**DATED                                                    2022**

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

|  |  |  |
| --- | --- | --- |
|  | BUILDING CONTRACT  Incorporating and amending the  **JCT Design and Build Contract, 2016 Edition**  **Relating to The Royal Borough of Kensington and Chelsea – Heating and Domestic hot and cold water, central plant services distribution Replacement Scheme – Cremorne Estate.**  **External of dwellings phase 1a and 1b.** |  |



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); and
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 design and construction of certain works.
2. The Contractor has agreed to carry out the design and construction of those works, as required by this agreement.
3. The Employer and the Contractor have agreed to incorporate and amend the JCT Design and Build Contract, 2016 edition ("**JCT Design and Build Contract**") 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 Design and Build Contract titled "Articles". |
| JCT Attestation | 1. the section of the JCT Design and Build Contract titled "Attestation". |
| JCT Conditions | 1. the section of the JCT Design and Build Contract titled "Conditions". |
| JCT Contract Particulars | 1. the section of the JCT Design and Build Contract titled "Contract Particulars". |
| JCT Recitals | 1. the section of the JCT Design and Build Contract titled "Recitals". |
| Schedule of Amendments | 1. the parties, background, agreed terms and schedules forming part of this agreement, which amend the JCT Design and Build Contract. |

## Capitalised terms used in this agreement have the same meaning as in the JCT Design and Build Contract unless the meaning given in the JCT Design and Build Contract 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 Design and Build Contract, 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 DESIGN AND BUILD CONTRACT

## This agreement incorporates and amends the JCT Design and Build Contract as follows:

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

### it incorporates the JCT Articles, as amended by **Part 2 of** [**Schedule**](#schedule1) **A**;

### it incorporates the JCT Contract Particulars, as set out in **Part 3 of** [**Schedule**](#schedule1) **A**; and

### it incorporates the JCT Conditions, as amended by **Part 4 of** [**Schedule**](#schedule1) **A**.

## 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 Works:

The Heating and Domestic Hot and Cold Water, Central Plant Services Distribution Replacement at Cremorne Estate, South Kensington, London (as further detailed in the Contract Documents).

1. THIRD RECITAL

Delete the existing third recital and replace with:

"the Contractor has examined the Employer's Requirements and confirms:

* the Contractor has inspected the site and satisfied himself as to its dimensions, location and other relevant matters.
* the Contractor’s Proposals meet with the Employer's Requirements and there is no discrepancy within and/or between the two documents: and
* the Contractor shall be fully responsible in all respects for the design of the Works (whether contained in the Employer's Requirements or the Contractor's Proposals), including without limitation design development, selection of goods and materials and satisfaction of performance specifications."

1. Articles
2. ARTICLE 2: CONTRACT SUM

Complete Article 2 with this Contract Sum:

[SUM IN WORDS] (£[SUM IN FIGURES])

1. Article 3: Employer's Agent

Complete Article 3 with this Employer's Agent:

[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 Employer’s Agent at all times in the performance of its obligations under this Contract.”

1. Article 5: PRINCIPAL DESIGNER

Complete Article 5 with this Principal Designer:

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

1. Article 6: Principal Contractor

Complete Article 6 with this Principal Contractor:

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

1. NEW ARTICLE 10: EFFECT OF APPROVAL

Insert new Article 10:

"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 Employer's Agent or their agents or representatives on the site of the Works, or the carrying out of tests on the instructions of the Employer or the Employer's Agent 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 Employer's Agent."

