**DATED                                                    202[\*]**

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) | THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA |  |
|  | (2) | [CONTRACTOR] |  |

|  |  |  |
| --- | --- | --- |
|  | BUILDING CONTRACT  Incorporating and amending the  **JCT Measured Term Contract, 2016 Edition**  **Relating to Temporary Hoarding and Security Services – Notting Hill Carnival Event 2023 - 2027** |  |



**THIS AGREEMENT is dated**

**BETWEEN**

1. **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (Employer, such term to include any successors in title or permitted assigns).
2. **[CONTRACTOR]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (Contractor).

BACKGROUND:-

1. The Employer wishes to procure the carrying out of certain works.
2. The Contractor has agreed to carry out those works, if and when the Employer elects to instruct such works during the Contract Period.
3. The Employer and the Contractor have agreed to incorporate and amend the JCT Measured Term Contract, 2016 edition ("**JCT MTC 2016**") as set out in this agreement.

**AGREED TERMS:-**

# Interpretation

The following definitions and rules of interpretation apply in this agreement.

## Definitions:

|  |  |
| --- | --- |
| JCT Articles | 1. the section of the JCT MTC 2016 titled "Articles". |
| JCT Attestation | 1. the section of the JCT MTC 2016 titled "Attestation". |
| JCT Conditions | 1. the section of the JCT MTC 2016 titled "Conditions". |
| JCT Contract Particulars | 1. the section of the JCT MTC 2016 titled "Contract Particulars". |
| JCT Recitals | 1. the section of the JCT MTC 2016 titled "Recitals". |
| Schedule of Amendments | 1. the parties, background, agreed terms and schedules forming part of this agreement, which amend the JCT MTC 2016. |

## Capitalised terms used in this agreement have the same meanings as in the JCT MTC 2016, unless the meaning in the JCT MTC 2016 is different from, or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.

## The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.

## A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

## References to clauses, schedules and annexes are to the clauses, schedules and annexes of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

## Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT MTC 2016, the Schedule of Amendments shall prevail.

## Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative only and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# Incorporation and amendment of the JCT MTC 2016

## This agreement incorporates and amends the JCT MTC 2016 as follows:

### it incorporates the JCT Recitals, as amended by Part 1 of Schedule 1;

### it incorporates the JCT Articles, as amended by Part 2 of Schedule 1;

### it incorporates the JCT Contract Particulars, as set out at Part 3 of Schedule 1; and

### it incorporates the JCT Conditions, as amended by Part 4 of Schedule 1.

## This agreement does not incorporate the JCT Attestation.

# Governing law and jurisdiction

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The parties hereby submit to the exclusive jurisdiction of the English Courts.

# Counterparts

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| The Common Seal of **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** was hereunto affixed in the presence of: | ) |  |
|  | ) |  |
|  | ) |  |
|  | ) | ……………………………………………….. |
|  | ) | Authorised signatory |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by **[CONTRACTOR]** | ) |  |
| acting by two directors or by a director and the company secretary | ) |  |
|  | ) |  |
|  | ) | Director |
|  |  |  |
|  |  |  |
|  | ) |  |
|  | ) |  |
|  | ) | Director / Secretary |
|  |  |  |

1. - Schedule of amendments
2. - Recitals
3. First Recital

Complete the First Recital with this description of the Contract Area:

The Royal Borough of Kensington and Chelsea, London, as further detailed in the Contract Documents

1. Fourth Recital

Insert at the end of the Fourth Recital, before the semi-colon:

“at Annex C to this Contract”.

1. - Articles
2. Article 3: Contract Administrator

Complete Article 3 with this Contract Administrator:

[NAME OF FIRM] of [ADDRESS] (company number [NUMBER])

Insert the following at the end of Article 3: “The Contractor shall, in good faith, fully cooperate with the Contract Administrator at all times in the performance of its obligations under this Contract.”

1. Article 4: Principal Designer

Complete Article 4 with this Principal Designer:

The Contract Administrator

1. Article 5: Principal Contractor

Complete Article 5 with this Principal Contractor:

The Contractor **OR** [NAME OF FIRM] of [ADDRESS] (company number [NUMBER])

1. New Article 9: Contractor's Parent Company Guarantee

Insert new Article 9:

"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached at Schedule 2 to the Schedule of Amendments. The parent company guarantee shall be executed and delivered by [NAME AND COMPANY NUMBER OF CONTRACTOR'S PARENT COMPANY]. If the Contractor does not procure execution and delivery of the parent company guarantee in accordance with this Article 9, then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Contractor under this Contract shall be extended until such time it is executed and delivered."

1. New Article 10: Performance Bond

~~Insert new Article 10:~~

~~"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form attached at Schedule 3 to the Schedule of Amendments. The value of the bond shall be no less than £[SUM]. The bond shall be executed and delivered by a surety approved by the Employer, acting reasonably. If the Contractor does not procure execution and delivery of the performance bond in accordance with this Article 10 then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Contractor under this Contract shall be extended until such time as the required performance bond is delivered."~~

1. New Article 11: Effect of Approval

Insert new Article 11:

"Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from its obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the Employer or the Contract Administrator or their agents or representatives on the site of the Contract Area, or the carrying out of tests on the instructions of the Employer or the Contract Administrator or by any instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer or the Contract Administrator."

