**[EMPLOYER] (“Employer”)**

**and**

**[CONTRACTOR] (“Contractor”)**

**SCHEDULE OF AMENDMENTS**

**TO THE JCT MEASURED TERM CONTRACT 2016 EDITION**

relating to

**[insert description of Works]**



**30 Finsbury Circus**

**London**

**EC2M 7DT**

**INDEX[[1]](#footnote-2)**

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|  |
| --- |
|  **Agreement** |

**This Agreement** is made the 20

**Between The Employer:** **[ ]** (Company No. [ ])whose registered office is at [ ][[2]](#footnote-3)

 ***Or***

 [  ] (a registered society as defined in the Co-operative and Community Benefit Societies Act 2014 with registration number [ ]) whose registered office is at [ ][[3]](#footnote-4)

**And The Contractor: [ ]** (Company No. [ ])whose registered office is at [ ]

|  |
| --- |
| **Recitals** |

**Whereas**

**First** the Employer requires works and services to be carried out at the properties more particularly set out in the Specification and/or within areas notified by the Employer from time to time (‘the Contract Area’) in accordance with the details set out or referred to in the Contract Particulars;

**Second** the Contractor has offered to carry out the required works at specified rates or as otherwise determined in accordance with the Conditions and the Employer has accepted that offer;

**Third** the Employer has appointed a Contract Administrator to issue Orders for the required works and carry out the functions ascribed to the Contract Administrator by the Conditions;

**Fourth** the Contractor has supplied to the Employer the Contractor’s safety policy complying with Statutory Requirements, a copy of which is annexed;

**Fifth** whether any of Supplemental Provisions 1 to 6 is stated in the Contract Particulars apply.

|  |
| --- |
| **Articles** |

**Now it is hereby agreed as follows:**

**Article 1: Contractor’s obligations**

The Contractor shall carry out all Orders that are placed with him during the Contract Period in accordance with the Contract Documents.

**Article 2: Payment**

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Price Framework.

**Article 3: Contract Administrator**

For the purposes of this Contract the functions of the Contract Administrator shall be undertaken by [ ] of **[ ]** or if he/she ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

**Article 4: Principal Designer**

The Principal Designer for the purposes of the CDM Regulations is the [Contractor][[4]](#footnote-5) or, if he/she ceases to be the Principal Designer, such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

**Article 5: Principal Contractor**

 The Principal Contractor for the purposes of the CDM Regulations is the Contractor or, if he ceases to be the Principal Contractor, such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

**Article 6: Adjudication**

 If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

**Article 7: Arbitration**

 Where Article 7 applies, then subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 7 are:

* any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
* any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

**Article 8: Legal Proceedings**

Subject to Article 6 and (where it applies) Article 7, the English Courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

**Article 9:**

The Employer and the Contractor agree that the modifications in these schedule of amendments (“Schedule of Amendments”) shall be incorporated into this Contract and the provisions of the Agreement, Recitals, Articles, Contract Particulars and the Conditions shall have effect as modified by the Schedule of Amendments, which together comprise “the Contract”.

**Article 10 – Performance Bond**

The Contractor shall procure the execution and delivery of a performance bond to the Employer within 14 days of the later of the i) commencement of the Contract Period and ii) a written request from the Employer confirming the estimated annual contract value for the first 12 months of the Contract Period, in the sum of [10%][[5]](#footnote-6) of the estimated annual contract value under this Contract.

The Contractor shall renew the bond facility on an annual basis in the sum of [10%][[6]](#footnote-7) of the notified estimate annual contract value until the expiry of the Contract Period. The Contractor shall procure the execution and delivery of the renewed replacement performance bond within 14 days of i) the expiry of the performance bond previously provided, and ii) a written request from the Employer confirming the estimated annual contract value for the following 12 months of the Contract Period.

The performance bond shall in each case be in the form of Schedule 3 to this Contract with only such amendments as the Employer may approve (acting reasonably).

Following any such request for a performance bond under this Article 10, the Employer may withhold any sums owed under the Contract until such time as the bond has been provided.

The Contractor shall include the cost of the bond in the next interim monthly application for payment after the delivery of a completed bond.

**Article 11 – Parent company guarantee**

The Contractor shall procure the execution and delivery of a parent company guarantee to the Employer within 14 days of a written request in the form of Schedule 4 to this Contract, from its ultimate asset holding parent company, with only such amendments as the Employer may approve. Following a request for a parent company guarantee under this Article 11, the Employer may withhold any sums owed under this Contract until such guarantee has been provided.

**Article 12 – Key Performance Indicators**

The Contractor shall carry out the works and all Orders under this Contract in accordance with the Key Performance indicators as set out at Schedule 7 (“the KPI’s”). The KPI’s shall be monitored in accordance with the procedures as set out in the KPI’s and clause 24.1. At any time during the Contract Period the Employer may carry out whatever checks and monitoring it deems necessary to ensure that any KPI’s measured by the Contractor are correct.

**Article 13 – Contract Review [and Cost Saving]**

The Employer and Contractor shall review the Contract [and any potential cost saving][[7]](#footnote-8) in accordance with the provisions of Schedule 10.

**Article 14 – Retrospective Liability**

Notwithstanding the date of this Contract it shall have effect as if it had been executed upon the date the Contractor first performed any work (including design, enabling, temporary or other preliminary or permanent works), services or activities in relation to the Works, and accordingly the duties and obligations of the Contractor as contained in this Contract shall be deemed to have applied to the carrying out of any of those works, services, activities and/or the Works prior to the date of this Contract. Any amounts paid by the Employer to the Contractor prior to the date of this Contract shall be treated as payment for sums payable for Works completed under this Contract.

[**Article 15 – Recording Fire Safety and Competency**

15.1 During the course of the Works the Contractor shall provide detailed photographic records to the Contract Administrator (or such other person nominated by the Contract Administrator or the Employer) of all fire safety products/materials and measures (both active and passive) that are installed on or in the Properties as part of the Works, including but not limited to all certification labels to fire stopping and to demonstrate the correct design and construction of fire compartmentation (the latter where this falls within the scope of the Works under an Order), and shall provide such photographic records at times and in a format requested by the Employer, and such records will include any other information specified in the Specification (“**the Fire Safety Record**”). The photographs must be provided with reference to the recording system set out in the Specification or such other system agreed between the Parties so that the location of each photograph can be precisely identified. The Fire Safety Record shall include, but is not limited to, materials installed on façades and attachments to facades, cavity barriers, fire stopping, fire doors, fire alarm systems and suppression systems and any other requirements set out in the Specification.

15.2 The Contractor shall ensure that it provides the Employer with a complete Fire Safety Record no later than one month before the Order Completion Date or the required timeframe for completion of Works to a Property and the provision of a completed Fire Safety Record shall be a condition precedent to the Employer accepting completion of Works carried out pursuant to an Order or to a Property.

15.3 The Contractor shall be responsible for the cost of providing the Fire Safety Record.

15.4 Where the Contractor fails to provide the Fire Safety Record in accordance with the provisions of this Article 15, the Employer shall be entitled to instruct the opening up of any element of the Works as necessary to obtain such photographic records and other information required and such instruction shall not be treated as a Variation or entitle the Contractor to an extension of time to any Order Completion Date or to any adjustment to any Order Price including any claim for loss and expense or to damages in respect of any delays to the Works or any additional costs, loss and/or expense suffered or incurred by the Contractor. The Contractor shall undertake such opening up and reinstatement works at its cost.

15.5 The Contractor acknowledges that the Employer may engage a fire engineer to review the Fire Safety Record, and the adequacy of the Fire Safety Record shall be subject to the final approval of the fire engineer. The Contractor shall co-operate fully with the Employer’s appointed fire engineer in the carrying out of their services and duties and such co-operation shall extend to allowing access to the Site, the Works, the Fire Safety Record, and any other documents and information as may reasonably be required and requested by the Employer’s appointed fire engineer. If the fire engineer is not satisfied with the adequacy of the Fire Safety Record, the Contractor shall take such steps as instructed by the Employer to satisfy the requirements of the fire engineer or the Employer shall be entitled to instruct the opening up of any element of the Works as necessary. Any instructions issued pursuant to this Article 15.5 shall not be treated as a Variation or entitle the Contractor to an extension of time to any Order Completion Date or to any adjustment to any Order Price including any claim for loss and expense or to damages in respect of any delays to the Works or any additional costs, loss and/or expense suffered or incurred by the Contractor. The Contractor shall undertake any required opening up and reinstatement works at its cost.

15.6 Subsequent to foreseen fire safety regulation changes (including but not limited to the Building Safety Act 2022 and Fire Safety Act 2021), the Contractor understands that the Works are being carried out to a residential building(s) and shall, as an essential part of the Works, ensure that all fire safety standards, regulations and laws are adhered to such that the Works (design, materials, goods, workmanship and any reporting to the Employer) shall meet or exceed such residential works fire safety standards required by Statutory Requirements, which for the avoidance of doubt includes the Building Safety Act 2022 and Fire Safety Act 2021. The Parties agree that the Employer may require reasonable additional information from the Contractor and/or reasonable additional site inspections to ascertain whether the Contractor is complying with this Article 15.6 during the Works. The Contractor shall co-operate, share information, and coordinate the Works with and seek approvals from any building safety regulator as required by the Employer and this requirement shall not be treated as a Variation or constitute a change in Statutory Requirements.

15.7 The Contractor shall at no cost to the Employer co-operate and provide the Employer with such documents and other information in relation to the Works and/or the Contractor as may be specified in the Contract Documents and/or in these Conditions, such documents and information to be provided at the time specified or if not specified within a reasonable time after a written request for the same by the Employer (having regard to the nature of the request). In addition, the Contractor shall co-operate and provide such other documents and information in relation to the Works (including in relation to the planning, design, construction and/or completion of the Works) and/or the Contractor as may be reasonably required by the Employer to satisfy any Statutory Requirements, such documents and information to be provided within a reasonable time after a written request for the same by the Employer (having regard to the nature of the request).

15.8 The Contractor warrants that the Contractor and its sub-contractors and suppliers (including the individuals employed or appointed by them to carry out any works or services in relation to the Works) or any Contractor’s Persons have and will for the duration of the Works continue to have the skills, knowledge, experience, behaviours and capabilities required to properly and competently perform their respective duties and obligations in relation to the Works, including where applicable any duties and obligations imposed on such person by any Statutory Requirements.

15.9 The Employer may at any time require the Contractor to provide details and evidence of the qualifications and/or experience of any person employed or engaged in connection with the Works.

15.10 The Contractor shall, if required by the Employer and at no cost to the Employer, replace or procure the replacement within a reasonable period of any person who does not have the skills, knowledge, experience, behaviours and capabilities required to properly and competently to perform their respective duties and obligations in relation to the Works.

15.11 The Contractor shall be responsible for and shall indemnify the Employer and any Group Company against any and all losses, liabilities, damages, costs, claims, proceedings or expenses whatsoever suffered or incurred by the Employer, or by any Group Company, arising out of or in connection with any failure by the Contractor to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in relation to the Works or any part thereof.

15.12 The Contractor’s liability under this Contract shall expire 12 years following completion of the Works pursuant to an Order (“Limitation Date”), save in respect of:

 (a) any claims notified before or on the Limitation Date; and

 (b) any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that the Contractor’s liability under this Contract in respect of such claims shall expire on the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to any actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

15.13 Subject to Article 15.14, no action or proceedings for any breach of this Contract may be commenced against the Contractor after the Limitation Date.

15.14 Nothing in Article 15.13 shall limit the Employer’s right to commence an action or proceedings against the Contractor in respect of any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that no such action or proceedings may be commenced against the Contractor after the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.][[8]](#footnote-9)

[**Article 16 – Social Value**

The Employer and Contractor are committed to ensuring that this Contract provides social value, as more specifically set out in the Specification and the Contractor’s tender response and the Contractor shall comply with its social value obligations as included under this Contract. The Contractor shall not be entitled to any additional money for discharging any social value obligations. The cost of discharging those obligations shall be deemed to be included within the Contractor’s Rates and Prices.][[9]](#footnote-10)

[**Article 17 – Option to Extend**

The Employer may choose to extend the Contract Period by a further period or periods of up to [ ] at its sole discretion. The Contractor acknowledges that in the event of a procurement challenge in respect of or in connection with the extension of the Contract Period (should the Employer exercise its option to extend the Contract Period), the Employer reserves the right to terminate the Contract by written notice with immediate effect. For the avoidance of doubt, in the event of the Contract coming to an end in this manner the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of a reduction in the Contract Period or the Contract coming to an end.][[10]](#footnote-11)

[**Article 18 – Specified Materials**

 18.1 The Contractor shall source the Specified Materials from the Named Supplier or, with the prior written consent of the Employer, from a party other than the Named Supplier provided this shall not be at any additional cost to the Employer. The Contractor shall be responsible for sourcing the Specified Materials without causing delay to the Works, and shall not be entitled to an extension of time or any adjustment to the sums payable under this Contract to the extent there is any delay in receipt of the Specified Materials.

 18.2 The Contractor shall be deemed to have satisfied itself as to the extent and nature of the Specified Materials to be supplied under this Contract, including, but not limited to personnel, materials and equipment, consumables and facilities required for the supply of the materials; the general and local conditions including climatic and weather conditions, and all other matters which could affect progress or performance of the supply of the materials. The Contractor shall be fully responsible for the Specified Materials, including (without limitation) design, installation and performance. Any products or Specified Materials supplied or Works carried out by a Named Supplier, or other parties as approved by the Employer, shall be deemed to have been supplied or carried out on a domestic subcontractor basis and the Contractor shall be fully responsible for the supply, design and installation of the relevant products or Specified Materials and Works by the Named Suppliers or other parties as approved by the Employer.

 18.3 Any failure by the Contractor to take account of matters which affect the provision of the Specified Materials, including (but not limited to) matters set out at Article 18.2, will not relieve the Contractor from its obligations under this Contract or entitle the Contractor to an increase in any rate, percentage adjustment or price payable to it under this Contract.

 18.4 As a pre-condition to the Employer’s acceptance of the completion of Works under an Order or to a Property, the Contractor shall obtain all product warranties from the Named Supplier or, subject to obtaining consent pursuant to Article 18.1, from a party other than the Named Supplier in favour of the Employer and provide the same to the Employer immediately upon receipt.

 18.5 The following definitions shall apply to this Article 18:

.1 **Specified Materials** means the materials or products as more particularly set out in the Specification, or as otherwise notified by the Employer, to be sourced from the Named Supplier (or such other party as approved by the Employer).

.2 **Named Supplier** means a supplier referred to in the Specification or as otherwise notified by the Employer.”][[11]](#footnote-12)

[**Article 19 – External Wall Works**

19.1 Prior to completion of the Works pursuant to an Order or to a Property (where required by the Employer) the Contractor shall engage a fire engineer (on terms approved by the Employer) who is currently a member of the Institute of Fire Engineers (and has been a member for at least the past five years) (“**the Fire Engineer”)** to carry out and undertake an assessment of (i) the external wall systems of the Works, (ii) any attachment to the external wall systems (such as balconies) (iii) cavity barriers, (iv) fire stopping, (v) fire doors, and (vi) fire suppression systems in order to determine whether the design and construction of these elements of the Works is safe and meets the functional requirements of the Building Regulations in relation to fire safety (the “**External Wall Statement**”). For the purposes of carrying out the services required to prepare the External Wall Statement the Fire Engineer shall be provided with the Fire Safety Record (as defined in Article 15.1), including any updated Fire Safety Record, and shall be allowed access to the Works in order to carry out any inspection (intrusive or otherwise) that may be required in order to complete the External Wall Statement. The Contractor shall provide all facilities required by the Fire Engineer in order to carry out and complete the External Wall Statement.

19.2 The provision of the External Wall Statement shall be a condition precedent to the Employer accepting completion of Works carried out pursuant to an Order or to a Property.

19.3 For the avoidance of doubt any delay to the Works caused by the Fire Engineer completing the External Wall Statement shall not give rise to an entitlement to an extension of time to the Order Completion Date or to any adjustment to the Order Price or entitle the Contractor to any loss and/or expense or damages in respect of any delays to the Works or any additional costs, loss and/or expense suffered or incurred by the Contractor.

19.4 To the extent the External Wall Statement identifies defects in the Works then the defects shall be remedied in accordance with the terms of the Contract.

19.5 The Contractor shall be responsible for the cost of providing the External Wall Statement.

19.6 The Contractor shall procure that the Fire Engineer, or any other person approved by the Employer (including the terms of engagement) and appointed by the Contractor, shall in addition to the External Wall Statement (where required by the Employer) provide the Employer with an EWS1 Form published by the Royal Institution of Chartered Surveyors (or equivalent as approved by the Employer) achieving the rating specified by the Employer. The requirement of an EWS1 Form shall be a condition precedent to the Employer accepting completion of Works carried out pursuant to an Order or to a Property.][[12]](#footnote-13)

[**Article 20 – Initial Order**

20.1 The Employer may issue an instruction to the Contractor, which shall set out a list of Properties that the Employer requires the Contractor to inspect and survey **(“Initial Order”)**. The Contractor shall carry out such inspections and surveys within the timeframes set out in the Initial Order (or within a reasonable period of time following receipt of the Initial Order if no timeframes are set out therein). The scope of the inspections and surveys shall be set out in the Initial Order.

20.2 The Contractor shall produce a works schedule no later than 14 days after completion of the Initial Order, and on the completion of any inspections and surveys undertaken pursuant to the Initial Order, setting out the Works that may be required at the Properties, any additional performance specification, the programme for completion of those Works, and the fixed costs of carrying out and completing those Works (and any other information requested by the Employer to be included as part of the works schedule). The fixed costs shall be in accordance with the Contractor’s Rates or on such other rates as may be agreed by the Employer.

20.3 Upon receipt of the Contractor’s works schedule, any additional performance specification, programme and fixed prices, the Employer may place an Order for the Works set out in the work schedule (whether in whole or in part) or ask the Contractor to submit up to one or more quotations for prior approval by the Employer in accordance with the procedure at clauses 3.5.8 to 3.5.13. The Employer may include any Works subsequently approved under an existing Order or instruct those Works under a new Order. For the avoidance of doubt, the Employer is under no obligation to issue an Order.][[13]](#footnote-14)

**Execution – the contract will be executed as a deed.**

|  |
| --- |
| **Contract Particulars** |

***Note: An asterisk \* indicates text that is to be deleted as appropriate.***

1. **Properties and description of the types of work**

(First Recital)

.1 List of properties in the Contract Area in respect of which Orders may be issued:

as more particularly set out in the Specification, or as otherwise advised by the Employer

.2 Description of the types of work for which Orders may be issued:

as more particularly set out in the Specification

1. **Supplemental Provisions**

(Fifth Recital and schedule)

(*Where neither entry against one*

*of the Supplementary Provisions*

*1 to 6 below is deleted, that*

*Supplemental Provision applies*)

|  |  |  |
| --- | --- | --- |
| Collaborative working |  | Supplemental Provision 1 |
|  | \* | applies |
|  |  |  |
| Health and safety |  | Supplemental Provision 2 |
|  | \* | applies |
|  |  |  |
| Cost savings and value improvements |  | Supplemental Provision 3 |
|  | \* | does not apply |
|  |  |  |
| Sustainable development and |  | Supplemental Provision 4 |
| environmental considerations | \* | applies |
|  |  |  |
| Performance Indicators and monitoring |  | Supplemental Provision 5 |
|  | \* | applies |
|  |  |  |
| Notification and negotiation of disputes |  | Supplemental Provision 6 |
|  | \* | applies |
|  |  |  |
| Where Supplemental Provision 6 applies, the respective nominees of the Parties are |  | Employer’s nominee |
|  |  | [ ] |
|  |  |  |
|  |  | Contractor’s nominee |
|  |  |  |
|  |  | [ ] |
|  |  | or such replacement as each Party may notify to the other from time to time |

1. **Contract Period**

(Article 1 and clause 7.1)

Subject to [Article [17][[14]](#footnote-15) and][[15]](#footnote-16) clause 7.1, the Contract Period will be [ ] years, commencing on [ ].

1. **Arbitration**

(Article 7)

|  |  |  |
| --- | --- | --- |
| (*If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.*)5A **Service by email:**  (Clause 1.6.3)Employer: [ ] [ ] Contractor: [ ] [ ] [[16]](#footnote-17) |  | Article 7 and clauses 9.3 to 9.8 (*Arbitration*) |
| \* | do not apply |

1. **BIM Protocol**

(Clause 1.1)

BIM Protocol (where applicable) N/A

*(State title, edition, date or other*

*Identifiers of the relevant documents)*

1. **Orders** **– minimum and maximum value**

(clause 2.4)

Minimum value of any one Order to be issued

£ N/A

Maximum value of any one Order to be issued

£ N/A

1. **Orders** **– value of work to be carried out**

(Clause 2.5)

Approximate anticipated value of work to be carried out under this Contract

\* £ N/A

 per annum

\* £ N/A

 for the Contract Period

1. **Orders – priority coding**[[17]](#footnote-18)

(Clause 2.6)

as more particularly set out in the Specification, or where specified in the Order.

1. **Construction Industry Scheme (CIS)**

(Clause 4.2)

The Employer at the commencement of the Contract Period

\* [is] [is not][[18]](#footnote-19) a ‘contractor’

for the purposes of the CIS

1. **Payments**

(Clause 4.3.1)

Estimated value of an Order above which £ N/A

progress payments can be applied for

(*if none is stated, it is £2,500.*)

1. **Responsibility for measurement and valuation**

(Clause 5.2)

|  |  |  |
| --- | --- | --- |
|  | \* | The Contractor shall measure and value all Orders, which shall be subject to validation by the Contract Administrator. |

1. **Schedule of Rates**

(Clause 5.3, 5.6)

.1 **The Schedule of Rates** is

as set out in the Price Framework (Schedule 6)

|  |  |  |  |
| --- | --- | --- | --- |
| .2 | Where the Schedule of Rates is the National schedule of Rates the version(s) identified opposite are to apply | \* |  |
|  | \* | N/A |
|  |  |  |  |
| .3 | **Rates – Fluctuations** |  |  |
|  |  |  |  |
|  | Clause 5.6 | \* | applies  |
|  | (*Unless ‘applies’ is deleted, the clause shall be deemed to apply*) | \* | does not apply[[19]](#footnote-20) |
|  |  |  |  |
| .4 | **Basis and dates of revision** |  |  |
|  | (*Not applicable where the National Schedule of Rates applies*) |
|  |  |  |  |
|  | Where clause 5.6 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6 (*If no basis is identified the rates remain fixed for all Orders*) | \* | ~~is as follows/~~ |
|  | \* | is set out  |
|  |  | at clause 5.6. |
|  |  |  |
|  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | Where clause 5.6 applies, the date at which the Contractor’s Prices are to be revised:  |  | the **[ ]**[[20]](#footnote-21) **anniversary** of the commencement of the Contract Period and each anniversary of this date thereafter |

1. **Daywork**

(Clause 5.4, 5.6)

|  |  |
| --- | --- |
| .1 | **Valuation – percentage additions** |
|  |  |  |  |
|  | Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows: |
|  |  |  |  |
|  | Overheads and profits on Materials |  | As per Price Framework |
|  |  |  |  |
|  | Overheads and profit on Plant, Services and Consumable Stores |  | As per Price Framework |
|  |  |  |
|  |  |  |  |
|  | Overheads and profit on Sub‑Contractors |  | As per Price Framework |
|  |  |  |
|  |  |  |  |
| .2 | **Revision of Schedule of Hourly Charges** |
|  |  |  |  |
|  | Clause 5.6 | \* | applies |
|  |  | \* | does not apply[[21]](#footnote-22) |
|  |  |  |
|  | (Where clause 5.6 applies) the annual revision date (if other than 1 August) is |  |   |
|  |  |  |
|  |  | the **[ ] anniversary** of the commencement of the Contract Period and each anniversary of this date thereafter |
|  | (Where clause 5.6 applies) the basis of revision of hourly charges, if not set out in the Schedule of Hourly Charges | \* |  |
|  | \* |  |
|  |  |  |

1. **Overtime work**

|  |  |  |
| --- | --- | --- |
| The percentage addition in respect of overheads and profit on non-productive overtime rates is(*Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges*) |  | N/A per cent |
|  |  |

1. **Insurance[[22]](#footnote-23)**

(Clauses 6.4.1, 6.7A, 6.7B, 6.8, 6.11, 6.15 and 6.16)

|  |  |  |  |
| --- | --- | --- | --- |
| .1 | Contractor’s Public Liability insurance: injury to persons or property – the required level of cover is not less thanEmployers’ Liability insurance: injury to employees of the Contractor – the required level of cover is not less than |  | £\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_for any one occurrence or series of occurrences arising out of one event£\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_for any one occurrence or series of occurrences arising out of one event |
|  |  |  |  |
| .2 | Percentage to cover professional fees *(if no other percentage is stated, it shall be 15 per cent.)* |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per cent |
|  |  |  |  |
| .3 | Insurance of existing structures –clause 6.7A.1 |  | \* applies (the Employer is not required to and shall not name the Contractor on a Joint Names Policy) |
|  |  |  |  |
| .4 | Insurance of work or supply comprised in Orders – clause 6.7B *(If neither entry is deleted, the clause does not apply.)* |  | \* applies (Contractor to maintain) |
| .5 | Where clause 6.7B applies and cover is to be provided under the Contractor’s annual policy, the annual renewal date is (as supplied by the Contractor) |  | to be provided by the Contractor |
|  |  |  |  |
| .6 | Terrorism Cover – details of the required cover(*Unless otherwise state, Pool Re Cover is required*) |  | are set out in the following document(s)  |
|  |  | is not required |

1. **Break Provisions – Employer**

(Clause 7.1)

|  |  |
| --- | --- |
| The period of notice | is as per clause 7.1 of this Contract |

1. **Settlement of Disputes**

(Clauses 9.2, 9.3 and 9.4.1)

|  |  |  |
| --- | --- | --- |
| **Adjudication** |  | The Adjudicator is to be appointed by the President or Vice President of: |
| Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) | \* |  |
| \* | the Royal Institution of Chartered Surveyors |
| \* |  |

*Execution as a Deed*

 **Executed as a Deed by the Employer**

namely **[ ]**

1. acting by a Director and the Company Secretary/two Directors **of the company**

 and

(*Print name of signatory*) (*Print name of signatory*)

*Signature Authorised Signatory Signature Authorised Signatory*

1. by affixing hereto the common seal **of the company/other body corporate**

in the presence of

*Signature Authorised Signatory*

 [*Common seal of a company*]

*Signature Authorised Signatory*

*Execution as a Deed*

**Executed as a Deed by the Contractor**

namely 1 **[ ]**

1. acting by a Director and the Company Secretary/two Directors **of the company** 2, 3

 and

(*Print name of signatory*) (*Print name of signatory*)

*Signature Director Signature Company Secretary/Director*

1. by affixing hereto the common seal **of the company/other body corporate** 2, 4

in the presence of

*Signature Director*

 [*Common seal of a company*]

*Signature Company Secretary/Director*

1. by attested signature of a single Director **of the company** 2, 5

 *Signature Director*

in the presence of

Witness’ signature (*Print name*)

Witness’ address

**SCHEDULE OF AMENDMENTS TO JCT MEASURED TERM CONTRACT 2016**

The Form of Contract will be the JCT Measured Term Contract 2016.