1. Contract Particulars

| **Clause Reference** | | **Subject** | | **Particulars** | | | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| *Fourth Recital and clause 4·5* | | Construction Industry Scheme (CIS) | | The Employer at the Base Date for the purposes of the CIS | | | | is a ‘contractor’ | | | | | |
| *Fifth Recital* | | Description of Sections (if any)  *(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown)* | | Not applicable. | | | | | | | | | |
| *Sixth Recital* | | Framework Agreement (if applicable)  *(State date, title and parties.)* | | Not applicable | | | | | | | | | |
| *Seventh Recital and Part 1 of Schedule 2* | | Supplemental Provisions - Part 1  *(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)* | | | | | | | | | | | |
| Named Sub-Contractors | | Supplemental Provision 1 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Valuation of Changes - Contractor's estimates | | Supplemental Provision 2 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Loss and expense - Contractor's estimates | | Supplemental Provision 3 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| *Seventh Recital and Part 2 of Schedule 2* | | Supplemental Provisions - Part 2  *(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)* | | | | | | | | | | | |
| Acceleration Quotation | | Supplemental Provision 4 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Collaborative working | | Supplemental Provision 5 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Health and safety | | Supplemental Provision 6 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Cost savings and value improvements | | Supplemental Provision 7 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Sustainable development and environmental considerations | | Supplemental Provision 8 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Performance indicators and monitoring | | Supplemental Provision 9 | | | | Applies | | | | |  |
| Does not apply | | | | | ✓ |
| Notification and negotiation of disputes | | Supplemental Provision 10 | | | | Applies | | | | | ✓ |
| Does not apply | | | | |  |
| Where Supplemental Provision 10 applies, the respective nominees of the Parties are | | Employer’s nominee | | | | Billy White | | | | | |
| Contractor's nominee | | | | [ ] | | | | | |
| or such replacement as each Party may notify to the other from time to time | | | | | | | | | |
| Article 4 | | Employer's Requirements  (*State reference numbers and dates or other identifiers of the relevant documents)* | | As attached within ITT docs. | | | | | | | | | |
| Article 4 | | Contractor's Proposals  (*State reference numbers and dates or other identifiers of the relevant documents*) | | As attached within ITT docs. | | | | | | | | | |
| Article 4 | | Contract Sum Analysis  (*State reference numbers and dates or other identifiers of the relevant documents*) | | As attached at Annex C to this Contract. | | | | | | | | | |
| Article 8 | | Arbitration | | Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply | | | | | | | | | |
| 1.1 | | Base Date | | | | 9 May 2022 | | | | | | | |
| 1.1 | | BIM Protocol (where applicable)  *(State title, edition, date or other identifiers of the relevant documents)* | | | | Not applicable | | | | | | | |
| 1.1 | | Date for Completion of the Works (*where completion by Sections does not apply*) | | | | 5 May 2023 | | | | | | | |
| 1.1 | | Sections: Dates for Completion of Sections | | | | Not applicable | | | | |  | | |
|  | | | | |  | | |
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|  | | | | |  | | |
| 1.7 | | Addresses for service of notices by the Parties (*if none is stated, the address in each case subject to clause 1.7.3 shall be that shown at the commencement of the Agreement*) | | Employer: Town Hall, Hornton Street, London W8 7NX | | | | | | | | | |
| Contractor: [ADDRESS] | | | | | | | | | |
| 2.3 | | Date of Possession of the site (*where possession by Sections does not apply*) | | | | 9 May 2022 | | | | | | | |
| 2.3 | | Sections: Dates of Possession of Sections | | | | Not applicable | | | | |  | | |
|  | | | | |  | | |
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|  | | | | |  | | |
| 2.4 | | Deferment of possession of the site (*where possession by Sections does not apply)* | | Clause 2.4 does not apply | | | | | | | | | |
| Maximum period of deferment (if less than 6 weeks) is nil weeks | | | | | | | | | |
| 2.4 | | Sections: deferment of possession of Sections | | Clause 2.4 does not apply | | | | | | | | | |
