PRECONSTRUCTION DELIVERY AGREEMENT

**NEC PROFESSIONAL SERVICES CONTRACT**

*The following Delivery Agreement template is drafted on the basis that the law of England and Wales applies.*

Pre-construction Services Delivery Agreement

(Professional Services Contract)

**THIS AGREEMENT** is made on [ ] 202[ ]

BETWEEN:

(1) [insert Employer name] of [insert Employer registered address] (**the ‘Employer’**)

 AND

* + - 1. Willmott Dixon Construction Limited whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire SG6 4ET (**the ‘*Contractor***)

for the Services of Pre-construction, Design and other Professional Services to complete RIBA Stage **[insert stage here]**.

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated 4th April 2022 made between **PLACES FOR PEOPLE GROUP LTD** and the Contractor (the ‘Framework Agreement’)

**When using the Professional Services Contract, the Contractor (as stated in the Framework Agreement) is the party named as ‘*Consultant’.***

**IT IS AGREED** as follows:-

1. **The *Contractor’s* obligations**

 The *Contractor* provides the services and comply with his obligations, acting as the *Consultant* in accordance with the conditions of contract set out in the Contract Data herein.

2. **The *Employer’s* obligations**

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions

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

**1. General**

The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, [X5], X7, X8, X9, X10, X11, X18, [Y(UK)1], Y(UK)2, Y(UK)3 of the NEC3 Engineering and Construction Contract April 2013, Option A.

* The *Employer* is

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Telephone |  |
| E-mail address |  |

* The *Adjudicator* is

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Telephone |  |
| E-mail address |  |

* The *Services* are
* The Scope is:

**Project Brief** [insert project specific brief ]

* The *language* of this contract is English
* The *law* of the contract is the law of England and Wales
* The *period for reply* is **2** weeks
* The *period for retention* is **12** years following Completion or earlier termination
* The *Adjudicator nominating body* is **the Royal Institution of Chartered Surveyors**
* The *tribunal* is **the Courts of England and Wales**
* The following matters will be included in the Risk Register

……………………………………………………………………

……………………………………………………………………

**2. The Parties’ main responsibilities**

* The *Employer* provides access to the following persons, places and things

access to *access* date

………………………… …………………………

 ………………………… …………………………

**3. Time**

* The starting date is ……………………………………………………
* The *Consultant* submits revised programmes at intervals no longer than**5** weeks

**4. Quality**

* The quality policy statement and quality plan are provided within **2** weeks of the Contract Date.
* The *defects date* is **12** weeks after Completion of the whole of the *services*.

**5. Payment**

* The *assessment interval* is monthly
* The *currency* of the contract is **the pound sterling**
* The *interest rate* is 3% per annum above the base rate in force from time to time of the Bank of England..

**8. Indemnity, insurance and liability**

* The amounts of insurance and the periods for which the *Consultant* maintains insurance are

|  |  |  |
| --- | --- | --- |
| **event** | **Cover** | **period following Completion of the whole of the *services* or earlier termination** |
| Professional Indemnity Insurance - failure of the *Consultant* to use the skill and care normally used by professionals providing services similar to the *services* | **£5,000,000** in respect of each claim, without limit to the number of claims **or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm (all claims relating to fire safety are limited to £5,000,000 in the aggregate)** | 12years  |
| death or bodily injury to a person (not an employee of the *Consultant* ) or loss of or damage to property resulting from an action or failure to take action by the *Consultant*  | **£10,000,000** in respect of each claim, without limit to the number of claims | 12 years  |
| death or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | **£10,000,000** in respect of each claim, without limit to the number of claims | 12 years |

* The *Employer* provides the following insurances
* Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to ‘self-insure’ such existing buildings and property and in doing so accepts all of the *Employer’s* associated risks arising out of or in relation to such ‘self-insurance’. In accordance with an Employer’s decision to ‘self-insure’ they do not accept any additional insurance premium/cost from the *Contractor*.

…………………………………………………………………………………………………

…………………………………………………………………………………………………

* The *Consultant’s* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters is limited to

£5,000,000

**Optional statements** (The following optional clauses apply)

**If the *Employer* has decided the *completion date* for the whole of the *services***

* The *completion date* for the whole of the *services* is ………………………..

