

Lots 3 – Cardiff and Vale University Health Board Building Framework

**Form of Agreement for an NEC4 Engineering and Construction Contract - Option B: Priced
Contract with Bill of Quantities**

FOR THE APPOINTMENT OF BECT BUILDING CONTRACTORS LTD

FOR PENTYRCH DEVELOPMENT

THIS AGREEMENT dated the day of

is between:

- 1) **Cardiff and Vale University Health Board** ("the *Client*") whose registered office is [Woodlands House, Maes Y Coed Road, Heath, Cardiff, CF14 4HH]
- 2) **BECT Building Contractors Ltd** ("the *Contractor*") (Company Number [01700765] whose registered office is [Unit 22 Waterside Business Park, Lamby Way, Rumney, Cardiff CF3 2ET]

The *Client* intends to procure the construction and completion of the Construction Project.

The *Client* following a competitive tender has elected to appoint the *Contractor* in relation to the Construction Project. This Agreement relates to works and services to be undertaken by the *Contractor* for the *Client* in respect of the following Construction Project (subject to any variations in accordance with this Agreement):-

The provision of a new build facility for the replacement of the current Pentyrch Branch Surgery. This has been a priority for a significant period of time for the Cardiff & Vale University Health Board and is a key component in supporting the primary care agenda of enhancing community infrastructure and the Health Board's overarching Shaping our Future Wellbeing Strategy to 2035 which aims to provide high quality primary care in fit-for-purpose accommodation.

(referred to below as the "**Construction Project**").

IT IS AGREED as follows:-

1. This Agreement incorporates:-
 - 1.1 the core clauses of the Institution of Civil Engineers NEC4 Engineering and Construction Contract (June 2017 incorporating January 2023 amends) with main option clause B (priced contract with Bill of quantities) and secondary options clauses ,X2, X7, X11,X15, X16, X20, Y(UK)2 and Z (and, for the avoidance of doubt, all other secondary option clauses shall not apply)(together referred to as the "**NEC**");
 - 1.2 Form of Agreement; including
 - Appendix 2 – Z Clauses
 - Appendix 3 – Dispute Resolution Procedure
 - Appendix 4 – Scope
 - Appendix 5 – Summary of the Price and Bill of Quantities
 - Appendix 6 – Key People
 - Appendix 7– Rates
 - Appendix 8– NEC Contract Data

NOW IT IS AGREED THAT

1. The *Contractor* will provide the *works* in accordance with this Form of Agreement.
2. The *Client* will pay the *Contractor* the amount due in accordance with this Agreement.
3. This Agreement supersedes any previous agreement between the Parties in relation to the services.
4. The terms of this Agreement may only be varied by an express written agreement to that effect executed as a Deed by the *Client* and the *Contractor*. No waiver, estoppel, acceptance, or other ground on which the *Client* may be said to have lost its right to insist on its strict rights under this Agreement, shall have such effect unless expressly so executed as a variation to this Agreement as stated above.
5. The *Client* may assign the benefit of this Agreement to any successor body exercising its functions. The *Contractor* may not assign the benefit of this Agreement without the consent of the *Client*.
6. If there is any ambiguity or inconsistency in or between the documents comprising this Agreement, the priority of the documents is in accordance with the following sequence:
 - this Agreement
 - the completed Contract Data Part One and Contract Data Part Two (including Z clauses)
 - the Scope
 - any other document forming part of the contract.

IN WITNESS WHEREOF the Parties have executed this Agreement as a DEED the day and year first before written

EXECUTED AS A DEED BY THE *CLIENT* hereinbefore mentioned

**Namely Cardiff & Vale University Local Health Board
(*Client*)**

By affixing its common seal in the presence of

.....

(Authorised official)

.....

(Authorised official)

Signed as a Deed by BECT Building Contractors Ltd
(**CONTRACTOR**) acting by a director and its secretary or
by two directors:

N. Holmes

Director Signature

NATHAN HOLMES

Director Name

[Signature]

Director/Secretary Signature

JAMES COOMBS

Director/Secretary Name

OR

Signed as a Deed by a director of [**CONTRACTOR**]
(**Contractor**) in the presence of:

Director Signature

Director Name

Witness signature

Name
(in block capitals)

Address

Occupation

.....

.....

.....

.....

.....

.....

SUMMARY TABLE OF X CLAUSES

Clause No.	Included in Contract	Description	Notes
X2	Yes	Changes in the Law	
X7	Yes	Delay Damages	
X11	Yes	Termination by the <i>Client</i>	
X15	Yes	Contractors Design	
X16	Yes	Retention	

If Option X2 is used XXXX

If Option X7 is used Delay damages for Completion of the whole of the works are £500 per day

If Option X15 is used The period for *retention* following Completion of the whole of the *works* or earlier termination is 52 Weeks

If Option X16 is used The ~~*retention free amount*~~ is [] of the Prices (as varied from time to time in accordance with this contract).

The *retention percentage* is [3%]

The *Contractor* may not] give the *Client* a retention bond.

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Option Z is used The ***additional conditions of contract*** are:

Part A- Clauses which amend the standard core clauses of the *conditions of contract*

Part B- Supplementary conditions of contract

The additional conditions of contract

PART A:

1. Identified and Defined Terms

Identified and Delete and replace as follows:
defined terms-
Clause 11.2 (2) "11.2(2) Completion is when:

- the *Contractor* has done all the work in accordance with this contract which the *Scope* states it is to do by the *Completion Date*. If the work which the *Contractor* is to do by the *Completion Date* is not stated in the *Scope*, *Completion* is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for *Others* to do their work;
- the *Contractor* has corrected all *Defects* which have been notified prior to *Completion*, except for those *Defects* which the *Project Manager* has agreed may be corrected after *Completion*;
- all the conditions of any *Consents* relating to the *works* have been complied with and satisfied (save in respect of any matters which will not prevent occupation and use of the *works*) which the *Project Manager* has agreed may be satisfied after *Completion*;
- any specific requirements or tests on *Completion* as stated in the *Scope* have been met or passed and the *Contractor* has submitted all relevant testing and commissioning certificates to the *Project Manager*;
- all workmen employed in connection with the carrying out and completion of the *works* (save in respect of any *Defects* which the *Project Manager* has agreed may be corrected after *Completion*) have vacated the *Site* and all plant, tools and appliances used in connection with the *works* and all surplus materials and rubbish have been removed from the *Site*;
- the *Contractor* has provided to the *Project Manager* copies of all statutory approvals, operating and maintenance manuals, relevant photographic and video surveys, condition schedules, relevant manufacturers' literature and guarantees and warranties for products and materials used in the *works*;
- the *Contractor* has provided the *Client* with all collateral warranties, bonds and/or guarantees which it is obliged to provide and/or procure in accordance with this contract;
- all information to enable the *Principal Designer* to issue the *Health and Safety File* has been provided and where and to the extent that the *Contractor* is responsible for providing the *Health and Safety File*, it is issued prior to *Completion*; and

- any other pre-conditions to Completion stated in the Scope have been satisfied."

Identified and defined terms-
Clause 11.2(4)

Delete and replace with:

"The Contract Date is the date of this Agreement or (if earlier) the date when the *Contractor* first begins to Provide the Works"

Identified and defined terms-
Clause 11.2 (6)

Delete and replace as follows:

"11.2 (6) A Defect is

- a part of the *works* (which term, as used in this contract, includes any design of the *works* by the *Contractor* or for which the *Contractor* is required to assume responsibility under this contract) which is not in accordance with the Scope; or
- a part of the *works* designed by the *Contractor* which is not in accordance with the Applicable Law or the *Contractor's* design which the *Project Manager* has accepted."

Identified and defined terms-
Clause 11.2 (10)

Add the following before the full stop at the end of clause 11.2 (10) definition of "Fee":

", in each case excluding the Defined Cost of

- correcting Defects; and
- design and work undertaken in order to correct a failure of the design to meet the functional and performance requirements specified in the Scope"

Identified and defined terms-
Clause 11.2 (12)

Delete and insert:

"Others are people or organisations who are not the *Client*, the *Project Manager*, the *Supervisor*, the *Adjudicator*, a statutory authority, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*."