1. - Contract Particulars

| **Number** | **Subject** | **Particulars** | |
| --- | --- | --- | --- |
| 1 | Properties and description of the types of work (First Recital) | List of properties in the Contract Area in respect of which Orders may be issued:  The route of the Carnival Event encompasses the areas around North Kensington, London. | |
| Description of the types of work for which Orders may be issued:  Providing temporary hoarding and security services to protect the property portfolio of RBKC during the Carnival Events. | |
| 2 | Supplemental Provisions (Fifth Recital and Schedule)  *(Where neither entry against an item below is deleted, the relevant Supplemental Provision applies.)* | | |
| Collaborative working | Supplemental Provision 1 applies | |
| Health and safety | Supplemental Provision 2 applies | |
| Cost savings and value improvements | Supplemental Provision 3 applies | |
| Sustainable development and environmental considerations | Supplemental Provision 4 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: Dennis Paul  Contractor's nominee: [ ]  or such replacement as each Party may notify to the other from time to time. | |
| 3 | Contract Period (Article 1 and clause 7.1) | Subject to clause 7.1 and clause 7.3, the Contract Period will be 5 years plus the options of 2 no extensions of 1 year each, commencing on 14 August 2023. The Employer (RBKC) reserves the right to invoke a break clause prior to the commencement stage of each 1-year term if, at such time, there is a change in the RBKC Strategic Direction, which could potentially influence the performance / cost / quality / programme expectations of the Contract. | |
| 4 | 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.)* | Article 7 and clauses 9.3 to 9.8 *(Arbitration)* do not apply | |
| 5 | BIM Protocol (Clause 1.1)  *(State title, edition, date or other identifiers of the relevant documents.)* | Not applicable | |
| 6 | Orders - minimum and maximum value (Clause 2.4) | Minimum value of any one Order to be issued: [£SUM]  Maximum value of any one Order to be issued: [£SUM] | |
| 7 | Orders - value of work to be carried out (Clause 2.5) | Approximate anticipated value of work to be carried out under this Contract:  £104,000 per annum | |
| 8 | Orders - priority coding (Clause 2.6) | Not required. | |
| 8A | Additional pre-requisites to achievement of completion of an Order (Clause 2.11.2) | In addition to the matters listed at clause 2.11.2, the following shall be a pre-requisite to completion of an Order being certified:  To provide relevant sign off at the stage of completion of temporary hoarding installation. | |
| 9 | Construction Industry Scheme (CIS) (Clause 4.2) | The Employer at the commencement of the Contract Period is a 'contractor' for the purposes of the CIS | |
| 10 | Payments (Clauses 4.3, 4.4 and 4.5) | Estimated value of an Order above which progress payments can be applied for *(if none is stated, it is £2,500)*: | |
| Valuation Dates *(If no date is stated, the Valuation Date is the last day of each month)* | |
| 11 | Responsibility for measurement and valuation (Clause 5.2)  *(Unless one of the options opposite is selected and, if relevant, an estimated value specified, the Contract Administrator shall measure and value all Orders.)* | The Contract Administrator shall measure and value all Orders | |
| 12 | Schedule of Rates (Clauses 5.3, 5.6.1 and 5.6.2) |  | |
| **The Schedule of Rates** is | As stated in the Pricing Document (App 5a). | |
| Where the Schedule of Rates is the National Schedule of Rates the version(s) identified opposite are to apply | Not applicable | |
| **Rates - Fluctuations** | Clause 5.6.1 applies  *(Unless 'applies' is deleted, the clause shall be deemed to apply.)*  **Consumer Price Index (CPI) linked – Base date of 6 April 2023.** | |
| **Basis and dates of revision**  (Not applicable where the National Schedule of Rates applies) | ~~Where clause 5.6.1 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6.1.2 [is as follows: / is set out in the following document:]~~  *~~(If no basis is identified the rates remain fixed for all Orders.)~~* | |
| Where clause 5.6.1 applies, the dates as at which the Schedule of Rates is to be revised are 6 April 2024 and yearly thereafter.  *(If no other date(s) are specified here or in the document setting out the basis for revision, the date shall be 1 August in each year.)* | |
| 13 | Daywork (Clauses 5.4, 5.6.3 and 5.6.4) |  | |
| **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: not applicable | |
| Overheads and profit on Materials | [X]% |
| Overheads and profit on Plant, Services and Consumable Stores | [X]% |
| Overheads and profit on Sub-Contractors | [X]% |
| **Revision of Schedule of Hourly Charges** | Clause 5.6.3 applies  *(Unless 'applies' is deleted, the clause shall be deemed to apply.)* | |
| Where clause 5.6.3 applies, the annual revision date (if other than 1 August) is 6 April 2024. | |
| ~~Where clause 5.6.3 applies, the basis of revision of hourly charges, if not set out in the Schedule of Hourly Charges [is as follows: / is set out in the following document:]~~ | |
| 14 | Overtime work (Clause 5.7) | The percentage addition in respect of overheads and profit on non-productive overtime rates is [X]%  *(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)* | |
| 14A | Third party consents, approvals, licences and permissions (Clause 6.3B) | The Contractor is responsible for obtaining the following at its own cost:  Any necessary road closures, planning consents and the like as required. | |
| 15 | Insurance (Clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11) |  | |
| Contractor’s Public Liability Insurance: injury to persons or property - the required level of cover is not less than | £10m for any one occurrence or series of occurrences arising out of one event  **Note: Contractor to provide evidence of public liability cover.** | |
| Contractor’s professional indemnity insurance | Professional indemnity insurance is required  If professional indemnity insurance is required, such insurance shall be maintained on an aggregate basis and shall have a minimum indemnity limit of £5m. | |
| Percentage to cover professional fees  *(if no other percentage is stated, it shall be 15 per cent.)* | [X]% | |
| Insurance of existing structures - clause 6.7A.1  *(Unless otherwise stated, clause 6.7A.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)* | applies   * Insurance for Existing Structures is by the Council but it is not a Joint names policy nor include any waiver of subrogation | |
| Insurance of work or supply comprised in Orders - Clause 6.7B  *(If neither entry is deleted, the clause does not apply.)* | does not apply   * Insurance of the works is by the Council under its Joint Names policy for All Risks | |
| 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) | **~~[Note: To be provided by Contractor (where the Contractor is responsible for insuring the works).]~~** | |
| Terrorism Cover - details of the required cover  *(Unless otherwise stated, Pool Re Cover is required.)* | Terrorism cover is required and will be included under the council’s block policy. | |
| 16 | Break Provisions (Clause 7.1) | The period of notice, if less than 13 weeks, is [X] weeks | |
| 17 | Adjudication (Clauses 9.2 and 9.3) | The Adjudicator is to be nominated by the nominating body | |
| Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  *(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)* | The Royal Institution of Chartered Surveyors | |

PART 4 – Conditions

1. Clause 1.1
   1. Amend these definitions:
      1. Agreement: add to the end of the definition, before the full stop:

", each as amended by the Schedule of Amendments".

* + 1. Article: add to the end of the definition, before the full stop:

", as amended by Part 2 of the Schedule of Amendments".

* + 1. CDM Regulations: add to the end of the definition, before the full stop:

"and any related guidance requirements issued by the Health and Safety Executive from time to time, or any remaking thereof or any amendments to a regulation therein".

