Client* to assist the *Client* in complying with its obligations under the Reverse Charge or in providing any information requested of the *Client* by HMRC.

51.6.7 If the requirements in article (8)(2)(a) and (b) of the Order are met in relation to any Supply, the *Client* and the *Contractor*, pursuant to article 8(2)(c) of the Order, agree to treat the Supplies as not being excepted supplies (within the meaning of articles 3(2) and 8 of the Order).

51.6.8 Notwithstanding clause 51.6.2, where the *Client* has operated the Reverse Charge on Supplies but HMRC confirms in writing to the *Client* that the Reverse Charge does not apply in respect of those Supplies and that, notwithstanding that the *Client* has operated the Reverse Charge, the *Contractor* has to account for VAT in respect of those Supplies then, subject to receipt by the *Client* of a valid VAT invoice from the *Contractor*, the *Client* will pay the VAT due on those Supplies to the *Contractor* within 5 working days after the later of:

51.6.8.1 obtaining any net repayment or credit from HMRC arising from the incorrect operation of the Reverse Charge after correcting both:

(a) the output tax overpaid to HMRC by the *Employer* (for which the *Client* would obtain a repayment or credit); and

(b) the input tax overpaid to the *Client* by HMRC (which the *Client* would owe to HMRC); and

51.6.8.2 obtaining repayment or credit from HMRC in respect of the VAT due on the relevant Supplies to the *Contractor*,

and the *Client* undertakes to claim such repayment or credit from HMRC without unreasonable delay after receiving confirmation from HMRC or a valid VAT invoice from the *Contractor*, each as mentioned above."

**8 Risks and insurance**

80.1 Add at the end of clause 80.1 insert:

* Terrorism to the extent not insured under the Pool Re Arrangement;
* Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds’.

**9 Termination**

91.1 Delete clause 91.1 and insert the following:

90.2 Either Party may terminate if the other Party becomes subject to any of the following events:

* + - 1. it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
			2. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;
			3. it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
			4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
			5. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);
			6. the holder of a qualifying floating charge over its assets (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
			7. a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or
			8. being an individual, it is the subject of a bankruptcy petition, application or order;
			9. a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten working days;
			10. any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) above (inclusive);
			11. it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
			12. in relation to a Party which is a partnership, the dissolution thereof.

**Option X15: THE *CONTRACTOR'S* DESIGN**

X15.1In line 2 delete "reasonable skill and care" and insert "the standard of care referred to in clause 21.4(b)"

X15.2 Delete this clause and insert "Not used."

**Option X23**

Insert new OPTION X23: CIC BIM PROTOCOL *(only applies when BIM is required)*

X23.1 In this Option X23, the Protocol is the CIC Building Information Modelling Protocol, first edition 2013. Terms used in this clause are those defined in the Protocol.

X23.2 Clauses 1, 2, 5, 6, 7 of the Protocol are *additional conditions of contract*. Clauses 3 and 4 and Appendices 1 and 2 of the Protocol are the Scope.

X23.3 The following are compensation events.

* The *Contractor* encounters an event which is outside his reasonable control and which prevents him from carrying out the work specified in clause 4.1.2 of the Protocol.
* The *Client* revokes a licence granted under clause 6.6 of the Protocol.

**OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Delete the existing wording for this Option Y(UK)3 and insert:

Y3.1 A person who is not a party to this contract shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.

Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this contract are not subject to the consent of any other person.

SCHEDULE OF COST COMPONENTS *(applies to Option C Delivery Agreements only)*

13(j) Add at the end ‘(but excluding any sums necessary to top up a pension fund)’.

53(j) Add a new item:

 ‘the cost of the Performance Bond provided under Option X13’.

53 Delete from (a) onwards and replace with

|  |
| --- |
| (a) catering. Includes tea, coffee, water, biscuits, sandwiches and other drinks for Client/contractor meetings. Includes microwave, kettle, cutlery, refrigerator and other domestic appliances.  |
| (b) medical facilities and first aid. Includes for compliance with all H&S requirements, (for example medical first aid box and eye wash).  |
| (c) recreation.  |
| (d) sanitation. Includes for compliance with all H&S requirements, all cleaning equipment, materials and consumables (brushes, mops, disinfectant, toilet rolls, tea towels, soap, hand wash, refuse sacks, dusters, bleach), servicing chemical toilets if provided. |
| (e) security. Includes the following to the site compound only: fencing/hoardings, gates, floodlights and cabin alarms.  |
| (f) copying.  |
| (g) telephone, telex, fax, radio and cabin/compound CCTV. Includes for telephone, fax and ISDN/broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the Contractor’s discretion (no adjustment shall be made to the Contractor’s Fee if CCTV is not provided). |
| (h) surveying and setting out. Includes provision of appropriate survey and setting out equipment; charges for weather surveys to determine *weather measurements* in accordance with the NEC contract; provision of digital camera(s) for use on site.  |
| (i) computing. Includes for any contractor’s computer hardware and software, laptops, printers and all computer infrastructure and networking costs. |
| (j) hand tools not powered by compressed air. Includes any tools hired, bought or brought by the Contractor for the purposes of setting up the temporary site establishment. |