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

* The *Consultant* is to submit a first programme for acceptance within **2** weeks of the *Contract Date*.

**If the *Employer* has identified work which is 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

**If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due**

* The period for payment is **14** days

**If the *Employer* states any expenses**

* The *expenses* stated by the *Employer* are

Itemamount

**If Option A is used**

* The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than **4** weeks.

**If Option C is used**

* The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than **4** weeks.
* The *exchange rates* are those published in **[*to be agreed on a project specific basis*]** on **[*to be agreed on a project specific basis*]** (date)

**If Option C is used**

* The *Consultant’s share percentages* and the *share ranges* are:

 *Share range* *Consultant’s share percentage*

Less than 95% 10%

From 95% to 100% 40%

From 100% to 102.5% 40%

Greater than 102.5% 100%

**Option X2**

* The *law of the project* is the law of England and Wales

**If Option X5 is used**

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

*section* description *completion date*

1. ……………….. …………………….

2. ……………….. …………………….

3. ……………….. …………………….

**If Option X5 and X7 are used together**

* Delay damages for each *section* of the services are

*section* description *completion date*

1. ……………….. …………………….

2. ……………….. …………………….

3. ……………….. …………………….

Remainder of *services ………………………..*

**If Option X7 is used (whether or not Option X5 is also used)**

* Delay damages for Completion of the whole of the *services* are £nil per day

**Option X8**

* The *collateral warranty agreements* are

agreement reference third party

**If Option X10 is used**

* The *Employer’s Agent* is

Name ………………………………………………….

Address ………………………………………………..

* The authority of the *Employer’s Agent* is all actions by the Employer stated in this contract except clauses 51, 90, 91 and 92.

**If Option X18 is used**

* The *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to
	+ £1,000,000
* provided that notwithstanding the above or any other provision of this contract, in the event of any claim arising as result of any failure to comply with building regulations and/or any other statutory requirements relating to the works and method, system, design products and materials detailed in the Fire Safety Strategy then (provided the Contractor has delivered the works in compliance with the Fire Safety Strategy) the Contractor shall have no liability to the Employer for any indirect or consequential loss arising as a result of any breach and any other liability of the Contractor shall be limited to £1,000,000.00 million pounds in aggregate.
* The *Consultant’s* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to the higher of
	+ £5,000,000 or
	+ 120% of the tendered total of the Prices subject to a maximum of £
* The end of liability date is **12 years** after Completion of the whole of the services (unless the Delivery Agreement is executed under hand in which case the end of liability will be **6 years** after Completion of the whole of the services).

**If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the *project bank***

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

**If Options Y(UK)3 is used**

* Term person or organisation

 ……………….. ………………..

 ……………….. ………………..

 ……………….. ………………..

 ……………….. ………………..

**If Options Y(UK)1 and Y(UK)3 are both used**

* Term person or organisation

 The provisions of Option Y(UK)1 Named Suppliers

**Option Z**

The additional Conditions of Contract are:

**1 General**

11.2 (2) Add further bullet point:

* provided or procured all Collateral Warranties which the *Consultant* is then obliged under this contract to provide or procure;

11.2(26) Insert a new definition:

‘Framework Agreement’ is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Consultant* dated 4th April 2022

**11.2(31) Fire Safety Strategy** means the specifications and drawings setting out the detailed design for the *works* and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the *works* including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in.”

**2 The Parties’ main responsibilities**

21.Amend as follows:

21.2 Delete and replace with:

‘The *Consultant’s* obligation is to exercise (and it warrants that it has exercised) all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified consultant of the professional discipline relevant to the Services being performed and who is experienced in undertaking services such as the Services in a similar timescale and also in connection with projects equivalent to the Project in connection with which the *services* are being performed.’

**The Consultant’s Obligations**

21.3 Insert new clause 21.3

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

1. no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
2. the Contractor in delivering the Works and complying with the requirements of the Contract and any documents forming part of the Contract shall exercise reasonable skill and care and shall have the like liability to the Client, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Client, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.’