**SECTION 1 – DEFINITIONS AND INTERPRETATION**

Clause 1.1 – Delete the definition of Agreement and insert: “Agreement: the Agreement to which these Conditions are annexed, including the Recitals, the Articles, the Contract Particulars, and the Schedules and Annexes to the Agreement.”

Clause 1.1 – Delete the definition of Conditions and insert: “Conditions: the clauses as amended by the Schedule of Amendments and as set out in sections 1 to 29 of the Conditions.”

Clause 1.1 – In the definition of Employer at the end insert: "and its permitted assignees under this Contract."

Clause 1.1 – Delete definition of National Schedule of Rates.

Clause 1.1 – In the definition of “Order”, include the following at the end: “, including any works or services reported through the call centre”

Clause 1.1 – Principal Designer – Delete the wording and replace with: “means the person named in Article 4 or any successor appointed by the Employer”.

Clause 1.1 – Amend definition of Schedule of Rates to read; “the Schedule of Rates identified in Schedule 6 (Schedule of Rates and Price Framework) together with Schedule 5 (Specification) applicable to this Contract included in or annexed to it.”

Clause 1.1 – Delete definition of Valuation Date.

Clause 1.1 – add new definitions as follows:

|  |  |
| --- | --- |
| *Word or phrase* | *Meaning* |
| British Standards:  | documentation that sets out a technical specification or other precise criteria for materials, products, systems and services. British Standards can indicate that materials and products meet a certain safety or environmental standard. |
| Confidential Information: | any information concerning, comprising or relating to the business affairs of the other party, this contract, any other contractor involved in cost sharing arrangements and all related documents, and personal information or details in respect of any employee of either party, or any tenant or any resident of the Employer. |
| Consents: | means any planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, discharging planning conditions (where applicable in relation to any varied or new planning permission), building regulations approval, fire officer approval and any other permissions, consents, approvals, certificates, permits, authorisations and licences that may be necessary pursuant to the Statutory Requirements or otherwise as may be necessary to lawfully carry out, maintain and complete the Works and if they are destroyed or damaged the reinstatement of the Works. |
| Contractor Default: | any of the circumstances set out in Clause 8.4.1 *(Default by Contractor).* |
| Contractor’s IT System: | the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Contractor in connection with the Works. |
| Contractor’s Rates or Prices: | the rates and prices as set out in Schedule 6 *(Schedule of Rates and Price Framework).*  |
| Controller: | has the meaning given in the Data Protection Legislation; |
| Core Group: | the Contract Administrator and two members of senior management that may be appointed from time to time by the Employer and the Contractor’s senior day to day manager of the Contract and any one other member of senior management appointed by the Contractor. |
| Customer: | a tenant, leaseholder or licensee of the Employer or of another landlord for whom the Employer undertakes housing management; |
| Customer Damage: | vandalism or other damage to a Property caused or suspected to be caused by a Customer or member of a Customer’s household or visitor to the Customer (excluding fair wear and tear). |
| Data Breach: | any event that results, or may result, in lack of availability of key systems, unauthorised access to Personal Data held by the Contractor under this Contract and/or any theft, accidental or unlawful dissemination, actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach in accordance with Data Protection Legislation; |
| Data Processing Operations: | the processing of Personal Data relating to employees and officers of the Employer, its service providers, service users and/or other third parties, as necessary for the provision of the Works during the Contract Period, and for such periods after the expiry or end of the Contract Period as are required for compliance with applicable Laws, together with such ancillary processing of Personal Data relating to employees and officers of the Employer, its service providers, service users and/or other third parties as is necessary for the performance of the Contractor’s obligations under this Contract or the administration of this Contract and as further set out in clause 14.1.16; |
| Data Protection Legislation: | all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the (i) Data Protection Act 2018 as amended (ii) the General Data Protection Regulations ((EU) 2016/679) (UK GDPR) (iii) Law Enforcement Directive (Directive (EU) 2016/680); (iv) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended and any applicable national implementing Laws as amended from time to time and all applicable Law, guidance, codes of practice issued relating to data protection or issued by a supervisory authority in relation to the processing of Personal Data and privacy; |
| Data Protection Impact Assessment:  | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| Data Protection Officer: | has the meaning given in the Data Protection Legislation; |
| Data Subject: | has the meaning given in the Data Protection Legislation; |
| Data Subject Access Request: | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| Defect Rectification Period: | * Where the Contractor is notified of a defect which is immediately dangerous or of an emergency nature, the defect must be attended and made safe by the Contractor within 4 hours and remedied on the same Business Day or such other time as notified by the Employer.
* Where the Contractor is notified of a defect of an urgent nature it must be attended and made safe by the Contractor within 4 hours and remedied within 2 Business Days or such other time as notified by the Employer.
* Where the Contractor is notified of a defect of a non-urgent nature, it must be remedied within 5 calendar days.
 |
| Direct Losses: | means all damage, losses, liabilities, claims, actions, costs, fees, expenses (including the cost of legal or professional services, legal costs being on an agent/client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law. |
| Documents and Data: | all documents, data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium used or created in connection with this Contract or the Works. |
| Group Company: | any of the Employer or its subsidiary or subsidiaries (of any tier) or holding company or companies (of any tier) or any subsidiary (of any tier) of any such holding company or companies and “subsidiary” shall bear the meanings given to it in section 1159 Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a), or section 100 or 101 of the Co-operative and Community Benefit Societies Act 2014, and a group company shall include any registered society as defined in the Co-operative and Community Benefit Societies Act 2014. |
| Employer Data: | all data, information records and documentation in any electronic or tangible form relating to the Properties, the Customers or the Works (including the identity of the Staff carrying out each Order) that is held on the Employer’s IT System, the Contractor’s IT System or in paper form. |
| Employer Default: | any of the circumstances set out in Clause 8.7 *(Default by Employer).* |
| Employer Party: | the Employer any board member of the Employer, any employee of the Employer and any Advisor or contractor to the Employer other than the Contractor or any Subcontractor. |
| Employer’s Proprietary Material: | all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Employer in connection with this Contract and/or any Order. |
| Employer’s IT System: | the Employer’s information technology system (including both software and hardware) which is to be used and/or connected to by the Contractor in connection with the Works. |
| Environmental Laws: | any law, statute, statutory instrument or legislation having effect in the United Kingdom, or circulars, guidance notes and the like issued by the United Kingdom Government or relevant regulatory agencies relating to the protection or pollution of the environment (within the meaning of the Environmental Protection Act 1990). |
| Equality and Diversity Law: | means all Law preventing unlawful discrimination, including unlawful checks on the basis of colour, race, nationality, ethnic group, regional or national origin, gender, marital status, civil partnership status, pregnancy, maternity, sexual orientation, gender reassignment, religious or similar belief, age, disability or part time or fixed term status. |
| Expiry Date: | the end of the Contract Period, extended, where applicable, under Clause 8.12 *(Expiry)*. |
| Final Account: | the account issued by the Contract Administrator under Clause 4.6 *(Final Account)* indicating any amount remaining due to the Contractor or the Employer. |
| Final Certificate: | the certificate issued by the Contract Administrator on the expiration of the defects liability period of the last Order issued prior to the termination or expiration of the Contract Period. |
| Force Majeure: | any event beyond the reasonable control of the affected Party which does not relate to its fault or negligence including Act of God, expropriation or confiscation of property or other Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes, power shortages and computer viruses. Force Majeure does not include:* any failure by the Contractor adequately to test any equipment or any materials before their use; and
* strikes or other industrial action by employees of the affected Party or any Subcontractors;
* any inability of the Contractor or its Subcontractors to obtain labour or Materials or any delays in being able to do so; or
* anything caused by a breach of this Contract by the affected Party.
 |
| Hazardous Substances: | any substances which are capable of carrying or causing harm to man or any other living organisms supported by the environment (within the meaning of the Environmental Protection Act 1990). |
| Health and Safety Law: | all Law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents. |
| Intellectual Property Rights: | means all intellectual property rights including patents, inventions, trademarks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off. |
| IT System: | the Employer’s IT System or the Contractor’s IT System (as applicable). |
| KPI or Key Performance Indicator: | a Key Performance Indicator by which the Contractor’s performance of the Works is measured as set out in Schedule 7 *(KPI Framework)*. |
| KPI Target(s): | the KPI targets set out in the KPI Framework at Schedule 7. |
| Law(s): | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, 'enforceable right' within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;  |
| Minimum Level of Acceptable Performance: | the minimum level of acceptable performance thresholds set out in the KPI Framework at Schedule 7. |
| Normal Working Hours: | the hours of [ ] am to [ ] pm on Monday to Friday, excluding a Public Holiday*.*[[23]](#footnote-24)  |
| Order Date for Completion: | the date for completion of each order stated within the Order or as otherwise referred to by any priority coding or as set out in the Specification or the Price Framework. |
| Order Price: | the price payable for the Works in an Order. |
| Order Variation: | a variation to the extent of Works undertaken under an Order from that originally included in the Order. |
| Personal Data: | has the meaning given in the Data Protection Legislation; |
| Personal Data Breach: | has the meaning given in the Data Protection Legislation; |
| Price Framework: | Schedule 6 *(Schedule of Rates and Price Framework)* setting out the basis of payment for the Works and including the Contractor’s Rates. |
| Processor: | has the meaning given in the Data Protection Legislation and **Process, Processed and Processing** shall be construed accordingly; |
| Property or Properties: | the sites at which Works will be undertaken, estates, dwellings, blocks, sheltered schemes, hostels, like properties and related common and communal areas, environs and assets within any area specified in the Contract Particulars or such other area as the Employer specifies by written notice to the Contractor that are included in the property portfolio owned or managed by the Employer and in relation to which the Employer or any other third party provider of property is responsible for maintenance. |
| Proprietary Material: | all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in connection with this Contract and/or any Order. |
| Protective Measures: | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it; |
| Public Health Measures: | mandatory public health measures issued by the United Kingdom Government or a Local or Public Authority after the date of this Contract in connection with any epidemic or pandemic as defined by the World Health Organization from time to time, which directly affects the execution of the Works in any of the following ways: 1. unavailability of labour as a result of preventative measures to alleviate the outbreak spreading and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar; or
2. reduced efficiency and outputs at the site of the Works due to the requirement for the Contractor’s labour force to practise social distancing, provided this excludes any measures that a competent contractor would have expected to have put in place on the date of this Contract; or
3. unavailability of plant, equipment or materials due to delays in their manufacture, importation or transportation;

but only to the extent that any of the events in (a) to (c) above are:  * unforeseeable to a reasonably competent contractor undertaking works similar in nature, scale and cost to the Works; and
* not capable of mitigation or avoidance, either in whole or in part, by a reasonably competent contractor using best endeavours in respect of such mitigation or avoidance; and
* not caused or contributed to by the Contractor's or the Contractor's Persons' negligence, default, breach of this Contract, failure to follow official governmental guidance (whether mandatory or otherwise) or Statutory Requirements relating to any epidemic or pandemic as defined by the World Health Organization from time to time.
 |
| Quality Inspector: | an independent quantity surveyor and member of the Royal Institute of Chartered Surveyors or Chartered Institute of Building Services Engineers employed by an independent firm of chartered surveyors to be appointed by the Employer and notified to the Contractor. |
| Regulated Activity:  | in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006. |
| Regulated Activity Provider: | shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006. |
| Remedial Plan: | a plan prepared by the Contractor under Clause 24.3 *(Remedial Plan)* following a breach of this Contract setting out how the Contractor will prevent a further breach. |
| Response Period: | the time for completion of each Order or each item of Work in an Order as specified in the Order or as otherwise referred to by any priority coding. |
| Schedule of Amendments:  | as referred to at Article 9. |
| Specification: | the Specification for the works as set out at Schedule 5 *(Specificatio*n)*.*  |
| Staff: | all persons employed or engaged by the Contractor or any tier of Sub-Contractor (where applicable) to perform the Contract including directors, officers, and employees and Sub-Contractors and their respective directors, officers, and employees. |
| Sub-Contract: | a contract between the Contractor and a Sub-Contractor. |
| Sub-Contractor: | a person or organisation who has a contract with the Contractor to undertake part of the Works or to design all or part of the Works and who has been approved as a Sub-Contractor by the Contract Administrator. |
| Sub-processor: | any third party appointed to process Personal Data on behalf of the Contractor related to this Contract; |
| Termination Date: | the date this Contract is terminated or determined for any reason (including by expiry) in whole or in part. |
| Valuation: | either an “application for payment” or an invoice, as set out in section 4. |
| Works: | any services and/or works carried out under this Contract within any of the Workstreams and which are the subject of an Order. |
| Workstreams: | whichever of the following Workstreams that are the subject of this Contract as set out in Schedule 5 (*Specification*):* [ ][[24]](#footnote-25)
 |

**Clause 1.2 – delete clause 1.2 and insert new clause 1.2 as follows:**

"The Agreement and these Conditions are to be read as a whole. In the event of any discrepancy, the priority between the Contract Documents shall be as follows:

1.2.1 The Agreement;

1.2.2 Conditions, as amended by the Schedule of Amendments;

1.2.3 Specification;

1.2.4 Price Framework;

1.2.5 Key Performance Indicators.”

**Clause 1.6 – delete clause 1.6.2 and insert new clause 1.6.2 as follows:**

“1.6 .2 Notices or other communications under this Contract will be duly served if given by and sent to the Party to be served in accordance with the following table (and the date of service and method of proof of service will be as set out in the table) or pursuant to clause 1.6.3:

|  |  |  |
| --- | --- | --- |
| Method of service | Date of service | Proof of service |
| Personal delivery of a letter addressed to the Party to be served to the address for service. | Day of delivery if before 16.00 on a Business Day otherwise 10.00 on the next Business Day after that. | Proof of delivery of the letter to an individual at the address for service. |
| Letter sent by first class post addressed to the Party to be served at its address for service. | 48 hours after posting if that is a Business Day otherwise 10.00 on the next Business Day after that. | Proof of posting to the address for service (unless the letter is returned undelivered within 10 (ten) Business Days, in which case service is not effective). |

1.6.3 Either Party may serve notice pursuant to any clause of this Contract by email, except for notices relating to termination, and the Employer may issue any instruction by email, provided such notice or instruction is issued to the recipients listed in the Contract Particulars or such other person(s) as may be notified by either Party. A notice permitted by email shall be deemed served on the same Business Day if issued before 17:00 on a Business Day or the following Business Day if issued thereafter.”

**SECTION 2 – CARRYING OUT WORK**

**Clause 2.1 – delete and insert a new clause 2.1 as follows:**

**“Contractor’s Obligations**

2.1 .1On receipt of an Order the Contractor shall:

.1 undertake the Works set out in the Order in a proper and workmanlike manner and fully in accordance with Schedule 5 (*Specification*), Schedule 6 (*Schedule of Rates and Price Framework)*, Schedule 7 (*KPI Framework*), the Contract Administrator's instructions, any instructions of the Employer, the Contract Documents, the Consents, the Construction Phase Plan and other Statutory Requirements and shall give all notices required by the Statutory Requirements; and

.2 use materials that are new, sound and of satisfactory quality and workmanship and fabrication will be to the standards consistent with the Specification (or if not specified in the Specification they shall be to a standard that is appropriate to the type of Works being carried out); and

.3 to the extent that the Order contains any design, be responsible for carrying out and completing the entire design of the Works in the Order, which shall be carried out by using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent professional designer who is experienced in carrying out work (and preparing design) of a similar scope, nature and complexity and size to the works in the Order; and

.4 take due account of the terms of any agreements between the Employer and third parties as are from time to time disclosed to him and shall perform his obligations under this Contract in such a manner as not to constitute, cause or contribute to any breach by the Employer of his obligations under such agreements and shall indemnify the Employer in respect of any loss and/or damage which he incurs as a result of any breach by the Contractor of this clause where such loss and/or damage arises under such agreements.

.2 The Contractor shall not use, generate, dispose of or transport to the Site any Hazardous Substances otherwise than in accordance with Environmental Laws.

.3 To the extent the standard of any Works has not been specified in this Contract, the Contractor must agree the relevant standard for the Works with the Contract Administrator prior to their execution.

.4 All materials used in the Works must:

.1 comply with all applicable standards;

.2 be to the standards specified in the Specification; and

.3 be to the reasonable satisfaction of the Contract Administrator.

 .5 In relation to the design for the Works the Contractor further warrants and undertakes to the Employer that:

 .1 the various elements of the design for the Works shall be properly coordinated and integrated, one with another;

 .2 the Works comprise or will comprise only materials and goods which are new and of sound and satisfactory quality and all workmanship, and fabrication will be to standards consistent with the Contract requirements; and

 .3 the Works shall, when completed, comply with the Specification and any performance specification or other relevant criteria or specifications referred to therein and with Statutory Requirements.

 Protocol for Design

 .6 Where the Contractor is required to design any element of the Works, those Works shall be designed so that they strictly comply with any design requirement set out within the Specification or within any other relevant Contract Document.

 .7 Where the Specification or relevant Contract Document does not provide sufficient information to enable the Contractor to design any element of the Works then the Contractor shall obtain approval for its proposed design from the Contract Administrator prior to implementing the design into the Works.”

**Clauses 2.2.1 and 2.2.2 – delete and insert new clauses 2.2.1 and 2.2.2 as follows:**

**“Materials, goods and workmanship**

2.2 .1 The Contractor in carrying out each Order shall not specify or use materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used, and the Contractor shall use materials, goods and workmanship of the quality and standards specified in the Order or the Specification, or if not so specified, of the quality and standard to be expected of a contractor experienced in works of a like nature to the works set out in the Order. The Contractor warrants to the Employer that he has not specified and will not specify for use nor use in carrying out each Order any substance and/or material which is not in conformity with any relevant British or European Standards or Codes of Practice or which are generally known to the UK construction industry to be deleterious to health and safety or the durability of the Works in the particular circumstances in which it is used or which is not used in accordance with the guidance contained in the publication "Good Practice in the Selection of Construction Materials" (current edition).

.2 Where and to the extent that the approval of the quality of materials or goods or of the standards of workmanship is a matter for the opinion of the Contract Administrator, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are not described in the Order or the Specification nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the relevant work. For the avoidance of doubt the standards of workmanship required pursuant to this clause shall be no less than those set out in British Standards or any other standard that may be applicable."

**Clause 2.2.3 – Delete this clause and replace with:**  “Any materials and/or goods that the Contractor intends to use in respect of the Works shall be subject to the approval of the Contract Administrator where such materials and/or goods are not consistent with the requirements of the Specification or Statutory Requirements.”

**Insert a new clause 2.2.5:**

“The Contractor shall ensure that all products are installed in accordance with the manufacturer’s recommendations. To the extent the Contractor considers that an alternative method of installation is required in respect of any part of the product, it shall seek the Contract Administrator’s prior written approval. Any approval given by the Contract Administrator shall not diminish or relieve the Contractor from any of his obligations or liabilities in respect of ensuring that that the products are correctly and properly installed. The Contractor shall remain fully responsible for the installation of all products.”

**Clause 2.3.1.2 - At end of clause delete "." and insert ";"**

**Clause 2.3.1.3 – Insert a new clause as follows:**

"to increase or decrease the scope of this Contract including (without limitation) the Contract Area or number of Properties and the omission or addition of any Works from or to an Order at any time upon prior notification to the Contractor;"

**Clause 2.3.5 – delete this clause.**

Clause 2.3.6 – delete and insert new clause 2.3.5 as follows:

"2.3 .5 The materials and goods supplied by the Employer for any Order shall be at the sole discretion of the Employer."

Clause 2.3.6 – Insert a new clause 2.3.6 as follows:

"If the Employer exercises its rights under clause 2.3.1.3 the Contractor shall have no claim against the Employer (whether under contract, statute, tort or otherwise) in respect of any abortive costs, demobilisation costs or indirect costs or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity or any indirect or consequential loss of any kind or for any other amount under this Contract or in respect of any increase to the Contractor’s Rates and the Contractor acknowledges that the Employer shall be at liberty to award any Works omitted from this Contract under clause 2.3.1.3 to a third party (or alternatively undertake the relevant Works itself)."

Clause 2.5 – delete this clause and insert new clause 2.5 as follows:

"**Value of work to be carried out under this Contract**

2.5 .1 The Employer is not obliged to provide the Contractor with any Orders nor does the Employer give any warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment. For the avoidance of doubt, the Employer shall not be liable for any loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of the Contractor not being awarded any Orders or any specific number of Orders under this Contract. For the avoidance of doubt, the Contractor does not have exclusive rights to all works and services to be performed and undertaken by the Employer and the Employer may, at its sole discretion, issue instructions to other contractors to carry out works and services in or on Properties within the Contract Area whether or not those works or services are within the scope of this Contract or not; or add or remove Properties at its sole discretion. The Employer may engage other contractors to carry out Works or other works to the Properties at the same time the Contractor undertakes the Works."

**Clause 2.6 – delete this clause and insert new clause 2.6 as follows:**

"Orders – completion

“2.6 In respect of Order completion:

2.6.1 unless covered by a priority coding referred to in the Contract Particulars (item 8) and/or Specification each Order shall state a commencement date and a date for its completion. The Contractor shall ensure that all of the work covered by and included in the Order shall be completed in full by the date for its completion specified by a priority code or in the Order and/or in accordance with the Specification[; and

2.6.2 without prejudice to the Employer’s rights under clause 2.13, if an Order is not completed within the time specified in the priority coding (or the appointment time or date for completion, whichever is the earlier) or by any later date fixed under clause 2.10, the Employer will be entitled to deduct as liquidated damages from payments due to the Contractor, its loss of rent and/or any claims and/or losses it becomes liable to pay][[25]](#footnote-26).”