* + 1. Conditions: add to the end of the definition, before the full stop:

", each as amended by Part 4 of the Schedule of Amendments".

* + 1. Contract Documents: delete the existing definition and replace with the following:

“this Contract together with all Schedules and Annexes thereto”.

* + 1. Contract Particulars: add to the end of the definition, before the full stop:

", as set out in Part 3 of the Schedule of Amendments".

* + 1. Recitals: add to the end of the definition, before the full stop:

", as amended by Part 1 of the Schedule of Amendments".

* 1. Add these definitions:

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU)."

“Covid-19 Pandemic: the outbreak of the virus known as Coronavirus or Covid-19 (recognised as a pandemic by the World Health Organization on 11 March 2020), including any secondary or subsequent resurgence of that virus or a mutated form of the same.”

"Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the time of use as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the work or supply comprised in Orders or any part or component of the same; or reducing, or possibly reducing, the normal life expectancy of the work or supply comprised in Orders or any part or component of the same; or not being in accordance with any relevant British or European Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations."

“Employer’s Policies: the Employer's policies set out at Annex B to this Contract.”

"Funder: a person that has provided, or is to provide, finance in connection with the whole or any part of the work or supply comprised in Orders; or the Contract Area, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise (including, without limitation, any entity that enters or has entered into a ‘forward funding’ or ‘forward purchase’ agreement with the Employer)."

"Key Sub-contractor: a sub-contractor appointed by the Contractor in connection with the work or supply comprised in Orders whose works package has a value of [£SUM] or more and/or named or identified in Part 1 of Schedule 4 to the Schedule of Amendments and any replacement of a Key Sub-contractor." **[Note: The draft template allows the Council to specify a value 'threshold' for sub-contracted works which, if exceeded, will require the Contractor to procure a collateral warranty from the relevant sub-contractor(s) as additional security. Delete all provisions relating to Key Sub-contractors if this is not required.]**

“Living Wage: the London Living Wage or the UK Living Wage as the context requires.”

“London Living Wage: the basic current hourly wage of £11.05 [Note: This is the current figure set by the Living Wage Foundation and will need to be checked at time of drafting] (before tax and other deductions and any increase for overtime) as set by the Calculating Body, the Resolution Foundation on behalf on the Living Wage Foundation, which may be amended from time to time.”

"Material: designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other documents or materials in any medium which have been created, developed and/or provided by the Contractor or its sub-consultants or sub-contractors in connection with any Order and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Contract Area and/or the work comprised in any Order."

"Purchaser: any person (save for a residential occupier) who takes or agrees to take a freehold interest in the whole or any part of the Contract Area."

“Resolution Foundation: the calculating body on behalf of the Living Wage Foundation (or any successor body) carrying out the relevant calculation.”

“Schedule of Information Requirements: a schedule stating the information that the Contractor requires the Employer, the Contract Administrator and the Employer’s Persons to release and the required timescales for that release.”

“Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced designer of the appropriate discipline undertaking the design of works similar in scope, character, value and complexity to the works comprised in any Order.”

"Tenant: any person (save for a residential occupier) who takes or agrees to take a leasehold interest in the whole or any part of the Contract Area."

"Third Party Agreements: the agreements, or extracts from agreements, between the Employer and third parties, which may affect the work or supply comprised in Orders, attached at Schedule 5 to the Schedule of Amendments, as supplemented by any instruction from the Contract Administrator referred to in clause 3.5.1."

“Wage Levels: means:

* in relation to employees working in London, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the London Living Wage from time to time;
* in relation to employees working outside of London and aged 25 or over, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the National Living Wage from time to time; and
* in relation to employees working outside of London and aged 24 or under, the national minimum wage.”

“UK Living Wage”: the basic current hourly wage of £9.90 [Note: This is the current figure set by the Living Wage Foundation and will need to be checked at time of drafting] (before tax and other deductions and any increase for overtime) as set by the Calculating Body, the Resolution Foundation on behalf on the Living Wage Foundation, which may be amended from time to time.

1. Clause 1.2

In clause 1.2, after "override or modify", add "the Schedule of Amendments, "

1. Clause 1.5

Delete "Notwithstanding any other provision of this Contract," and replace with "Subject to clauses 3.1 and 5A of this Contract,"

1. Clause 1.8

Insert a new clause 1.8:

"The appointment of the Contractor under this Contract hereunder shall be deemed to have commenced with effect from the date when the Contractor first began to carry out any services or works relating to this Contract. To the extent that the Contractor has carried out any services or works relating to Orders prior to commencement of this Contract [(whether under [the letter[s] of intent dated [ ],[, pre – construction services agreements dated [ ]] or otherwise)], the duties and obligations contained in this Contract shall be deemed to apply to the carrying out of those services or works. All payments made in respect of services or works carried out prior to the date of this Contract shall be treated as payments on account of sums due under this Contract."

1. Clause 2.1

Insert the following at the end of clause 2.1, as a new paragraph:

“Orders shall be awarded in accordance with the call-off procedure for Orders (if any) detailed at Annex D to this Contract. The Contractor acknowledges and agrees that:

.1 it shall have no expectation or entitlement to payment of any costs, expenses or disbursements incurred in preparing or submitting any required call-off proposal (whether such proposal is accepted or rejected), or otherwise complying with the requirements of Annex D (if any); and

.2 it shall have no expectation or entitlement to provide any works or services to the Employer at any Site, except as provided in an Order. If the Contractor carries out any works or services in relation to any Site without first having been provided with a corresponding Order then, notwithstanding any other term in this Contract, the Contractor shall not be entitled to any payment for the works or services in question (by way of contract, restitution, quantum meruit or otherwise).”

1. Clause 2.1A

Insert new clause 2.1A:

"Audit, Employer Policies, Living Wage and publicity

.1 The Contractor shall:

.1 at all times maintain complete and accurate records and information as to all work and services carried out, and all sums paid, under this Contract;

.2 afford the Employer and/or the Employer's designated auditor(s) access to all such records and information at all reasonable times on request; and

.3 provide copies of such records and information as and when reasonably required by the Employer and/or the Employer's designated auditor(s).

.2 The Contractor shall, and shall procure that the Contractor’s Persons, comply with the Employer’s Policies.

.3 The Contractor shall ensure that staff employed by it, or by any of its sub-contractors, who are engaged on the provision of Orders are paid no less than the relevant Wage Levels as per Schedule 7.