| Maximum period of deferment (if less than 6 weeks) is nil weeks | | | | | | | | | |
| 2.27A | | Additional pre-requisites to achievement of practical completion or sectional completion | | | | In addition to the matters listed at clause 2.27A, the following shall be a pre-requisite to achievement of practical completion or sectional completion (as applicable):  [Insert any pre-conditions to practical completion or sectional completion not already listed at clause 2.27A] | | | | | | | |
| 2.29.2 | | Liquidated damages *(where completion by Sections does not apply)* | | At the rate of | | £3,800 per week or pro rata for part thereof | | | | | | | |
| 2.29.2 | | Sections: rate of liquidated damages for each Section | | Section: | | Rate per week or pro-rata for part thereof (£) | | | | | | | |
| Not applicable | | £ | | | | | | | |
|  | |  | | | | | | | |
|  | |  | | | | | | | |
| 2.34 | | Sections: Section Sums | | Not applicable | | £ | | | | | | | |
|  | |  | | | | | | | |
|  | |  | | | | | | | |
| 2.35 | | Rectification Period (*where completion by Sections does not apply) (If no other period is stated, the period is 6 months)* | | | | 12 months from the date of practical completion. | | | | | | | |
| 2.35 | | Sections: Rectification *Periods (if no other period is stated, the period is 6 months.)* | | | | Section | | | | Months (from the date of practical completion of each Section) | | | |
| Not applicable | | | | 12 months from the date of practical completion of the Section. | | | |
|  | | | |  | | | |
| 4.6 | | Advance payment  *(Not applicable where the Employer is a Local or Public Authority)* | | Clause 4.6 does not apply | | | | | | | | | |
| 4.6 | | Advance Payment Bond  *(where an advance payment is to be made, an advance payment bond is required unless stated that it is not required)* | | An advance payment bond is not required | | | | | | | | | |
| 4.7.1 | | Method of payment - alternatives | | Periodically in accordance with Alternative B (clause 4.1). | | | | | | | | | |
| Alternative A: Stage Payments | | Not applicable | | | |  | | | | | |
|  | | | |  | | | | | |
|  | | | |  | | | | | |
|  | | | |  | | | | | |
| 4.7.2 | | Interim Payments - Interim Valuation Dates  *(The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession)* | | The first Interim Valuation Date is 9 June 2022 and thereafter the same date in each calendar month.  **[Note: The JCT DB template provides for monthly invoicing and 30 day payment terms (the notional 'due date' is the relevant Interim Valuation Date and the 'final date for payment' is 30 days after the due date). Further amendments will be required if this mechanism needs altering for a particular project (although please bear in mind the Fair Payment Charter and the PCR 2015).]** | | | | | | | | | |
| 4.15.4 | | Listed Items - uniquely identified  (*Delete the entry if no bond is required)* | | For uniquely identified Listed Items a bond in respect of payment for such items is required for | | [Insert details]  **OR**  [Not applicable] | | | | | | | |
| 4.15.5 | | Listed Items - not uniquely identified (*Delete the entry if clause 4.15.5 does not apply)* | | For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for | | [Insert details]  **OR**  [Not applicable] | | | | | | | |
| 4.17 | | Contractor's Retention Bond  *(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply and relevant particulars are given below)* | | Clause 4.17 does not apply | | | | | | | | | |
| 4.18.1 | | Retention Percentage | | | | 5%  **Note: The draft assumes a 5% retention from interim payments, reducing to 2.5% on practical completion.** | | | | | | | |
| 5.5 | | Daywork | | | | The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document:  Not applicable | | | | | | | |
| 6.3B | | Third party consents, approvals, licences and permissions | | | | The Contractor is responsible for obtaining the following without addition to the Contract Sum:  To include for Local Authority, infrastructure services Authority’s, planning and building consents. | | | | | | | |
| 6.4.1 | | 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.** | | | | | | | |
| 6.5.1 | | Insurance - liability of Employer | | Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event | | £10m  **Note: Contractor to provide evidence of non-negligent liability cover (if required).** | | | | | | | |
| 6.7 and Schedule 3 | | Works insurance - Insurance Option applicable | | | | Schedule 3: Insurance | | | | | | | |