Identified and defined terms-
Clause 11.2 (29)

Delete from the end of this clause the words "the correction of which will delay the following work"

Identified and defined terms-
Insert new Clause 11.2 (33)

Insert new Clause 11.2 (33)

"Insolvency Event means the occurrence of any of the following (or any event analogous to the following in a jurisdiction other than England and Wales):

- the *Contractor* 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 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 Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply; or
- the *Contractor* 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 its creditors other than (being a company) for the sole purpose of a scheme

for a solvent amalgamation of the *Contractor* with one or more other companies or the solvent reconstruction of the *Contractor*; or

- a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the *Contractor* (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the *Contractor* with one or more other companies or the solvent reconstruction of the *Contractor*; or
- an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the *Contractor* (being a company); or
- the holder of a qualifying floating charge over the assets of the *Contractor* (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- a person becomes entitled to appoint a receiver over the assets of the *Contractor* or a receiver is appointed over the assets of the *Contractor*; or
- the *Contractor* (being an individual) is the subject of a bankruptcy petition or order or (being a partnership) has a partner to whom the foregoing applies; or
- a creditor or encumbrancer of the *Contractor* 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 the *Contractor's* assets; or
- any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or
- the *Contractor* suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business such that it is incapable of delivering services in Wales; or
- the *Contractor*, being a company, is removed from the register by the Registrar of Companies,

but a resolution by the *Contractor* or a court order that the *Contractor* be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an event of insolvency. In relation to the foregoing, "company" includes a limited liability partnership or limited partnership or any legal person with limited liability to which similar consequences apply."

Identified and defined terms-
Insert new Clause 11.2 (34)

Insert new Clause 11.2 (34)

"Confidential Information means all confidential information (however recorded or preserved) disclosed by a Party to the other Party in connection with this Agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to:
 - a. the business, affairs, customers, suppliers or plans of the disclosing Party; or
 - b. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;

- b) any information developed by the Parties in the course of performing this Agreement; and/or
- c) any commercially sensitive information;
- d) and also includes any further categories of information which the *Client* and the *Contractor* agree from time to time is subject to a duty of confidentiality."

Identified and defined terms-
Insert new Clause 11.2(35)

Insert new Clause 11.2(35) ""Works" or "works" (whether capitalised or italicised or not) includes any design of the *works* by the *Contractor* or for which the *Contractor* is required to assume responsibility under this contract."

Identified and defined terms-
Insert new Clause 11.2(36)

Insert new Clause 11.2(36)

"Prevention Event means one of the exceptional events or circumstances listed below provided always that such event or circumstance (a) occurs within the United Kingdom; (b) is beyond the affected Party's control; (c) could not reasonably have been provided against, avoided or overcome by the affected Party; and (d) is not substantially attributable to the affected Party:

- (a) war, invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
- (c) munitions of war (except unexploded ordnance at the Site at the Contract Date), ionising radiation or contamination by radio-activity except where attributable to the *Contractor's* use of such munitions, radiation or radio activity;
- (d) pandemic or epidemic excluding coronavirus (Covid-19 and other variants of the same pandemic);
- (e) natural catastrophe such as earthquake, hurricane, typhoon or volcanic activity (excluding any event referred to in clause 60.1(13)); or
- (f) strikes, riots and civil commotion not confined to the employees, servants or agents of the *Contractor* and/or any Subcontractor."

Identified and defined terms-
Insert new Clause 11.2(37)

Insert new Clause 11.2(37)

"The Required Standard is all the reasonable skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced consultant engaged in the design and/or specification of works of a similar nature, scope, value and complexity to the *works* and under the same or similar circumstances, where such consultant is seeking to comply with its contractual obligations and all Applicable Laws."

Identified and defined terms-
Insert new Clause 11.2(38)

Insert new Clause 11.2(38)

"Documents means the copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information (whether created or stored electronically or otherwise) prepared or under preparation by or on behalf of the *Contractor* in connection with the *works*."

Identified and defined terms-

Insert new Clause 11.2(39)

Insert new Clause 11.2(39)	"Materials means any technology, concepts, ideas, data, programs or software (including source and object codes), drawings, schedules, minutes, schemes, formulae, programmes, designs, systems, processes, logos, marks, literature, styles, documents, manuals, reports, drawings, designs, artwork, models, prototypes, photographs, films, sound recordings or any other works or materials (in whatever form and on whatever media held) which are created, originated, conceived, designed, developed or otherwise, prepared, provided or produced by or on behalf of the <i>Contact</i> for the purpose of the project or otherwise in connection with the project or the <i>works</i> (whether before or after the date of this contract), including any and all copies thereof and extracts therefrom".
Identified and defined terms- Insert new Clause 11.2(40)	Insert new Clause 11.2(40) "Business Day means a day of the week other than Saturday, Sunday or a Bank Holiday."
Identified and defined terms- Insert new Clause 11.2(41)	Insert new Clause 11.2(41) "Applicable Law means any statute, statutory instrument, regulation, directive, rule, judgement, order, decision, recommendation or statutory guidance made under any statute or directive having the force of law which affects the <i>works</i> or the Project or the performance of all or any of the obligations under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the <i>works</i> or whose systems the <i>works</i> are, or are to be, connected, including without limitation any statutory provisions and any decision, notice, direction, instruction, permission or award of a Competent Authority."
Identified and defined terms- Insert new Clause 11.2(42)	Insert new Clause 11.2(42) "Consents are any and all consents, licences, authorisations, permits, permissions, registrations, filings, exemptions, approvals and the like required from Competent Authorities or Others in order for the <i>Contractor</i> to Provide the Works in accordance with this contract and a "Consent" is any one of them."
Identified and defined terms- Insert new Clause 11.2(43)	Insert new Clause 11.2(43) "Novated Consultant is a consultant notified by the <i>Client</i> to the <i>Contractor</i> in accordance with clause Z8."
Insert new Clause 11.2(44)	Insert new Clause 11.2(44) "Competent Authority is any legal person, regulator, statutory authority (including the statutory authorities) or statutory undertaker, and/or any court of law or tribunal in each case having authority under Applicable Law."
[Insert new Clause 11.2(45)	Insert new Clause 11.2(45) "A Provisional Sum is a provisional sum for work included in the Scope which the <i>Client</i> may (in its discretion) require the <i>Contractor</i> to carry out
Insert new Clause 11.2(46)	Insert new Clause 11.2(46) "The Provisional Sums (which are included in the Prices) are set out in the Contract Data
Interpretation and the law- Clause 12.1	At the end of Clause 12.1 add the following bullet points <ul style="list-style-type: none">• "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."

The *Project* Delete clause 14.1 and replace as follows:
Manager and
Supervisor -
 Clause 14.1

"14.1 The *Project Manager's* or the *Supervisor's*

- acceptance of a communication from the *Contractor*; or
- acceptance of the *Contractor's* design; or
- acceptance of the *works*;

and/or the carrying out of any inspection or test does not change the *Contractor's* responsibility to Provide the Works, its liability for Defects or its liability for its design."

[The *Project* Insert a new clause 14.5 as follows:
Manager and
Supervisor -
 Clause 14.5

"14.5 The *Project Manager* may give an instruction to the *Contractor* for the expenditure of a Provisional Sum."

Contractor's Delete the second sentence in clause 16.3 and replace with:
 proposals -
 Clause 16.3

"A reason for not accepting is that:

- the proposed area is not necessary to Provide the Works or
- the proposed area is used for work not in this contract or
- adding to the Working Areas in the way proposed will interfere with the *Client's* activities or use of property or cause it to suffer or incur additional loss or costs or
- the *Client* is not entitled to allow the additional area to be used."

Requirements for Add at the end of the first sentence: "or between the documents which form part of this contract and
 instructions - Consents required for the *works* or Applicable Law".
 Clause 17.1

Prevention Delete clause 19.1 and replace with the following:
 Clause 19.1

"19.1 If a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

the *Project Manager* gives an instruction to the *Contractor* stating how the event is to be dealt with."

2.The Contractors Main Responsibilities

Providing the Add the following words to the end of clause 20.1 before the full stop:
 Works- Clause
 20.1

",in a proper and workmanlike manner and in compliance with Consents and Applicable Law"

The Contractor's design- Clause 21.2

Delete clause 21.2 and replace as follows:

"21.2 The Contractor submits the particulars of its design to the *Project Manager* for acceptance at the times and in the manner and format stated in the Scope. A reason for not accepting the Contractor's design is that:

- it will not allow the Contractor to Provide the Works free from Defects;
- it does not comply with the Scope;
- it does not comply with any previous design submitted by the Contractor which the Project Manager has accepted;
- it does not comply with consents required for the works;
- it does not comply with Consents and/or Applicable Law; or
- it does not comply with any other provision of this contract.

The Contractor does not proceed with the relevant work until the *Project Manager* has accepted its design."

The Contractor's design- Clause 21.4

Insert a new clause 21.4 as follows:

"21.4 The Contractor shall not approve or specify for use or use and the Contractor shall ensure that Subcontractors do not approve or specify for use or use any goods, products, materials, substances or building practices which, at the time of approval, specification or use are:

- not approved or not recommended or
- prohibited by this contract or
- identified as being deleterious in the particular circumstances in which they are specified for use or used, meaning:
 - goods, products, materials, substances or building practices generally known at the time of specification and/or approval and/or use to be deleterious or hazardous to the health and safety of occupants of the works and/or the environment and/or the durability or stability of the works in the particular circumstances in which they are used; or
 - goods, products, materials, substances or building practices which do not conform with or contravene British Standards or Codes of Practice and general good building and engineering practice; or
 - goods, products, materials, substances or building practices that do not comply with any publications of the Building Research Establishment or in the publication entitled "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices/British Property Federation) (as may be reviewed or amended from time to time)
- would not be specified or used by a contractor exercising the Required Standard.