.4 The Contractor shall not, and shall procure that the Contractor’s Persons shall not, without the prior written consent of the Employer publish alone or in conjunction with any other person any articles, illustrations, photographs, videos or press announcements relating to the work or supply comprised in Orders, or otherwise publicise this Contract or the work or supply comprised in Orders, save in accordance with any legal obligation upon the Contractor to do so."

1. Clause 2.1B

Insert new clause 2.1B:

"Site conditions – Halfway House

~~[Option 1: This wording transfers the full time and cost risk of adverse site conditions to the Contractor. Advantage - Provides the Council with maximum time and cost certainty. Disadvantage - May lead to push-back from the Contractor and/or a disproportionate increase in the Contractor's pricing (to account for the additional risk involved), depending on the nature of the site and the works, the extent and results of any site surveys etc. undertaken by the Council, and the perceived likelihood of adverse site conditions impacting on the regular progress of the works.]~~

~~The Contractor has had an opportunity of inspecting the physical conditions (including but not limited [insert key examples of site conditions that the Contractor will be assuming the risk of]) and other conditions of or affecting the Contract Area and shall be deemed to be fully acquainted with the same before the date of this Contract and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the work or supply comprised in Orders. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment or an extension of time for completion. As between the Contractor and the Employer, the Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.1B and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.”~~

The Contractor shall be deemed to be fully acquainted with any physical and other conditions of or affecting the Contract Area (including but not limited to [insert key examples of site conditions that the Contractor will be assuming the risk of]) which a competent and experienced contractor should have reasonably made allowance for, having regard to any opportunity afforded to the Contractor to survey and/or inspect the Contract Area before the date of this Contract, the information contained in any site reports provided to the Contractor by the Employer before the date of this Contract and any publicly available information regarding the Contract Area. The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances relating to such site conditions as ascertainable from the aforementioned surveys, inspections and information which may influence or affect the execution of the work or supply comprised in Orders. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment or an extension of time for completion of an Order.”

1. Clause 2.1C

Insert new clause 2.1C:

“**Covid-19 precautions**

The Contractor undertakes:

.1 to take all practicable steps to prevent the transmission of Covid-19 (and other disease and infection) at the site and generally among the Contractor’s Persons;

.2 to comply, and to require all persons coming onto the site or otherwise performing any Order to comply, at all times with all Statutory Requirements, good industry practice, guidance and operational protocols relating to the Covid-19 Pandemic;

.3 to comply with all Covid-19 Pandemic related reporting requirements, data gathering and information sharing requirements reasonably imposed by the Employer from time to time;

.4 to require its subcontractors (at all levels) to agree a clause equivalent in all material respects to this clause 2.1C; and

.5 to provide a weekly update report (to be issued each Friday afternoon) identifying any known impacts of the Covid-19 Pandemic on the regular progress of any and all Orders which are in progress at that time.”

1. Clause 2.2
   1. Delete clause 2.2.1 and replace with: "All materials and goods for the work comprised in each Order shall be of satisfactory quality, reasonably fit for their intended purposes and of a standard appropriate to the relevant works and shall comply with Statutory Requirements and any standards, quality and requirements set out in the Schedule of Rates and/or the Order."
   2. Delete clause 2.2.2 and replace with: "The workmanship for the work comprised in each Order shall be of the standards described in the Schedule of Rates and the Order, or if not described or to the extent these contain a lesser standard, all workmanship shall be of satisfactory quality and carried out in a good, proper and workmanlike manner."
   3. Delete clause 2.2.3 and replace with: "Where and to the extent that approval of 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."
   4. Insert a new clause 2.2.5: "The Contractor shall not use or specify for use anything in the work comprised in the Orders, which, at the time of specification or use, is Deleterious."
   5. Insert new clause 2.2.6: “The Contractor shall ensure that all goods, materials, products and equipment intended for incorporation in the relevant Site are correctly and properly installed in accordance with manufacturer’s recommendations. To the extent that the Contractor considers an alternative method of installation is required or would better suit any goods, materials, products or equipment, it shall seek the Contract Administrator’s prior written approval. Any such approval given by the Contract Administrator shall not relieve the Contractor from his obligation to ensure that products are correctly and properly installed."
2. Clause 2.3
   1. ~~[In clause 2.3.5, delete “5%” and replace with “[X]%”.]~~ **~~[Note: The JCT MTC permits the Contractor a handling charge of 5% on the value of any materials, goods or plant provided by RBKC in connection with an Order. Amend the stated percentage as necessary to suit RBKC’s requirements.]~~**
   2. Insert at the end of clause 2.3.6, before the full stop: "(save where and to the extent that such failure is caused or contributed to by the Contractor's handling or storage of the materials or goods, or the Contractor's incorporation of the same into the work comprising the relevant Order)".
3. Clause 2.5

Insert the following at the end of clause 2.5:

"The Employer is under no obligation to issue any minimum number and/or value of Orders and the Contractor shall have no expectation or entitlement for any Order(s) to be issued to it at any time. Nothing in this Contract shall prevent or restrict the Employer from entering into negotiations or contracting with any other contractor at any time in relation to the works contemplated by this Contract. The Employer shall not incur any liability to the Contractor (including without limitation in relation to loss of opportunity, loss of revenue or loss of profit) if it contracts with any other contractor in relation to the works contemplated by this Contract and/or elects not to issue any Order(s) to the Contractor for whatever reason."

1. Clause 2.8

In clause 2.8.2, delete from and including “to the extent that” to and including the end of the clause, and replace with: “to the extent that the non-compliance results from the Contractor having carried out work in accordance with any design comprised in the Order or an instructed Variation which the Contractor is not responsible for preparing or verifying its adequacy”.

1. Clause 2.8A

Insert a new clause 2.8A as follows:

“Design

.1 The Contractor shall be responsible for preparing and/or verifying the design of the works comprised in any Order or instructed Variation, save to the extent stated otherwise in the Contract Documents.

.2 The Contractor warrants and undertakes to the Employer that:

.1 it shall use the Standard of Care when designing the works comprised in any Order and in selecting goods, materials, plant and equipment for incorporation in the same;

.2 it shall use the Standard of Care to ensure that its designs comply with Statutory Requirements and that the works ordered shall, once complete, comply with Statutory Requirements;

.3 it has properly coordinated and integrated and shall continue to properly coordinate and integrate the various elements of the design of the works comprised in Order so far as applicable; and

.4 it shall not alter any design, or the selection of goods, materials, plant and equipment, without the prior written approval of the Contract Administrator.”