**Clause 2.7 – delete the final sentence and add new sentences at the end of clause 2.7 as follows:**

"The Contract Administrator shall have 10 Business Days from the receipt of any programme of Works required under the Contract to approve or register its disapproval of the programme in writing. If the Contract Administrator fails to respond within 10 Business Days then it shall be deemed to have been approved. Provided the Contract Administrator has approved the programme, the Contractor shall procure that all of the works carried out in accordance with or under any Order(s) is carried out strictly in accordance with the programme. If the Contract Administrator has stated to the Contractor that it does not approve of the programme then the Contractor shall resubmit a revised programme to the Contract Administrator for approval within 5 Business Days of notification by the Contract Administrator. If a revised programme does not meet the Contract Administrator’s approval, this process shall be repeated (at the Employer’s sole discretion) until the Contract Administrator has given its written approval to the programme, whereupon the Contractor shall carry out the works within the order strictly in accordance with such approved programme. Notwithstanding this, in the event the Contractor is unable to produce a programme that meets the Contract Administrator’s approval, then the Employer shall be entitled to instruct an alternative contractor to carry the programme of works within an Order or a programme of Orders in accordance with clause 2.5.1."

**Clause 2.8.1 –** Re-number clause 2.8.1 as clause 2.8. Insert the word “written” before the word “notice” on the second line.

**Clause 2.8.2 – delete this clause.**

**Clause 2.10 – delete this clause and insert the following:**

"**Extension of Time**

2.10 If, at any time during the course of completing an Order, the Contractor shall establish that the progress of the Works under the Order shall have been affected by reason of:

.1 Variation;

.2 Force Majeure; or

.3 fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from them, riot or civil commotion or any other risks insured against; or

.4 exceptionally adverse weather; or

.5 a delay in obtaining access to a Property to carry out the Works where the Contractor has complied with its obligations under the Contract in relation to securing such access; or

.6 a delay in receiving any statutory permission required for the Works where the Contractor has applied for such permission promptly and pursued the application diligently; or

.7 Public Health Measures, to the extent the Contractor can demonstrate that this has a direct impact on the Works,

the Contract Administrator shall allow such extension of time as is fair and reasonable in the circumstances upon written application by the Contractor to the Employer and Contract Administrator provided always that such application is made immediately after the Contractor is aware that such delay has or might occur (which written application shall include any documentation the Contractor may wish to provide in support of or justifying its application and the Contractor's assessment of the extension of time it seeks). To the extent that any extension of time is granted a revised date for completion for the Order shall be fixed by the Contract Administrator and notified to the Contractor. For the avoidance of doubt, there shall be no increase in any Order Price in the event an extension of time has been granted.”

**Clause 2.11.1 – at the start of the clause, insert the following wording:**

“As soon as possible, but no later than 24 hours after the completion of an Order”

**Clause 2.11 – Insert a new clause 2.11.3, 2.11.4, and 2.11.5 as follows:**

 “.3 As soon as possible, but no later than 24 hours after the completion of all Works required to a Property that is subject to an Order, the Contractor shall notify the Contract Administrator when the Works (in its opinion) have been completed in accordance with this Contract. If the Contract Administrator does not dissent by notice, giving reasons, within 14 days of receipt of the Contractor’s notice, the date so notified by the Contractor shall for all purposes of this Contract be the date when the Works required to a Property that is subject to an Order have been completed in accordance with this Contract.

 .4 Where the Contract Administrator dissents, then as soon as the Contract Administrator is satisfied that the Works required to the Property that is subject to an Order have been completed, the Contract Administrator shall notify the Contractor.

.5 If the Contract Administrator or an authorised representative of the Employer is required to attend any Property for the purposes of assessing whether or not an Order or the Works required to a Property that is subject to an Order have been completed in accordance with this Contract on more than one occasion, then the cost to the Employer of any further attendance by the Contract Administrator or an authorised representative of the Employer shall be borne by the Contractor. The Contract Administrator shall be entitled to dissent to the Contractor’s notification that an Order or the Works required to a Property that is subject to an Order have been completed where the Works contain defects, shrinkages, faults or any incomplete items of Works. The Contract Administrator shall also be entitled to dissent where one or more of the following items of information (to the extent required by the Employer) have not been provided in respect of the relevant Order or Works completed at a Property that is subject to an Order:

 .1 all guarantee documents and instruction booklets;

 .2 all necessary test and servicing certificates;

 .3 all building control certificates;

 .4 fire door certification;

 .5 collaboration tests, and commissioning certificates for new installations;

 .6 product and equipment warranties (as applicable), including evidence of registration of those warranties;

 .7 a comprehensive operation and maintenance manual for each new installation, enabling the new installation to be operated and maintained efficiently and safely;

 .8 photographs of pre-commencement and of completed Works;

 .9 any resident related data applicable to the completed Works;

 .10 all other certification or documentation more particularly described in the Specification or would typically be expected following completion of the Works or as otherwise requested by the Employer.”[[26]](#footnote-27)

**Clause 2.12 – Delete the clause and replace with the following:**

“.1 Notwithstanding any failure by the Contract Administrator to dissent to the Contractor’s notification that an Order or the Works required to a Property that is subject to an Order have been completed pursuant to clause 2.11.1 or 2.11.3, the Contract Administrator may deliver to the Contractor as an instruction a schedule of defects, shrinkages, faults or any incomplete items of work outstanding at or after the Order Completion Date or the completion date of Works required to a Property that is subject to an Order which he requires to be completed or made good within 5 Business Days (or such other time specified by the Contract Administrator) following receipt by the Contractor of the instruction under this clause 2.12.1.

.2 The Contractor shall at no cost to the Employer complete or make good all defects, shrinkages, faults and any outstanding items of work and defects referred to in the said instruction.

.3 If the Contractor fails to rectify the defects under this clause within 5 Business Days (or such other time specified by the Contract Administrator), following receipt by the Contractor of the instruction under this clause 2.12, the Employer may instruct another contractor to carry out the required works, and the cost of such works shall be deducted from any sums owing to the Contractor or shall otherwise be recovered as a debt.

.4 Any defects, shrinkages or other faults which appear within 12 months of the Order Completion Date or following completion of all Works required to a Property that is subject to an Order (unless the defect relates to materials, goods, a part or component for which the manufacturer or supplier provides a warranty for a longer period than 12 months in which case the longer period shall apply) and which are due to materials, goods or workmanship not being in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer within its Defects Rectification Period. Where the Contractor fails to carry out the necessary remedial works required by the Defects Rectification Period, the Employer shall be entitled to exercise its rights pursuant to clause 2.14 and/or 2.15.”

**[Insert a new clause 2.13 as follows:**

**"Liquidated and Ascertained Damages**

2.13 .1If the Contractor fails to complete all of the Works required to a Property that is subject to an Order or otherwise complete the Works required to a Property that is subject to an Order free of any defects, shrinkages, faults or any incomplete items of work by the date for completion specified in the Order in relation to Works required to a Property, then the Contractor shall, if requested by the Employer, pay the sum of liquidated and ascertained damages for each week or pro rata for part thereof that the completion of the Works required to a Property is delayed (such damages being a pre-estimate of loss of rental income, service charges and the Employer’s administrative costs), calculated from the date for completion specified within the Order for those Works required to the Property until the completion of those Works in accordance with the terms of this Contract. The Employer may deduct these damages from sums that become payable to the Contractor pursuant to this Contract or otherwise recover such sums as a debt. The levels of liquidated and ascertained damages are set out in Schedule 11.

 .2 The Employer's entitlement to liquidated and ascertained damages shall be in full settlement of any claim arising from such delay but shall be in addition and without prejudice to any other rights and remedies available to it for any other breach.

 .3 If the Contractor fails to attend or is late in attending a prearranged appointment the Employer may recover the sum of £[ ] per missed or late attendance at an appointment from the Contractor (such amount being a pre-estimate of both any amount the Employer has to pay to the Customer(s) and the Employer’s administrative costs), by making a deduction against sums that become payable to the Contractor pursuant to this Contract or otherwise recover such amounts as a debt.

.4 The Employer shall be entitled to increase the amount of liquidated and ascertained damages for the purposes of clause 2.13.1 throughout the Contract Period provided the Contractor is given no less than four weeks written notice of such an increase.

.5 The Employer shall be entitled to add any Workstream to Schedule 11.

.6 Any stated figure for liquidated and ascertained damages shall be subject to fluctuation at each anniversary date of the Contract in accordance with the mechanism for calculating any fluctuation in accordance with clause 5.6.][[27]](#footnote-28)

**Insert a new clause 2.14 as follows:**

**“Instruction to complete Orders or rectify Defects**

2.14 .1In the event that the Contractor fails to complete an Order or any item of Work in an Order, the Contract Administrator may instruct the Contractor either:

.1 to complete any Order or item of Work within an Order which has not been completed within its Response Period within 2 (two) Business Days (which for the purposes of this clause 2.14.1 shall become the new Response Period); or

.2 not to undertake that Order at all, on the basis that the Employer will get an alternative contractor to carry out the Works in accordance with Clause 2.15.

.2 The Contract Administrator may instruct the Contractor in accordance with Clause 2.12 (Defects) either:

.1 to rectify any defect, shrinkage, fault or outstanding item of work that has not been completed or made good before the end of its Defect Rectification Period within 2 (two) Business Days of such instruction (which for the purposes of this clause 2.14.2 shall become the new Defect Rectification Period); or

.2 not to complete or make good that defect, shrinkage, fault or outstanding item of work at all, on the basis that the Employer will engage another contractor to complete or make good that defect, shrinkage, fault or outstanding item of work in accordance with Clause 2.15.”

**Insert a new clause 2.15 as follows:**

**“Diversion or Suspension of Orders**

2.15 .1 The Employer may arrange for a contractor other than the Contractor to undertake any Works (including the rectification of any defects, shrinkages or other faults) if the Contractor:

.1 refuses to accept an Order for those Works;

.2 cannot be contacted by the Contract Administrator, despite the Contract Administrator having made reasonable endeavours to do so;

.3 fails to complete or make good any defect, shrinkage, fault or outstanding item of work notified to the Contractor pursuant to clause 2.12 within its Defect Rectification Period;

.4 fails to complete an Order or item of Work in an Order within its Response Period;

.5 fails to complete any Works within an Order in accordance with the Specification or any other express requirement of this Contract; or

.6 is not able to carry out the Works within a reasonable time frame.

.2 Where the Employer engages a contractor other than the Contractor to undertake Works under Clause 2.15.1:

.1 the Employer may recover from the Contractor:

a any additional costs of having those Works done by another contractor (either compared to the amount that would have been paid to the Contractor for that Order or, where the Works are to rectify any defect, shrinkages or other faults, in addition to the amount paid to the Contractor);

b any Direct Losses suffered by the Employer as a result of the circumstances referred to in clause 2.15.1; and

c an administrative fee, which will be set at 15% of the value of the Order.

.3 Where due to a default by the Contractor, compensation becomes payable to a Customer, the amount of such compensation payable by the Employer shall be reimbursed by the Contractor with the addition of 15% of the compensation amount to cover the Employer’s administration costs, and such sums may be recoverable as a debt or may otherwise be deducted by the Employer from sums payable to the Contractor.”

**SECTION 3 – CONTROL OF WORK**

**Clause 3.1 – delete and replace with the following:**

"Assignment

3.1 The Employer may assign or otherwise transfer this Contract or the benefit hereof at any time without the consent of the Contractor. The Contractor shall not assign or otherwise transfer this Contract without the prior written consent of the Employer."

**Clause 3.2 – Re-number clause 3.2 as 3.2.1, delete the second sentence and insert the following sentence:**

“3.2 .1 In the event the Employer consents to any works under this Contract being carried out by a Sub-Contractor, the Contractor shall ensure that all Works carried out by any Sub-Contractor are carried out in accordance with the terms of this Contract, the CDM Regulations and all health and safety requirements. Any application by the Contractor to sub-contract the Works must provide: (1) the identity of the sub-contractor, (2) the sub-contractor’s financial standing with a set of latest company accounts, (3) evidence to demonstrate a value for money exercise was undertaken in proposing the selection of the sub-contractor, (4) the extent of the Works that are to be sub-contracted and/or the extent of the design of the Works that is to be sub-contracted, and (5) the terms of the Sub-Contract, which will include equivalent terms as this Contract in relation to data protection, tax evasion, modern slavery and anti-bribery. The Contractor shall indemnify the Employer against all costs, losses and expenses that arise from the Contractor not complying with this clause. The Contractor shall remain fully responsible for all Works undertaken by a Sub-Contractor or a failure to undertake such Works.”

**Insert a new clause 3.2.2 as follows:**

“3.2 .2 The Contractor shall use all reasonable endeavours to consider local Sub-Contractors within the Contract Area when appointing any Sub-Contractor to carry out Works under this Contract, provided always that the Contractor shall comply with clause 3.2.1.”

**Insert a new clause 3.2.3 as follows:**

“3.2 .3 The Contractor must include the following terms in all Sub-Contracts:

.1 that the Contractor will pay all sums due from the Contractor to the Sub-Contractor within no more than 30 (thirty) days from receipt of a valid invoice under the Sub-Contract;

.2 that the Sub-Contractor’s liability under the Sub-Contract shall be unlimited;

.3 that a Sub-Contractor must provide a collateral warranty to the Employer in accordance with the terms of this Contract if required by the Employer;

.4 that the Sub-Contractor will comply with all the terms and conditions of this Contract.”

**Clause 3.3 – delete clause 3.3 and insert a new Clause 3.3 with the following wording:**

**“Contractor’s representative**

3.3 .1 The Contractor shall employ a competent Contractor’s representative and any Orders or Variations given to him by the Contract Administrator shall be deemed to have been issued to the Contractor.

.2 The Contractor must ensure that the Contractor’s representative or a nominated deputy is contactable by the Employer at any time inside or outside Normal Working Hours during the Contract Period.

.3 The Contractor may replace the Contractor’s representative at any time. Wherever possible the Contractor must notify the Employer in writing of the details of any new Contractor’s representative under Clause 3.3.5 before removing any person as Contractor’s representative.

.4 The Contractor must appoint a replacement Contractor’s representative either before or as soon as practicable after and in any event within 10 (ten) Business Days after the date of any person ceasing to be its Contractor’s representative.

.5 Before or within 2 (two) Business Days of appointing any person as Contractor’s representative the Contractor must notify the Employer in writing of:

.1 the name of the Contractor’s representative;

.2 the post held by the Contractor’s representative; and

.3 contact details for the Contractor’s representative.

.6 The Contractor must also inform the Employer in writing of any person(s) authorised to act as deputy for the Contractor’s representative.

.7 Any communication given by the Employer or Contract Administrator to the Contractor’s representative will be deemed to have been given to the Contractor.”

**Clause 3.4 – delete this clause and replace it with a new clause 3.4:**

“3.4 Access to the Site is to be carried out in accordance with the procedures as set out in the Specification.[[28]](#footnote-29)”

**Clause 3.5.2 – delete the second sentence.**

**Clause 3.5.4 -** delete the words “in the estimated value of the relevant Order for the purposes of Clause 4.3 (progress payments) and”. Substitute “it” with “the relevant Order”.

**Clause 3.5 – insert new clauses 3.5.5 to 3.5.14 (inclusive) as follows:**

3.5 .5 The Contractor must immediately seek the Contract Administrator’s instructions whilst its Staff (or its Sub-Contractor’s Staff) are still at the Property where extra or varied Works will or may result in an increase in the Order Price of any Order.

.6 Despite the issue of an Order the Contractor must also obtain further prior permission from the Contract Administrator to carry out any Work in excess of the price indicated in the Order for that Work where (in the Contractor’s opinion) it arises because of Customer Damage.

.7 Where the Specification requires full details of an Order Variation to be included in the Valuation for that Order, it is a condition precedent to payment for that Order Variation that the Contractor provides those details.

Quotation for a proposed Instruction

.8 Before giving any instruction to do anything that is not already an obligation of the Contractor under this Contract, the Contract Administrator may require the Contractor to provide one or more quotations setting out the consequences (in terms of both time and cost) of that instruction being given.

.9 The Contractor must provide the quotation to the Contract Administrator:

.1 within any period specified by the Contract Administrator; or

.2 if the Contract Administrator does not specify any period, within 5 (five) Business Days of the request.

.10 Each quotation must set out the consequences of the instruction being given in terms of both time and cost, with costs being split between any increases to the Order Prices for the Orders affected and any additional payment.

.11 On receipt of a quotation under Clause 3.5.10 the Contract Administrator may:

.1 issue the instruction to proceed;

.2 ask for a revised quotation (giving reasons), in which case Clauses 3.5.8 to 3.5.10 are to apply to that request; or

.3 inform the Contractor that the instruction is not being proceeded with.

.12 If the Contract Administrator does not issue an instruction under Clause 3.5.11 within 20 (twenty) Business Days of the date the quotation is provided (or such longer period as the Contractor agrees with the Contract Administrator) the quotation shall be considered invalid.

.13 Where an instruction is issued under Clause 3.5.12 within the period specified in clause 3.5.12 the resulting extensions to the Response Periods and/or increases to any Order Prices must not exceed the times or amounts specified in the quotation or the timeframe and amount specified in a new Order in respect of the approved quotation.

.14 Where any new Properties are added to the Contract, the price for Works to be carried out at such new Properties shall be at the Contractor’s Rates, subject to any adjustment pursuant to the mechanism at clause 5.6.

**Clause 3.6 – delete in clause 3.6.2.1 the words “**in accordance with clause 4.4**” and replace with** “in accordance with clause 4.3”

**Clause 3.6 – delete clause 3.6.2.2 and insert:**

“3.6 .2 .2 save as provided under clause 3.6.2.1, cancellation of an Order shall not give rise to any entitlement for the Contractor to claim any abortive costs, demobilisation costs, or any direct or indirect costs or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity or any indirect or consequential loss of any kind or for any other amount under this Contract; and

 .3 clause 3.6.2.1 does not apply where Orders are cancelled before any physical works have commenced."

**Clause 3.7 – at the end of this clause add the following sentence:**

"The Contractor shall then ensure that such person is excluded from the Site immediately."

**Clause 3.9 – Insert a new clause 3.9.5** as follows**:**

.5 where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer’s appointment concludes or is terminated prior to the expiry of 12 months following the end of the Contract Period or earlier termination, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations”.

**Insert a new clause 3.11 as follows:**

“Roles and Instructions of the Contract Administrator

3.11 .1 Subject to Clause 3.11.2, the Contractor must comply with all oral and written instructions given by the Contract Administrator:

.1 within any period specified in the Contract Documents;

.2 if no period is specified in the Contract Documents, within any period specified by the Contract Administrator; and

.3 if no period is specified either in this Contract or by the Contract Administrator within 5 (five) Business Days of the date of the instruction.

.2 If the Contractor does not receive written confirmation of an oral instruction within 5 (five) Business Days the Contractor must confirm that instruction back to the Contract Administrator within 10 (ten) Business Days of the date of the oral instruction. If the Contractor does not provide written confirmation of the oral instruction within this period, it will be deemed not to have been given.

.3 The Contract Administrator may exercise all functions and rights of the Employer under this Contract except to the extent that either:

.1 the Specification states otherwise; or

.2 the Employer notifies the Contractor in writing of any restrictions.

.4 The signing by the Contract Administrator of time sheets or similar documents are not to imply the Contractor’s compliance with the Contract.”

**Insert a new clause 3.12 as follows:**

“Complaints Handling[[29]](#footnote-30)

3.12 .1 The Contractor must deal with any complaints received in a prompt, courteous and efficient manner, and in accordance with the procedures set out in the Specification and the Employer’s complaints policy, which is included in the Specification.

.2 The Contractor must keep written records of all complaints received and of the action taken in relation to each of them. Such records must be kept available for inspection by the Contract Administrator at any reasonable time.

.3 The Contractor must notify the Contract Administrator as soon as reasonably practicable in writing of all complaints received by it and all the steps it has taken (or intends to take) to deal with the complaint

.4 The Contractor must promptly provide all information the Employer requires in order to deal with any complaints the Employer receives in connection with the Works or the Contractor.

.5 The Contractor must at the request of the Contract Administrator arrange for notice(s) to be permanently displayed giving information on how to complain about the Works. The notice(s) must be in a form and displayed in places approved by the Contract Administrator.

.6 Where any complaint that involves a breach by the Contractor of any of its obligations under this Contract and which gives rise to any regulatory or statutory sanction including the payments of any fine or compensation then the Employer may demand payment of that sum from the Contractor and the Contractor shall make such payment within seven days of receiving the Employer’s written demand.

7. The Employer may carry out its own investigation of any complaint notified to it (whether by the Contractor or any other person). In the event the Employer carries out its own investigation, it shall notify the Contractor accordingly and shall provide the Contractor with its findings and/or conclusions on completion of the investigation. In the event those findings and/or conclusions recommend any remedial action, the Contractor shall ensure that such remedial action is undertaken forthwith and no later than 5 Business Days after receipt of the Employer’s notification.”

**Insert a new clause 3.13 as follows:**

“Publicity

3.13 .1 The Contractor must not and must ensure that Sub-Contractors do not give any information about the Works for publication in the press or on radio, television, via the internet, or for any other medium without the prior written consent of the Employer.

.2 The Contractor must not, and must ensure that Sub-Contractors do not take photographs of any Properties or any Works without the prior consent of the Employer.

.3 The Contractor must take all measures needed to prevent Staff taking, publishing or otherwise circulating such photographs.

.4 The Contractor must not advertise on any of the Properties or in connection with the Contract unless the Contract Administrator has previously approved the content, duration and location of the advertisement.”

**Insert a new clause 3.14 as follows:**

"No admission, consent, comment, sanction, acknowledgement, confirmation or advice made or given by or on behalf of the Employer or the Contract Administrator shall operate to exclude or limit the Contractor's liability for any breach of its obligations under this Contract."

**Insert a new clause 3.15 as follows:**

The Contractor shall be deemed to have inspected and examined the sites of the Works, the Properties and their surroundings (that are subject to an Order) and to have satisfied himself as to the nature of the existing structures, infrastructure and services, the form, location and nature of the sites of the Works and the Properties and the extent, scope, nature and difficulty of the Works and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the sites of the Works and the Properties, the accommodation he may require and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works (and any information in connection therewith which may have been provided by or on behalf of the Employer being provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness). The Contractor shall not be entitled to any extension of time or to any additional payment (by way of loss and/or expense or otherwise) on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under the Contract on the ground that he did not or could not have foreseen any matter(s) which might affect or have affected the execution of the Works.”

**Insert a new clause 3.16 as follows:**

“3.16.1 The Contractor warrants that it shall (at its cost) provide the information listed at clause 3.16.2, and where required by the Employer shall provide full access to the Contractor’s IT System where such information is stored (at the Contractor’s cost), no later than 4 weeks prior to the expiry of the Contract Period, or no later than 4 weeks prior to the end of the Contract Period following the issue of a notice of pursuant to clause 7.1.1, or within 7 days of a notice of termination issued pursuant to clause 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 24.1.9 or 26.5. The Contractor shall not be entitled to any further payment until it has complied with this clause 3.16.1 and until it has transferred ownership of the items listed at clause 3.16.2 to the Employer.

3.16.2 The information required pursuant to clause 3.16.1 is as follows:

* full repairs history, including jobs logged with full descriptions, case and engineers notes;
* before and after photographs of completed Works;
* all certificates and warranties as required by the Employer;
* WIP reports;
* any other reporting as agreed by the Parties in order to manage the Works;
* KPI results and backing data;
* complaints documentation and information including case and investigation notes;
* full systems/portal access (as relied upon by the Employer during the Contract Period) and until settlement of the Final Account; and
* any other asset related information requested by the Employer.”

**Insert a new clause 3.17 as follows:**

“3.17 The Contractor shall at all times comply and shall procure that the Contractor’s Persons shall comply with the Employer’s policies as included in the Specification in the course of carrying out its obligations under this Contract, including any updated or new policies provided to the Contractor from time to time during the Contract Period. The Contractor acknowledges that the Employer may be bound by statute to update its policies from time to time. In circumstances where the Contractor considers that compliance with any updated or new policy is likely to have a detrimental impact on its ability to deliver the Works it shall notify the Employer in good time and the Parties shall discuss, at Core Group level, the introduction of any measures necessary to ensure the Contractor can continue to comply with any updated or new policy.”