The *Contractor* shall inform the *Client* immediately if the *Contractor* becomes aware whilst carrying out the *works* that any of the items referred to in this clause 21.4 have been specified for use or used."

Using the *Contractor's* design- Clause 22.1 In clause 22.1, add the words ", repair, maintenance, reinstatement" after the words "construction, use, alteration".

Using the *Contractor's* design- Insert new Clause 22.2 Insert new clause 22.2 "22.2 The *Contractor* grants to the *Client*, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of all Materials prepared by the *Contractor* for the *works* for any purpose relating to the *works* and/or the Project to which the *works* relate. The *Client's* licence carries the right to grant sub-licences and is transferable to third parties without the consent of the *Contractor* and survives termination (for any reason) of the *Contractor's* employment under this contract. The *Contractor* obtains from a Subcontractor equivalent rights to use Material prepared by a Subcontractor. The *Contractor* shall, on request, supply the *Client* with copies of all Materials prepared by the *Contractor* for the *works*."

Working with the *Client* and Others – Clause 25.3 In the second bullet point of clause 25.3, add the words "the *Project Manager*, the *Supervisor* or" after the words "an additional amount to"

Delete the last sentence of clause 25.3.

Subcontracting- Clause 26.2 Delete the second sentence in clause 26.2 and replace with:

"A reason for not accepting the Subcontractor is

- that its appointment will not allow the *Contractor* to Provide the Works,
- the *Client* is concerned (on reasonable grounds) about the financial standing or expertise or experience or insurance cover of the proposed Subcontractor, or
- the *Client* is concerned (on reasonable grounds) about any breach of contract, negligence, late, incomplete or defective works or failure to rectify the same, by the proposed Subcontractor in relation to any work previously performed (whether as contractor or subcontractor of any tier) for the *Client*, or
- the *Client* requires a collateral warranty and the Subcontractor is unable to provide a collateral warranty to the *Client* in a form which is reasonably acceptable to the *Client*, or
- the *Project Manager* has reasonable grounds for concern in relation to the Subcontractor's experience, financial standing, insurance cover or status.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

- accepted the Subcontractor and, to the extent these *conditions of contract* require; and
- accepted the subcontract documents."

Other Responsibilities-
Insert new Clause 27.5

Insert new clause 27.5 as follows:

"27.5 The *Contractor* complies with:

- (a) any rules, regulations, policies and procedures (including health and safety policies and quality assurance procedures) issued by the *Client*; and
- (b) the terms of any planning permission."

Other Responsibilities-
Insert new Clause 27.6

Insert new clause 27.6 as follows:

"27.6 The *Contractor* obtains all Consents unless otherwise stated in the Scope".

Assignment clause 28 – Delete clause 28

3.Time

Starting, Completion and Key Dates-
Clause 30.1

Add the following words to the end of clause 30.1:

"The *Contractor* proceeds regularly and diligently to Provide the Works in accordance with this contract and the Accepted Programme."

Starting, Completion and Key Dates-
Insert new Clause 30.4

Insert new clause 30.4

"30.4 If the *Contractor* considers that it has been or is likely to be delayed in the performance of the whole or any part of its obligations then it shall immediately inform the *Project Manager* in writing and shall specify:

- (g) the cause of the delay;
- (a) the likely effect on progress; and
- (b) such actions as it believes are required to remedy the delay or problem."

Starting, Completion and Key Dates-
Insert new Clause 30.5

Insert new clause 30.5

"30.5 The *Contractor* uses all reasonable endeavours to prevent, reduce and mitigate the effects of any delay in the performance of its obligations."

[The Programme – Clause 31.2

Add the following additional bullet point in clause 31.2:

- "latest dates for the instruction of any Provisional Sum"

The Programme – Add before the full stop as the end of the last bullet point in clause 31.3 the following additional bullet
Clause 31.3 points:

- "it is more onerous on the *Client* or Others
- it proposes dates for dates for compliance by the *Client*, the *Project Manager* or Others [(including, but not limited to latest dates for the instruction of any Provisional Sum)] which are not practicable or reasonable"

4. Quality Management

Tests and inspections –
Clause 41.1 Delete the words "applicable law" at the end of clause 41.1 and replace with:
"Applicable Law"

Correcting Defects- Clause 44.2 Delete clause 44.2 and replace as follows:
"44.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*, in accordance with clause 44.5. The *defect correction period* begins at Completion for Defects notified before Completion which the *Project Manager* has agreed may be corrected after Completion and when the Defect is notified for other Defects."

Correcting Defects - Insert new Clause 44.5 Add a new clause 44.5 as follows:
"44.5 In correcting any Defect, the *Contractor*, Subcontractors and their personnel will

- cause the minimum amount of interference and disruption as is reasonably practicable to the carrying out of other works at the Site and the use and/or occupation of the Site;
- comply with any reasonable directions and security precautions for the Site;
- comply with any Site access protocols;
- be accompanied, if the *Client* so requires;
- make good as soon as reasonably practicable and in any event within any period stipulated by the *Client* to the reasonable satisfaction of the *Client* any loss, damage or injury thereby caused to the Site or any part or parts thereof; and
- at the end of each day, ensure that the Site is left in a good and clean condition cleared of all unused materials, plant, goods and equipment."

Damages for a Defect as a Breach of Contract - Insert new Clause 47 Insert new clause 47

5. Payment

- Assessing the amount due-
Insert new Clause 50.8
- Insert a new clause 50.8 as follows:
- "50.8 In assessing the amount due, the *Project Manager* is entitled to retain the [whole/[x]%) of the Price for Work Done to Date until the *Contractor*:
- submits to the *Project Manager* policies and certificates for the insurances required by this contract;
- Payment - Clause 51.4
- In clause 51.4, delete the words "and is compounded annually".
- Payment - Insert new Clause 51.6
- Insert a new clause 51.6 as follows:
- "51.6 Subject to Y2.3, the *Client* may deduct from any money due to the *Contractor*
- any sum due to the *Client* from the *Contractor* under this contract, and
 - any amount which the *Contractor* is liable to pay to the *Client* (whether liquidated or otherwise) arising under this contract."
- Defined Cost -
Insert new Clause 52.2
- Add new clause 52.2
- "52.2 The *Contractor* shall keep the following records to substantiate the costs for a compensation event:
- full accounts of all costs relating to the *works*,
 - accounts of payments of Defined Cost,
 - proof that the payments have been made,
 - copies of enquiries, instructions and/or tender documentation and tender clarification documents in respect of subcontracts,
 - copies of tenders received from Subcontractors,
 - communications about and assessments for Subcontractors,
 - other records as stated in the Scope."
- Defined Cost -
Insert new Clause 52.3
- Add new clause 52.3
- "52.3 The *Project Manager* shall be entitled to receive further information and explanations from the *Contractor* as may be reasonably necessary to enable the *Project Manager* to form an opinion on these records and accounting methods."
- Defined Cost -
Insert new Clause 52.4
- Add new clause 52.4
- "52.4 The *Contractor* shall use its reasonable endeavours to ensure that the terms of all subcontracts include provisions materially similar to this clause 52 so that the *Contractor* is able to obtain the records and information required to enable the *Contractor* to comply with its obligations under this clause 52."

Final Assessment – Clause 51.3 In clause 53.1 insert the following words at the start of the second bullet point "(subject to clause 93.2 A3),"

6. Compensation Events

Compensation Events- Clause 60.1(10) Delete clause 60.1(10) and replace as follows:
"60.1(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless:

- the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection; or
- it was otherwise reasonable in the circumstances for the *Supervisor* to instruct the *Contractor* to search."

Compensation Events- Clause 60.1(11) Add the following words to the end of clause 60.1(11):
"but if it is reasonable for the *Supervisor* to do the test or inspection in the light of a Defect (whether or not any further Defect is discovered) neither the test or inspection, nor any delay caused by it, is a compensation event."

Compensation Events- Clause 60.1(19) In clause 60.1(19), delete "An event" and insert:
"A Prevention Event occurs which:

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme".

[Compensation Events- Insert new Clause 60.1(22) Add a new clause 60.1(22):
"The *Project Manager* gives an instruction for the expenditure of a Provisional Sum."]

Notifying Compensation Events- Clause 61.3 Amend the final paragraph of clause 61.3 to read as follows:
"If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, it is not entitled to a change in the Prices, the Completion Date or a Key Date."