1. Clause 2.8B

Insert new clause 2.8B as follows:

“Copyright

.1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free, world-wide licence to copy and make full use of any Material prepared by or on behalf of the Contractor for any purpose relating to Orders including any of the Permitted Uses.

.2 The licence referred to in clause 2.8B.1 carries the right to grant sub-licences and is freely transferable to third parties without the Contractor's consent.

.3 The Employer may, at any time (whether before or after completion of any Order, or termination of the Contractor's engagement under this Contract), request a copy or copies of (some or all of) the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Employer.

.4 All royalties or other sums payable in respect of the supply and use of any patented articles processes or inventions required in connection with Orders shall be paid by the Contractor and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs, and expenses suffered or incurred by the Employer by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with any Order.

.7 The Contractor hereby unconditionally and for all purposes waives all moral rights to which it is entitled under Part One of Chapter IV of the Copyright Designs and Patents Act 1988 in all Material produced or to be produced by the Contractor pursuant to this Contract.”

1. Clause 2.10
   1. Insert the following after the wording ‘for its completion’ and before the wording ‘but shall constantly’ in sub-clause 2.10.1:

“(such notification to include, without limitation, (i) a proposed revised programme for the relevant Order; and (ii) copies of any related delay notifications or particulars issued by the Contractor’s sub-contractors (such copies to be provided on an open-book basis))”.

* 1. Insert a new sub-clause 2.10.3 as follows:

"The Contractor shall not be entitled to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or the Contractor's Persons.”

* 1. Insert a new sub-clause 2.10.4 as follows:

“Without prejudice to the generality of clause 2.10.3, if the Contractor fails to give the notice and/or particulars required under clause 2.10.1 at the earliest practicable opportunity when a competent and experienced contractor could have given them, then any associated extension of time shall be assessed as if the Contractor had given the notice and/or particulars at that time.”

1. Clause 2.11
   1. Delete the second sentence of clause 2.11.1 and replace with "The Contract Administrator shall in turn notify the Contractor and the Employer of the date when in his opinion the Order has been completed and/or supplied in accordance with this Contract. The date so notified by the Contract Administrator shall for the purposes of this Contract be deemed to be the date when the Order was completed and/or supplied in accordance with this Contract (the 'Order Completion Date')."
   2. Delete the existing text of clause 2.11.2 and replace with the following:

"Without prejudice to any other requirement to be satisfied prior to completion of an Order as may be specified elsewhere in this Contract, it shall be a pre-requisite to completion of an Order being certified that the Contractor shall have:

.1 completed the works comprised in the Order such that they are free from apparent defects, subject only to minor defects which do not affect or impair the use, enjoyment, occupation and/or fitting out of the relevant part(s) of the Contract Area by the Employer;

.2 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the works comprised in the Order, in accordance with the Contract Documents and the Employer's reasonable requirements; and

.3 satisfied any further pre-requisites to completion as may be stated in the Contract Particulars."

1. Clause 2.12

Add the following to the end of clause 2.12:

"Any defects, shrinkages and other faults referred to in this clause 2.12 shall be made good by the Contractor within a reasonable time (and forthwith in the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation or use of the relevant part of the Contract Area). If the Contractor fails to make good any defects, shrinkages or other faults notified by the Employer pursuant to this clause within the time required under this clause then the Employer shall be entitled to instruct another contractor to carry out such works and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor."

1. Clause 2.12A

Add a new clause 2.12A after clause 2.12:

"**Snagging list and defects, shrinkages or other faults remaining at completion of an Order**

Clause 2.12 shall, without limitation, apply to:

.1 any items identified on any snagging list issued by the Contract Administrator at or around completion of any Order;

.2 any defects, shrinkages or other faults in the relevant works at completion of any Order; and

.3 any incomplete work, forming part of the works comprising the relevant Order, remaining at completion of that Order."

1. Clause 2.13

Add a new clause 2.13 after clause 2.12A:

"**Third Party Agreements**

.1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.

.2 The Contractor shall ensure that no act or default or omission on its part or on the part of any of its employees or sub-contractors in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

1. Clause 2.14

Insert a new clause 2.14:

“Contractor’s additional information sharing requirements

.1 The Contractor shall at its own cost prepare, and keep updated during the carrying out of the Orders, a master programme showing how the Contractor intends to time and sequence the works comprised in the Orders (including the design phase, lead-in times for procurement of materials, and the construction phase) in order to achieve completion of the Orders within the timescales required under this Contract. The Contractor shall provide a copy of the latest master programme to the Employer whenever reasonably requested and the Employer shall be entitled to require the Contractor to submit a revised programme if at any time it considers that the details do not comply with the requirements of this Contract.

.2 Where and to the extent required by the Employer or the Contract Administrator, the Contractor shall at its own cost prepare, and keep updated during the carrying out of the Orders, a Schedule of Information Requirements.

.3 Without prejudice to its other duties and obligations under this Contract, the Contractor shall provide (at its own cost) such information as the Employer or the Employer’s Persons may require from time to time on the nature, state and progress of the works comprised in the Orders (including without limitation information on the selection of goods and materials, buildability, procurement times and construction times).”

1. Clause 3.1

Delete clause 3.1 and replace with:

".1 The Employer may on two occasions without the consent of the Contractor assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.

.2 The Employer shall notify the Contractor of any assignment within 10 Business Days.

.3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 3.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion (save that the Employer’s consent shall not be required where and to the extent that the assignment is automatically permitted by virtue of the Business Contract Terms (Assignment of Receivables) Regulations 2018)."

1. Clause 3.2

Insert the following after "JCT Short Form of Sub-Contract" in the clause 3.2:

"The appointment of all Key Sub-Contractors shall be on terms and conditions which are to be approved by the Employer (such approval not to be unreasonably withheld or delayed). The Contractor shall upon reasonable request (but not later than 14 days from request) by the Employer or the Contract Administrator, provide a full copy of the executed form of sub-contract to the Employer, redacted as necessary to remove commercially sensitive pricing information only."