| Option A Applies | | | | | |  |
| Option B Applies | | | | | |  |
| Option C Applies | | | | | | ✓ |
| Percentage to cover professional fees  (*if no other percentage is stated, it shall be 15 per cent)* | | | | 15% | | | | | | | |
| Where cover is to be provided under the Contractor's annual policy, the annual renewal date is | | **[Note: To be provided by Contractor (where the Contractor is responsible for insuring the Works).]** | | | | | | | | | |
| Where Insurance Option C applies, paragraph C.1 | | applies  **~~OR~~**  ~~[is replaced by the following provisions (referred to in this Contract as the 'C.1 Replacement Schedule'):~~  ~~[insert details]]~~  **~~[Note: Paragraph C.1 should be stated to apply where Insurance Option C applies and the Council will insure the existing structures in joint names. If the Council will NOT insure the existing structures in joint names (e.g. because the existing structures are owned by a superior landlord who has control of the insurance arrangements, or because the Council cannot procure insurance in joint names), then insert details of the alternative insurance arrangements where indicated.]~~** | | | | | | | | | |
| 6.10 and Schedule 3 | | Terrorism Cover - details of the required cover  (*Unless otherwise stated, Pool Re Cover is required)* | | | | ~~[Insert details]~~  **~~OR~~**  Terrorism cover not required | | | | | | | |
| 6.15 | | Professional Indemnity Insurance  Level of cover  (*If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated*)  (*If no amount is stated, insurance under clause 6.15 shall not be required*) | | Amount of Indemnity required | | | Relates to claims or series of claims arising out of one event and is £5m  **Note: Contractor to provide evidence of PI cover.** | | | | | | |
| Cover for pollution and contamination claims  (*If no amount is stated such cover shall not be required;, unless otherwise stated, the required limit of indemnity is an annual aggregate amount*) | | | | Is required with a sub-limit of indemnity of £2m  **Note: Contractor to provide evidence of pollution and contamination cover.** | | | | | | | |
| Expiry of required period of Professional Indemnity Insurance (after the date of practical completion of the Works) is | | | | 12 years | | | | | | | |
| 6.17 | | Joint Fire Code | | The Joint Fire Code applies | | | | | | | | | |
| If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a "Large Project":  Yes | | | | | | | | | |
| 6.20 | | Joint Fire Code - amendments/revisions  (*The cost shall be borne by the Contractor unless otherwise stated*) | | The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor. | | | | | | | | | |
| 7.3.1 | | Performance bond or guarantee from bank or other approved surety | | | | is required | | | | | | | |
| The required form of the bond or guarantee is set out in Schedule C to the Schedule of Amendments. | | | | | | | |
| Value: 10% of the Contract Sum | | | | | | | |
| Period of validity: the expiry date of the performance bond or guarantee is to be [the date of practical completion of the Works / the date of issue of the Notice of Completion of Making Good for the Works]  **[Note: The later expiry date will invariably lead to an increased cost for procuring the bond, which the Contractor may seek to pass on to the Council.]** | | | | | | | |
| Reduction in value - if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is | | | | 50%  **[Note: If the Council requires the performance bond to be in place until a date falling after practical completion, it may wish to accept a percentage reduction in the value of the bond at practical completion. This is likely to be more palatable to the Contractor and should assist with keeping premium costs to a minimum.]** | | | | | | | |
| 7.3.2 | | Guarantee from the Contractor's parent company | | | | is required | | | | | | | |
| Parent company's name and registration number: [Insert details] | | | | | | | |
| The required form of the guarantee is set out in Schedule B to the Schedule of Amendments. | | | | | | | |
| 8.9.2 | | Period of suspension  *(If none is stated, the period is 2 months)* | | | | 2 months | | | | | | | |
| 8.11.1.1 to 8.11.1.6 | | Period of suspension  (*If none is stated, the period is 2 months)* | | | | 2 months | | | | | | | |
| 9.2.1 | | Adjudication | | The Adjudicator is to be nominated by the Adjudicator nominating body. | | | | | | | | | |
| 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 | | | | | | | | | |