Notifying Compensation Events- Clause 61.4 Add a new bullet point after the last bullet point of clause 61.4 as follows:
• arises by reason of any act, omission, breach or default (including any insolvency) of the *Contractor*, any Subcontractor or supplier, or any other person for whom the *Contractor* is responsible"

Notifying Compensation Events- Insert new Clause 61.8 Insert new clause 61.8
"If the *Contractor* believes that the issue of any instruction or information (including any confirmation of a decision made at an early warning meeting) by the *Project Manager* (not expressed to be a

change to the Scope) constitutes or will give rise to a compensation event, the *Contractor* must, (save in circumstances of emergency) as soon as reasonably practicable and in any case before acting on the instruction or other information, notify the *Project Manager* of the *Contractor's* belief and allow the *Project Manager* time to consider the impact of the instruction or other information in relation to the *Contractor's* notice."

Assessing
Compensation
Events- Insert
new Clause 63.17

Insert a new clause 63.17 as follows:

"63.17 Notwithstanding clauses 63, the Prices are not increased for any compensation event referred to in clause 60.1(13) or clause 60.1(19). The right of the *Contractor* to a change to the Completion Date and/or the Key Dates (assessed in accordance with clause 63.5) is the *Contractor's* only right in respect of a compensation event referred to in clauses 60.1(13) and/or 60.1(19)."

[Assessing
Compensation
Events- Insert
new Clause 63.18

Insert a new clause 63.18 as follows:

"63.18 Notwithstanding clauses 63, the Completion Date and Key Dates are not altered for any compensation event referred to in clause 60.1(22) unless the *Project Manager's* instruction is issued after the latest date for the instruction of the relevant Provisional Sum stated in the Accepted Programme.

Assessing
Compensation
Events- Insert
new Clause
63.19

Insert a new clause 63.19 as follows:

"63.19 Where a compensation event or its effect is in part attributable to the *Contractor's* fault (including any fault on the part of any Subcontractor or other person for whom the *Contractor* is responsible), the Prices, the Completion Date and/or Key Dates are not changed to the extent attributable to the *Contractor's* fault. "Fault" for this purpose includes any failure on the part of the *Contractor* or its Subcontractors to take any reasonable action to prevent or mitigate the compensation event or its effect.

7.Title

The *Client's* title
to Plant and
Materials-
Clause 70

Delete clause 70 in its entirety and replace with the following:

"70 The *Client's* title to Plant and Materials

70.1 The cost of Plant and Materials outside the Working Areas is excluded from the Price for Work Done to Date unless

- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title to the Plant and Materials,
- the Plant and Materials is clearly and visibly marked as for the *Client* and this contract and
- the Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas.

70.2 Where the cost of Plant and Materials outside the Working Areas is included in the Price for Work Done to Date

- the *Contractor's* title in the Plant and Materials passes to the *Client*,

- the *Contractor* does not remove it from where it is stored except for the use on the *works* and
 - the risk of loss or damage to the Plant and Materials remains with the *Contractor*.
- 70.3 The cost of the Plant and Materials within the Working Areas is excluded from the Price for Work Done to Date unless
- title in the Plant and Materials has already passed to the *Client* under subclause 70.2 or
 - the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant and Materials.
- 70.4 The *Contractor's* title in Plant and Materials passes to the *Client* when it is brought within the Working Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor*.
- 70.5 The *Contractor* does not remove Plant and Materials within the Working Areas from where it is stored except for use on the *works* or with the *Project Manager's* permission.
- 70.6 The title to Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission.
- 70.7 The *Contractor* ensures that all Equipment, Plant and Materials delivered to the Site are kept and stored in accordance with the manufacturer's instructions prior to their use, installation or incorporation."

8.Liabilities

Client's
liabilities-
Clause 80.1

In clause 80.1, delete the following bullet point:

"A fault in the design contained in the Scope provided by the *Client* or"

And place a bullet point before the following words;

"An instruction from the *Project Manager* changing the Scope."

Client's
liabilities-
Clause 80.1

In clause 80.1, bullet point 5, second line after 'power,' add 'terrorism,'

Client's
liabilities-
Clause 80.1

Delete the first sub-bullet in the sixth main bullet in clause 80.1 and replace with:

"a Defect,"

Insurance
Cover- Insert
new Clause
84.3 and 84.4

Insert new clauses 84.3 and 84.4:

"84.3 Where any of the insurances required to be provided by the *Contractor* are in the aggregate, the *Contractor* shall inform the *Client* of any claim which is likely to have a material effect on the amount of cover or limit of indemnity available to the *Client* under that insurance, as soon as reasonably possible after becoming aware of such claim."

"84.4 Where professional indemnity insurance is required pursuant to the Contract Data, this is provided always that such insurance is available at commercially reasonable rates. The *Contractor*

shall immediately inform the *Client* if such insurance is not or ceases to be available at commercially reasonable rates in order that the *Contractor* and the *Client* can discuss the means of best protecting the *Contractor* and the *Client* in the absence of such insurance."

Section 9 - Termination

Reasons for
termination -
Clause 91.7

Delete clause 91.7 and replace as follows

"91.7 The *Client* may terminate if a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks (R21)"

Reasons for
termination -
Clause 91.9

Insert new clauses 91.9 as follows:

"91.9 Other than any payment which may become due under clause 93, the *Client* shall not be liable to the *Contractor* for any costs, expenses, disbursements or losses (including any indirect or consequential losses, such as loss of profit) which may arise as a result of the termination of the contract. Any termination of the *Contractor's* engagement under this contract is without prejudice to the Parties' rights and remedies accrued up to the date of termination, which shall survive such termination."

Procedures on
Termination-
Insert new Clause
92.3 and 92.4

Insert new clauses 92.3 and 92.4 as follows:

"92.3 Upon termination of this contract (howsoever terminated) the *Contractor*:

- promptly takes all necessary steps to stop performance of the *works* in an orderly manner and with reasonable speed and economy; and
- delivers to the *Client* all documents belonging to the *Client* that shall for the time being be under the control of the *Contractor* or any Subcontractor; and
- ceases to access any of the *Client's* computer systems to which it previously had access; and
- gives to the *Client* all hard copy and electronic data (including material prepared by any Subcontractor) prepared by or on behalf of the *Contractor* under this contract. The *Client* has the right to use such material for completion of the *works*."

"92.4 The *Contractor* complies at its own cost with the reasonable requirements of the *Client* to ensure the orderly hand over of the *works* to any incoming substitute *Contractor*."

Payment
Termination-
Clause 93.2

on Delete the wording of A3 in clause 93.2 and replace with:

"A3 A deduction of any loss or costs incurred by the *Client* as a result of such termination including the additional cost to the *Client* of completing the whole of the *works* and after termination the *Client* shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the event that such loss or cost exceeds the amount otherwise payable to the *Contractor* in accordance with this contract, without prejudice to any other right or remedy of the *Client*, the *Client* may recover such excess from the *Contractor* as a debt."

Dispute
Resolution Option
W2

Insert new clause

"The Parties' Representatives in relation to the Dispute Resolution Procedure are the -Key Account Manager (the "*Contractor*") and (the "*Client*")."

Option X2 –
Changes in Law

Delete the existing wording of Option X2 and replace as follows:

"X2.1 A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date unless such change:

- is a change in taxes on the *Contractor's* net income or profit or in taxes imposed on its business rather than the performance of its obligations under this contract, or
- was mentioned in the Scope as something with which the *Contractor* is required to comply

A change is treated as occurring before the Contract Date if it is stated in a statute or statutory instrument before the Contract Date but comes into force after the Contract Date.

X2.2 The *Project Manager* may notify the *Contractor* of a compensation event for a change in the law and instruct it to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced."

Option X15 –
The
Contractor's
design

Delete clause X15.1 and replace as follows:

"X15.1 The *Contractor* is not liable for a Defect which arose from its design unless it failed to carry out that design using the Required Standard."

Delete clause X15.2 and replace as follows:

"X15.2 If the *Contractor* corrects a Defect for which it is not liable under the contract following an instruction of the *Project Manager* to do so, it having been agreed or determined that the *Contractor* was not responsible for the Defect, it is a compensation event."

Delete clause X15.5 and replace as follows:

"X15.5 The *Contractor* provides insurance for claims made against it arising out of its failure to use the Required Standard. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data."

APPENDIX 2 – Z Clauses

Z1 Copyright – add new clause

.1 The copyright in all documents prepared by or on behalf of the *Client* is and remains the property of the *Client*.

.2 The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information (whether created or stored electronically or otherwise) prepared or under preparation by or on behalf of the *Contractor* in connection with the *works* (together referred to in this clause as "the Documents") shall remain vested in the *Contractor* but the *Client* shall have an irrevocable royalty-free and non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the *works* or to the *property* including, but without limitation, the construction, completion, extension, maintenance, letting, promotion, advertisement, reinstatement, refurbishment, extension and repair of the *works* and/or the *property*. Such licence shall be transferable to third parties without the consent of the *Contractor* being required and shall include the right to grant sub-licences.