1. Clause 3.3

Insert the following at the end of clause 3.3:

“The Employer shall be entitled (acting reasonably) to require the removal of a Contractor’s representative or any other person engaged on the carrying out of Orders if, in the Employer's opinion, their performance or conduct is or has been unsatisfactory and the Contractor shall promptly remove such person and replace them with such person as the Employer shall first have approved in writing. Any cost incurred by the Contractor in replacing its Contractor’s representative or any other person engaged on the carrying out of Orders (in any circumstances) shall be borne by the Contractor. The Contractor’s representative shall keep complete and accurate records regarding on-site activity in accordance with any requirements reasonably imposed by the Employer and shall make the same available for inspection by the Employer at all reasonable times.”

1. Clause 3.4
   1. In clause 3.4.1, delete “Schedule of Rates” and replace with “other Contract Documents”.
   2. Delete the existing text of clause 3.4.3 and replace with the following:

“The Contractor shall at all times comply with any Employer’s Policies and/or other parts of the Contract Documents relating to Site access. The Contractor’s ordinary rights and remedies under clause 3.4.2 shall not apply where and to the extent that the inability to gain access, or the presence of any on-site impediment, is attributable to the Contractor’s failure to comply with this clause 3.4.3.”

1. Clause 3.5
   1. Insert the following at the end of clause 3.5.1:

"The Contract Administrator or the Employer may, without invalidating this Contract or the relevant Order, issue an instruction supplementing or amending the Third Party Agreements."

* 1. Insert the following at the end of clause 3.5.2, before the full stop:

"(but, unless so sanctioned at the Contract Administrator’s sole option and discretion, the Contractor (i) shall be required to reinstate the original work and/or supply comprised in the relevant Order; and (ii) shall not be entitled to any additional payment or any extension of time for completion in respect of the Variation or the subsequent reinstatement work)".

1. Clause 3.6
   1. Delete the existing text of clause 3.6.2.2 and replace with: "the Contract Administrator shall value and certify, for payment by the Employer in accordance with clause 4.4, the cost of materials or goods properly ordered for the work comprised in the relevant Order, for which the Contractor then has paid or is legally bound to pay. Provided that this clause 3.6.2.2 shall not apply (and the Contractor’s sole entitlement to payment for the relevant Order shall be as provided for at clause 3.6.2.1) in circumstances where the Order cancellation results from the Contractor failing to commence, progress and/or complete the Order in accordance with the Contract Documents".
   2. Insert the following at the end of clause 3.6.2 (as a new hanging paragraph):

"Payment under this clause 3.6.2 (if any) shall be the Contractor's sole entitlement to compensation for the cancellation of any Order. The Employer shall not be liable to the Contractor for any other costs, expenses, disbursements or losses (including any loss of profits, loss of fees, loss of chance or other similar losses, or any indirect losses or consequential losses) arising out of the cancellation of any Order."

1. Clause 3.9
   1. In clause 3.9.4, delete "immediately" and replace with "promptly".
   2. Add new clause 3.9.5:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before completion of the works comprising any Order, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations. Where the Contractor is not the Principal Designer, the Contractor shall further provide (at its own cost) all necessary assistance to and co-operate fully with the Principal Designer in the performance of its duties."

* 1. Add a new clause 3.9.6:

“the Contractor warrants to the Employer that he has the necessary skills, knowledge and experience to undertake all roles performed pursuant to the CDM Regulations under or in connection with this Contract and that it has sufficient resources and will allocate those resources to the fulfilment of such duties.”

* 1. Add a new clause 3.9.7:

“the Contractor hereby warrants that in relation to the preparation of the design of comprised in Orders it shall carry out and fulfil, and shall ensure that all sub-contractors responsible for design shall carry out and fulfil, the duties of a designer under the CDM Regulations. The Contractor shall further ensure that all of his consultants, sub-contractors and suppliers shall liaise and co-operate with the Principal Designer.”

1. Clause 3.11

Insert new clause 3.11:

"Project meetings

The Contractor shall attend project meetings convened by the Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Employer or the Contract Administrator (including, without limitation, representatives of Purchasers, Tenants and/or Funders) shall be permitted to attend such meetings."

1. Clause 4.3

In clause 4.3.2, delete “the date 7 days after”.

1. Clause 4.6
   1. In clause 4.6.1, delete "14 days" and replace with "30 days".
   2. In clause 4.6.5, delete "5 days" and replace with "1 day".
2. Clause 4.7
   1. In clause 4.7.1 after "7 days after the Contractor has given notice to the Employer, with a copy to the Contract Administrator, of his intention to suspend the performance of" insert: "any or all of".
   2. In clause 4.7.3, delete: "or on request" and, at the end of the sub-clause, add a new sentence:

"The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

1. Clause 5.1
   1. Change the full stop at the end of sub-clause 5.1.3 to a semicolon and add a new sub-clause 5.1.4:

".4 without prejudice to the rest of this clause 5.1, an instruction from the Employer supplementing or amending the Third Party Agreements."

* 1. Insert the following at the end of clause 5.1 (as a new hanging paragraph):

"The Contractor shall not be entitled to any additional payment or to any extension of time for completion in respect of any Variation that is necessitated by any error, omission, negligence or default of the Contractor or the Contractor's Persons."

1. Section 5A

Insert a new Section 5A entitled "Collateral warranties":

**".1** **Contractor's collateral warranty**

.1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any [Funder, any Purchaser and any Tenant] identified in the Employer's request, in the form of the Contractor's deed of collateral warranty contained in Schedule 6 to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably request.

**[Note – Please delete the third party beneficiaries (Funder, Tenant or Purchasers) who will not require a collateral warranty from the Contractor. If in doubt, leave all in the document as the obligation to provide the warranty only arises upon request from the Council.]**

.2 If the Contractor does not procure execution and delivery of any such warranty within the time period required under clause 5A.1 then, notwithstanding any other term of this Contract, the final date for payment of each sum shall which shall become due to the Contractor under this Contract shall be extended until such time as the required warranty is executed and delivered.

**.2 Sub-contractor collateral warranties**

.1 Within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall ensure that the Key Sub-contractor identified in the request has executed and delivered a deed of collateral warranty in favour of the Employer and/or in favour of any [Funder, any Purchaser and any Tenant] identified in the request, in the relevant form set out in Part 2of Schedule 4 to the Schedule of Amendmentswith such amendments as the relevant beneficiary may reasonably require.