**SECTION 4 – PAYMENT**

**Section 4 – at the start of Section 4 insert a new clause 4A [and 4B][[30]](#footnote-31) as follows:**

“4A All applications for payment under clause 4 shall set out and be accompanied by:

 .1 the relevant addresses where Works are carried out and the corresponding Order number or project title;

 .2 the name of the Employer representative that placed the Order;

 .3 a breakdown of the Works that have been carried out by reference to the item code in the Price Framework and/or Specification and description, together with confirmation that they have been fully and properly carried out in accordance with and to the standard required by the Contract;

 .4 the precise period to which the request for payment relates;

 .5 a breakdown of the costs submitted as part of an application for payment, including the net price payable for the Works;

 .6 be in accordance with the values set out in the Price Framework; and

 .7 provide photographs of completed Works; and

 .8 any other information or documents which the Contract Administrator has given notice to the Contractor it considers is necessary in its reasonable opinion to approve payment, including but not limited to any item specified in clause 2.11.5.”

 [For the avoidance of doubt, the valuation of each application for payment shall be subject to an adjustment for KPI performance as set out in the KPI Framework and/or the Price Framework.][[31]](#footnote-32)

 [4B **Retention**

.1 The Employer shall be entitled to deduct and retain as retention a sum equal to 5% of the certified sum payable pursuant to any interim application for payment made in respect of Works completed under an Order.

.2 This retention (or the balance thereof) shall be re-paid by the Employer to the Contractor on each anniversary of the Contract Period. The Employer shall be entitled to retain and utilise the retention in the following circumstances, where:

.1 the Contractor is notified of a defect and has failed to remedy that defect within the period set out at clauses 2.14.2 or at all; or

.2 the Employer has established a set-off, deduction or counterclaim against any sums due to the Contractor, including but not limited to where the Contract is terminated as a result of the Contractor’s breach or where the Contractor has become Insolvent.][[32]](#footnote-33)

 **Delete Clause 4.3 and substitute:**

“Payments

4.3 Payments under the Contract will be made on the following terms:

.1 No later than 7 days after the end of each month and no earlier than the first day of the month (“Application Window”), the Contractor shall provide the Employer with an application for payment in respect of all Works completed in the previous month. The application for payment shall contain a detailed breakdown of the sums due in respect of each and every relevant Workstream. The application for payment shall be supported with all the documentation required and set out within clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator. The application for payment must only seek payment in respect of fully completed Works to each individual Property and the Employer shall not be obliged to make payment for partly completed Works to a Property. By submitting an application for payment, the Contractor is representing that all Works set out within the application for payment have been completed in accordance with the Contract. If the monthly application for payment is not provided within the Application Window, it shall be considered null and void and the Contractor shall be entitled to re-submit the application for payment within the following Application Window.[[33]](#footnote-34)

.2 The due date for payment shall be 14 days from the date of receipt of the application for payment. If the due date for payment occurs in the period from and including 10 Business Days before Christmas Day to the fifth Business Day of the following calendar year, the due date shall be postponed until the fifth Business Day of the following calendar year.

.3 The Contract Administrator shall be entitled to reject any application for payment or any part thereof where in his opinion:

a) it is not supported by the information required and set out within clause 4A, the Price Framework, the Specification or any specific requirement of the Contract or the Contract Administrator; or

b) is not in the format set out at Schedule 8[[34]](#footnote-35); or

c) the application for payment contains any Order (or any Work completed pursuant to an Order) that is incomplete, contains defective Works or otherwise breaches any requirement of this Contract; or

d) the application is inaccurate in one or other respect either in terms of value or Order information.

.4 In the event the Contract Administrator rejects an application for payment in accordance with clause 4.3.3 or any part thereof the Contractor will not be entitled to payment for any rejected sums within the application for payment until such time as those rejected sums have been included within a further application for payment that has been submitted in accordance with clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator. The re-submitted application for payment shall be issued no earlier than the intervals set out at clause 4.3.1.[[35]](#footnote-36)

.5 Where an application for payment is not rejected in its entirety, then no later than 5 days after the due date for payment the Contract Administrator shall provide the Contractor with a payment notice setting out the sum that the Employer considers to be or to have been due at the due date for payment and the basis on which that sum is calculated. A payment notice shall be issued by the Contract Administrator even where the sum due to the Contractor in respect of any application for payment is zero.

.6 The final date for payment shall be 21 days from the due date for payment, subject to the Employer receiving an invoice in respect of each application for payment from the Contractor no later five days following receipt of the Employer’s payment notice pursuant to clause 4.3.5. Where the Contractor fails to provide its invoice within the timeframes set out herein, the final date for payment shall be extended by the number of days the Contractor is in delay in providing an invoice.

.7 The Contract Administrator or Employer may issue a pay less notice no later than 2 days prior to the final date for payment setting out the sums it considers due and the basis upon which such sums have been calculated. A pay less notice shall be issued by the Contract Administrator or Employer even where the sum due to the Contractor in respect of any application for payment is zero.

.8 Any payments that are due to the Contractor shall be subject to the Employer’s rights of set off without limitation.

.9 The Employer shall be entitled to deduct any liquidated and ascertained damages established pursuant to clause 2.13 from any interim application for payment or recover the same from the Contractor as a debt, provided a notice has been issued in accordance with clause 4.3.7.

.10 The Employer shall have no liability to make any payment to the Contractor for Works that are completed more than three months prior to the date of an application for payment. Where an application for payment has been made that consists of or includes any Works completed more than three months prior to the date of the application for payment, then the Employer may apply a £NIL value for those Works and the Employer shall have no liability to make any payment in respect of them whatsoever. Where the Employer or the Contract Administrator identifies within any application for payment Works completed more than three months prior to the date of the application, then it shall be entitled to apply a £NIL valuation against such Works pursuant to clause 4.3.5 or otherwise issue a pay less notice pursuant to clause 4.3.7.

.11 No later than 7 days after receiving payment from the Employer pursuant to this clause 4, the Contractor shall provide the Employer with evidence that it has paid all sub-contractors (where such sums have been included in the application for payment). The Employer shall be under no obligation to make any further payment under this Contract (subject to issuing a relevant notice under clause 4.3.5 or 4.3.7) until evidence is provided by the Contractor to the satisfaction of the Employer (acting reasonably).

.12 Neither the issue by the Employer or the Contract Administrator of any certificate nor the payment of any amount by the Employer to the Contractor pursuant thereto shall prejudice or adversely affect the right of the Employer to contend that any Order has not been properly valued.”

**Delete Clause 4.4 and substitute:**

“Audit

4.4 .1 If at any time, and notwithstanding the issue of the Final Certificate, it is discovered that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts in respect of Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer, then the Employer shall have the right to:

.1 inspect any/all premises in respect of which Works have been instructed to the Contractor since the start of the Contract Period where it is purported that Work has been carried out by the Contractor under the Contract, and

.2 determine at their sole discretion the extent of such inspection that is deemed necessary for the purposes of further checking, and

.3 recover from the Contractor all reasonable costs and/or expenses which the Employer has incurred or may incur consequential to carrying out such inspection (only where the inspection finds that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts in respect of Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer), and

.4 determine and recover from the Contractor the apparent excess amount in respect of any overcharge and/or overpayment as appropriate.

.2 Any amount due to the Employer arising from the above provisions shall be recoverable as a debt from the Contractor to the Employer and may also be set-off or deducted from any monies due or which may become due to the Contractor, provided a notice has been issued in accordance with clause 4.3.7. Provided always that the recovery of such debt shall be without prejudice to any other rights or remedies the Employer may have.

.3 The Employer may appoint the Quality Inspector to carry out an audit which shall include any such inspection and/or investigation, which the Employer has the right to undertake pursuant to clause 4.4.1.

.4 If having carried out the audit, the Quality Inspector determines that a sum of money is due to the Employer then the Contractor shall pay that sum of money forthwith, or subject to clause 4.3.7, the Employer shall have the right to set-off such sum against any sums owed to the Contractor under this Contract or otherwise recover such sums as a debt.

.5 In the event the Quality Inspector finds a sum of money is due to the Employer, the Contractor shall pay the reasonable cost of the Quality Inspector for carrying out the audit. The Employer may pay the Quality Inspector and recover the cost from the Contractor as a debt or, subject to clause 4.3.7, set-off such cost against any sums owed to the Contractor under this Contract.

.6 Any audit undertaken by the Quality Inspector for the purpose of clause 4.4.3 shall be final and binding upon the Parties provided that a copy of all reports prepared by the Quality Inspector are made available in full to the Contractor and the Quality Inspector acts in accordance with the terms of his/her appointment at all times.”

**Delete Clause 4.5 and substitute:**

“Annual Final Account

4.5 The annual final account process shall proceed as follows:

.1 No later than ten (10) Business Days following each anniversary of the commencement of the Contract Period (or such other timeframe required by the Employer), the Contractor shall provide a detailed breakdown of the sums considered payable in respect of each and every relevant Workstream (and which remain unpaid) and set out the basis for how that sum has been calculated. The Contractor must provide such information as required by clause 4.3.1, 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator and if such documentation is not provided the Contractor will not be entitled to any payment.

.2 Within forty (40) Business Days following each anniversary of the Contract Period (or such other timeframe required by the Employer), and provided the Contractor has complied with its obligations pursuant to clause 4.5.1, the Employer shall prepare and issue to the Contractor an annual final account, which when agreed shall be conclusive evidence as to the balance due between them for that annual period and, upon such agreement, the Contract Administrator shall issue the annual final account valuation.

.3 The Employer or the Contractor (as the case may be) shall pay the amount stated in the annual final account valuation no later than 30 days from the date of receipt of an invoice from the Employer or the Contractor (as the case may be) for the sum stated in the annual final account valuation as payable.

.4 If agreement is not reached within forty (40) Business Days from the date of issue of the annual final account pursuant to clause 4.5.2, either the Employer or the Contractor may implement the procedures described in clause 9 if appropriate.”

Re-number clause 4.6.6 as clause 4.6.14. Delete the remainder of clause 4.6 and substitute:

“Final Account

4.6 Notwithstanding any provision in clause 8 to the contrary, the Final Account process shall proceed as follows:

.1 The Contractor must submit a final application for payment, for Works it considers it has carried out and completed, to the Contract Administrator within 40 Business Days after the earlier of:

.1 the Termination Date, where termination is for a Contractor Default or Employer Default; or

.2 the Expiry Date or, if earlier, the expiry of a notice served by the Employer under clause 7.1 (Break Notice).

.2 The final application for payment shall contain a detailed breakdown of the sums considered payable in respect of each and every relevant Workstream and set out the basis for how that sum has been calculated. Within the final application for payment the Contractor must provide such information as required by clause 4.3.1, 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator and if such documentation is not provided the final application for payment will not to be valid and will be rejected accordingly.

.3 The Contract Administrator must issue the Final Account to the Employer and the Contractor indicating the amount due to the Contractor or due to the Employer as the case may be within 40 Business Days of receipt of the final application for payment and all documentation required by clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator.

.4 In the Final Account, the Contract Administrator must set out:

.1 all amounts valued as due to the Contractor under previous applications for payment;

.2 all subsequent adjustments to those approved valuations in accordance with this Contract;

.3 any sums the Employer may recover from the Contractor in accordance with the terms of the Contract including but not limited to any liquidated and ascertained damages established pursuant to clause 2.13;

.4 the amount (even if the amount is zero) of the actual payment proposed to be made by the Employer to the Contractor or of any amount due from the Contractor to the Employer;

.5 the basis on which that amount is calculated.

.5 If the Contractor does not submit its final application for payment and other documentation as required by this clause 4.6.2 the Contract Administrator may calculate all amounts that are to be included in the Final Account based on the information the Contract Administrator has available at that time.

.6 Within 20 Business Days of receipt of the Final Account under clause 4.6.3, if the Final Account is agreed, the Contractor must sign and return a copy of the Final Account to the Employer. By doing so, the Contractor accepts that the stated amount to be paid will be in full and final settlement of all amounts due to the Contractor under the Contract and that no further payment will be due to the Contractor.

.7 Following signature of the Final Account the Contractor must issue an invoice within 10 Business Days.

.8 An invoice will not be a valid invoice under clause 4.6.7 unless:

.1 all conditions precedent to payment becoming due in relation to the final valuation to which it relates have been satisfied;

.2 it is for the amount due as set out in the Final Account.

.9 The date the invoice is received by the Employer is the due date for payment of the amount stated in the Final Account.

.10 The final date for payment shall be 21 days from the due date for payment.

.11 The Contract Administrator or Employer may issue a pay less notice no later than 5 Business Days prior to the final date for payment setting out the sums it considers due and the basis upon which such sums have been calculated. A pay less notice shall be issued by the Contract Administrator or Employer even where the sum due to the Contractor in respect of any application for payment is zero.

.12 The Contractor shall not be entitled to submit an interim application for payment once the Parties have commenced negotiations in respect of the Final Account or following the termination of this Contract. The Employer shall be entitled at any time to recover any overpayment it considers it has made to the Contractor in respect of any interim application for payment or the Final Account or shall otherwise be entitled to recover such sum as a debt from the Contractor.

.13 In the event of the Contractor suffering an event of insolvency as described in clause 8.1:

(i) the Employer need not pay any sum that has already become due to the Contractor insofar as the Employer has given or gives a notice in accordance with clause 4.3.7 or 4.6.11;

(ii) the Employer need not pay any sum that has already become due to the Contractor if the event occurs after the date on which the notice in relation to that sum would have been served in accordance with clause 4.3.7 or 4.6.11.”

**In Clause 4.7.1 change reference from clause 4.6 to “clause 4.3 (Payment)”**

**Clause 4.8 – Insert a new clause 4.8 as follows:**

“Neither the issue by the Employer or the Contract Administrator of any instruction, direction, consent, approval, confirmation, comment, sanction, acknowledgement, advice, the issue of a payment certificate nor the payment of any amount by the Employer to the Contractor pursuant thereto shall constitute or imply or be evidence of the Employer's approval or acceptance of any work, materials or equipment or relieve the Contractor of any of its obligations under this Contract.”

**SECTION 5 – MEASUREMENT AND VALUATION**

**Delete clause 5.2 and substitute:**

**“Measurement and Valuation – responsibility**

5.2 Unless otherwise agreed by the Contract Administrator and the Contractor, all work carried out pursuant to an Order (including any Variations required by the Contract Administrator or subsequently sanctioned by him) shall be valued in accordance with the Price Framework.”

**Delete clause 5.3 and substitute:**

5.3 .1 Insofar as the measurement and valuation of an Order or Works within the Order cannot be readily ascertained by reference to the Price Framework then the valuation of the Order or Works within the Order shall be ascertained by the Contractor who shall act reasonably at all times and provide the Contract Administrator with an opportunity to be present at the measurement for such Order or Works, and whether or not the Contract Administrator is present for each measurement, the Contractor shall provide the Contract Administrator with such information as may be required by the Contract Administrator to demonstrate that each Order has been measured reasonably. The measurement and/or valuation of such Orders by the Contractor shall be subject to the approval of the Contract Administrator.

.2 The Contractor has examined the Contract Documents and confirms that the tendered Rates and Prices include for all items and contingencies except where the Contract expressly provides for additional payment.

.3 The Contractor is deemed to have:

.1 inspected the Properties (or a representative sample of them);

.2 satisfied itself regarding the conditions under which the Works are to be carried out;

.3 satisfied itself to the extent and accuracy of any information provided by the Employer; and

.4 made all necessary allowances to execute the Works within the tendered Rates and Prices.”

**Delete clause 5.4.**

**Delete clause 5.5.**

**Clause 5.6 – delete this clause and insert a new clause 5.6 as follows:**

[“**Rates – Fluctuations**

5.6

.1 The Contractor’s Prices shall remain fixed for the **first [ ] months following the commencement of the Contract Period**. Thereafter any adjustment to the Contractor’s Rates or Prices may be considered by the Employer on the **[ ]** anniversary of the commencement of the Contract Period and each anniversary of this date thereafter (**“Inflation Date”**) by the adjusted increase or decrease to the Contractor’s Prices in accordance with the Consumer Price Index (“CPI”).

.2 For the purposes of the first adjustment the base index shall be the CPI value published prior to the commencement of the Contract Period and compared to the most recent index value published prior to the Inflation Date. Subsequent indexation shall be calculated as the difference between the most recent index value used at the previous Inflation Date and the most recent index value published prior to the current Inflation Date.

.3 If the Contractor requires an adjustment to the Contractor’s Prices, pursuant to clause 5.6.1, then it shall provide the Contract Administrator with a written request no later than 4 weeks prior to the Inflation Date and provide the basis for calculating the adjustment.

.4 Upon receipt of this written request and supporting calculation the Contract Administrator shall ascertain the increase or decrease applicable to the Contractor’s Prices (or in relation to the second and subsequent Inflation Dates the future increase or decrease at each) and shall provide written notice of that calculation as soon as reasonably practicable prior to the Inflation Date.

.5 Following the Contract Administrator’s assessment pursuant to clause 5.6.4, any adjustment to the Contractor’s Rates or Prices that are agreed by the Employer shall apply in respect of all Works ordered by the Employer after the Inflation Date. For the avoidance of doubt, and notwithstanding anything to the contrary in the Price Framework, the Employer does not have an obligation to agree any adjustment to the Contractor’s Rates or any revised rates.

.6 In the event the Contractor fails to provide the written request in accordance with clause 5.6.3, then it shall be at the Employer’s discretion as to whether any adjustment is made for that particular year in accordance with this clause 5.6.

.7 Either Party can request a review of the Contractor’s Rates if it considers there has been a significant fluctuation in one or more of the cost elements that comprise the Contractor’s Rates or Prices, which would not otherwise be captured within the inflation adjustment or which could not have been reasonably foreseen prior to the commencement of the Contract Period. The Party submitting the review request must provide a statement detailing the reason for the review and provide all supporting documentation that demonstrates a significant fluctuation in the Contractor’s Rates or Prices.

.8 Within 10 Business Days of a written request under clause 5.6.7, the Contractor shall provide the Contract Administrator with a detailed breakdown of the associated costs that demonstrate the increase to the Contractor’s Rates or Prices. Upon receipt of the detailed cost breakdown, the Contract Administrator will carry out an assessment of the information within 10 Business Days and will arrange a subsequent meeting with the Contractor to discuss the assessment and agree any adjustments to the Contractor’s Rates that are deemed reasonable by the Contract Administrator. The Contract Administrator may call further meetings to discuss the assessment if the Contract Administrator considers necessary. For the avoidance of doubt, the Employer does not have an obligation to accept or agree any adjustment to the Contractor’s Rates following a review under clause 5.6.7 or 5.6.8.

.9 Where the Employer agrees an increase to the Contractor’s Rates (or such rates as may be subsequently adjusted) pursuant to clause 5.6.8, the adjusted rates shall be reviewed by the Parties on a monthly basis. The Contractor shall provide the Employer with all information requested to demonstrate the costs being incurred by the Contractor in delivering the Works. If the Employer is not satisfied that the Contractor has demonstrated an entitlement to the adjusted increase in the rates at any time, it shall notify the Contractor, and the Contractor acknowledges that the rates applicable prior to the agreed adjustment shall apply to all Works completed following the date of the Employer’s written notification.

.10 If following an assessment pursuant to clause 5.6.9 it is considered that the costs to deliver the Works has reduced, the Parties shall agree an adjustment to the rates to reflect the cost of delivery. The process at clauses 5.6.7 and 5.6.8 shall be repeated where either Party considers that there has been a significant fluctuation in the rates that are applicable following any adjustment.”][[36]](#footnote-37)

**Clause 5.7 – delete this clause.**

**Clause 5.8 – delete this clause.**

**SECTION 6 – INJURY, DAMAGE AND INSURANCE**

**Clause 6.1 – after** "Order" **in line 3 insert** "or of any obligation pursuant to clause 2.12 *(Defects)."*

**Clause 6.2 – Delete** "Subject to clause 6.3" **in line 1.**

**Clause 6.2 – after** "Order" **in line 4 insert** "or of any obligation pursuant to clauses 2.12.*(Defects)*"

**Clause 6.3** – **Delete clause 6.3 in its entirety, replace the heading with “Nuisance” and insert the following as a new clause 6.3:**

"The Contractor shall at all times prevent any public or private nuisance (including without limitation any such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of an Order or of any obligation pursuant to clause 2.12 *(Defects)* and shall defend or, at the Employer's option, assist the Employer in defending any action or proceedings which may arise as a result of any breach by the Contractor of its obligations under this Contract. The Contractor shall be responsible for and shall indemnify the Employer against any and all expenses, liabilities, losses, claims and proceedings whatsoever arising from any breach by the Contractor of its obligations under this clause 6.3."

**Clause 6.4.1.2 –** In line 2 **after** “the Contractor” **insert** “, with the Employer being provided with cover on an indemnity to principals basis under the Contractor’s policy of insurance,”

**Clause 6.7A**

**Delete clause 6.7A.1 and insert:**

"if it wishes to do so, take out and maintain in his own name a policy in respect of the existing structures for which Orders may be issued together with the contents thereof owned by him or for which he is responsible. The Employer shall not be required to name any other party (including the Contractor) on such policy;"

In the final paragraph in line 1 delete "such Joint Names Policies" and insert "such policy”.

In the final paragraph, delete the final sentence.

**Clause 6.13.2 - Delete** this clause and mark as **“Not Used”**

**Clause 6.13.4 - In line 3, after** “Contractor shall” **insert** “subject to the consent of the Employer and”

**Clause 6.13.5 - In line 1, after** “clause 6.7B applies” **insert** “and provided the Employer has given consent pursuant to clause 6.13.4”

**Clauses 6.13.5.3 - In line 6, after** “treated as a Variation” **insert a full stop and delete the remainder of the clause.**

**Clause 6.13.6 – delete this clause**

**Clause 6.14: In line 2, delete** “either Party may, if it is just and equitable,” **and replace with** “the Employer may”. **In line 2, delete** “to the other”. **In line 4, delete from “:…” to and including** “upholding of the notice” **in line 9.**

**Insert a new clause 6.15 and 6.16 as follows: [[37]](#footnote-38)**

"Professional Indemnity Insurance

6.15 Without limiting his other obligations under this Contract or otherwise at law, the Contractor shall maintain professional indemnity insurance to cover each and every professional liability which he may incur under this Contract, from the commencement of the Contract Period and until 15 years after completion of the final Order under this Contract, with a limit of indemnity not less than [£ ] in respect of each and every claim, provided that such insurance continues to be available in the United Kingdom market on reasonable terms and at commercially reasonable premium rates to contractors of similar standing to the Contractor.

 **Product Liability Insurance**

6.16 Without limiting his other obligations under this Contract or otherwise at law, the Contractor shall maintain product liability insurance to cover each and every liability which he may incur under this Contract, from the commencement of the Contract Period and until 15 years after completion of the final Order under this Contract, with a limit of indemnity not less than [£ ] in respect of each and every claim, provided that such insurance continues to be available in the United Kingdom market on reasonable terms and at commercially reasonable premium rates to contractors of similar standing to the Contractor."

**SECTION 7 – BREAK PROVISION**

**Clause 7.1 – delete this clause and insert a new clause 7.1 as follows:**

“[.1 The Employer has the right to bring the Contract to an end or reduce the Contract Period by giving not less than 13 weeks’ notice to the Contractor, provided such notice is not given before the first 6 months following the commencement of the Contract Period.][[38]](#footnote-39) [The Contractor has the right to bring the Contract to an end by giving not less than 36 weeks’ notice to the Employer, provided such notice is not given before the first 12 months following the commencement of the Contract Period.][[39]](#footnote-40) [In the event the Contractor gives notice pursuant to this clause 7.1.1 it shall at the same time as the notice pay to the Employer the sum of £100,000 (one hundred thousand pounds) (“the **Break Payment**”) or such lesser amount as determined by this clause 7.1.1. If the Contractor does not pay the Break Payment then any notice given by it pursuant to this clause 7.1.1 shall be deemed invalid and shall have no effect. The Break Payment shall not be subject to any set-off or counterclaim. The Break Payment shall be fixed at £100,000 (one hundred thousand pounds) for a period of 24 months following the commencement of the Contract Period, and shall thereafter reduce by £10,000 (ten thousand pounds) on the second anniversary of the commencement of the Contract Period and by the same amount on each subsequent anniversary of the commencement of the Contract Period.][[40]](#footnote-41)

.2 Without prejudice to clause 7.1.1, the Employer shall have the right to reduce the scope of Works or remove a Workstream or part thereof by giving the Contractor not less than 13 weeks’ notice, provided such notice is not given before the first 6 months following the commencement of the Contract Period. Such notice can be revoked by the Employer at any time.”