1. Conditions
2. 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 Particulars: add to the end of the definition, before the full stop:

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

* + 1. Funder: delete the existing definition text and replace with:

"a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works, or the site of the Works, 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)."

* + 1. Purchaser: delete the existing definition and replace with “any person (save for a residential occupier) who takes or agrees to take a freehold interest in the whole or any part of the Works".
    2. Recitals: add to the end of the definition, before the full stop:

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

* + 1. Tenant: delete the existing definition and replace with “any person (save for a residential occupier) who takes or agrees to take a leasehold interest in the whole or any part of the Works".
  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.”

~~["Deeds of Novation: the deeds of novation between the Employer, the Contractor, and those Professional Consultants listed at Part 1 of Schedule D, in the form attached at Part 4 of Schedule D to the Schedule of Amendments."]~~ **~~[Note: Only required if the Employer's design consultants will be novated to the Contractor.]~~**

"Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the time of specification or 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 Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; 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 D to this Contract.”

"Key Sub-contractor: a sub-contractor appointed by the Contractor to carry out design works and/or named or identified in Part 1 of Schedule E to the Schedule of Amendments and any replacement of a Key Sub-contractor."

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

“London Living Wage: the basic current hourly wage of [£10.75] [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 of 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 the Works 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 Works (and the completed Works)."

"Professional Consultant: a professional consultant appointed by (or novated to) the Contractor to carry out design services and/or named or identified in Part 1 of Schedule D to the Schedule of Amendments and any replacement of a Professional Consultant."

“Resolution Foundation: the calculating body on behalf of the Living Wage Foundation (or replacement 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 Employer’s Agent 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 architect (or other appropriate professional designer) undertaking the design of works similar in scope, character, value and complexity to the Works."

"Third Party Agreements: the agreements, or extracts from agreements, between the Employer and third parties, which may affect the Works, attached at Schedule F to the Schedule of Amendments, as supplemented by any instruction from the Employer referred to in clause 5.1.3."

“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 [£9.30] [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 1.3

In clause 1.3, after "override or modify" add: "the Schedule of Amendments,"

1. Clause 1.6

Delete "Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B," and replace with "Subject to clause 7 of this Contract,".

1. CLAUSE 1.8
   1. Delete clause 1.8.1.1 and replace with "Number not used".
   2. In clause 1.8.2.1, delete “the date of issue of the relevant statement” and replace with “the due date for the final payment”.
2. CLAUSE 1.10

In clause 1.10 delete "either Party's consent under clause 7.1 the giving of which shall be at the sole discretion of the Party from whom it is sought" and replace with "the Employer's consent under clause 7.1.4 the giving of which shall be at the Employer's sole discretion".

1. CLAUSE 1.12

Insert a new clause 1.12:

"The appointment of the Contractor under this Contract 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 the Works. To the extent that any such services or works were carried out prior to or otherwise than pursuant to 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

Delete sub-clause 2.1.2 and replace with: "The Contractor shall make due allowance in its programme for any work to be undertaken by any Statutory Undertaker and shall give sufficient notice in writing to each of them of the dates and times when their work can be undertaken on site without causing any delay or disruption to the Works."

1. Clause 2.1A

Insert new clause 2.1A:

"**Audit, Employer Policies, Wage Levels 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 the Works are paid no less than the relevant Wage Levels as per Schedule H.

.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 Works, or otherwise publicise this Contract or the Works, save in accordance with any legal obligation upon the Contractor to do so."

1. Clause 2.1B

Insert new clause 2.1B:

"Site conditions

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 to Excavation findings and potential issues, Live working system, logistics of project and keeping system live with no breakdowns or minimal shutdowns and non reliance on temporary plant and other conditions of or affecting the site of the Works 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 Works. 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 (whether by way of an addition to the Contract Sum or otherwise) or an extension of time. 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.”

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 the Works 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 the Works (to include, at minimum, an up to date register of all Relevant Events under clause 2.26.15).”

1. Clause 2.2
   1. In sub-clause 2.2.1, after "so far as procurable, be" add: "of satisfactory quality, reasonably fit for their intended purposes and".
   2. In sub-clause 2.2.2, insert a new final sentence: "To the extent not described in the Employer's Requirements or Contractor's Proposals, or to the extent these contain a lesser standard, all workmanship shall be of satisfactory quality and carried out in a good and workmanlike manner."
   3. Add a new sub-clause 2.2.6:

"The Contractor shall not specify or use anything in the Works which, at the time of specification or use, is Deleterious."

* 1. Add a new sub-clause 2.2.7:

“The Contractor shall ensure that all goods, materials, products and equipment intended for incorporation in the Works are correctly and properly installed in accordance with manufacturer’s instructions and 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 Employer’s Agent’s prior written approval. Any such approval given by the Employer’s Agent shall not relieve the Contractor from his obligation to ensure that goods, materials, products and equipment are correctly and properly installed."