**[Note – Please delete the third party beneficiaries (Funder, Tenant or Purchasers) who will not require Key Sub-Contractor collateral warranties. If in doubt, leave all in the document as the obligation to provide the warranty only arises upon request from the Council. If sub-contractor warranties will not be required at all (not even in favour of RBKC), delete clause 5A.2 entirely.]**.

.2 If the Contractor fails to procure any executed deed of collateral warranty from any Key Sub-contractor within the time period required under clause 5A.2, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Key Sub-contractor and claimed by the Contractor in its application for payment.

.3 The Contractor shall not terminate or vary the appointment of any Key Sub-Contractor without the Employer's prior consent, which shall not be unreasonably withheld or delayed."

1. Clause 6.1

In clause 6.1, after "caused by the carrying out of an Order" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

1. Clause 6.2

In clause 6.2, after "by reason of the carrying out of an Order" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

1. Clause 6.3A

Add new clause 6.3A after clause 6.3:

"Contractor to prevent nuisance

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the works comprised in an Order or of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A."

1. Clause 6.3B

Add a new clause 6.3B after clause 6.3A:

"**Trespass and third party consents**

.1 Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the carrying out of any Order or of any other obligation pursuant to Section 2 or Section 3 of the Conditions and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public.

.2 The Contractor shall obtain, at its own cost, any third party consents, approvals, licences or permissions stated in the Contract Particulars.

.3 If requested by the Employer, the Contractor at its own cost shall provide reasonable assistance (including the provision of copies of drawings and specifications) to the Employer and its nominated representatives and consultants in obtaining any third party consents, approvals, licences or permissions which are not the Contractor's responsibility to obtain under clause 6.3B.2 but which are otherwise necessary for the carrying out of an Order.

.4 The Contractor shall, and shall procure that the Contractor’s Persons shall, comply in all respects with the terms of any third party consents, approvals, licences or permissions issued from time to time in connection with any Order."

1. Clause 6.4
   1. Insert at the end of clause 6.4.1.1, before the semi-colon: “and shall have a minimum indemnity limit of £10,000,000 for any one claim”.
   2. Insert a new clause 6.4.3:

“.1 If required by the Contract Particulars, the Contractor shall maintain professional indemnity insurance in the amount and on the basis stated in the Contract Particulars, provided that (subject to clause 6.4.3.2) such insurance is available at commercially reasonable rates. The Contractor shall maintain such insurance from commencement of the Contract Period until the date falling twelve years following the Contractor’s last performance of works or services under this Contract.

.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

.3 The Contractor shall immediately inform the Employer if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Contractor and the Employer can discuss how best to protect the respective positions of the Contractor and the Employer without that insurance.

.4 Whenever the Employer requests, the Contractor shall provide evidence that the professional indemnity insurance required by this clause is in force.

.5 The obligation under this Contract to take out and maintain professional indemnity insurance shall continue notwithstanding termination of the Contract, or determination of the Contractor’s employment hereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer.”

1. [Clause 6.6

In the definition of ‘Joint Names Policy’, after “the Contractor” insert: “and [insert details of any third party / parties that need to be covered by the CAR policy]”] **[Note: Delete this amendment if it is sufficient for just RBKC and the Contractor to be named on the CAR policy.]**

1. Clause 6.10

Add the following after clause 6.10.2:

“.3 The Contractor shall notify the Employer in writing from time to time of any change in its insurance arrangements.

.4 The Contractor shall not do or permit or suffer to be done any act or thing which may vitiate or prejudice the recovery of any sum under any policy or policies of insurance effected by either Party.”

1. Clause 6.14

Delete “either Party” and replace with “the Employer”. Delete “the other” and replace with “the Contractor”.

1. Clause 7.1

Delete "Each Party" and replace with "The Employer". Delete "the other Party" and replace with "the Contractor".

1. Clause 7.2

Delete "the Employer or the Contractor, as the case may be," and replace with "the Contractor".

1. Clause 7.3

Insert a new clause 7.3:

“Extension of Contract Period

No later than three months before the end of the initial Contract Period, the Employer may by giving written notice to the Contractor extend the Contract Period by further periods of 2 x 1-year extensions.

1. Clause 8.4
   1. In sub-clause 8.4.1.2, delete "that the carrying out of any Order or Orders is materially disrupted, suspended or delayed".
   2. Insert a new sub-clause 8.4.1.3:

".3 fails to maintain or provide adequate evidence of any insurance cover required to be procured by the Contractor under this Contract"

* 1. Insert a new clause 8.4.4:

"The Employer may immediately terminate the Contractor's employment under this Contract by giving written notice, if the Contractor is in material or persistent breach of its obligations under this Contract and fails to rectify such breach within 14 days of being notified of the same."

1. Clause 8.6

Delete the existing text of clause 8.6 and replace with the following:

“.1 The Employer shall be entitled at any time to terminate the Contractor’s employment under this Contract or any other contract with the Employer and recover all its loss if the Contractor, the Contractor’s Persons or anyone acting on the Contractor’s behalf do any of the following things:

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

.2 commit an offence under the Bribery Act 2010; or

.3 commit any fraud in connection with this or any other contract with the Employer whether alone or in conjunction with the Employer’s Persons (including any person employed on a permanent, temporary or agency arrangement by the Employer); or

.4 give any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

.2 The Employer shall be entitled at any time to terminate the Contractor’s employment under this or any other contract with the Employer if (where this Contract is one to which regulation 73(1) of the PC Regulations applies) the circumstances set out in regulations 73(1)(b) of the PC Regulations apply.

.3 Any clause under this Contract limiting the Contractor’s liability shall cease to apply in circumstances where the Contractor’s employment is terminated pursuant to this clause 8.6.”

1. Clause 10

Insert a new clause 10 as follows:

“**Data protection**

**~~[Option 1: To be used where the Contractor will NOT have access to any personal data under this contract.]~~**

~~Italicised wording in this clause 10 shall have the meanings ascribed to it under the Data Protection Act 2018. It is not anticipated that the Contractor will act as a~~ *~~data processor~~* ~~of any~~ *~~personal data~~* ~~in respect of which the Employer is a~~ *~~data controller~~*~~. To the extent that the Contractor is required by the Employer to act as a~~ *~~data processor~~* ~~at any stage, the parties shall, prior to the Contractor acting in this capacity, first agree the terms of a written agreement to set out the ambit of such role. Any~~ *~~processing~~* ~~of~~ *~~personal data~~* ~~prior to such written agreement being concluded is not authorised by the Employer.”~~

**[Option 2: To be used where the Contractor WILL have access to personal data under this contract (e.g. this might be relevant where the contract is being used for housing maintenance the Contractor will be given names, contact details etc. of the resident occupiers).]**

.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

.3 Without prejudice to the generality of clause 10.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.