**Clause 7.2 – amend existing clause reference to Clause 7.2.1 and at the end of the clause add the following sentence:**

"7.2 .1 For the avoidance of doubt, in the event of a reduction of the Contract Period, the Contract coming to an end, a reduction in the scope of Works or removal of a Workstream under clause 7.1 *(Break Notice)* the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts, abortive costs, demobilisation costs, or other costs, expenses or losses suffered or incurred by the Contractor as a result of taking such action. Following the service of a notice pursuant to clause 7.1.1, the Rates shall not be subject to an uplift at the Inflation Date (as defined in clause 5.6.1) where the Contract will expire following the Inflation Date.”

**Insert new Clause 7.2.2:**

“7.2 .2 Where the Contractor completes Orders under Clause 7.2 the Termination Date must be the date of completion of the last Order to the reasonable satisfaction of the Contract Administrator.”

**SECTION 8 – TERMINATION**

**Clause 8.4.1.2 – Delete clause 8.4.1.2 and insert –** “without reasonable cause fails to carry out and complete any work pursuant to any one or more Order before each relevant Order Date for Completion.”

**Clause 8.4.1 – insert additional sub-clauses 8.4.1.3 – 8.4.1.10 inclusive as follows:**

“8.4 .1 .3 without reasonable cause significantly suspends, disrupts or delays the carrying out of any work pursuant to any Order or Orders;

 .4 fails to proceed regularly and diligently with any work pursuant to any Order or Orders;

 .5 fails to carry out any Works pursuant to any Order or Orders in accordance with this Contract;

 .6 purports to assign, novate or appoint an agent to deliver this Contract without the consent of the Employer in breach of Clause 3.1 *(Assignment)* or sub-contracts or purports to sub-contract any part of the Works without the Employer’s consent;

.7 fails to achieve the [Minimum Level of Acceptable Performance][[41]](#footnote-42) for any KPI on 3 consecutive months or on 4 occasions during a 12 month period;

.8 fails to comply with any of its obligations including any conditions contained in the Contract Documents;

.9 fails to comply or procure compliance with clause 3.17;

.10 fails to remedy any other breach of this Contract which, in the reasonable opinion of the Employer, is sufficiently serious to entitle the Employer to terminate this Contract if it is not remedied,”

**Clause 8.6 – In the heading, after “Corruption” insert “, Modern Slavery, Tax Evasion”**

**Clause 8.6 – After “Bribery Act 2010” insert “and/or Modern Slavery Act 2015, and/or Criminal Finances Act 2017”**

**Clause 8.10.2.1 - change reference from clause 4.6.5 to clause “4.3.7 or 4.6.11”**

**Clause 8.11 – insert new clause 8.11A as follows:**

“Termination by either party –Obligations of the Contractor

8.11A .1 Upon any determination of the Contractor's employment under this Contract the Contractor shall immediately vacate the Site and shall comply with all instructions of the Employer for the protection of any works and any goods and materials and the safe and orderly removal of all plant equipment and other items belonging to the Contractor and shall immediately deliver to the Employer possession of the Site and any works in a neat and tidy condition.

.2 Upon any determination of the Contractor’s employment under this Contract, the provisions of Clause 22 (*Transferring Employees*) and Schedule 9 TUPE shall apply.”

 **Clause 8.12 – insert a new clause 8.12 as follows:**

“Expiry

8.12 .1 During the 3 (three) months preceding the Expiry Date or the end of this Contract by any means the Contractor must continue to carry out and complete Orders except as set out below:

.1 need not carry out any Order instructed during those 3 (three) months which cannot be reasonably completed before the Expiry Date unless the Contract Administrator and Contractor agree otherwise and the Contractor must notify the Contract Administrator of the fact that the Order cannot be completed before the Expiry Date immediately on receipt of the Order; and

.2 must complete all Orders instructed before the start of such 3 (three) month period, even if such Works cannot be completed before the Expiry Date.

.2 Where the Contractor completes Orders under Clause 8.12.1 the Expiry Date will be the date of completion of the last Order to the reasonable satisfaction of the Contract Administrator.

**Clause 8.13 – insert a new clause 8.13 as follows:**

“Obligations to Co-operate at Termination

8.13 .1 On termination of this Contract the Contractor must co-operate fully with the Employer in relation to the legal and operational handover of responsibilities between the Contractor and the Employer.

.2 The Contractor must use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation and service agreements relating to the Works that are in force on the Termination Date are assigned to the Employer or as the Contract Administrator may instruct.

.3 Except where this Contract is terminated for Contractor Default, and subject to the Contractor obtaining permission to do so from any Customer occupying the affected Properties, the Contractor may go onto any of the Properties in the 5 (five) Business Days after the Termination Date to remove any materials or equipment which either it or a Sub-Contractor owns or has hired and which are not to be transferred to the Employer on the Termination Date.

.4 The Contractor must deliver all materials and equipment paid for by the Employer to the Employer or as the Contract Administrator directs within 5 (five) Business Days of:

.1 the Termination Date, where the reason for termination is any reason other than Employer Default; or

.2 where the termination is for Employer Default, the date on which the Contractor receives payment for those plant and materials under Clause 8.7 *(Default by Employer)*.

.5 The Contractor must ensure that all rubbish, debris, and site waste has been removed from the Properties within 5 (five) Business Days of the Termination Date but the Contractor’s attendance at any Properties for the purpose of such removal is subject to:

.1 any direction of the Contract Administrator; and

.2 the Contractor obtaining permission to do so from any Customer occupying those Properties.

.6 If the Contractor fails to remove all rubbish, debris and site waste from the Properties within 5 (five) Business Days of the Termination Date the Employer may do so and recover its reasonable costs of doing so from the Contractor through the Final Account.

.7 Within 5 (five) Business Days of the Termination Date, the Contractor must:

.1 return to the Employer the Employer Data and all Documents and Data provided by the Employer;

.2 provide copies of all other Documents and Data used in connection with the Works to the Employer; and

.3 return to the Employer all keys, passes, door entry codes and other information relating to the Properties.

.8 All the Documents and Data (including Employer Data) provided under Clause 8.13.7 must be supplied in the formats required by the Employer and must be up-to-date to midnight on the Termination Date.

.9 Following the later of the rectification of defects and payment of the Final Account the Contractor must delete all copies of all Documents and Data relating to this Contract from the Contractor’s IT System except:

.1 those required to be kept under Clause 8.14 *(Post Termination)*; and

.2 any in which the Contractor has the Intellectual Property Rights under Clause 11 *(Copyright Licence, Proprietary Material and Employer Data)”*

**Clause 8.14 – insert a new clause 8.14 as follows:**

“Post Termination

8.14 .1 For a period of 12 (twelve) years after the Termination Date the Contractor must maintain full records of:

.1 this Contract;

.2 the Works done under it;

.3 all payments received from the Employer; and

.4 any expenditure of the Contractor that the Employer reimburses,

and shall provide such documents to the Employer upon request.”

**SECTION 9 – SETTLEMENT OF DISPUTES**

**Clause 9 – Insert new clause 9.9:**

“Governing Law and enforcement

9.9 The formation, construction, performance, validity and all aspects of this Contract are to be governed by English Law.”

**Insert new clauses 10 to 29 (inclusive) as follows:**

**SECTION 10 – COLLATERAL WARRANTIES [[42]](#footnote-43)**

Contractor Warranties in favour of others

10.1 The Contractor shall execute and deliver to the Employer deeds of collateral warranty in favour of any third party owner of Properties or any relevant party so notified to it by the Employer in the form as set out in Schedule 1 *(Form of Contractor’s Collateral Warranty)*, and in each case such deed to be procured and provided to the Employer within 14 days of the Employer's written request to do so.

Sub-contractor Warranties

10.2 Within 14 days of the Employer’s request the Contractor shall procure that any sub-consultants and any sub-contractors appointed to carry out any work shall provide to the Employer a deed of collateral warranty in favour of the Employer and any relevant party so notified to it by the Employer in the form as set out in Schedule 2 (Form of Sub-Contractor’s Collateral Warranty) with such amendments as any sub-contractor or sub-consultant may reasonably require, which are approved by the Employer acting reasonably, and in each case such deeds are to be procured with a certified copy of the completed sub-contract and evidence of insurance.

10.3 If the Contractor fails to deliver any deed of warranty requested under clause 10.1 or 10.2 within 14 days of the Employer’s request, the Employer may withhold any payment or further payment (as the case may be) which would otherwise be due to the Contractor under this Contract until such deed of warranty is provided.

**SECTION 11 – COPYRIGHT LICENCE, PROPRIETARY MATERIAL**

Copyright Licence

11.1 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Employer an irrevocable royalty-free non‑exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with this Contract and/or any Order, including (without limitation) the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of any works carried out under this Contract and/or any Order. Such right shall also carry a right to grant sub-licences.

**SECTION 12 – CONFIDENTIAL INFORMATION AND SECURITY OF CONFIDENTIAL INFORMATION**

Confidential Information

12.1 .1 During the term of this Contract and after its expiry or termination for any reason, each of the parties undertakes to the other to keep the Confidential Information confidential, except to the extent that:

.1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;

.2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;

.3 disclosure or use is necessary by the relevant party in connection with entry into this deed or for the proper and effective performance of his obligations under this deed (including disclosure by either party to his insurers and professional advisers); or

.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).

.2 The Contractor must not discuss any aspect of the Works or this Contract with the press or on radio, television, internet or any other medium without the consent of the Employer.

Security of Confidential Information

12.2 .1 In order to ensure that no unauthorised person gains access to any Confidential Information or any Personal Data obtained in the performance of this Contract, the Contractor must maintain such information security systems as are approved by the Employer.

.2 Where necessary to prevent such access, the Employer may require the Contractor to alter any security systems at any time during the Contract Period at the Contractor’s expense.

.3 The Contractor must immediately notify the Employer of any breach of security in relation to Confidential Information or Personal Data obtained in connection with this Contract and will keep a record of such breaches. The Contractor must use its best endeavours to recover such Confidential Information or Personal Data (however it was recorded). This obligation is in addition to the Contractor’s obligations under Clause 12.1 *(Confidential Information).*

.4 The Contractor must co-operate with the Employer in any investigation that the Employer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or Personal Data.

.5 This Clause 12.2 is to apply during the Contract Period and for six years after the Termination Date.

**SECTION 13 – SAFEGUARDING**

Safeguarding

13.1 The Contractor shall ensure that it has in place a policy that provides for the following:

.1 No Works are to be carried out unless an adult is present within the Property. Should only a minor be present in the Property the Contractor must refuse to enter the Property.

.2 In respect of any sheltered accommodation, the warden shall be contacted and consulted prior to any Works commencing.

.3 In respect of vulnerable tenants the Contractor will follow the customer liaison provisions in the Specification[[43]](#footnote-44).

13.2 The Contractor shall provide the Employer with a copy of its policy if requested to do so on the execution of this Contract.

13.3 The Contractor shall further ensure that all Sub-Contractors comply with the requirements of this section 13 and each Sub-Contract contains equivalent requirements.

13.4 The Contractor shall immediately notify the Employer if it considers a child or a vulnerable resident is at risk or if there has been a breach of the obligations set out in this clause 13 or pursuant to the Safeguarding Vulnerable Groups Act 2006.

13.5 The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

13.6 The Contractor shall:

 .1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (DBS);

 .2 monitor the level and validity of the checks under this Clause 13.6 for each member of staff; and

 .3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

13.7 The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

13.8 The Contractor shall immediately notify the Employer of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 13 have been met.

13.9 The Contractor shall refer information about any person carrying out the Works to the DBS where it removes permission for such person to carry out the Works (or would have, if such person had not otherwise ceased to carry out the Works) because, in its opinion, such person has harmed or poses a risk of harm to the service users or children or vulnerable adults.

**SECTION 14 – DATA PROTECTION AND IT**

Data Protection

14.1 .1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor in respect of Personal Data. Unless otherwise agreed in writing, the Data Processing Operations (as reviewed from time to time) and as set out in clause 14.1.16 is the only processing that the Contractor is authorised to do by the Employer.

.2 The Contractor shall notify the Employer immediately if it considers that any of the Employer’s instructions infringe Data Protection Legislation.

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

.1 a systematic description of the envisaged processing operations and the purpose of the processing;

.2 an assessment of the necessity and proportionality of the processing operations in relation to the Works;

.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

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

.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

.1 process that Personal Data only in accordance with the Data Processing Operations, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law;

.2 ensure that it has in place Protective Measures to protect against a Data Breach, which can include but is not limited to accidental, unauthorised, or unlawful destruction, loss, alteration or access, having taken account of the:

1. nature of the data to be protected;
2. harm that might result from a Data Breach;
3. state of technological development; and
4. cost of implementing any measures;

.3 ensure that:

1. the Contractor’s Persons do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Operations);
2. it takes all reasonable steps to ensure the reliability and integrity of any of the Contractor’s Persons who have access to the Personal Data and ensure that they:
3. are aware of and comply with the Contractor’s duties under this clause;
4. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
5. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer or as otherwise permitted by this Contract; and
6. have undergone adequate training in the use, care, protection and handling of Personal Data; and

.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

1. the Employer or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Legislation) as determined by the Employer;
2. the Data Subject has enforceable rights and effective legal remedies;
3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and
4. the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

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

.5 Subject to clause 14.1.6, the Contractor shall provide written notice to the Employer’s Data Protection Officer (e-mail: [ ][[44]](#footnote-45)) immediately if it:

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

.2 receives a request to rectify, block or erase any Personal Data;

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

.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

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

.6 becomes aware of a Data Breach.

.6 The Contractor’s obligation to notify under clause 14.1.5 shall include the provision of further information to the Employer in phases, as details become available.

.7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:

.1 the Employer with full details and copies of the complaint, communication or request;

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

.3 the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;

.4 assistance as requested by the Employer following any Data Breach;

.5 assistance as requested by the Employer with respect to any request from the Information Commissioner’s Office, or any consultation by the Employer with the Information Commissioner's Office.

.8 The Contractor shall maintain, and provide to the Employer upon request, complete and accurate records and information to demonstrate its compliance with this clause.

.9 The Contractor shall allow for audits of its Data Processing activity, including security and other organisational and technical measures by the Employer or the Employer’s designated auditor. This will include evidence of testing system security on an annual basis, as a minimum through independent penetration tests, the results of which will be made known to the Employer.

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

.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

 .1 notify the Employer in writing of the intended Sub-processor and Processing;

.2 obtain the written consent of the Employer;

.3 enter into a written agreement with the Sub-processor which are equivalent to and give effect to the terms set out in this clause 14 such that they apply to the Sub-processor; and

.4 provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.

.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

.13 The Employer may, at any time on not less than 30 Business Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (in either case in accordance with Data Protection Legislation which shall apply when incorporated by attachment to this Contract).

.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Employer may on not less than 30 Business Days’ notice to the Contractor amend this Contract to ensure that they comply with any guidance issued by the Information Commissioner’s Office.

.15 The Contractor shall indemnify the Employer against all liabilities, costs, expenses, damages, and losses (and all other reasonable professional costs and expenses) suffered or incurred by the Employer arising out of or in connection with:

.1 any breach of the obligations contained within this clause 14.1 (Data Protection); or

.2 any failure to comply with its obligations as a Processor under the Data Protection Legislation.

.16 The following Data Processing Operations shall apply to this Contract:

|  |  |
| --- | --- |
| Subject Matter of Processing: | the Contractor will process Personal Data for the purpose of providing works and services in relation to the Workstreams in accordance with the terms of this Contract. |
| Duration of Processing: | the Contractor will process the Personal Data for the duration of the Contract Period or until the date of termination of this Contract, where applicable. |
| Nature and Purpose of the Processing: | to maintain records required to allow the Contractor to fulfil its duties to provide works and services in relation to the Workstreams as set out within this Contract. |
| Type of Personal Data: | Personal Data to include: Name, address, contact telephone numbers, email address, visiting information/issues (such as lone working markers or customers needs)  |
| Special Category Data: | Visting information/issues may contain health and disability information where this is relevant. Further information may be provided by Customers at the time and during the Contractor undertaking works and services to Properties. |
| Categories of Data Subject: | Customers, employees, sub-contractors and their employees. |
| Specific Processing Instructions: | Data will be shared between the Employer and Contractor via a secure data interface. The Contractor will ensure that any information is shared securely between itself and any Sub-processor. |

Employer Data held on the Contractor’s IT Systems

14.2 .1 The Contractor must:

.1 store all Employer Data safely and separately from any data not relating to the Employer or the Works;

.2 provide, maintain and update (where necessary) the Contractor’s IT System so that, at all times during the Contract Period, it is suitable for the delivery of the Works and for keeping the Employer Data up to date in connection with this;

.3 make all Employer Data maintained on the Contractor’s IT System readily available to the Employer at all times during the Contract Period; and

.4 return that Employer Data to the Employer following the Termination Date.

.2 Each Party warrants to the other that:

.1 it will not introduce any virus, malware, key logger or other harmful software into the other’s IT System;

.2 it will regularly check all software and transfer media used in connection with this Contract (including any software and transfer media used on or connected to the other Party’s IT System) with an up-to-date virus checker throughout the Contract Period;

.3 it will grant access to its IT System to the other Party during Normal Working Hours (other than when it is necessary to close down its IT System to rectify faults or undergo maintenance of which the other Party has been given reasonable notice); and

.4 granting the other Party access to its IT System does not breach any Intellectual Property Rights of any third party.

.3 The Contractor:

.1 acknowledges that the Employer Data belongs solely to the Employer and the persons to whom the data relates;

.2 must not remove any copyright notices contained in or relating to the Employer Data;

.3 must not modify, alter or reconfigure the Contractor’s IT System in order to provide the required functionality, unless agreed by the Employer;

.4 must not modify, alter, or overwrite any Employer Data stored on the Contractor’s IT System without the prior written consent of the Employer;

.5 must always maintain a back-up and records of any Employer Data it has so modified for a minimum of 3 (three) months after the modification or deletion;

.6 must, if any Employer Data is lost or corrupted, restore or procure the restoration of the Employer Data to its state immediately before the corruption or loss;

.7 must access and use the Employer’s IT System only for the purpose of and to the extent required for the Works and when doing so must comply with any reasonable rules on its use that are issued by the Employer from time to time; and

.8 must ensure that the Employer is able to use any software necessary to access and use the Employer Data both during the Contract Period and after the Termination Date.

.4 The Contractor warrants that:

.1 the Contractor’s IT System will operate and interface seamlessly with the Employer’s IT System; and

.2 the Contractor must enhance the interfaces between the Employer’s IT System and the Contractor’s IT System from time to time to the extent instructed to do so by the Contract Administrator to develop the Employer’s service to Customers.

.5 The Contractor must notify the Employer promptly and, in any event, within 2 (two) Business Days if it becomes aware of any actual, potential or threatened breach of Clause 14.2.2 or of any of the warranties in Clause 14.2.3 or Clause 14.2.4.

.6 Each Party must indemnify the other in respect of all liability incurred as a result of a breach of any of clauses 14.2.2.1 to 14.2.2.4 (inclusive), and the Contractor shall be liable for and shall indemnify the Employer against any, costs, losses, expenses or damages incurred or suffered by the Employer as a result of any breach by the Contractor of clause 14.2.1, clause 14.2.3, clause 14.2.4 and/or clause 14.2.5.

**SECTION 15** – **NOTIFICATION BY CONTRACTOR OF CLAIMS**

Notification of Claims

15.1 Notwithstanding the Contractor’s obligations the Contractor immediately upon becoming aware of the same or likelihood of the same shall notify the Contract Administrator and appropriate insurance companies of any:-

.1 accident involved a member of the public on the Site within the Contract Area or an employee of any contractor or any Sub-contractor;

.2 damage caused by the Contractor or any sub-contractor or any of their employees;

.3 breach of any relevant statutory provision by the Contractor or any sub-contractor or any of their employees;

.4 investigation, enquiry or adverse report or comment by the Health and Safety Executive or any successor or comparable agency in relation to the Contractor;

.5 any legal proceedings notified to or commenced against the Contractor in relation to any event or occurrence within the Contract Area;

.6 any enforcement action of whatever nature notified to or commenced against the Contractor; and

.7 any other matter which may in the Contractor’s opinion result in any claim of whatever nature against the Employer or which might reasonably be expected to damage public confidence in the Employer or adversely affect the Employer’s reputation.

15.3 If requested to do so by the Contract Administrator, the Contractor shall provide the Contract Administrator with any relevant information in connection with any of the matters referred to in clause 15 or any legal inquiry, arbitration or court proceedings in which the Employer may become involved or any relevant disciplinary hearing internal to the Employer and shall give evidence in any such inquiry or proceedings or hearing.

15.4 Except for any claims made by third parties, the Employer shall, if so requested by the Contractor, provide the Contractor with any relevant information in connection with any of the matters referred to in clause 15 for the purposes of any legal inquiry, arbitration or court proceedings in which the Contractor may become involved.

**SECTION 16 – CONTRACTOR’S STAFF AND LICENCE TO ENTER PROPERTIES**

Contractor’s Staff

16.1 .1 The Contractor shall ensure that its staff, servants and agents carrying out any Works under the Contract shall confine themselves to the locality of their work, cause as little interference as possible to the Employer’s tenants and/or tenants premises, and ensure that all works are carried out with the least possible inconvenience to occupants of dwellings, premises and tenants and occupiers of adjoining premises taking into account any special needs of such persons or any cultural sensitivities.

.2 The Contractor must employ sufficient competent Staff to undertake the Works.

.3 The Contractor must obtain the consent of the Contract Administrator before employing as a member of Staff any person who is:

.1 a board member of the Employer (as applicable);

.2 any employee of the Employer; or

.3 any close relative (spouse, civil partner, parent, grandparent, child, grandchild (including an illegitimate child or grandchild), brother or sister) of any such person; or

.4 any person with whom such person has a close personal relationship that is equivalent to their being a close relative.

.4 The Contractor must ensure that all Staff undertaking the Works:

.1 are appropriately qualified and experienced;

.2 are properly trained and supervised;

.3 when undertaking the Works:

a act in the best interests of the Employer;

b comply with all applicable Law including Health and Safety Law, Equality and Diversity Law, the Human Rights Act 1998 and Data Protection Legislation; and

c comply with any direction given by the Contract Administrator under this Contract.

16.2 At the Employer’s request, the Contractor shall procure that in respect of all Staff performing any of the Works (including any Works performed by Sub-Contractors or anyone acting on behalf of the Contractor), that before they perform any of the Works, they will be questioned as to whether or not they have any convictions and the results are obtained of a check of the most extensive kind available made with the Disclosure Barring Service (“DBS”) (and any successor body). Where a member of Staff discloses a conviction or the Contractor is notified following a check made with the DBS, the Contractor shall notify the Employer and the Parties shall discuss how to proceed.

**SECTION 17 – CONTRACTOR’S ASSETS**

* 1. The Contractor shall at all times during the Contract Period provide and maintain all such equipment, vehicles, materials and all other physical resources, referred to as “**Assets**”, as may be necessary from time to time for the carrying out of the Contractor’s obligations under this Contract.
	2. The Contractor shall be responsible for the maintenance and repair of all Assets, and shall maintain all Assets at all times in good and serviceable repair and in such condition as is required for the proper performance by the Contractor of its obligations under this Contract. The Contractor shall at all times be responsible for any necessary licensing and for the payment of all licensing fees, taxes and insurances as may be required in connection with the possession of or use of any of the Assets.
	3. All Assets used by the Contractor shall conform to any applicable minimum standards as set by Law.
	4. The Contractor shall only keep such hazardous materials or equipment as are necessary for the carrying out of the Contractor’s obligations under this Contract and are approved in writing by the Contract Administrator, such approval not to be unreasonably withheld or delayed, and such materials or equipment shall at all times be kept under proper control and the Contractor shall ensure that all such materials or equipment and their usage, storage and transportation comply with all applicable Law.
	5. For the avoidance of doubt, the Contractor shall be responsible for the replacement cost of any Assets, even though deployed in carrying out the Contractor’s obligations under this Contract.

**SECTION 18 – SECURITY**

18.1 The Contractor shall issue to all of its personnel who shall at any time have access to any of the Employer’s Properties identification badges in such form as the Employer may from time to time determine.

18.2 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Employer and shall only permit such keys, passes and other means of access to be given to those of the Contractor’s employees, agents or Sub-Contractors whose names and addresses have been given to the Employer and then only to the extent required for the purpose of carrying out the Contractor’s obligations under this Contract. In addition, the Contractor shall ensure that the Contract Administrator is informed immediately of the loss of any keys, passes and other means of access and shall reimburse the Employer any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

**SECTION 19 – CLAIMS FOR DAMAGE AND LOSS OF CUSTOMER’S GOODS, CHATTELS ETC**

19.1 The Contractor shall expeditiously investigate all claims for damage or loss to a Customer’s goods, chattels, possessions and personal property and reimburse the Customer where the circumstances would indicate that such loss or damage may have been caused by the Contractor, its operatives or any Sub-Contractor.