.3 The *Contractor* indemnifies the *Client* in respect of all costs, claims, damages, proceedings and expenses arising out of any breach of any such copyright by the *Contractor*, its assignees or subcontractors appointed in relation to the *works*.

Z2 Assignment – add new Clause:

"The *Client* has the right to assign this contract to another NHS body without having to seek the *Contractor's* consent. The *Contractor* may not assign the benefit of this Agreement without the consent of the *Client*."

Z3 Legislation – add new clause:

The *Contractor* Provides the *works* in a proper and workmanlike manner and in compliance with all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *works* or performance of any obligations under this contract and any regulation or byelaw of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or with whose systems the *works* are, or are to be, connected.

Z4 Principal Contractor – add new clause:

The *Client* appoints the *Contractor* to act as principal contractor for the purposes of the Construction (Design and Management) Regulations 2015 and any replacement or amendment of those Regulations.

Z5 Records and Audit– add new clause:

.1 The *Contractor* shall keep and maintain until twelve (12) years after the date of termination or expiry (whichever is the earlier) of this contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this contract.

.2 The *Contractor* shall keep the records and accounts referred to in clause Z7.1 above in accordance with good accountancy practice.

.3 The *Contractor* shall afford the *Client* and/or any auditor such access to such records and accounts as may be required from time to time.

Z6

Health and Safety– add new clause:

- .1 The *Contractor* shall comply, and shall ensure that its staff and subcontractors comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the *Client's* own policies and procedures.
- .2 The *Contractor* shall at all times maintain a specific Health and Safety at Work policy relating to the employment of its own staff and subcontractors whilst carrying out their duties in relation to the Contract on the *Client's* premises.
- .3 The *Contractor* will be required to nominate a Health and Safety Representative to liaise with the *Project Manager* on all Health and Safety matters.
- .4 The *Contractor's* staff and subcontractors shall follow a system of accident recording in accordance with the *Client's* accident recording procedure and the *Contractor's* own accident reporting procedures.
- .5 All notifiable accidents shall immediately be brought to the attention of the *Project Manager*.
- .6 The *Contractor* shall ensure the co-operation of its staff and subcontractors in all prevention measures designed against fire, or any other hazards, and shall notify the *Client* and *Project Manager* of any change in the *Contractor's* working practices or other occurrences likely to increase such risks or to cause new hazards.
- .7 The *Contractor's* staff and subcontractors shall be trained to recognise situations which involve an actual or potential hazard including:
 - .7.1 danger of personal injury to any person on the *Client's* premises and where possible, without personal risk, make safe any such situation or report any such situation to the *Project Manager*.
 - .7.2 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the *Client's* policies;
 - .7.3 security;
 - .7.4 risk management;
 - .7.5 major incident.
- .8 The *Contractor* shall provide such first aid facilities and ensure that its staff and subcontractors abide by such first aid procedures as shall be required by the *Client* as detailed in the Scope and Tender Response Document.
- .9 The *Contractor* shall at any time ensure that the equipment used and procedures operated conform to the *Client's* Fire Policy as detailed in the Scope and Tender Response Document.
- .10 The *Contractor* shall co-operate with the *Client's* Fire, Security and Safety Advisors and shall comply with their reasonable instructions.
- .11 The *Contractor* will comply with COSHH and COSHH hazard management and control.

Z7

Confidentiality and Freedom of Information

- 1 In respect of any Confidential Information it may receive from the other party (the "Discloser") and subject always to the remainder of this Clause Z10 each party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
 - .1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

.1.2 the provisions of this Clause Z10 shall not apply to any Confidential Information which:-

.1.2.1 is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;

.1.2.2 is obtained by a third party who is lawfully authorised to disclose such information; or

.1.2.3 is authorised for release by the prior written consent of the Discloser; or

.1.2.4 the disclosure of which is required to ensure the compliance of the Authority and/or any Beneficiary with the Freedom of Information Act 2000 (the "FOIA").

.2 Nothing in this Clause Z10 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the *Contractor* is the Recipient, to the *Contractor's* immediate or ultimate holding company provided that the *Contractor* procures that such holding company complies with this Clause Z10 as if any reference to the *Contractor* in this Clause Z10.2 were a reference to such holding company.

.3 The *Contractor* authorises the *Client* to disclose the Confidential Information to such Person(s) as may be notified to the *Contractor* in writing by the *Client* from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the *works* supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The *Client* shall use reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The *Client* shall not without good reason claim that the lowest price available in the market is the realistic market price.

.4 The *Contractor* acknowledges that the *Client* is or may be subject to the FOIA. The *Contractor* notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The *Contractor* will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the *Contractor* from time to time) to the extent that they apply to the *Contractor's* performance under the Contract.

.5 The *Contractor* agrees that:

.5.1 without prejudice to the generality of Clause Z10.2, the provisions of this Clause Z10 are subject to the respective obligations and commitments of the *Client* under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The *Contractor* will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the *Contractor* from time to time) to the extent that they apply to the *Contractor's* performance under the Contract.

.5.2 subject to Clause Z10.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the *Client*;

.5.3 where the *Client* is managing a request as referred to in Clause Z10.4, the *Contractor* shall co-operate with the *Client* making the request and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.

.6 The *Contractor* shall and shall procure that its subcontractors shall:

- .6.1 transfer any request for information, as defined under section 8 of the FOIA, to the *Client* as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;
- .6.2 provide the *Client* with a copy of all information in its possession or power in the form that the *Client* requires within five (5) Working Days (or such other period as the *Client* may specify) of the *Client* requesting that Information; and
- .6.3 provide all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to a request for information within the time for compliance set out in section 10 of the FOIA.
- .7 The *Client* (as the case may be) may consult the *Contractor* in relation to any request for disclosure of the *Contractor's* Confidential Information in accordance with all applicable guidance.
- .8 The Parties, including any Beneficiary, acknowledge that, the content of this Contract is not Confidential Information. The *Client* shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- .9 Notwithstanding any other term of the Contract, the *Contractor* hereby gives its consent for the *Client* to publish in the public domain the Contract in its entirety including any changes to the Contract that may from time to time be agreed (subject to the redaction of any information which is exempt from disclosure in accordance with the provisions of either the FOIA or the EIR as the case may be).
- .10 If the *Client* elects to publish the Contract:
- .10.1 the *Client* consult with the *Contractor* in order to determine whether any information contained in the Contract should be redacted prior to publication;
- .10.2 any final decision in relation to the redaction of information shall be a matter for the *Client* in their absolute discretion.
- .10.3 the *Contractor* shall give such assistance and co-operation to the *Client* as they shall reasonably require in order to publish the Contract.
- .11 This Clause Z10 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, their treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause Z10 shall remain in force for a period of 3 years after the termination or expiry of this Contract.
- .12 In the event that the *Contractor* fails to comply with this Clause Z10, the *Client* reserves the right to terminate the Contract by notice in writing with immediate effect.

Z8

Data Protection

- .1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause Z11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- .2 The Parties acknowledge that where the *Contractor* is processing personal data under or in connection with this Contract that for the purposes of the Data Protection Legislation, the *Client* where applicable is the data controller and the *Contractor* is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Where the *Contractor* is processing personal data, <https://cavuhb.nhs.wales/files/policies-procedures-and-guidelines/corporate-policy/d-corporate-policy/data-protection-act-policy-2016-pdf/> sets out the scope, nature and purpose of processing by the *Contractor*, the duration

of the processing and the types of personal data (as defined in the Data Protection Legislation "Personal Data") and categories of data subject.

3 Without prejudice to the generality of clause Z11.1, the *Client* will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the *Contractor* for the duration and purposes of this Contract.

4 Without prejudice to the generality of clause Z11.1, the *Contractor* shall, in relation to any Personal Data processed in connection with the performance by the *Contractor* of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the *Client* where applicable unless the *Contractor* is required by laws of any member of the European Union or by the laws of the European Union applicable to the *Contractor* to process Personal Data ("EU 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 *Client* where applicable of this before performing the processing required by the EU Applicable Laws unless those EU Applicable Laws prohibit the *Contractor* from so notifying the *Client* where applicable;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the *Client* where applicable, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

I ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the *Client* where applicable has been obtained and the following conditions are fulfilled:

(i) the *Client* or the *Contractor* has provided appropriate safeguards in relation to the transfer;

(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; and

(iv) the *Contractor* complies with reasonable instructions notified to it in advance by the *Client* where applicable with respect to the processing of the Personal Data;

(e) assist the *Client* in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the *Client* without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the *Client* delete or return Personal Data and copies thereof to the *Client* on termination of the agreement unless required by EU Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause Z11 and allow for audits by the *Client*, or the *Client's* designated auditor.