.4 Without prejudice to the generality of clause 10.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:

.1 process that Personal Data only on the written instructions of the Employer as set out in the Data Processing Instructions Schedule attached at Annex E to this Contract or otherwise provided by the Employer, unless the Contractor is required by Applicable Laws. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer;

.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

.4 not transfer any Personal Data outside of the European Economic Area 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;

.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; and

.4 the Contractor complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

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

.6 notify the Employer without undue delay on becoming aware of a Personal Data breach;

.7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and

.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Employer or the Employer's designated auditor.

.5 The Employer does not consent to the Contractor appointing any third party processor of Personal Data under this Contract.

.6 The Employer may, at any time on not less than 30 days’ notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

.7 In this clause 10, the following definitions apply:

“Applicable Laws: the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data."

"Data Protection Legislation: (i) the GDPR; (ii) the Data Protection Act 2018; (iii) any laws which implement any such laws; and (iv) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.”

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

1. Clause 11

Insert a new clause 11 as follows:

**“Anti-Slavery**

.1 The Contractor shall, and shall procure that the Contractor’s Persons, comply with the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.22814760534583756&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) and any related Employer’s Policies.

.2 Without prejudice to the generality of clause 11.1, the Contractor undertakes, warrants and represents that:

.1 neither the Contractor nor any of its officers, employees, agents or subcontractors has:

.1 committed an offence under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.12760841368112064&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) (an “MSA Offence”); or

.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.7279748899274029&bct=A&risb=&service=citation&langcountry=GB" \t "_parent); or

.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.8263395979225712&bct=A&risb=&service=citation&langcountry=GB" \t "_parent); and

.2 it has implemented due diligence procedures to ensure compliance with the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.27764660670174246&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) (and any related Employer’s Policies) in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Employer on request at any time.

**.**3 The Contractor shall notify the Employer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Contractor’s obligations under clause 11.1 or clause 11.2. Any such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor’s obligations.

.4 Any breach of clause 11.1 or clause 11.2 by the Contractor shall be deemed to be a material breach of this Contract which is not capable of remedy and shall entitle the Employer to terminate the Contractor’s engagement with immediate effect under clause 8.4.4.”

1. JCT MTC 2016, Schedule: Supplemental Provisions

This agreement incorporates the Schedule to the JCT Conditions.

Schedule 2 - Parent Company Guarantee

Not applicable.

Schedule 3 - Performance Bond

"Not used"

Schedule 4 - Key Sub-contractors and Key Sub-contractor's deed of collateral warranty

[Note: The draft template allows the Council to specify a value 'threshold' for sub-contracted works which, if exceeded, will require the Contractor to procure a collateral warranty from the relevant sub-contractor(s) as additional security. Delete all provisions relating to Key Sub-contractors if this is not required.]

1. Key Sub-contractors

The Key Sub-contractors identifiable at the date of this Contract are:

* [LIST BY NAME OR SPECIALISM]

1. Key Sub-contractor's deed of collateral warranty

[Note: Attach agreed form(s) of Sub-Contractor collateral warranty (e.g. the Council's amended JCT SCWa/E, SCWa/F and SCWa/P&T warranties).]

Schedule 5 - Third Party Agreements

"Not applicable"

Schedule 6 - Contractor's collateral warranty

[Note: Attach agreed form(s) of Contractor collateral warranty (e.g. the Council's amended JCT CWa/F and CWa/P&T warranties).]

SCHEDULE 7 – LIVING WAGE

* 1. **X Living Wage**
  2. X.1 Without prejudice to any other provision in this Contract, the Contractor shall (and will ensure that their Sub-Contractors shall):

X.1.1. ensure that no employee engaged in the provision of the Works is paid an hourly wage (or equivalent of an hourly wage) less than;

X.1.1.1. the London Living Wage where an employee is based in Greater London;

or,

X.1.1.2. the UK Living Wage where an employee is based outside Greater London;

X.1.2. ensure that no employee engaged in the provision of the Works is paid less than the amount to which they are entitled in their respective contracts of employment; and

* + 1. X.1.3. provide to the Employer such information concerning the Contractor compliance with its obligations in this Clause X.1.1 including but not limited to the numbers of employees of its or any Sub-contractor of its paid the relevant Living Wage as the Employer or its nominees may reasonably require from time to time.
  1. X.2 For the purposes of this Clause X an employee shall be based in Greater London where the premises at which or from which they are engaged in the provision of the Works is situated within a London Borough.

Annex A – Pricing and specification

The Parties have attached to this Annex A:

* the schedules of rates identified in the Contract Particulars.
* the Schedule of Hourly Charges; and
* the preliminaries and specification preambles applicable to this Contract.
* The Pricing Document – Appendix 5a

Annex B - Employer's Policies

As appended in the ITT documents.

Annex C - Contractor's safety policy

[Attach Contractor's safety policy, as referred to in the Fourth Recital of the JCT standard form.]

Annex D – Call off procedure

Not applicable

Annex E - Data processing instructions schedule

|  |  |
| --- | --- |
| Subject matter of Processing | Communication with tenants and others in connection with the Project |
| Duration of Processing | From the date of delivery of personal data to the date all obligations required under the contract have been performed. |
| Nature and Purpose of Processing | Receipt of data from the employer Storage of data. Use of data solely for communication  with Data Subjects in connection with the Project only, e.g. to arrange access, to provide information about the Project, to process complaints and provide feedback  Performance and monitoring of contract obligations and communications between all parties engaged on the Project Secure destruction or return of all personal data supplied by the Employer or acquired by the  Contractor in connection with the Project in accordance with the Employer’s instructions. |
| Types of Personal Data | To include as available: name, address, telephone number, email address. |
| Categories of Data Subjects | Tenants / Leaseholders / Other occupiers of relevant properties and members of the public. |