**SECTION 20 – EQUALITIES**

20.1 In all its activities carried out pursuant to the Contract, the Contractor shall comply with and shall ensure that its employees, agents, sub-contractors and their employees and agents comply with the Equality Act 2010 as well as statutory and other official guidance and codes of practice and any amendments to each of the same, including, without limitation the Code of Practice on Racial Equality in Employment and shall indemnify the Employer for any loss, expense or damage incurred as a result of any breach of such obligations.

20.2 The Contractor agrees that it will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the Equality Act 2010 and any code of practice issued thereunder and to discharge its own obligations.

20.3 The Contractor must notify the Contract Administrator in writing as soon as possible and in any event within 2 (two) Business Days of first becoming aware of any investigation or proceedings brought against the Contractor for unlawful discrimination or harassment.

20.4 Where there is a finding against the Contractor in any investigation or proceedings for unlawful discrimination or harassment:

.1 the Contractor must indemnify the Employer against all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with that investigation or proceedings;

.2 the Contractor must take all appropriate steps to prevent any repetition of the unlawful discrimination; and

.3 the Contractor must provide the Contract Administrator with such information as the Contract Administrator requests about such steps.

20.5 The Contractor must set out its policy on equality and diversity:

.1 in instructions to those concerned with recruitment, training and promotion;

.2 in documents available to employees, recognised trade unions or other representative groups of employees; and

.3 in recruitment advertisements or other literature.

20.6 The Contractor must, on request, provide the Employer with examples of the instructions and other documents, recruitment advertisement or other literature.

20.7 Where the Contractor’s or any Sub-Contractor’s Staff are required to carry out Works alongside the Employer’s employees, the Contractor must use all reasonable endeavours to ensure those Staff comply with the Employer’s equality and diversity policy.

20.8 The Contractor shall become accredited with the CITB’s ‘Be Fair’ Scheme within 18 months of the commencement of the Contract Period and provide evidence to the Employer.

**SECTION 21 – CO-OPERATION WITH OTHER CONSTRUCTORS/CONTRACTORS**

21.1 The Contractor shall co-operate with all other constructors and contractors appointed by the Employer to undertake works and services in relation to the Employer’s properties.

**SECTION 22 – TRANSFERRING EMPLOYEES**

22.1 The terms at Schedule 9 TUPE shall apply.

**SECTION 23 – RELIEF FROM OBLIGATIONS**

Early Warning

23.1 .1 Each Party must notify the other in writing (copied to the Contract Administrator) of any matter they become aware of which could lead to either Party being unable to comply with its obligations under this Contract to any extent that is material.

.2 Following a notification under Clause 23.1.1 the Contract Administrator may require the Contractor to attend a risk reduction meeting to consider:

.1 the likely impact of the matter that has been notified;

.2 the steps that should be taken (in accordance with this Contract) for managing avoiding or reducing the effect of it; and

.3 the likely cost of those steps and who (in accordance with this Contract) should bear that cost.

Change in Law risk

23.2 .1 Where the Contractor considers that a change in Law after the date of this Contract, which could not have been reasonably foreseen by the Contractor at the commencement of the Contract Period, has or will have a significant impact on the Rates, the mechanism at clauses 5.6.7 to 5.6.10 shall apply.

**SECTION 24** – **MONITORING, KPI’S, BREACHES AND REMEDIES**

Monitoring and KPI’s

24.1 .1 The Parties shall provide the Contract Administrator with all the monthly KPI data for the previous month as set out at Schedule 7 (*KPI Framework*), that falls within each Party’s responsibility to collate, by no later than two weeks following the start of each month. Following receipt of this data, the Contract Administrator shall provide the Parties with all relevant KPI data in advance of each KPI review meeting, which shall take place no later than 4 weeks after the date on which the Contract Administrator has received all the relevant KPI data or on such other date as determined by the Employer.[[45]](#footnote-46)

.2 During the Contract Period, the Employer shall have the right to make any adjustments to the KPI requirements including but not limited to:

.1 KPI Targets

.2 KPI Minimum Levels of Acceptable Performance

.3 The removal, adjustment or replacement of a KPI

 Where the Employer proposes to make an adjustment to the KPI requirements it shall notify the Contractor of its intention before doing so and the Contractor may provide the Employer with the details of any cost consequences arising from the proposed adjustment to the KPI requirements. The Employer shall have an obligation to consider any such cost consequence but shall be under no obligation to agree an adjustment to the Contractor’s Rates or Prices.

.3 The Contractor must grant access to the Employer and/or Contract Administrator to any premises where Works are being undertaken and for any period required by the Employer and/or Contract Administrator.

.4 If either Party reasonably considers there to be any error or omission in the other Party’s KPI data for a particular month, the notifying Party shall notify the other Party and the Contract Administrator of the error or omission within five (5) Business Days of the issue of the KPI data. That notification shall be in writing and properly particularised. Following such notification, the Contractor and the Employer shall meet to discuss and seek to agree an amendment to the relevant KPI data. The Contract Administrator’s decision regarding any amendments shall be final.

.5 The Employer may at any time monitor or direct the Contractor to monitor the Contractor’s performance in relation to any KPI over such period as the Employer reasonably determines.

.6 The Core Group members will review monthly and quarterly throughout the Contract Period (as required by the Employer), including a review on the anniversary of the Contract and during the remainder of the Contract Period, at a meeting, the performance of the Contractor against the Key Performance Indicators set out in Schedule 7 (*KPI Framework*) and will consider the extent to which the Employer is obtaining best value from the Contract.

.7 Having considered the outcome of the review set out at clause 24.1.6, if the Contractor fails to achieve the [Minimum Level of Acceptable Performance][[46]](#footnote-47) in one or more KPIs (as set out in the KPI Framework) for that monthly period, quarter or annual period subject to the review, then the Contractor shall, within ten (10) Business Days from the date of the relevant monthly/quarterly/annual review meeting under clause 24.1.6, issue to the Contract Administrator and the Employer its proposals for how intends to rectify those failures within a 2 (two) month period (or a shorter period, as reasonably determined by the Employer) from the date of the Core Group review meeting pursuant to clause 24.1.6 (“the Action Plan”).

.8 The Core Group shall following ten (10) Business Days after receipt of the Contractor’s Action Plan under clause 24.1.7 meet to consider such proposals provided by the Contractor and amend or clarify them as may be agreed whereupon the Contract Administrator shall issue the agreed finalised proposals as an improvement plan (“**the Improvement Plan**”) no later than 10 days thereafter. In the event the Core Group cannot agree finalised proposals or the Contractor fails to provide its proposals in accordance with clause 24.1.7, the Employer is entitled to exercise all and any of the rights available to it at clause 24.1.9.

.9 The Core Group shall meet within three (3) months from the date of the Core Group review meeting under clause 24.1.6, to review the performance of the Contractor and the Contract Administrator shall within ten (10) Business Days from the date of such meeting issue a report of the outcome of this review, taking into account any Improvement Plan that may have been agreed pursuant to clause 24.1.8. If this report notifies a continued failure by the Contractor to achieve the [Minimum Level of Acceptable Performance][[47]](#footnote-48) on one (1) or more of the KPIs then the Employer shall be entitled to terminate this Contract for breach of contract, shorten the Contract Period or reduce the scope of works and services to be carried out by the Contractor under the Contract or remove a Workstream or part thereof in each case by notice with immediate effect and in such circumstances the Contractor shall not have a claim against the Employer (whether under contract, statute, tort or otherwise) in respect of any consequential or indirect loss or any actual or expected loss of profit, loss of revenue, loss of goodwill, or loss of opportunity other than payments for Orders already completed in accordance with the Contract.

**Employer rights where Works are not in accordance with the Contract**

24.2 If the Employer determines that Works have not been carried out in accordance with the Contract and the Contractor has failed to make good or remedy any defect or default in the Works then without prejudice to any other right it may have under this Contract, the Employer shall be at liberty to employ an alternative Contractor to make good or remedy any defect or default in the Works without any additional notice to the Contractor and recover the costs of so doing from the Contractor.

Remedial Plan

24.3 .1 The Employer may (but is under no obligation to do so) by written notice require the Contractor to produce a Remedial Plan if the Contractor is in breach of this Contract.

.2 A Remedial Plan must demonstrate to the satisfaction of the Employer how such a breach will be avoided in future.

.3 The Contractor must provide a draft of the Remedial Plan within 10 (ten) Business Days of the Employer’s written notice under Clause 24.3.1.

.4 Within 10 (ten) Business Days of the receipt of the draft Remedial Plan under Clause 24.3.3 (or such longer period as the Employer and Contractor agree) the Employer must by written notice to the Contractor:

.1 approve the draft Remedial Plan; or

.2 approve the draft Remedial Plan subject to the Contractor making specific changes to it that are set out in the notice; or

.3 reject the draft Remedial Plan and inform the Contractor of the contents of it that need to be changed to secure the Employer’s approval; or

.4 reject the draft Remedial Plan and inform the Contractor of the Employer’s reasons for doing so.

.5 Where the Employer approves the draft Remedial Plan under Clause 24.3.4, the Contractor must implement that Remedial Plan.

.6 Where the Employer approves a draft Remedial Plan under Clause 24.3.4 subject to amendments being made by the Contractor, the Contractor must indicate by written notice to the Employer within 5 (five) Business Days whether those amendments are acceptable. Where the Contractor’s notice indicates that the amendments are:

.1 acceptable, the Contractor must implement that Remedial Plan within the timescales set out in that Remedial Plan;

.2 not acceptable, then clause 24.3.7 will apply.

.7 Where the Employer rejects the draft Remedial Plan:

.1 the Contractor must provide the revised Remedial Plan within 10 (ten) Business Days of the date of rejection or such shorter period stated in the notice of rejection within which the Employer (acting reasonably) considers that it should be provided having regard to the nature of the breach; and

.2 Clauses 24.3.2 to this Clause 24.3.7 will apply to the revised Remedial Plan and any further revisions to it.

Remedies cumulative

24.4 The rights and remedies given by this Contract are cumulative and do not exclude any other rights or remedies given by Law or under this Contract.

Indemnity

24.5 The Contractor hereby indemnifies and will keep indemnified the Employer against all losses, damages, claims, actions and demands that the Employer suffers or incurs, which may at any time be made or incurred in respect of the injury to or death of any persons or loss or destruction of or damage to any property and any other claims, liabilities, loss and/or damage arising from or in connection with the Contract or any defect in the Works or any breach by the Contractor of any of the terms of the Contract which arise out of any act, default or omission of the Contractor, its sub-contractors, staff, agents or employees be these wilful, negligent or otherwise and against all claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever suffered or incurred in respect thereof or in relation thereto.

**SECTION 25** – **GENERAL PROVISIONS**

Third party rights and groups

25.1 .1 Where the Employer requires the Contractor to undertake Works for a group organisation that group organisation may rely on this Contract under the Contracts (Rights of Third Parties) Act 1999.

 2 Subject to Clauses 25.1.1 and Schedule 9, [and the rights extended to any Group Company pursuant to Article 15,][[48]](#footnote-49) nothing in this Contract confers any benefit on any person or organisation who is not a Party or gives any such person or organisation any right to enforce it.

Waiver and severability

25.2 .1 A failure by the Employer in enforcing any rights, powers or privileges under this Contract must not be construed as a waiver of that provision. Such waiver must not affect the validity of the Contract or the Employer’s right to enforce it in accordance with its terms.

 .2 The single or partial exercise of any right, power or privilege under the Contract does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).

.3 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiting its entitlement.

.4 No waiver is to be deemed a waiver of any subsequent breach or default not is it to affect the other terms of this Contract.

.5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount of any other statement in respect of money.

.6 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Entire agreement

25.3 .1 Subject as provided in Clause 25.3.3, this Contract sets out the whole agreement between the Parties in relation to the Works. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.

.2 Each Party warrants that it has not entered into this Contract in reliance on any representation made by the other except to the extent that such representation is expressly included in it.

.3 Nothing in this Clause 25.3 excludes any liability for fraudulent misrepresentation.

Extent of obligations and further assurance

25.4 .1 Where the Employer is a charity and/or a registered provider of social housing, nothing in this Contract requires the Employer to act in any way which is inconsistent with its obligations as such.

.2 Each Party undertakes (subject to Clause 25.4.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.

No partnership or agency

.3 Nothing in this Contract is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other Law concerning partnerships or limited liability partnerships.

.4 Neither Party must hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Contract expressly provides otherwise.

Variations of the contract

25.5 .1 No variation of this Contract is to bind either Party and no person has authority on behalf of either Party to agree to any variations to this Contract except where the amendment is agreed to in writing by both Parties.

.2 No consents to any variation to this Contract are required from any person who is not a Party.

Counterparts

.3 This Contract may be executed in counterparts each of which is deemed to be an original and the counterparts together constitute the same agreement.

Legal costs

.4 Each Party is to bear their own costs in relation to the negotiation and completion of this Contract.

**SECTION 26** – **ANTI-BRIBERY OBLIGATIONS**

26.1The Contractor shall and shall procure that any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it shall:

.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption (and for this purpose the UK’s Bribery Act 2010 (the **Bribery Act**) shall be deemed to apply (**Relevant Laws**).

.2 not do, or omit to do, any act that will cause or lead the Employer or any of its group companies to be in breach of any of the Relevant Laws or the Employer’s anti-bribery policy (the **Policy**), a copy of which will be provided to the Contractor upon request;

.3 have and shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Relevant Laws and the Policy, and will enforce them where appropriate;

.4 promptly report to the Employer (in writing) any breach of the Relevant Laws or the Policy by it or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it;

.5 promptly report to the Employer (in writing) any request or demand for any undue financial or other advantage of any kind received by the Contractor (or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it) in connection with the performance of this Contract;

.6 if requested, provide the Employer with any reasonable assistance, at the Employer’s reasonable cost, to enable the Employer to perform any activity required for the purpose of compliance with any of the Relevant Laws or the Policy; and

.7 within one month of the date of this Contract, and annually thereafter, certify to the Employer in writing signed by an authorised officer of the Contractor, compliance with this clause 26 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.

26.2 The Contractor shall indemnify the Employer or any of its group companies against any losses, damages, claims or expenses incurred by (including but not limited to legal fees), or awarded against, the Employer or any of the Employer’s group companies as a result of any breach of this clause 26 by the Contractor or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it.

26.3 The Contractor warrants and represents to the Employer that neither the Contractor nor any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it:

.1 has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; or

.3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

26.4 The Contractor shall promptly notify the Employer if, at any time during the term of this Contract, its circumstances, knowledge or awareness or that of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it, changes such that it (or they) would not be able to repeat the warranties set out in clause 26.3 at the relevant time.

26.5 Without prejudice to the provisions of clause 8.6, the Employer may terminate this Contract with immediate effect upon written notice to the Contractor if at any time after entry into this Contract the Contractor or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it:

.1 breaches clause 26.1;

.2 is unable to repeat the warranties set out in clause 26.3;

.3 pleads guilty to or is convicted of any offence involving bribery or corruption, fraud or dishonesty;

.4 is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; and/or

.5 is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

26.6 If the Employer terminates this Contract for breach of this clause 26, the Contractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination. The Employer shall be entitled to recover any and all losses and damages that it incurs following a termination of this Contract due to a breach by the Contractor of clause 26, including its full re-procurement costs which the Contractor hereby agrees are reasonably foreseeable.

**SECTION 27** – **MODERN SLAVERY ACT**

27.1The Contractor shall (and shall procure compliance by its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it), at its own cost, comply with its obligations under the Modern Slavery Act 2015 **(“MSA 2015”)**.

27.2 The Contractor shall respond promptly to any questionnaire or due diligence enquiries put to it by the Employer or its representatives relating to the subject of modern slavery and human trafficking and the Contractor warrants that any such information provided shall be true and accurate in all material respects having made such internal enquiries as would be expected by a reasonably prudent and diligent contractor.

27.3 The Contractor warrants to the Employer that:

.1 none of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it have been convicted of any offence involving slavery and human trafficking;

.2 none of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

.3 having made reasonable enquiries, so far as it is aware it or its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it have not been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking,

and the warranties so provided by the Contractor shall be deemed repeated to the Employer on each anniversary of the commencement of the Contract Period.

27.4 The Contractor undertakes that it shall:

.1 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains; and

.2 undertake such training as may be reasonably required to procure that its business and supply chain are and remain free of any human trafficking or slavery.

27.5 The Contractor shall notify the Employer as soon as it becomes aware of:

.1 any breach or potential breach of this clause 27; or

.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

27.6 The Contractor shall prepare and deliver to the Employer, on each anniversary of the Contract Period, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

27.7 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach by the Contractor of this clause 27.

27.8 If the Employer terminates this Contract for breach by the Contractor or the Contractor’s Persons of the Modern Slavery Act 2015 pursuant to clause 8.6, the Contractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination. The Employer shall be entitled to recover any and all losses and damages that it incurs following a termination of this Contract due to a breach by the Contractor of the Modern Slavery Act 2015, including its full re-procurement costs which the Contractor hereby agrees are reasonably foreseeable.

**SECTION 28** – **AUDIT AND RECORD KEEPING**

28.1The Contractor shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Contractor in connection with this Contract and the steps taken by the Contractor to comply with its obligations under this clause 28.1. The Contractor shall ensure that such records and books of accounts are sufficient to enable the Employer to verify the Contractor’s compliance with its obligations under this clause 28.1.

28.2 The Contractor shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of clause 28.1, to access and take copies of the Contractor’s records and any other information held at the Contractor’s premises and to meet with the Contractor’s personnel to audit the Contractor’s compliance with its obligations under clause 28.1. Such audit rights shall continue for three years after termination of this Contract. The Contractor shall provide all necessary assistance to the conduct of such audits during the Contract Period and for a period of three years after termination of this Contract.

**SECTION 29** – **ANTI-FACILITATION OF TAX EVASION**

29.1The Contractor shall and shall procure that its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it or other persons who are performing Works in connection with this Contract shall:

29.1.1 not engage in any activity, practice or conduct which would constitute either:

.1 a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or

.2 a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;

29.1.2 not do, or omit to do, any act that will cause or lead the Employer to commit an offence under section 45(1) or section 46(1) of the Criminal Finances Act 2017;

29.1.3 promptly report to the Employer any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;

29.1.4 have and shall maintain in place throughout the term of this Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Contractor) and to ensure compliance with clause 29.1.1;

29.1.5 if requested, provide the Employer with any reasonable assistance, at the Employer’s reasonable cost, to enable the Employer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with Part 3 of the Criminal Finances Act 2017;

29.1.6 within one month of the date of this Contract, and annually thereafter, certify to the Employer in writing signed by an authorised officer of the Contractor, compliance with this clause 29 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request.

29.2 The Contractor shall indemnify the Employer or any of its group companies against any losses, damages, claims or expenses incurred by (including but not limited to legal fees), or awarded against, the Employer or any of the Employer’s group companies as a result of any breach of this clause 29 by the Contractor or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it.

29.3 The Contractor warrants and represents that:

29.3.1 its responses to the Employer’s anti-facilitation of tax evasion due diligence questionnaire are complete and accurate; and

29.3.2 neither the Contractor nor any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it:

.1 has been convicted of any offence involving tax evasion or the facilitation of tax evasion;

.2 having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence concerning tax evasion or the facilitation of tax evasion;

.3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

29.4 The Contractor shall promptly notify the Employer if, at any time during the term of this Contract, its circumstances, knowledge or awareness or that of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it, changes such that it (or they) would not be able to repeat the warranties set out in clause 29.3 at the relevant time.

29.5 Without prejudice to the provisions of clause 8.6, the Employer may terminate this Contract with immediate effect upon written notice to the Contractor if at any time after entry into this Contract the Contractor or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor’s Persons or other persons associated with it are in breach of this clause 29.

29.6 If the Employer terminates this Contract for breach of this clause 29, the Contractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination. The Employer shall be entitled to recover any and all losses and damages that it incurs following a termination of this Contract due to a breach by the Contractor of clause 29, including its full re-procurement costs which the Contractor hereby agrees are reasonably foreseeable.

**SCHEDULE 1 – FORM OF CONTRACTOR’S COLLATERAL WARRANTY**

DATED                                                         20

**(CONTRACTOR)**

**(BENEFICIARY)**

**(EMPLOYER)**

**DEED OF COLLATERAL WARRANTY**

relating to a project at

(                                      )

**DATED**

**PARTIES**

|  |  |  |
| --- | --- | --- |
| 1 | Contractor | (                              ) (company no (          )) whose registered office is at (                                                    ) |
| 2 | Beneficiary | (                              ) (company no (          )) whose registered office is at (                                                    ) |
| (3 | Employer | (                                          )(company no (          )) whose registered office is at (                                    ) |

**RECITALS**

A By the Contract, the Employer has employed the Contractor to carry out and complete the Orders.

B (The Beneficiary has agreed to provide finance for the Orders.

*or*

The Beneficiary has agreed to purchase (*part of*) the Property.

*or*

The Beneficiary has agreed to take a lease of (*part of*) the Property.

*or*

The Beneficiary has agreed to take an interest in (*part of*) the Property.)[[49]](#footnote-50)

C As a condition of and in consideration of the Beneficiary’s agreement the Contractor has agreed to enter into this deed for the benefit of the Beneficiary.

**OPERATIVE PROVISIONS**

# Definitions and interpretation

## Unless the contrary intention appears, the following definitions apply:

|  |  |
| --- | --- |
| *Beneficiary* | includes any person to whom the benefit of this deed and/or any rights arising under it have been validly assigned in accordance with clause (7); |
| *Contract* | the contract dated (                           20 ) between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to carry out and complete the Orders; |
| *Contract Period* | the Contract Period more particularly described in the Contract; |
| *Employer* | ((*insert name of Employer*) and)[[50]](#footnote-51) includes any person to whom the benefit of the Contract has been validly assigned; |
| (*Fund* | (*insert name of Fund*);)[[51]](#footnote-52) |
| *Orders* | the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under the Contract. |
| *Property* | the property at (                                           ); |
| *Proprietary Material* | all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in the course of or as a result of carrying out the Orders; |
| *Statutory Requirements* | any requirements imposed by:(a) any Act of Parliament;(b) any instrument, rule or order made under any Act of Parliament;(c) any regulation or byelaw of any local authority, statutory undertaker or other body which has jurisdiction with regard to the Orders or to whose systems the Orders are or will be connected; or(d) any planning permission, building regulation approval or other consent or approval required for the execution of the Orders; and |

## Any obligation on a party to this deed to do an act includes an obligation to procure that it is done.

## If a party is placed under a restriction in this deed, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.

## References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.

## Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.

## Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.

## The clause headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.

## Unless the contrary intention appears, references in this deed to numbered clauses are references to the relevant clause in this deed.

## References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments, regulations and codes of practice made under it.

# Contractor’s warranties

## The Contractor warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Contract in accordance with the terms of the Contract, provided always that:

### the Contractor shall owe no greater obligations to the Beneficiary under this deed than it owes to the Employer under the Contract;

### the Contractor shall be entitled in any proceedings under this deed to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability (but excluding set‑offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Employer under the Contract; and

### the Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Orders (unless and until the Beneficiary has given notice to the Contractor under clause 4.1 or clause 4.3)[[52]](#footnote-53).

## Without limiting clause 2.1, the Contractor warrants to the Beneficiary that:

### it has exercised and will continue to exercise, in the performance of its obligations under the Contract, all the skill, care and diligence which may reasonably be expected of a qualified and competent design and build contractor experienced in carrying out work of a similar size, scope, nature and complexity to the Orders;

### the Orders as completed will comply with any performance specification or requirement included or referred to in the Contract;

### the Orders have been and will be carried out and completed in a good, sound, substantial and workmanlike manner using good quality and appropriate materials and in all respects in accordance with the Contract;

### unless otherwise instructed or authorised by the Employer or the Contract Administrator on his behalf under the Contract, none of the materials referred to in clause 2.2.1 of the Contract has been or will be used in the completion of the Orders; and

### the Orders as completed will in all respects comply with the Statutory Requirements.

## The Contractor extends to the Beneficiary the benefit of all warranties on the part of the Contractor contained in the Contract.

## The Contractor acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Contractor under this clause 2.

## The Contractor acknowledges to the Beneficiary that, at the date of this deed, the Contract remains in full force and effect and the Employer has paid all sums properly due to the Contractor under the Contract.