- .5 The *Client* does not consent to the *Contractor* appointing any third party processor of Personal Data under this Contract.
- .6 Either Party may, at any time on not less than 30 days' notice, revise this clause Z11 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- .7 The *Contractor* shall indemnify and keep the *Client* indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses) claims or proceedings whatsoever or however arising from the *Contractor's* unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

Z9

Prevention of Corruption and Bribery

- 1 The *Contractor* will:
 - .1.1 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - .1.2 comply with the *Client's* Ethics, Anti-bribery and Anti-corruption Policies (as the *Client* may update them from time to time) (the "Relevant Policies");
 - .1.3 maintain in place throughout the term of this Contract its own policies and procedures, including, but not limited to, adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Policies and Clause Z13.1 and will enforce them where appropriate;
 - .1.4 promptly report to the *Client* any request or demand for any undue financial or other advantage of any kind received by the *Contractor* in connection with the performance of this Contract;
 - .1.5 immediately notify the *Client* if a foreign public official becomes an officer or employee of the *Contractor* or acquires a direct or indirect interest in the *Contractor* (and the *Contractor* warrants that it has no foreign public officials as officers, staffs or direct or indirect owners at the Contract Date); and
 - .1.6 within three (3) Months of the date of this Contract, and annually thereafter, certify to the *Client* in writing signed by an officer of the *Contractor*, compliance with this Clause Z13 by the *Contractor* and all persons associated with it and all Subcontractors. The *Contractor* shall provide such supporting evidence of compliance as the *Client* may reasonably request.
- .2 The *Contractor* shall ensure that any person associated with the *Contractor* who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Contractor* in this Clause Z13 ("Relevant Terms"). The *Contractor* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *Client* for any breach by such persons of any of the Relevant Terms.
- .3 Breach of this Clause Z13 shall be deemed a material breach of this Contract which is not capable of remedy.
- 4 For the purposes of this Clause Z13, the meaning of 'adequate procedures' and 'foreign public official' and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause Z13.4 a person associated with the *Contractor* includes any SubContractor of the *Contractor*.

Z10 Anti Slavery

1 In performing its obligations under the Contract the, *Contractor* shall:

.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, and regulations from time to time in force including the, Modern Slavery Act 2015; and

.1.2 comply with the *Client's* Anti-slavery policy.

Z11 Public Contracts Regulations 2015

.1 This Contract may be modified without a new procurement procedure in accordance in any of the following case:

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses—

(i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and

(ii) do not provide for modifications or options that would alter the overall nature of the contract.

Z12 Conflicts of interest and the prevention of fraud

.1 The *Contractor* shall take appropriate steps to ensure that neither the *Contractor* nor any staff or Subcontractors are placed in a position where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the *Client* under the provisions of this Contract. The *Contractor* will disclose to the *Client* full particulars of any such conflict of interest which may arise.

.2 The *Client* reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the *Client* under the provisions of this Contract. The actions of the *Client* pursuant to this Clause Z16.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the *Client*.

.3 The *Contractor* shall take all reasonable steps to prevent fraud by staff and the *Contractor* (including its owners, members and directors). The *Contractor* shall notify the *Client* immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

.4 If the *Contractor* or its staff commits fraud the *Client* may terminate this Contract and recover from the *Contractor* the amount of any direct loss suffered by the *Client* resulting from the termination.

Z13 Liability Period

Neither Party shall commence any action or proceedings against the other under this contract after 12 years from Completion of the whole of *works* and any adjudicator's decision, other than a decision that has already become finally binding, shall be finally binding on them unless either Party has referred that dispute for final determination by arbitration or legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date. **PROVIDED ALWAYS** that nothing in this clause limits either Party's:

.1 right to commence any action or proceedings against the other:

.1 in accordance with section 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; or

.2 for a breach of this contract that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 that gives rise to a failure to comply with that legislation in relation to the *works* or any part thereof, provided that any such action or proceedings is subject to the limitation periods that would apply if they were commenced under that legislation or the Civil Liability (Contribution) Act 1978;

.2 obligation to maintain insurance for the periods specified in this contract or rights in relation to any failure to maintain insurance for such periods.

CONTRACT DATA PART ONE

APPENDIX 3

Dispute Resolution Procedure

Application and General Principles

- 1.1 The procedure set out in this Schedule (the "**Dispute Resolution Procedure**") shall apply to any dispute, claim or difference ("**Dispute**") between the Contractor and the Client arising out of or relating to this Agreement.
- 1.2 This Dispute Resolution Procedure sets out the intention of the Parties to act in a collaborative manner and in a spirit of partnership in seeking to resolve disputes at the earliest stage possible and it is the intention of the Parties that it should be adhered to. However, for the avoidance of doubt, this Dispute Resolution Procedure is not intended to curtail or delay in any way any Party's right to commence adjudication at any time in respect of a Dispute. The Parties may seek any interim or interlocutory relief from the courts of England and Wales at any time.
- 1.3 Unless otherwise agreed, all negotiations connected with the Dispute shall be in confidence and without prejudice to the rights of the Parties in any future proceedings. If at any point the Parties reach agreement on the resolution of a Dispute or any part of a Dispute, it shall be set out in writing and signed by the authorised representatives of both Parties. Such resolution shall from that point on be binding on the Parties and may be referred to as evidence of their agreement.

2. Notice

- 2.1 If a Dispute arises, the Party who wishes to raise it (the "**Claiming Party**") must give notice (a "**Dispute Notice**") to the other Party (the "**Responding Party**") as soon as reasonably possible after becoming aware of the circumstances giving rise to the Dispute. The Dispute Notice must specify in reasonable detail –
- 2.1.1 The relevant facts giving rise to the Dispute;
- 2.1.2 Any contractual obligation or other applicable legal duty which the Claiming Party asserts has been or will be breached; and
- 2.1.3 The remedy or action requested by the Claiming Party.

3. Negotiation

- 3.1 Subject to paragraph 1.2 above, if a Dispute arises between the parties at any time, such Dispute shall first be referred to the Parties' Representatives. The Parties' Representatives shall be identified in Appendix 2 of this Agreement. The Parties' Representatives shall meet without prejudice within 5 Working Days of receipt of the Dispute Notice by the Responding Party and they shall attempt in good faith to resolve such Dispute. Any decision jointly made by the Parties' Representatives shall be final and binding unless the Parties otherwise agree, once it has been recorded in writing and signed by each Representative in accordance with paragraph 1.3.
- 3.2 Subject to paragraph 1.2 above, if the Parties' Representatives have failed to resolve any Dispute within 10 Working Days of receipt of the Dispute Notice by the Responding Party, the dispute shall be referred to the Chief Executive of the Client and the Managing Director of the Contractor (together referred to as "**Senior Management**") who shall within 5 Working Days of the Dispute being referred to them meet without prejudice and attempt in good faith to resolve such Dispute. Any decision jointly made by the Senior Management shall be final and binding unless the Parties otherwise agree, once it has been recorded in writing and signed by each Representative in accordance with paragraph 1.3.
- 3.3 Any Party may nominate a deputy to attend in the place of the Senior Management representatives named above, provided that such deputy must be duly authorised to agree a resolution of the Dispute.

4. **Mediation**

- 4.1 If the Dispute cannot be resolved by negotiation in accordance with paragraph 3 of this Schedule ("**Negotiation**"), the Dispute shall be referred to mediation pursuant to the procedure set out in paragraph 4 below ("**Mediation**") unless any Party, acting reasonably, considers that the Dispute is not suitable for mediation.
- 4.2 For the avoidance of doubt, nothing in this Schedule shall be taken to exclude or limit the rights of any Party to make such applications (including but not limited to applications as to costs) as it sees fit in any proceedings, relating to the conduct of the other Party and in particular any decision made under paragraph 4.1 above.
- 4.3 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 4.3.1 a neutral mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 working days after a request from one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party may apply to Centre for Effective Dispute Resolution ("**CEDR**"), International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU to appoint a Mediator and the mediation shall be conducted in accordance with the rules and procedures of the CEDR Group. If the CEDR Group is unable or unwilling to nominate a Mediator then any Party may (subject to obtaining the consent of the other(s)) approach an alternative reputable mediation body.
- 4.3.2 The Parties shall within 10 working days of the Mediator's appointment discuss and agree with the Mediator a programme for the exchange of all relevant information and the procedure to be adopted for the mediation. Either Party may ask the Mediator to give guidance on a suitable programme for information exchange and/or mediation procedure.
- 4.3.3 If Mediation fails to achieve a resolution of the dispute or any part of it, any Party may ask the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Dispute without the prior written consent of the other Party.
- 4.4 Subject to paragraph 4.1 above, a Party may not commence any action in Arbitration or the Courts until the mediation procedure set out in this paragraph 4 has been completed.
- 4.5 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

5. **Adjudication**

- 5.1 Any Party may by notice to the other refer the Dispute to adjudication in accordance with the Adjudication Procedure set out in paragraphs 6, 7, 8 and 9 of this Schedule.