SHORTER SCHEDULE OF COST COMPONENTS

11 Add at the end of clause 11 ‘(but excluding any sums necessary to top up a pension fund)’.

41 Delete Clause 5 from ‘to cover the cost of’ replace with:

|  |
| --- |
| Payments for the provision of  |
| * catering. Includes tea, coffee, water, biscuits, sandwiches and other drinks for Client/contractor meetings. Includes microwave, kettle, cutlery, refrigerator and other domestic appliances.
 |
| * medical facilities and first aid. Includes for compliance with all H&S requirements, (for example medical first aid box and eye wash).
 |
| * recreation.
 |
| * sanitation. Includes for compliance with all H&S requirements, all cleaning equipment, materials and consumables (brushes, mops, disinfectant, toilet rolls, tea towels, soap, hand wash, refuse sacks, dusters, bleach), servicing chemical toilets if provided.
 |
| * security. Includes the following to the site compound only: fencing/hoardings, gates, floodlights, cabin alarms.
 |
| * copying.
 |
| * telephone, telex, fax, radio and cabin/compound CCTV. Includes for telephone, fax and ISDN/broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the Contractor’s discretion (no adjustment shall be made to the Contractor’s Fee if CCTV is not provided).
 |
| * surveying and setting out. Includes for a site level and staff for cross check of setting out, weather surveys to determine *weather measurements* in accordance with the NEC contract, digital camera for use on site.
 |
| * computing. Includes for any contractors computer hardware and software, laptops, printers and all computer infrastructure and networking costs.
 |
| * hand tools not powered by compressed air. Includes any tools hired, bought or brought by the Contractor for the purposes of setting up the temporary site establishment.
 |

Add the following new Shorter Schedule of Cost Components items

|  |  |
| --- | --- |
| ‘56 | ‘the cost of the Performance Bond provided under Option X13’ |
| ‘57 | Payments for the provision and use in the Working Areas of water, gas and electricity’ |
| ‘58 | Payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others’ |

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

**The following details the Contract Data which will be provided by the *Contracto*r for each Delivery Agreement.**

**Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.**

**Part two - Data provided by the *Contractor***

**Statements given in all contracts**

1 General

The *Contractor* is

|  |  |
| --- | --- |
| Name |   |
| Address for communications |   |
| Address for electronic communications |   |

|  |  |  |
| --- | --- | --- |
| The *fee percentage* is | **[ as set out in the Commercial Model ]** |  % |

|  |  |
| --- | --- |
| The *working areas* are | the Site and ………. |

The *key persons* are

|  |  |
| --- | --- |
| Name (1) |   |
| Job |   |
| Responsibilities |   |
| Qualifications |   |
| Experience |   |

|  |  |
| --- | --- |
| Name (2) |   |
| Job |   |
| Responsibilities |   |
| Qualifications |   |
| Experience |   |

The following matters will be included in the Early Warning Register

|  |
| --- |
|  |

2 The *Contractor’s* main responsibilities

|  |  |  |
| --- | --- | --- |
| If the *Contractor* is to provide Scope for its design | The Scope provided by the *Contractor* for its design is in  | **[insert location]** |
|  |  |

3 Time

|  |  |  |
| --- | --- | --- |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is | **[insert location]** |
|  |

|  |  |  |
| --- | --- | --- |
| If the *Contractor* is to decide the *completion date* for the whole of the *works* | The *completion date* for the whole of the *works* |  **[insert date]** |
|  |

5 Payment

|  |  |
| --- | --- |
| The *activity schedule* is | **[insert location]** |

|  |  |
| --- | --- |
| The tendered total of the Prices is | **[insert amount] [& in words]** |

Resolving and avoiding disputes

If Option W1 or W2 is used The *Senior Representatives* of the *Contractor* are

|  |  |
| --- | --- |
| Name(1) |   |
| Address for communications |   |
| Address for electronic communications |   |

|  |  |
| --- | --- |
| Name(2) |   |
| Address for communications |   |
| Address for electronic communications |   |

If Option W3 is used The *Contractor’s* nomination for the Dispute Avoidance Board is

|  |  |
| --- | --- |
| Name |   |
| Address for communications |   |
| Address for electronic communications |   |

X10: Information modelling

If Option X10 is used

|  |  |  |
| --- | --- | --- |
| If an *information execution plan* is to be identified in the Contract Data | The *information execution plan* identified in the Contract Data is |   |
|  |

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used The *project bank* is

|  |
| --- |
|   |

*named suppliers* are

|  |
| --- |
|   |

Data for the Short Schedule of Cost Components

The *people rates* are

category of person unit rate

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   |  |   |  |   |
|   |  |   |  |   |
|   |  |   |  |   |
|   |  |   |  |   |

|  |  |
| --- | --- |
| The published list of Equipment is the edition current at the Contract Date of the list published by |  |
|  the Civil Engineering Contractors Association (CECA) Schedules of Dayworks carried out Incidental to Contract Work 2011 |
| The percentage for adjustment for Equipment in the published list is |  |
| -70 |  % (state plus or minus) |

The rates for other Equipment are

Equipment rate

|  |  |  |
| --- | --- | --- |
|   |  |   |
|   |  |   |
|   |  |   |
|   |  |   |

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person rate

|  |  |  |
| --- | --- | --- |
|   |  |   |
|   |  |   |
|   |  |   |
|   |  |   |

The rates for Defined Cost of design outside the Working Areas are **[as set out in the Commercial Model]**

category of person rate

|  |  |  |
| --- | --- | --- |
|   |  |   |
|   |  |   |
|   |  |   |
|   |  |   |

The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

|  |
| --- |
| **[ as set out in the Commercial Model ]** |

**Data for the Shorter Schedule of Cost Components (Options A or C)**

* The percentage for people overheads is **100%**
* The percentage for design overheads is **10%**

The percentage for Working Area overheads is %

* + - * The percentage for manufacture and fabrication overheads is %

**Data for both schedules of cost components**

The percentage for design overheads is **10 %**

1. To be agreed between the parties [↑](#footnote-ref-1)
2. To be agreed between the parties [↑](#footnote-ref-2)