# (Obligations prior to determination of the Contractor’s employment[[53]](#footnote-54)

## The Contractor shall not exercise nor seek to exercise any right to determine its employment under the Contract for any reason, including any breach on the part of the Employer, without giving to the Beneficiary not less than (21) days’ notice of its intention to do so and specifying the grounds for the proposed determination.

## Any period stipulated in the Contract for the exercise by the Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under clause 3.1.

## Compliance by the Contractor with clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination, nor otherwise prevent the Contractor from exercising its rights after the expiration of notice, unless the right of determination shall have ceased under the provisions of clause 4.

# “Step‑in” right

## The right of the Contractor to determine its employment under the Contract shall cease if, within the period of (21) days referred to in clause 3.1, the Beneficiary ((which expression shall for the purposes of this clause 4 include any receiver, administrative receiver or other appointee (in each case a “Nominee”) appointed by the Beneficiary))[[54]](#footnote-55) shall give notice to the Contractor:

### requiring it to continue its obligations under the Contract;

### acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Contract; and

### undertaking to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract and to pay to the Contractor within 7 days any sums which have become due and payable to it under the Contract but which remain unpaid(.)(;)

 (provided that:

### in this proviso and in clause (4.8) *Fund Warranty* means a deed made or to be made between the Contractor, the Fund and the Employer in respect of the Orders under which the Fund has a right equivalent (with the appropriate changes) in all material respects to the right granted by clause 4.1 to the Beneficiary, save that the period for the exercise of that right by the Fund shall expire 14 days after service of the Contractor’s simultaneous notices on the Beneficiary and the Fund of its intention to determine its employment under the Contract;

### any notice served by the Contractor on the Beneficiary pursuant to clause 3.1 shall be invalid unless a similar notice has been simultaneously served upon the Fund;

### the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 within the period of 14 days referred to in clause 4.1.4 unless the Fund shall previously have notified the Beneficiary that it will not exercise its equivalent right under the Fund Warranty;

### the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 in response to a notice under clause 3.1 if the Fund has already exercised its equivalent right under the Fund Warranty in response to the Contractor’s simultaneous notice to the Fund; and

### any notice given by the Beneficiary which is in breach of clause 4.1.6 or clause 4.1.7 shall be invalid.)[[55]](#footnote-56)

## Upon compliance by the Beneficiary with the requirements of clause 4.1, the Contract shall continue as if the right of determination on the part of the Contractor had not arisen and as if the Contract had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.

## Notwithstanding that as between the Employer and the Contractor the Contractor’s right of determination of its employment under the Contract may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Contractor and the Employer to that effect and the Beneficiary complies with the requirements on its part under clause 4.1(, provided that the Beneficiary may only give notice under this clause 4.3 if it shall first have given the Fund and the Contractor notice of its intention to do so and the Fund has consented expressly to the exercise of such right by the Beneficiary)[[56]](#footnote-57).

## (Any notice given by the Beneficiary which is in breach of clause 4.3 shall be invalid.)[[57]](#footnote-58)

## The Contractor shall be bound to assume that, as between the Employer(the Fund)[[58]](#footnote-59) and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.

## The Contractor, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Employer.

## (If the Beneficiary appoints a Nominee to exercise its rights under this clause 4, the Nominee shall act on behalf of the Employer and shall have no personal liability to the Contractor, but the Beneficiary shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Nominee.)[[59]](#footnote-60)

## (If the Fund exercises its equivalent right under clause 4.1 or clause 4.3 of the Fund Warranty, the provisions of clauses 3 and 4 shall have effect as if all references to the Fund and the Fund Warranty had been deleted and as if all references to the Employer were references to the Fund.)[[60]](#footnote-61))

# Use of Proprietary Material

## The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty‑free non‑exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Orders and/or the Property, including (without limitation) the execution and completion of the Orders and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.

## The licence referred to in clause 5.1 carries the right to grant sub‑licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor’s employment under the Contract.

## Insofar as the Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material and/or of the Orders, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of them.

## The Contractor shall procure for the Beneficiary a waiver corresponding to that in clause 5.3 from any sub‑contractor employed by the Contractor who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Proprietary Material and/or of the Orders in respect of them.

## The Contractor shall provide a complete set of copies of the Proprietary Material to the Beneficiary without charge within one month of the end of the Contract Period and shall provide further copies of any or all of the Proprietary Material to the Beneficiary on request and upon payment by the Beneficiary of the Contractor’s reasonable copying charges.

## The Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared.

# (Insurance[[61]](#footnote-62)

## Without limiting its other obligations under this deed or otherwise at law, the Contractor shall maintain professional indemnity insurance to cover each and every professional liability which it may incur under this deed, with a limit of indemnity of not less than £5,000,000 in respect of each and every claim, provided that such insurance continues to be available in the United Kingdom market on reasonable terms and at commercially reasonable premium rates to contractors of similar standing to the Contractor.

## The insurance referred to in clause 6.1 shall:

### be subject only to such conditions and excesses as may be usual in the United Kingdom market at the time; and

### be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this deed and for a period expiring not less than 15 years after the end of the Contract Period and notwithstanding the determination (for any reason) of the Contractor’s employment under the Contract.

## As and when reasonably required to do so by the Beneficiary, the Contractor shall produce documentary evidence that the insurance required by this clause 6 is being properly maintained.

## The Contractor shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this clause 6 on reasonable terms and at commercially reasonable premium rates or at all or if there is any material reduction in the scope or level of cover offered by such insurance.

## The Contractor shall not compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this deed without the prior consent of the Beneficiary, provided that nothing in this clause precludes the Contractor’s insurers from taking over (in the name of the Contractor) the defence of any claim made by the Beneficiary under this deed and (in that capacity) from conducting and settling it as they see fit.)

# Assignment

## The Beneficiary may at any time assign the benefit of this deed and/or any rights arising under it by way of absolute legal assignment (to any further person providing finance or re-finance in connection with the Orders)[[62]](#footnote-63) (to any subsequent purchaser of Beneficiary’s interest in the Property (subject to a maximum of two such assignments) and/or by way of charge to any mortgagee of the Property)[[63]](#footnote-64) on notice to the Contractor, without the consent of the Contractor being required.

# Third parties

## Any holding or subsidiary company of the Beneficiary or any company associated with it may in its own right enforce any term of this deed.

## Except as provided in clause 8.1, it is not intended that any third party (other than the Beneficiary) should have the right to enforce a provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## The parties may rescind or vary this deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

# (Warranties in favour of others

 The Contractor shall, within 14 days of being requested so to do by the Beneficiary, execute and deliver to the Beneficiary a deed of collateral warranty (in terms substantially similar to this deed but excluding clauses 3, 4 and 9) in favour of any person who acquires an interest in the Property from the Beneficiary and/or any first person who has entered into a lease or an agreement for lease for any part of the Property, provided that a collateral warranty in favour of such person has not already been requested by the Employer under the Contract.)[[64]](#footnote-65)

# Other remedies

## Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.

## The liability of the Contractor under this deed shall not be released, diminished or in any other way affected by:

### the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Orders or to inspect any documents relating to them on behalf of the Beneficiary or the failure to appoint such a person;

### any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or

### any other independent inquiry into any relevant matter which the Beneficiary may make or fail to make.

# Limitation

11.1 The Contractor’s liability under this deed shall expire 12 years following completion of works pursuant to each Order (“Limitation Date”), save in respect of:

(a) any claims notified before or on the Limitation Date; and

(b) any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that the Contractor’s liability under this deed in respect of such claims shall expire on the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to any actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

11.2 Subject to clause 11.3, no action or proceedings may be commenced against the Contractor after the Limitation Date.

11.3 Nothing in clause 11.2 shall limit the Beneficiary’s right to commence an action or proceedings against the Contractor in respect of any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that no such action or proceedings may be commenced against the Contractor after the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

# Notices

Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

# Governing law and disputes

The application and interpretation of this deed shall in all respects be governed by English law and any dispute or difference arising under this deed shall be subject to the jurisdiction of the English courts.

Delivered as a deed on the date of this document.

Executed under the common seal of:

[CONTRACTOR] in the presence of:

 Director

 Director / Secretary

Executed under the common seal of

[EMPLOYER] in the presence of:

 Authorised Signatory

 Authorised Signatory

Executed under the common seal of

(BENEFICIARY) in the presence of:

 Director

 Director / Secretary

**SCHEDULE 2 – FORM OF SUB-CONTRACTOR’S COLLATERAL WARRANTY**

DATED                                                            20

**(SUB-CONTRACTOR)**

**(EMPLOYER / BENEFICIARY)[[65]](#footnote-66)**

**DEED OF WARRANTY**

relating to a project at

(                                        )

**DATED**

**PARTIES**

|  |  |  |
| --- | --- | --- |
| 1 | Sub-Contractor | (                                          )(company no (          )) whose registered office is at (                                    ) |
| 2 | (Employer/Beneficiary) | (                                          )(company no (          )) whose registered office is at (                                    ) |

**RECITALS**

A By the Contract, the Employer has employed the Contractor to carry out and complete the Orders.

B Pursuant to the provisions of the Contract, the Contractor with the consent of the Employer has employed the Sub-Contractor under the Sub-Contract to carry out and complete the Sub-Contract Works.

(C Recite nature of the Beneficiary’s interest in the Property.)[[66]](#footnote-67)

D In consideration of the foregoing the Sub-Contractor has agreed to enter into this deed in favour of the (Employer/Beneficiary).

**OPERATIVE PROVISIONS**

# Definitions and interpretation

## Unless the contrary intention appears, the following definitions apply:

|  |  |
| --- | --- |
| *[[67]](#footnote-68)(Beneficiary* | includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 6.1;) |
| *Contract* | the contract dated (                        ) between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has undertaken to carry out and complete the Orders; |
| *Contract Period* | the Contract Period more particularly described in the Contract; |
| *Contractor* | ( ) (company no ( ) whose registered office is at ( ) |
| *[[68]](#footnote-69)(Employer* | includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 6.1;) |
| *[[69]](#footnote-70)(Employer* | (                                          )(company no (          )) whose registered office is at (                                    ) |
| *Orders* | the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under the Contract. |
| *Property* | the property at (                                                    ); |
| *Proprietary Material* | all drawings, details, plans, specifications, schedules, calculations, software and other work (and the designs contained in them) prepared or to be prepared by or on behalf of the Sub-Contractor in connection with the Orders; |
| *Sub-Contract* | the sub‑contract dated (                             ) between the Contractor (1) and the Sub-Contractor (2) (and any further agreement varying or supplementing it) whereby the Sub-Contractor has undertaken to carry out and complete the Sub-Contract Works; |
| *Sub-Contract Works* | the work and/or those parts of the Orders to be carried out by the Sub-Contractor as more particularly defined and described in the Sub-Contract; and |

## The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.

## Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.

## Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.

## Where the context so admits, references in this deed to a clause are to a clause of this deed.

## References in this deed to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.

# Sub-Contractor’s warranties

## The Sub-Contractor warrants and undertakes to the (Employer/Beneficiary) as follows:

### that he has exercised and will continue to exercise all reasonable skill, care and diligence:

#### in the performance of his duties and responsibilities pursuant to and within the scope of his employment under the Sub-Contract;

#### in relation to the design of the Sub-Contract Works insofar as the Sub-Contractor is responsible pursuant to the terms of the Sub-Contract and to the standard to be expected of a properly qualified and competent professional designer who is experienced in carrying out work (and preparing design) of a similar scope, nature, complexity and size to the Sub-Contract Works; and

#### in the selection of materials and goods insofar as the same have been or will be selected by the Sub-Contractor, his sub-contractors or suppliers in accordance with the Sub-Contract;

### that the Sub-Contract Works have been and will be carried out and completed to satisfy any performance specification or requirement included or referred to in the documents comprising the Sub-Contract;

### that the Sub-Contract Works have been and will be carried out and completed in a good, sound, substantial and workmanlike manner using good quality and appropriate materials and in all respects in accordance with the Sub-Contract;

### that he has observed and performed and will continue to observe and perform all the terms and obligations on his part to be observed and performed under the Sub-Contract; and

### that none of the materials referred to in clause 2.2.1 of the Contract has been or will be used in the Sub-Contract Works.

## The Sub-Contractor acknowledges that the (Employer/Beneficiary) shall be deemed to have relied and to continue to rely upon the warranties and undertakings given by the Sub-Contractor under this clause 2, provided always that:

### the Sub-Contractor shall owe no greater obligations to the (Employer/Beneficiary) under this deed than it would have had if in lieu of this deed the (Employer/Beneficiary) had been named as joint employer with the Contractor under the Sub-Contract, provided that in relation to any claim under this deed the Sub-Contractor shall not be entitled to rely upon any shorter limitation period applicable to the Sub-Contract, whether express or implied, than the period of liability set out at clause 2.2.2 of this deed; and

### the Sub-Contractor’s liability under this deed shall expire 12 years following completion of the Sub-Contract Works (“Limitation Date”), save in respect of:

### (a) any claims notified before or on the Limitation Date; and

### (b) any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that the Sub-Contractor’s liability under this deed in respect of such claims shall expire on the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to any actions brought under that legislation or the Civil Liability (Contribution) Act 1978; and

### subject to clause 2.2.4, no action or proceedings may be commenced against the Sub-Contractor after the Limitation Date; and

### nothing in clause 2.2.3 shall limit the (Employer/Beneficiary)’s right to commence an action or proceedings against the Sub-Contractor in respect of any claims arising from or in connection with a failure to comply with section 1 or section 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984, including any claim to a contribution in relation to liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, provided that no such action or proceedings may be commenced against the Sub-Contractor after the expiry of the limitation period applicable in accordance with the Limitation Act 1980 to actions brought under that legislation or the Civil Liability (Contribution) Act 1978.

# (Determination and Novation of the Sub-Contract

## The Sub-Contractor shall not, without first giving to the Employer not less than 21 days’ prior notice, exercise any right he may have to determine his employment under the Sub‑Contract or treat the same as having been repudiated by the Contractor or withhold performance of his obligations thereunder.

## In the event that the employment of the Contractor under the Contract is determined for any reason whatsoever, the Sub-Contractor shall continue to carry out and complete his obligations under the Sub-Contract and shall within 7 days of the Employer’s request so to do execute a deed of novation in such form as the Employer may reasonably require transferring the rights and obligations of the Contractor under the Sub‑Contract to the Employer (in which event the Sub-Contractor shall not thereafter unreasonably withhold his consent to a further novation of the Sub‑Contract by the Employer) or to any person nominated by the Employer. Provided always that the provisions of this clause 3.2 shall not apply if the Employer shall so notify the Sub-Contractor within 14 days of the date of determination as aforesaid.

## If the Employer shall notify the Sub-Contractor under clause 3.2, the Sub-Contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with such notification or this deed.)[[70]](#footnote-71)

# Use of Proprietary Material

## The copyright in the Proprietary Material shall remain vested in the Sub-Contractor, but the Sub-Contractor grants to the (Employer/Beneficiary) an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose whatsoever connected with the Orders and/or the Property, including (without limitation) the execution and completion of the Orders and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.

## The licence referred to in clause 4.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Sub-Contractor’s employment under the Sub‑Contract.

## The Sub-Contractor shall provide copies of any or all of the Proprietary Material to the (Employer/Beneficiary) upon request and upon payment by the (Employer/Beneficiary) of the Sub-Contractor’s reasonable copying charges.

## The Sub-Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared.

# Insurance

## The Sub-Contractor undertakes to the (Employer/Beneficiary) to maintain with a reputable insurance company with a place of business in the United Kingdom, from the date hereof and for a period expiring no earlier than 15 years after the end of the Contract Period and notwithstanding the determination for any reason of the Sub-Contractor’s employment under the Sub-Contract, (professional indemnity/product liability) insurance without unusual or onerous conditions or excesses to cover its liabilities under this deed, with a limit of indemnity of not less than £5,000,000 (in respect of each and every claim/in the aggregate in any period of insurance), provided always that such insurance continues to be available in the United Kingdom market upon reasonable terms and at commercially reasonable premium rates.

## As and when he is reasonably required to do so by the (Employer/Beneficiary), the Sub-Contractor shall produce for inspection by the (Employer/Beneficiary) documentary evidence that such insurance is being properly maintained.

## The Sub-Contractor shall forthwith notify the (Employer/Beneficiary) if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Sub-Contractor is unable to continue to maintain such insurance.

# Assignment and Third Parties

## The (Employer/Beneficiary) may at any time assign, charge or transfer the benefit of this deed and/or any rights arising hereunder to any person acquiring an interest in the whole or any part of the Property upon notice to the Sub-Contractor provided that (save in the case of an assignment to any company or other body corporate which is a subsidiary or associated company of the (Employer/Beneficiary) or which is wholly owned directly or indirectly by the (Employer/Beneficiary)) not more than two such assignments shall be permitted without the consent of the Sub-Contractor being required.

## Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce a provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

# Other remedies

## Nothing in this deed shall in any way prejudice or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the (Employer/Beneficiary) would have against the Sub-Contractor in the absence of this deed.

## The liability of the Sub-Contractor under this deed shall not be released, diminished or in any other way affected by:

### the appointment by the (Employer/Beneficiary) of any person to survey the Property or to monitor the carrying out of the Orders or to inspect any documents relating to them on behalf of the (Employer/Beneficiary) or the failure to appoint such a person;

### any approval or consent given or withheld or purported to be given or withheld by or on behalf of the (Employer/Beneficiary); or

### any other independent inquiry into any relevant matter which the (Employer/Beneficiary) may make or fail to make.

# Notices

Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

# Governing law and disputes

The application and interpretation of this deed shall in all respects be governed by English law and any dispute or difference arising hereunder shall be subject to the jurisdiction of the English courts.

Delivered as a deed on the date of this document.

Executed under the common seal of

(BENEFICIARY) in the presence of:

 Director

 Director / Secretary

Executed under the common seal of:

(SUBCONTRACTOR) in the presence of:

 Director

 Director / Secretary

**SCHEDULE 3 – FORM OF PERFORMANCE BOND**

**THIS GUARANTEE BOND** is made on 20

**BETWEEN**

**(1) [CONTRACTOR]** as principal;

**(2) [GUARANTOR]** as guarantor; and

**(3) [EMPLOYER]**

**WHEREAS:**

By a contract (“Contract”) entered into or to be entered into between the Employer and Contractor particulars of which are set out in the schedule the Contractor has agreed with the Employer to execute works (“Works”) upon and subject to the terms and conditions therein set out.

The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

**NOW THIS DEED WITNESS** as follows:

**1. Promise to pay**

The Guarantor guarantees to the Employer that in the event of a failure by the Contractor to fulfil its obligations under the Contract (an Employer’s valid determination of the Contractor’s employment under clause 8 of the Contract being deemed to be such a failure) the Guarantor shall subject to the provision of this Guarantee Bond satisfy and discharge the losses sustained by the Employer and the debts payable by the Contractor to the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.

**2.** **Extent of liability**

* 1. The maximum aggregate liability of the Guarantor and the Contractor under the Guarantee Bond shall not exceed the sum set out in the schedule (“Bond Amount”) but subject to such limitation and to clause 3 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
	2. The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no forbearance or allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce of affect the liability of the Guarantor under this Guarantee Bond.
1. **Expiry of obligations**

Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.

1. **Contractor’s obligations**

The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

1. **Assignment**

The Employer may without the consent of the Guarantor assign or charge the benefit of this Guarantee Bond to any person to whom the Employer lawfully assigns or charges the benefit of the Contract.

1. **Third Party Rights**

A person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. **Governing Law**

This Guarantee Bond shall be governed by English law, and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

**IN WITNESS** whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this day of 20 .

**SCHEDULE**

|  |  |
| --- | --- |
| Contractor | • (company number • ) of • whose registered office is at •  |
| Guarantor | • (company number • ) of • whose registered office is at •  |
| Employer | • (company number • ) of • whose registered office is at •  |
| Contract | A contract [ dated • ] [ to be entered into] between the Employer and the Contractor in the form known as • for works comprising •  |
| Bond Amount | [15%] of the annual contract value |
| Expiry | 12 months after the end of the Contract Period (save to the extent of any claims notified by the Employer to the Guarantor in writing prior to such date). |
| **EXECUTED** as a deed by the )[] in the presence of: ) |  |
|  | Director |
|  | Director/ Company Secretary |

**SCHEDULE 4 – FORM OF PARENT COMPANY GUARANTEE**

DATED                                          20

**(EMPLOYER)**

**(GUARANTOR)**

**PARENT COMPANY GUARANTEE**

relating to a project at

(                                             )

**DATED**

**PARTIES**

|  |  |  |
| --- | --- | --- |
| 1 | Employer | (                                          )(company no (          )) whose registered office is at (                                    ) |
| 2 | Guarantor | (                                                     ) (company no (              )) whose registered office is at (                                                 ) |

**RECITALS**

A By the Contract, the Employer has employed the Contractor to carry out and complete the Orders.

B The Guarantor is the ultimate parent company of the Contractor.

C The Guarantor has agreed to guarantee the due performance by the Contractor of his obligations under the Contract in the manner set out in this deed.

**OPERATIVE PROVISIONS**

# Definitions and interpretation

## Unless the contrary intention appears, the following definitions apply:

|  |  |
| --- | --- |
| *Contract* | the contract dated (                       20 ) between the Employer (1) and the Contractor (2) whereby the Contractor has undertaken to carry out and complete the Orders; |
| *Contractor* | ( ) (company no ) whose registered office is at ( ) |
| *Employer* | includes any person to whom the benefit of the Contract has been validly assigned, charged or transferred pursuant to clause 3.1 of the Contract; and |
| *Orders* | the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under the Contract. |

## The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.

## Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.

## Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.

## Where the context so admits, references in this deed to a clause are to a clause of this deed.

## References in this deed to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.

# Guarantee

In consideration of the Employer agreeing to enter into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees and undertakes to the Employer that:

## .1 the Contractor will perform and observe all his obligations under the Contract on the days and at the times and in the manner provided in the Contract; and

## .2 in the event of any breach of such obligations by the Contractor, the Guarantor shall procure that the Contractor makes good the breach or shall otherwise cause it to be made good and shall indemnify and hold harmless the Employer against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the Employer arising from or in connection with it;

provided that (subject to clause 5) any limitation or defence which would have been available to the Contractor in an action under the Contract shall likewise be available to the Guarantor in a corresponding action under this deed, and for the avoidance of doubt, the Guarantor’s liability under this deed shall be no greater than the liability of the Contractor under the Contract.

# Guarantor’s liability

## The obligations of the Guarantor under this deed shall be in addition to and shall be independent of any other security which the Employer may at any time hold in respect of the Contractor’s obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.

## The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:

### the bankruptcy, insolvency, liquidation, reorganisation, dissolution, amalgamation, reconstruction or any analogous proceeding relating to the Contractor or any change in the status, function, control or ownership of the Contractor;

### any time given or forbearance or other indulgence shown by the Employer to the Contractor;

### the assertion or failure to assert or delay in asserting any rights or remedies of the Employer or the pursuit of any right or remedy of the Employer;

### the giving by the Contractor of any security or the release, modification or exchange of any such security or the liability of any person; or

### any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor.

# Variations to the Contract

The Guarantor authorises the Contractor and the Employer to make any addition or variation to the Contract, the due and punctual performance of which shall likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation.

# Liquidation of Contractor

The Guarantor covenants with the Employer that if the Contractor shall go into liquidation and the liquidator shall disclaim the Contract or if the Contractor’s employment under the Contract shall be determined for any reason the liability of the Guarantor under this deed shall remain in full force and effect.

# Waiver

The Guarantor waives any right to require the Employer to pursue any remedy (whether under the Contract or otherwise) which it may have against the Contractor before proceeding against the Guarantor under this deed.

# Rights of Guarantor against Contractor

The Guarantor shall not by any means or on any ground seek to recover from the Contractor (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the Employer in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the Employer to claim or have the benefit of any security which the Employer holds for any money or liability owed by the Contractor to the Employer. If the Guarantor shall receive any monies from the Contractor in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the Employer for so long as the Guarantor shall remain liable or contingently liable under this deed.

# Continuing guarantee

The terms of this deed shall be a continuing guarantee and shall remain in full force and effect until each and every part of every obligation of the Contractor under the Contract shall have been performed and observed and until each and every liability of the Contractor under the Contract shall have been satisfied in full. Provided that the liability of the Guarantor under this deed shall cease on the expiry of the Contractor’s liability under the Contract, save to the extent of any claims notified by the Employer to the Guarantor in writing prior to the expiry of such period.

# Third party rights

Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

# Notices

Any notice or other communication required under this deed shall be given in writing. A party being served with a notice is deemed to have received the same on actual receipt or on 2 Business Days (as defined in the Contract) after the notice is sent by registered post to the recipient’s registered address, whichever is the earlier.