6. **Adjudication Procedure**

- 6.1 Any Party may give notice (a "**Notice of Adjudication**") at any time of its intention to refer a Dispute to the Adjudication Procedure. The Adjudicator shall be appointed by agreement of the Parties or in the absence of agreement, any Party may approach the Chartered Institute of Arbitrators with the object of securing the appointment of an Adjudicator and referral of the dispute to it within 7 days of the Notice of Adjudication.
- 6.2 The Adjudicator shall act in accordance with the procedure set out in this paragraph 6.
- 6.3 The Party who has served a Notice of Adjudication (the "**Referring Party**") shall, not later than 7 days after service of a Notice of Adjudication or the appointment of the Adjudicator, whichever is the later, refer the Dispute to the Adjudicator (the "**Referral Notice**").
- 6.4 The Referral Notice shall:

- 6.4.1 Refer to this paragraph 6.4;
- 6.4.2 include a statement of the Referring Party's case including a summary of the nature, background and extent of the Dispute and the issues arising, not to exceed 20 sides of A4 paper;
- 6.4.3 include copies of documents which the Referring Party considers have an important and direct bearing on the Dispute and are referred to in the Referring Party's statement of case under paragraph 6.4.2 above and are necessary by way of supplementation of such statement (subject to there being a maximum limit of 3 lever arch files);
- 6.4.4 set out the relief, remedy or recourse the Referring Party seeks; and
- 6.4.5 be copied simultaneously to the other Party (the "**Recipient Party**").
- 6.5 The Recipient Party may submit to the Adjudicator a response to the Referral Notice (the "**Response**"), no later than 10 Working Days from the date of service of the Referral Notice on the Adjudicator.
- 6.6 The Response shall:
 - 6.6.1 refer to this paragraph 6.6;
 - 6.6.2 include a statement of the Recipient Party's case not to exceed 20 sides of A4 paper;
 - 6.6.3 include copies of documents which the Recipient Party considers have an important and direct bearing on the Dispute and are referred to in the Recipient Party's statement of case under paragraph 6.6.2 above and are necessary by way of supplementation of such statement (subject to there being a maximum limit of 3 lever arch files); and
 - 6.6.4 be copied simultaneously to the Referring Party.
- 6.7 Any adjudication commenced pursuant to the Adjudication Procedure shall continue notwithstanding any failure by any Party to take part.
- 6.8 The Adjudicator shall be entitled to obtain such advice and/or assistance as in its reasonable discretion it considers necessary and/or desirable so as to more effectively and efficiently determine the Dispute. Where it takes such advice and/or assistance, it shall notify both Parties in advance of the persons who are requested to provide it with such advice or assistance and shall allow both Parties an opportunity to make representations on the advice or assistance received before making its decision.
- 6.9 The Adjudicator shall deliver a written reasoned decision (the "**Adjudicator's Decision**") on the Dispute:
 - 6.9.1 Within 28 days of the date of service of the Referral Notice on the Adjudicator; or
 - 6.9.2 up to 42 days after the date of service of the Referral Notice on the Adjudicator, if the Referring Party so consents; or
 - 6.9.3 within such longer period as is agreed by the Parties after the Referral Notice has been served.
- 6.10 The Adjudicator's Decision shall be Binding (as defined in paragraph 6.13 below) and unless either Party notifies the other within 45 Working Days of the date of the Adjudicator's Decision of their intention to commence Arbitration proceedings relating to the Dispute which forms the subject matter of the Adjudicator's Decision, the Adjudicator's Decision shall be Conclusive (as defined in paragraph 6.14 below).
- 6.11 The Parties shall each bear their own costs of the Adjudication Procedure.

- 6.12 The Adjudicator shall be entitled to determine responsibility for the costs, fees and expenses of the Adjudicator in the Adjudicator's Decision. Where no such determination is made, the Parties shall share such costs, fees and expenses equally.
- 6.13 "**Binding**" means in relation to an Adjudicator's Decision that such a decision shall be acted upon by the Parties and shall be binding and enforceable as between them for the purposes of this Agreement until and save to the extent that the relevant Dispute is finally determined by Arbitration, legal proceedings or by agreement of the Parties.
- 6.14 "**Conclusive**" means in relation to an Adjudicator's Decision that such a decision is conclusive of the respective rights and obligations of the Parties and shall not be challenged further by either Party pursuant to the Dispute Resolution Procedure or otherwise in respect of the specific Dispute in question.

7. **Conduct of the Adjudicator**

- 7.1 In relation to the Adjudication Procedure the Adjudicator shall conduct its determination in such manner as it shall in its sole and unfettered discretion see fit, provided that it acts impartially and all written communications to and from it and any Party shall be copied to the other Party. The Adjudicator shall not, without giving that other Party an opportunity to attend on not less than 2 Working Days' notice, conduct any oral hearing or otherwise discuss the issues in Dispute with a Party other than in the presence of the other. The Adjudicator may act inquisitorially and may take the initiative in ascertaining the facts and the law relevant to the Dispute.
- 7.2 The Adjudicator shall be entitled to correct the Adjudicator's Decision so as to remove a clerical or typographical error arising by accident or omission within 5 Working Days of publication of the Adjudicator's Decision.

8. **Liability**

- 8.1 In relation to the Adjudication Procedure, neither the Adjudicator nor its employees or agents shall be liable for anything done or omitted in the discharge or purported discharge of its or their functions unless the act or omission is in bad faith.

9. **Adjudicator not to act as Arbitrator**

- 9.1 In relation to the Adjudication Procedure, the Adjudicator shall act as adjudicator and not as an arbitrator.
- 9.2 The Adjudicator will make all decisions in accordance with the terms of this Agreement and the governing law. Where a matter in this Agreement is to be resolved pursuant to the Dispute Resolution Procedure but it is not possible for the Adjudicator to make a decision by reference to the terms of this and the governing law, the Adjudicator will reach such decision as is fair and reasonable and as complies with governing law taking into account the intentions of the Parties in entering into this Agreement and in all of the circumstances that the Adjudicator believes are relevant to enable such a decision to be made.
- 9.3 The Parties agree that the Adjudicator may open up, review and revise any opinion, decision, certificate, account, requirement or notice given pursuant to this Agreement and which is related to the Dispute and to determine all matters in dispute which shall be submitted to it as if no such opinion, decision, certificate, account, requirement or notice had been given.
- 9.4 Save in respect of the Dispute to which the decision of the Adjudicator relates, no decision of the Adjudicator (including in respect of any matter of interpretation of this Agreement) shall be Binding or Conclusive on the parties or an Adjudicator in relation to any other Dispute.

10. **Arbitration**

- 10.1 **Any Dispute** not resolved by any of the above means shall be referred to be determined in accordance with the provisions of the Arbitration Act 1996 by a sole arbitrator save for –

- 10.1.1 a Dispute which is currently subject to Negotiation or Mediation; or
- 10.1.2 a Dispute which is currently subject to the Adjudication Procedure; or
- 10.1.3 a Dispute in respect of which an Adjudicator's Decision has been given but in respect of which notice in accordance with paragraph 6.10 has not been served within the requisite time period; or
- 10.1.4 a dispute in connection with the enforcement of an Adjudicator's Decision.

The Arbitration procedure to be used is the current Construction Industry Model Arbitration Rules (CIMAR).

- 10.2 Any Party wishing to refer a Dispute to Arbitration shall serve on the other Party an Arbitration Notice requiring the other to agree to the appointment of an arbitrator.
- 10.3 If the Parties fail to agree within 10 Working Days on the appointment of an arbitrator, either party may approach the Chartered Institute of Arbitrators and request them to appoint an arbitrator. Such appointment by the Chartered Institute of Arbitrators shall be binding upon the Parties.
- 10.4 The arbitrator's appointment shall take effect upon its agreeing to act, whether or not its terms have been accepted.
- 10.5 The arbitrator shall have the power to direct such valuations and measurements as in its opinion may be desirable in order to ascertain the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any payment, and to open up, review and revise any account, opinion, decision, requirement or notice issued, given or made (including, without limitation, an Adjudicator's Decision provided that notice has been given in accordance with paragraph 6.10 above) and to determine all matters in dispute which shall be submitted to it in the same manner as if no such account, opinion, decision, requirement or notice had been issued, given or made.
- 10.6 Subject to paragraph 10.7 the award of the arbitrator shall be final and binding on the Parties.
- 10.7 The Parties agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and the arbitrator)-
 - 10.7.1 apply to the courts to determine any question of law arising in the course of the reference; and
 - 10.7.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this Schedule.