1. ~~[CLAUSE 2.3~~

**~~[Note: Delete this amendment if the Contractor will be granted exclusive possession of the site and will not need to coordinate with other trades etc.]~~**

~~Delete “On” at the start of this clause and replace with “Subject always to clause 2.3A, on”.]~~

1. ~~[CLAUSE 2.3A~~

**~~[Note: Delete this amendment if the Contractor will be granted exclusive possession of the site and will not need to coordinate with other trades etc.]~~**

~~Insert a new clause 2.3A:~~

~~“.1~~ **~~[Note: Amend this opening paragraph as needed to suit the requirements of the particular project]~~** ~~The Contractor acknowledges that the site forms part of~~ ***~~[insert nature of the site, e.g. a school]~~*** ~~and that certain related persons (the “~~**~~Other Personnel~~**~~”) will be present during the carrying out of the Works. The Contractor further acknowledges that the Employer may procure the completion of certain works not forming part of this Contract (the “~~**~~Third Party Works~~**~~”) during the carrying out of the Works. The Contractor shall:~~

~~.1       fully and actively cooperate with the Other Personnel and any contractors engaged in connection with the Third Party Works in the performance of the Contractor’s duties and obligations under this Contract;~~

~~.2        comply with all reasonable instructions issued by the Employer (or the Employer’s Agent) in respect of the coordination of the Works with the Third Party Works and the requirements and activities of the Other Personnel; and~~

~~.3        take all reasonably practicable measures to ensure that no unforeseen interruption or interference is caused by or to the Other Personnel or the Third Party Works in the execution of the Works.~~

~~Subject to clauses 2.3A.2 and 2.3A.3, the Contractor shall not be entitled to an extension of time or additional payment (whether by addition to the Contract Sum or otherwise) due to the requirements of this clause.~~

~~.2         Where and to the extent that the Third Party Works or the requirements and activities of the Other Personnel are not sufficiently detailed in the Contract Documents to enable a competent and experienced contractor to carry out and complete the Works in conjunction with the same, without consequent delay and/or disruption to the Works, then such consequent delay and/or disruption shall be treated as a Relevant Event and a Relevant Matter.~~

~~.3         Where and to the extent that the regular progress of the Works is delayed or disrupted due to any impediment, prevention or default (whether by act or omission) by the Other Personnel or any contractor engaged in connection with the Third Party Works, then this shall be treated as a Relevant Event and a Relevant Matter.”]~~

1. ~~[clause 2.5~~

**~~[Note: Delete this amendment if the Contractor will be granted exclusive possession of the site and will not need to coordinate with other trades etc.]~~**

~~Delete clause 2.5 and replace with “Not used.”]~~

1. ~~[clause 2.6~~

**~~[Note: Delete this amendment if the Contractor will be granted exclusive possession of the site and will not need to coordinate with other trades etc.]~~**

~~Delete clause 2.6 and replace with “Not used.”]~~

1. clause 2.7

In clause 2.7.4, after "divulge" insert: "(except in compliance with statutory obligations or the requirements of any auditor or otherwise in accordance with the terms of this Contract)".

1. Clause 2.11

Delete clause 2.11 and substitute with the following:

"The Contractor accepts entire responsibility for any design contained in the Employer's Requirements and the Contractor's Proposals, including verifying the adequacy of any design contained therein, whether or not the whole or any part of the Employer's Requirements and/or Contractor's Proposals have been prepared by the Employer or by any consultants employed by the Employer."

1. Clause 2.12

Delete clause 2.12 entirely and its heading and replace with: "Number not used."

1. Clause 2.13

Delete the opening paragraph of the clause (before sub-clause 2.13.1) and replace with:

"If the Contractor becomes aware of any inadequacy, discrepancy or divergence in or between any of the following documents, namely:"

1. Clause 2.14

Delete the text of clause 2.14 and replace with:

"Where there is an error, omission or discrepancy within the Employer's Requirements, the Contractor's Proposals or the Contractor’s Design Documents (including any non-compliance with Statutory Requirements), or a divergence between any of the Employer's Requirements, the Contractor's Proposals and the Contractor’s Design Documents, the Contractor shall notify the Employer of the error, omission, discrepancy or divergence and of its proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the error, omission, discrepancy or divergence shall be dealt with. The Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract."