# Governing law

The application and interpretation of this deed shall in all respects be governed by English law.

Delivered as a deed on the date of this document.

|  |  |
| --- | --- |
| Executed as a deed by **(GUARANTOR)**in the presence of: | )) |
|  |  |
|  | Director |
|  |  |
|  | Director/Company Secretary |
|  |  |
| Executed as a deed by **[ ]**in the presence of: | )) |
|  |  |
|  | Authorised Signatory |
|  |  |
|  | Authorised Signatory |
|  |  |

**SCHEDULE 5 – SPECIFICATION**

**SCHEDULE 6 – SCHEDULE OF RATES AND PRICE FRAMEWORK**

**SCHEDULE 7 – KPI FRAMEWORK**

**SCHEDULE 8 – FORMAT OF APPLICATION FOR PAYMENT**

 **TBC**

**SCHEDULE 9 – TUPE SCHEDULE****[[71]](#footnote-72)**

**Definitions**

The following definitions apply to this Schedule 9. Save as otherwise stated in this Definitions Clause the definitions and interpretation set out in this Contract shall also apply to this Schedule 9:

|  |  |
| --- | --- |
| Word or phrase | Meaning |
| Commencement Date: | the date of commencement of the Contract Period;   |
| Former Employee: | an employee who was employed by the Contractor in the performance of the service undertaken by the Contractor under this Contract (the **Services**) whose contract of employment has been terminated for whatever reason at the Termination Date; |
| New Contractor: | each and every contractor (which shall include the Employer if activities cease to be carried out by a contractor and are instead carried by the Employer on their own behalf) who shall provide an equivalent service to any of the Services after the Termination Date; |
| Second Transferring Employees: | those persons who immediately prior to the Termination Date are employed by the Contractor in the performance of the Services who have a right under the Transfer Regulations to transfer to any new provider of the Services; |
| Subsequent Transfer Date: | means any date(s) after the Commencement Date upon which a further transfer to the Contractor happens to which the Transfer Regulations apply; |
| Subsequent Transferring Employees: | means those persons who immediately prior to the relevant Subsequent Transfer Date are employed in the performance of duties which are to be undertaken by the Contractor under this Contract with effect from the Subsequent Transfer Date who have the right under the Transfer Regulations to transfer to the Contractor; |
| Termination Date: | the date this Contract is terminated or determined for any reason (including by expiry) in whole or in part; |
| Transferring Employee: | those persons whose names are set out in clause 4 of this Schedule 9 and **“Transferring Employees”** shall be construed accordingly; |
| Transfer Regulations: | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended); |

1. **transferring employees**
	1. The Contractor hereby acknowledges to the Employer that with effect from the Commencement Date the Contractor will become the employer of the Transferring Employees as if (which both parties believe to be the case) the engagement of the Contractor as agent for the performance of the Services gives rise to a transfer to which the Transfer Regulations apply.

1.2 All salaries and other emoluments including holiday pay, taxation and national insurance contributions and contributions to retirement benefit schemes relating to the Transferring Employees shall be borne by the Contractor with effect from the Commencement Date.

1.3 The Contractor shall indemnify the Employer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Employer including without limitation all legal expenses and other professional fees in relation to:

* + 1. any failure by the Contractor to comply with its obligations pursuant to the Transfer Regulations; and
		2. anything done or omitted to be done by the Contractor in respect of any of the Transferring Employees whether before, on or after the Commencement Date.

1.4 The Parties acknowledge that the Transfer Regulations may also apply during the term of this Contract as a result of more Properties or Workstreams being added from time to time. Where the Transfer Regulations do so apply then the Parties agree that clauses 1.1 to 1.3 and clause 2 of this Schedule shall apply as if all references to “the Commencement Date” mean the “Subsequent Transfer Date” and all references to “the Transferring Employees” mean the “Subsequent Transferring Employees”.

1.5 If any Subsequent Transferring Employee was employed by the Employer or another company in the Employer’s corporate group immediately prior to the Subsequent Transfer Date (an Employer Transferring Employee) then the Employer confirms that all salaries and other emoluments including holiday pay, taxation and national insurance contributions and contributions to retirement benefit schemes relating to any Employer Transferring Employee(s) shall be discharged up to the Subsequent Transfer Date.

1.6 A New Contractor shall be entitled to enforce the rights in clause 3 of this Schedule 9. Without limiting any other rights it may have the Contractor shall not have available to it by way of defence or set off against any claim brought by a New Contractor those matters that would be available to the Contractor by way of defence or set off against any claim brought by the Employer.

1.7 The rights of a New Contractor under this Schedule 9 shall be subject to the same conditions, limitations and exclusions as apply to the Employer’s rights under this Contract.

1.8 The appointment of the Contractor may be terminated in accordance with the provisions of this Contract and the Parties may agree to rescind this Contract or amend, vary or waive any terms of this Contract or settle any dispute or other matter arising out of or in connection with this Contact on such terms as they see fit without the consent of a New Contractor.

1. **PENSIONS**

The Contractor shall offer the Transferring Employees’ pension provisions in accordance with the sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 (S.I.2005/649).

1. **TERMINATION**
	1. The provisions of this Schedule 9 will continue notwithstanding the termination of this Contract.
	2. If this Contract is terminated or determined in circumstances in which the Transfer Regulations apply the following provisions will apply:
		1. with effect from the Termination Date the Employer or the New Contractor will become the employer of the Second Transferring Employees;
		2. the Contractor shall be liable for all salaries, wages, bonuses, pension contributions, income tax and National Insurance contributions or other emoluments relating to the Second Transferring Employees up to and including the Termination Date and shall indemnify the Employer and or, as the case may be, the New Contractor in respect thereof;
		3. the Contractor will indemnify the Employer and/or the New Contractor against any loss, damage, expenses and costs (including reasonable legal fees) suffered or incurred by reason of any proceeding, claim or demand by or on behalf of any Second Transferring Employee or Former Employee relating to any act or omission by the Contractor whether before, on or after the Termination Date in relation to the employment of any Second Transferring Employee or Former Employee;
		4. The Contractor warrants that it will comply in full with its obligations under Regulations 11, 13 and 14 of the Transfer Regulations and will indemnify the Employer and/or the New Contractor against any loss, damage, expenses and costs (including reasonable legal fees) suffered or incurred by the Employer and/or the New Contractor as a result of a breach of this warranty.
	3. 12 months prior to the expiry of this Contract, following notice to terminate this Contract or whenever the Contractor is on notice that the Employer will terminate this Contract whichever is the earlier, the Contractor shall:
		1. not vary and shall not make any promises or proposal to vary any terms or conditions of employment of any employee employed by the Contractor in the performance of the Services at that time (the **Assigned Employees**) without the Employer’s prior written consent;
		2. be precluded from making any material increase or decrease in the numbers of, or from replacing any Assigned Employee(s) save in circumstances where an Assigned Employee resigns and then only with the Employer’s prior written consent;
		3. be precluded from transferring any Assigned Employee to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services or from materially decreasing/increasing the number of hours worked by any Assigned Employee in connection with the Services save with the Employer’s prior written consent;
	4. The Contractor agrees that on request by the Employer during any time within 12 months prior to expiry of this Contract, following notice to terminate this Contract or whenever the Contractor is on notice that the Employer will terminate this Contract whichever is the earlier, the Contractor shall provide to the Employer or at the Employer’s direction, to the New Contractor:
		1. a complete and accurate list of Assigned Employees or Second Transferring Employees as appropriate
		2. such updates of the information set out in clause 3.4.1 and 3.4.3
		3. complete and accurate copies of the employment records and/or employee information in relation to the Assigned Employees as the Employer reasonably requests.

3.5 The Contractor warrants that the information listed in Clause 3.4 will be complete and accurate in all respects as at the date it is provided. The Contractor will keep the Employer and/or the New Contractor indemnified in full against any loss, damage, expense and costs (including reasonable legal fees) suffered or incurred by the Employer and/or the New Contractor from any inaccuracy or incompleteness in such information or by any changes in the information which have not been communicated to the Employer and/or the New Contractor which occur prior to the Termination Date.

1. **EMPLOYEES**

**(Employer to provide list of employees to Contractor when known)[[72]](#footnote-73)**

**SCHEDULE 10 – CONTRACT REVIEW PROCEDURES**

### **Definitions**

The following definitions apply to this Schedule 10. Save as otherwise stated in this Definitions Clause the definitions and interpretation set out in this Contract shall also apply to this Schedule 10:

|  |  |
| --- | --- |
| Word or phrase | Meaning |
| **[**Cost Reduction Proposal: | changes proposed by the Contractor that will result in a reduction in the cost to the Employer in respect of the delivery of the Works or the associated life cycle costs of completed Works;**]** |
| Customer Service Proposal: | changes proposed by the Contractor to work practices and procedures that will result in improvements to customer service; |
| **[**Supply Chain Agreement | any agreement established between the Contractor and other contractors and any sub-contractors or suppliers that secures the Employer a cost reduction and the benefits as set out in clause 4 to this Schedule 10.**]** |

# CONTRACT ADMINISTRATOR’S POWER TO CALL A MEETING

Meetings will be held as and when requested by the Contract Administrator and the Contractor and such other attendees as may be requested shall attend all such meetings at no additional cost. Such meetings may be held out of normal office hours. The Contractor shall inform any Subcontractors or suppliers when their presence is required. For the avoidance of doubt, all costs arising from attending such a meeting are deemed to be included in the Contractor’s Prices. At each meeting under this Schedule 10, the Core Group shall attend.

# MONTHLY KPI REVIEW MEETINGS:

A monthly review meeting will be held between the Core Group, and any other person the Contract Administrator requires to attend. The meeting will be held each month to review the Contractor’s performance over the previous month in respect of the KPI’s. Prior to such meetings the Contractor shall supply the Contract Administrator with such information that is required. The agenda will cover but not be limited to the following:

* review of KPIs
* tenant satisfaction in accordance with KPI’s
* complaints received from tenants
* the Contractor’s performance in relation to the priority times
* an update on jobs outstanding beyond priority times
* any invoice queries
* defects & standards of materials and workmanship
* any general queries the Contract Administrator may wish to raise from time to time
* budget spend to date, budget commitment to date, expected end of year spend
* no. of properties where handover accepted to date, number of properties completed and awaiting handover to date
* no. of properties where work has started and is in progress (not just where survey done)
* no. of Orders or items of Work refused by the Contractor
* no. of occasions where Contractor has failed to gain access due to Customer not responding
* outstanding issues log, including identified risks
* accidents, near misses and RIDDORS

# QUARTERLY REVIEW MEETINGS

A quarterly review meeting will be held between the Core Group, and any other person the Contract Administrator requires to attend. The quarterly review meeting shall review the overall performance of the Contractor under the Contract, with a view to the improving the delivery of the Contract for the benefit of the Employer and its tenants/residents. Prior to such meeting the Contractor shall supply the Contract Administrator with such information that the Contract Administrator requires. **[**At each quarterly review meeting the Contractor will be invited to submit to the Contract Administrator Cost Reduction Proposals in accordance with clause 4 of this schedule 10.**]**

The Contractor is advised that there will be occasions when the tenants or tenants’ representatives will need to be present and will have a role to play in satisfying maintenance needs.

# [COSTS REDUCTION[[73]](#footnote-74) AND] CUSTOMER SERVICE PROPOSALS

## **[**At the quarterly review meeting the Contractor **shall** propose his Cost Reduction Proposals. At each quarterly review meeting the Contract Administrator may invite other contractors engaged by the Employer to the meeting where the Contractor shall work together with such other contractors and shall participate in joint initiatives with the Employer to establish Supply Chain Agreements so as to secure:-

better prices;

improved warranties and other added value;

improved plant and/or materials;

improved working practices that lead to a reduction in Price.**]**

## **[**The Contractor shall wherever possible participate with the Employer and other contractors in sharing its knowledge of any Supply Chain Agreements it is currently party to that may benefit the Employer and achieve the aims set out at Clause 4.1.**]**

## The Contractor’s participation in Supply Chain Agreements shall be subject to such Supply Chain Agreements offering the Employer best value compared to the Contractor’s own supply chain arrangements for which purposes the Contractor shall provide such information regarding its own supply chain arrangements as the Employer may require and the Employer shall treat such information as confidential in accordance with clause 12.

## The Contractor **shall** propose his Customer Service Proposals. At each quarterly meeting the Contract Administrator may invite other contractors engaged by the Employer to the meeting in order to encourage the sharing of innovation and ideas for the improvement of customer service and in particular:

### faster response times

### improved customer satisfaction

### more efficient use of resources and IT support.

## The acceptance of any **[**Cost Reduction Proposal or**]** Customer Service Proposal shall be at the Employer’s sole discretion and the Contract Administrator on behalf of the Employer shall be entitled to ask for any supporting information in order to verify or evidence any **[**Cost Reduction Proposal or**]** Customer Service Proposal and their effectiveness.

# ANNUAL REVIEW MEETING

There will be an annual review meeting on each anniversary of the Contract between the Core Group, and any other person the Contract Administrator requires to attend. At each review meeting the KPI's, the Works and the price for the Works shall be reviewed. There shall be no obligation on the Employer to make any alteration to the Contractor’s Rates (whether adjusted by fluctuation or otherwise).

**SCHEDULE 11 – LIQUIDATED DAMAGES**

1. Index to be updated in the final draft [↑](#footnote-ref-2)
2. Select for limited company [↑](#footnote-ref-3)
3. Select for RP [↑](#footnote-ref-4)
4. Amend if the Employer will engage the Principal Designer [↑](#footnote-ref-5)
5. Employer to consider increased amount where a bond is required. [↑](#footnote-ref-6)
6. As above [↑](#footnote-ref-7)
7. [↑](#footnote-ref-8)
8. Whether the cost reduction mechanism shall apply is to be considered on a case by case basis. Where it DOES NOT apply, remove the wording in brackets from here and in the heading. Where it DOES apply remove the brackets and footnote. See further comments at Schedule 10. To consider if required on a case by case basis and to tailor to GH’s requirements where applicable. [↑](#footnote-ref-9)
9. To be included and or amended accordingly if the Contractor is required to comply with social value obligations. If compliance with social value obligations is not applicable, delete Article 16. Renumber Articles if previous Articles are deleted. [↑](#footnote-ref-10)
10. [↑](#footnote-ref-11)
11. To be included and populated or deleted subject to whether an extension to the Contract Period applies. Employer to consider drafting where the specification documents require the Contractor to source specified materials from named suppliers. Where applicable, adjust as appropriate to ensure the mechanism is consistent with the Employer’s commercial requirements. [↑](#footnote-ref-12)
12. To consider Article 19 and include in contracts that involve replacement of cladding panels or remedial works to external parts of the building or external works. Include Article 19.6 if the Contractor is required to procure an EWS1 Form in relation to these Works. To consider and adapt on a case by case basis where Article 19 is required. [↑](#footnote-ref-13)
13. An initial order mechanism has been included to allow surveys and inspections to take place in order for the Contractor to scope the works required and put forward its costs in accordance with the agreed rates. If any required works fall outside the agreed rates, 20.3 refers to the quotation mechanism to assist with determining a suitable price for those further works. Once the scope and price of works is agreed by the Employer, a formal works order may be issued. Consider if required on a case by case basis. [↑](#footnote-ref-14)
14. Check and amend reference to Article 17 if optional articles above Article 17 are removed and Article 17 is renumbered as a result. [↑](#footnote-ref-15)
15. Delete “Article [17] and” where the Contract Period is not subject to an extension. [↑](#footnote-ref-16)
16. Include two email addresses for each party – see clause 1.6.3 below on notices that may be served by email. [↑](#footnote-ref-17)
17. Priority coding usually applies under responsive repairs and voids contracts, or when setting out timeframes for dealing with emergencies. They can also apply to other contracts. These timeframes can be set out here or must be set out in the Specification. [↑](#footnote-ref-18)
18. Employer to check with the finance department to determine if it is a “contractor” for the purpose of CIS. The Employer may be registered as a contractor, but exempt from the CIS rules. [↑](#footnote-ref-19)
19. Where the rates are subject to an uplift, this mechanism will apply. An inflation mechanism has been included at clause 5.6 – it refers to a CPI uplift. The Employer must ensure this is consistent with any inflation mechanism included in the Price Framework [↑](#footnote-ref-20)
20. To be amended subject to whether the rates are fixed for the Contract Period or if they are subject to inflation after a fixed period of 12 months or 24 months or any other period. If the rates are subject to inflation, the timings to be included here will need to be mirrored at clause 5.6 of the amendments. [↑](#footnote-ref-21)
21. To be amended subject to whether the Contractor’s tendered hourly rates are fixed for the Contract Period or if they are subject to inflation after a fixed period of 12 months or 24 months or any other period. [↑](#footnote-ref-22)
22. The levels and types of insurance required will need to be included here, and to be consistent with tender requirements. [↑](#footnote-ref-23)
23. [↑](#footnote-ref-24)
24. [↑](#footnote-ref-25)
25. To be inserted and to be consistent with the requirements set out in the Specification. Types of works to be listed for each contract and to be consistent with the descriptions in the Specification. To delete from the end of 2.6.1 if clause 2.13 will not apply – see below re 2.13. [↑](#footnote-ref-26)
26. [↑](#footnote-ref-27)
27. List to be reviewed and amended on a contract by contract basis, depending on the nature of the works. Ensure the Specification includes additional items where not listed here. The inclusion of LADs for late completion is to be considered on a case by case basis and adapt as necessary. If applicable, a schedule of these costs against the relevant types of works will need to be included at Schedule 11. E.g. LADs may apply where there may be a loss of income for late completion (i.e. rent or other income) or the Employer may want to charge fixed costs for every late or missed Appointment. [↑](#footnote-ref-28)
28. [↑](#footnote-ref-29)
29. If not applicable, remove the wording at clause 2.13 and mark as “Clause 2.13 – Liquidated and Ascertained Damages -Not Used”, and delete Schedule 11. Access procedures should be clearly set out in the Specification. Consider if this is consistent with the Employer’s complaints processes. The Employer’s complaints policy should be appended to the Specification. If preferred, the drafting can be amended to simply refer to compliance with the Employer’s complaints policy. [↑](#footnote-ref-30)
30. Remove brackets and footnote where Retention applies, otherwise delete where retention does not apply. [↑](#footnote-ref-31)
31. Remove brackets and footnote where the payment of variable profit is subject to KPI performance and where the mechanism is **clearly** set out in the KPI Framework and/or Price Framework, otherwise amend accordingly or delete – for example will the contract operate a variable profit mechanism? Is a deduction made from each monthly valuation to account for variable profit? [↑](#footnote-ref-32)
32. [↑](#footnote-ref-33)
33. [↑](#footnote-ref-34)
34. Remove brackets and footnote where Retention applies, otherwise delete the wording at 4B where retention does not apply. Where retention applies, amend reference to 5% Retention at 4B.1 if a different figure is agreed. Consider how retention will be deducted and released in practise and amend accordingly if required. The proposed mechanism is by no means set in stone. If an application for payment is issued outside of this window, you must still issue a payment notice with a £NIL valuation citing a failure to provide the application for payment on time in accordance with clause 4.3.1. Where a particular format of an application for payment will not be included at Schedule 8, amend this clause to say – “is not in the format agreed between the Parties” and amend Schedule 8 to say “Schedule 8 – Not Used” [↑](#footnote-ref-35)
35. [↑](#footnote-ref-36)
36. Where any part of an application for payment or the entire application for payment is rejected, a payment notice must still be issued pursuant to clause 4.3.5, which must set out the sum considered payable on the date of the notice and set out the reasons for why parts (or all) of the application for payment have been rejected. Wording to be considered on a case by case basis where the rates are NOT fixed for the duration of the Contract Period. If the rates are fixed for the Contract Period, delete the wording and include – *“The Contractor’s Prices shall remain fixed for the Contract Period and shall not be subject to adjustment.”*  [↑](#footnote-ref-37)
37. The mechanism included at clause 5.6.2 will need to be consistent with any inflation mechanism included in the Price Framework. Also note the mechanism refers to CPI for assessing an adjustment – to be amended as appropriate for consistency with the Price Framework. Professional Indemnity Insurance is required where the Contractor has design responsibility or is providing professional advice. Products Liability insurance provides cover against personal injury or damage to persons or property as a result of defects in goods or products supplied as part of the works. Where these types of insurance are required, the levels of insurance must be included. [↑](#footnote-ref-38)
38. Remove brackets in final draft. Consider if the break clause will need to be amended on a case by case basis. [↑](#footnote-ref-39)
39. Consider if you want to provide the Contractor with a right to break. [↑](#footnote-ref-40)
40. The sums included for the suggested break payment and the suggestion to reduce the break payment has been included by way of example only. Remove optional wording where not applicable or review and amend accordingly where applicable. [↑](#footnote-ref-41)
41. To change to KPI Targets where performance is measured against KPI Targets as opposed to minimum levels of acceptable performance. To amend for consistency with the KPI Framework on a case by case basis. [↑](#footnote-ref-42)
42. Reference to sub-contractor warranties at 10.2 to be retained. [↑](#footnote-ref-43)
43. To consider on a case by case basis if Contractor warranties at 10.1 will be required in favour of a third party; i.e. consider if an organisation other than the Employer owns any of the Properties that are subject to this Contract (this includes a group company of the Employer) or any third party organisation with an interest in the works (excluding individual leaseholders). The Employer’s safeguarding policy must be appended to the Specification [↑](#footnote-ref-44)
44. Employer to include. [↑](#footnote-ref-45)
45. Clause 24.1.1 to be re-considered and amended (if necessary) for consistency with the KPI Framework; e.g. the drafting here envisages that both parties will be responsible for the collection of KPI data as further set out in the KPI Framework. Further, the drafting in respect of the timing of when this information will need to be provided and the subsequent review meetings will need to be consistent with the KPI Framework. [↑](#footnote-ref-46)
46. To change to KPI Targets where performance is measured against KPI Targets as opposed to minimum levels of acceptable performance. To amend for consistency with the KPI Framework on a case by case basis. [↑](#footnote-ref-47)
47. As above. [↑](#footnote-ref-48)
48. Only include wording in brackets if Article 15 is retained. [↑](#footnote-ref-49)
49. Delete and/or amend as appropriate. [↑](#footnote-ref-50)
50. Insert if Employer is not a party to the warranty. [↑](#footnote-ref-51)
51. Include only if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-52)
52. Delete if Beneficiary does not have step-in rights. [↑](#footnote-ref-53)
53. Delete clauses 3 and 4 if Beneficiary does not have step-in rights. [↑](#footnote-ref-54)
54. Include only where Beneficiary is a bank providing finance. [↑](#footnote-ref-55)
55. Include if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-56)
56. Include if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-57)
57. Include if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-58)
58. Include if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-59)
59. Include only where Beneficiary is a bank providing finance. [↑](#footnote-ref-60)
60. Include if Beneficiary has step-in rights which are sub-ordinated to the Fund. [↑](#footnote-ref-61)
61. Delete clause 6 if the Contractor does not have a significant design responsibility. [↑](#footnote-ref-62)
62. Use where Beneficiary is a Fund. [↑](#footnote-ref-63)
63. Delete if Beneficiary is a Fund. [↑](#footnote-ref-64)
64. Consider for inclusion if Beneficiary is a fund or purchaser. [↑](#footnote-ref-65)
65. Adjust terminology subject to the identity of the party receiving the benefit of a collateral warranty. It will be “Employer” for the employer under this Contract and “Beneficiary” for any other third party. Amend terminology that refers to “(Employer/Beneficiary)” throughout this warranty. [↑](#footnote-ref-66)
66. Omit from Employer warranty. [↑](#footnote-ref-67)
67. Omit from Employer warranty. [↑](#footnote-ref-68)
68. Include in Employer warranty only. [↑](#footnote-ref-69)
69. Omit from Employer warranty. [↑](#footnote-ref-70)
70. Include in Employer warranty only. [↑](#footnote-ref-71)
71. To be considered and amended on a case by case basis. The schedule currently envisages a transfer of employees from the incumbent to the incoming contractor. If there are any LGPS pension considerations or the requirement for the incoming contractor to enter into an admissions agreement, further drafting will be required. [↑](#footnote-ref-72)
72. If TUPE does not apply, retain this Schedule as TUPE may apply on exit/early termination. To Include [↑](#footnote-ref-73)
73. Whether the cost reduction mechanism shall apply is to be considered on a case by case basis. Where it DOES NOT apply, remove ALL the wording in brackets under this Schedule 10.

 Where it DOES apply remove the brackets. [↑](#footnote-ref-74)