Insert a new clause 21.3.2

21.3.2 Where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Strategy Document and/or in any Specification, information or Drawings prepared by or on behalf of the Client have been installed and fitted by the Contractor and building regulation approval has been issued then the issue of such building regulation approval on practical completion of the works shall be deemed conclusive evidence that such method, system, design products or materials comply with such requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Control Regulations.’

**Compensation Events**

60.1 (11) Amend clause 60.1(11) by adding to the end of the third bullet point: “and for the avoidance of doubt the impact of coronavirus shall remain within the scope of this definition”

60.1(13) Insert new clause 60.1(13):

Any change to the Fire Safety Strategy after the Contract Date required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority building control or approved inspector and which affects the execution of the Works shall be a Client’s risk.

60.1(14) Insert new clause 60.1(14)

a delay in the procurement or transportation of any goods or materials which has a direct and adverse effect upon the whole of the Works or a programme critical element of the Works caused as a consequence of any limitation on the free movement of goods and materials to the United Kingdom from the European Union provided that the Contractor has used all practicable steps to minimise and mitigate any delay arising from the events contemplated in this clause 60.1.(14) including placing orders for such goods or materials within a reasonable time based on any relevant lead in times that could be reasonably anticipated at the Contract Date and provided further that there shall be no increase to the Prices arising from a compensation event under this clause 60.1.(14).

60.1(15 ) Insert new clause 60.1(15)

 a shortage in the supply of labour affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works caused as a consequence of legislation limiting the right of European citizens to work, remain or enter the United Kingdom

**81**  **Indemnity insurance and liability**

81.1 Amend the insurance table:

In respect of the first entry in the left hand column that starts ‘Liability of the Consultant…’ amend so that it reads:

‘Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care required by this contract.’

**Insert new OPTION X21: CIC BIM PROTOCOL** *(only applies when BIM is required)*

X21.1 In this Option, the Protocol is the CIC Building Information Modelling Protocol, first edition 2013. Terms used in this clause are those defined in the Protocol.

X21.2 Clauses 1, 2, 5, 6, 7 of the Protocol are *additional conditions of contract*. Clauses 3 and 4 and Appendices 1 and 2 of the Protocol are Scope.

X21.3 The following are compensation events.

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

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

**Statements given in all contracts**

* The *Consultant* is Willmott Dixon Construction Limited

The Services are to be delivered by Local Construction Office:-

|  |  |
| --- | --- |
| Name | **(Insert LCO details to be agreed on a project specific basis)** |
| Address |  |
| Telephone |  |
| E-mail address |  |

* The key persons are

|  |  |
| --- | --- |
| (1) Name |  |
| Job |  |
| Responsibilities |  |
| Qualifications |  |
| Experience  |  |
| (2) Name |  |
| Job |  |
| Responsibilities |  |
| Qualifications |  |
| Experience  |  |

* The staff rates are

**name /designation rate**

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

* The following matters will be included in the Risk Register

**[insert project specific risks]**

**Optional Statements**

**If the *Consultant* is to decide the *completion date* for the whole of the *services***

* The *completion date* for the whole of the *services* is

**If a programme is identified in the Contract Data**

* The programme identified in the Contract Data is…………………………………….

**If the Consultant states any expenses**

* The *expenses* stated by the Consultant are

Item amount

…………………….. ………………………………

**Option A**

* The *activity schedule* is ……………………………………

The tendered total of the Prices is **[insert project specific price]**

**If Option Y(UK)1 is used**

* The *project bank* is …………………..……………………………….
* *named suppliers* are ………………………………………………….

**[Insert Employer specific execution details]**

Executed as a deed for and on behalf of )

**(Insert name of Employer)** )

by )

 …………………………………………

 Chairman

 …………………………………………

 Authorised signatory

Executed as a deed for and on behalf of )

**Willmott Dixon Construction Limited** )

by )

 …………………………………………

 Director

 …………………………………………

 Full name (BLOCK CAPITALS)

 …………………………………………

 Position/title

 …………………………………………

 Director/ Secretary

 …………………………………………

 Full name (BLOCK CAPITALS)

 …………………………………………

 Position/title