APPENDIX 4

The Scope

Document title - *Pentyrch Development Final* is available upon request

APPENDIX 5

Summary of Price and Bill of Quantities

Document title - 1 24005.MAIN SUMMARY is available upon request.

APPENDIX 6

Key People

- The key people are:

1	Name	
	Job	
	Responsibilities	
	Qualifications	
	Experience	
	Category	
2	Name	
	Job	
	Responsibilities	
	Qualifications	
	Experience	
	Category	
3	Name	
	Job	
	Responsibilities	
	Qualifications	
	Experience	
	Category	
4	Name	
	Job	
	Responsibilities	
	Qualifications	

	Experience	
	Category	
5	Name	
	Job	
	Responsibilities	
	Qualifications	
	Experience	
	Category	
6	Name	
	Job	
	Responsibilities	
	Qualifications	
	Experience	
	Category	
	Experience	

APPENDIX 7

Rates

Contract Data

Contract Data: Engineering and Construction Contract

OPTION B: PRICED CONTRACT WITH BILL OF QUANTITIES

Contract Data

PART ONE – DATA PROVIDED BY THE CLIENT

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

1 General

The *conditions of contract* are the core clauses, the clauses for main Option B, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments October 2020)

Option for resolving and avoiding disputes

W2

Secondary Options

X2, X7, X11, X15, X16, X20 Y(UK)2 and Z

The *works* are

The development is a new development centered around the replacement of Pentyrch Branch Surgery. This has been a priority for a significant period of time and is a key component in supporting the primary care agenda of enhancing community infrastructure and the Health Board's overarching Shaping our Future Wellbeing Strategy to 2035 which aims to provide high quality primary care in fit-for-purpose accommodation.

The *Client* is Cardiff & Vale University Health Board

Name

Geoff Walsh

Address for communications

Woodlands House, Maes Y Coed Road,
Heath, Cardiff, CF14 4HH

Address for electronic communications

The *Project Manager* is To be confirmed

Name

Address for communications

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in

The Site Information is in

The boundaries of the site are

The language of the contract is

The law of the contract is the law of

The period for reply is 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

If the Client has identified work which is set to meet a stated condition by a key date

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)	Rhydlarfa Drive	TBC (17 th March 2024)
(2)		
(3)		

The Contractor submits revised programmes at intervals no longer than

If the Client has decided The completion date for the whole of the works

The completion date for the whole of the works is

Taking over the works before the Completion Date

The Client ~~is~~ **is not** willing to take over the works before the Completion Date (Delete as applicable)

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

The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is

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

The defect correction period is except that

- The defect correction period for is
- The defect correction period for is

5 Payment

The currency of the contract is the

The assessment interval is

The interest rate is % per annum (not less than 2) above the

rate of the

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

6 Compensation events

The place where weather is to be recorded is

Bute Park Cardiff

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 08.00 hours GMT

and these measurements:

The *weather measurements* are supplied by

Met Office

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

The Met Office Station situated at
Bute Park Cardiff

and which are available from

Met Office

Where no recorded data
are available

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Not applicable

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

50 %

If there are additional
compensation events

~~These are additional compensation events~~

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's* liabilities

- (1) 1. Completion is delayed as a result of a Contractor's insurable event; insurance events include fire, lightning, explosion, storm, tempest, flood bursting or overflowing water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom.
1.1 Where there is delay as a result of the Contractor's insurable event the completion date is changed, but there is no effect on the Prices.
- (2) The works are delayed or suspended due to an act of terrorism.
- (3) [List any other]

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is

[£10,000,000.00 (five million pounds sterling)]

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

[£10,000,000.00 (five million pounds sterling)]

If the *Client* is to provide
Plant and Materials

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

[£5,000,000.00 (five million pounds sterling)]

If the *Client* is to provide any of the insurances stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

(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

If additional insurances are to be provided

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

Arbitration

If the *tribunal* is arbitration

The *arbitration procedure* is

Option W2

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

RICS

If Option W1 or W2 is used

The *Senior Representatives of the Client* are

Name (1)

Geoff Walsh

Address for communications

Woodlands House, Maes Y Coed Road,
Heath, Cardiff, CF14 4HH

Address for electronic communications

Geoff.Walsh@wales.nhs.uk

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

To be appointed by the Royal Institute of
Chartered Surveyors

Address for communications

Dispute Resolution Service, 55 Colmore
Row, Birmingham, B3 2AA

Address for electronic communications

drs@rics.org

The *Adjudicator nominating body* is

RICS

If Option W3 is used ————— The number of members of the Dispute Avoidance Board is one/three (Delete as applicable)

The *Client's* nomination for the Dispute Avoidance Board is

Name

Address for communications

Address for electronic communications

The Dispute Avoidance Board visit the Site at intervals no longer than

 months

The Dispute Avoidance Board nominating body is

X1: Price adjustment for inflation

If Option X1 is used ————— The proportions used to calculate the Price Adjustment Factor are

0.	<input type="text"/>	linked to the index for	<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>	non-adjustable	<input type="text"/>
1.00	<input type="text"/>		

The *base date* for indices is

These indices are

X3: Multiple currencies

If Option X3 is used ————— The *Client* will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total maximum payment in the currency
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The *exchange rates* are those published in

on (date)

X5: Sectional Completion

If Option X5 is used — The completion date for each section of the works is

<i>section</i>	<i>description</i>	<i>completion date</i>
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>

X6: Bonus for early Completion

If Option X6 is used without Option X5 The bonus for the whole of the works is per day

If Option X6 is used with Option X5 The bonus for each section of the works is

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>
The bonus for the remainder of the works is		<input type="text"/>

X7: Delay damages

If Option X7 is used without Option X5 Delay damages for Completion of the whole of the works are £500 per day

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

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>
The delay damages for the remainder of the works are		<input type="text"/>

X8: Undertakings to the Client or Others

If Option X8 is used — The undertakings

to Others are
provided to

The Subcontractor undertaking to Others are
works — provided to

The Subcontractor undertaking to the Client are
works

X10: Information modelling

If Option X10 is used

If no information execution
plan is identified in part two
of the Contract Data

The period after the Contract Date within which the Contractor is to submit a first
Information Execution Plan for acceptance 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 providing
information similar to the Project Information 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

X12: Multiparty collaboration (not used with Option X20)

If Option X12 is used — The Promoter is

The Schedule of Partners is in

The Promotor's objective is

The Partnering Information is in

X13: Performance bond

If Option X13 is used

The amount of the performance bond is

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

X16: Retention

If Option X16 is used The ~~retention free~~ amount is

The ~~retention~~ percentage is %

Retention bond The *Contractor* ~~may/may not~~ give the *Client* a retention bond (Delete as applicable)

X17: Low performance damages

If Option X17 is used The amounts for low performance damages are

amount		performance level
<input type="text"/>	for	<input type="text"/>
<input type="text"/>	for	<input type="text"/>
<input type="text"/>	for	<input type="text"/>
<input type="text"/>	for	<input type="text"/>

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 Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to~~

~~The Contractor's total liability to the Client for all matters arising under or in connection with the contract, other than~~

The ~~end of liability date~~ is years after the Completion of the whole of the *works*

X20: Key Performance Indicators (not used with Option X12)

If Option X20 is used The *incentive schedule* for Key Performance Indicators is in

A report of performance against each Key Performance Indicator is provided at intervals of months

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used The ~~Contractor is/is not~~ to pay any charges made and to be paid any interest paid by the ~~project bank~~ (Delete as applicable)

The ~~account holder is the Contractor/the Parties~~ (Delete as applicable)

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 Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used	term	beneficiary
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3	term	beneficiary
	<input type="text"/>	<input type="text"/>

PART TWO – DATA PROVIDED BY THE CONTRACTOR

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

1 General

The Contractor is

Name

Address for communications

Address for electronic communications

The fee percentage is %

The working areas are

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

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

If the Contractor is to decide the completion date for the whole of the works

The completion date for the whole of the works is

5 Payment

The activity schedule is

The tendered total of the Prices is

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

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
<input type="text" value="Operations Director"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£52.13"/>
<input type="text" value="Project Manager"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£41.25"/>
<input type="text" value="Commercial Director"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£50"/>
<input type="text" value="Assistant Quantity Surveyor"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£25"/>
<input type="text" value="Technical Director"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£50"/>
<input type="text" value="Design Manager"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£40"/>
<input type="text" value="Senior Health and Safety Advisor"/>	<input type="text" value="Hourly Rate"/>	<input type="text" value="£37.50"/>

The published list of Equipment is the edition current at the Contract Date of the list published by

The percentage for adjustment for Equipment in the published list is

 % (state plus or minus)

The rates for other Equipment are

Equipment	rate
<input type="text" value="TBC"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

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

category of person rate

	T B C	

The rates for Defined Cost of design outside the Working Areas are

category of person rate

	T B C	

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

TBC