1. Clause 2.15
   1. In sub-clause 2.15.2.1, after "change in the Statutory Requirements" insert:

"that was not foreseen by the Contractor at the Base Date and could not reasonably have been foreseen by a competent contractor at the Base Date".

* 1. Delete sub-clause 2.15.2.3.

1. Clause 2.17
   1. Delete clause 2.17.1 and replace with the following:

Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works including all design work prepared or proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements. The Contractor warrants to the Employer that it shall use the Standard of Care when designing the Works and that its design complies with Statutory Requirements."

* 1. [Delete clause 2.17.3 and replace with "Not used".] **Option 1 - This amendment results in the Contractor's design liability under the Contract being completely uncapped. Advantage - Provides the Council with maximum rights of recourse against the Contractor in the event that the design is not carried out to the required standards. 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).]**

**~~OR~~**

~~[Delete clause 2.17.3 and replace with the following:~~

~~"Where or to the extent that this Contract does not involve the Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Contractor's liability to the Employer for loss of use, loss of profit or other consequential loss arising in respect of its design liabilities shall be limited to £[SUM] for each and every claim (but such a limitation shall not apply to or be affected by any liability for liquidated damages under clause 2.29).]~~ **~~[Option 2: 'Half way house' provision, whereby the Contractor's design liability is limited, but on an each and every claim basis (as opposed to the unamended JCT position whereby the design liability cap is an aggregate sum). Likely to be more acceptable to the Contractor than Option 1 but the Council must satisfy itself that the cap is sufficient to cover the potential losses that could be suffered if the design of the Works is not carried out to the required standards. In no event should the cap be less than the Contractor's level of PI insurance cover.]~~**

1. CLAUSE 2.24
   1. Insert the following at the end of clause 2.24.2, before the full stop: “(such details to include, without limitation, (i) a proposed revised programme for the Works; 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))”.
   2. Insert a new clause 2.24.4 as follows:

“Without prejudice to the generality of clause 2.25.6.5, if the Contractor fails to give the notice and/or particulars required under clauses 2.24.1 to 2.24.3 (inclusive) 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 2.25

Add a new sub-clause 2.25.6.5:

"The Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

1. Clause 2.26
   1. In sub-clause 2.26.2.1, after "clause 2.13" insert: "(subject always to clauses 2.11 and 2.14)"
   2. Insert at the end of sub-clause 2.26.2.3 "or unless the inspection or test was reasonable in all the circumstances".
   3. Insert the following at the end of clause 2.26.7: "(provided that the Contractor has complied fully with its obligations under clause 2.1.2 of this Contract)".
   4. In sub-clause 2.26.11 add at the end of the sub-clause and before the semicolon:

"provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

* 1. In sub-clause 2.26.12 add at the end of the sub-clause and before the semi-colon:

“save for:

* any statutory powers exercised in connection with the United Kingdom’s exit from the European Union or the associated transition period (including consequent effects on economic circumstances, market conditions and/or labour availability), which shall not be treated as directly affecting the execution of the Works for the purpose of this clause 2.26.12; and
* any statutory powers exercised in connection with the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.26.15 below”
  1. In sub-clause 2.26.14 add at the end of the sub-clause and before the full stop:

"save that the term 'force majeure' shall not include:

* any consequences of the United Kingdom ceasing to be a member state of the European Union or the cessation of the associated transition period (including any change in economic circumstances, market conditions and/or labour availability); and
* any consequences of the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.26.15 below”.
  1. Insert a new sub-clause 2.26.15:

“an event which:

* is either:
  + the imposition after the Base Date (pursuant to Statutory Requirements or published industry guidance) of any restriction on the activities and/or personnel permitted on site at any time; or
  + a delay in the delivery of goods, materials, plant and/or equipment intended for incorporation in the Works arising due to international border control restrictions and/or domestic transportation restrictions imposed after the Base Date pursuant to Statutory Requirements; and
* can reasonably be said to have arisen in consequence of the Covid-19 Pandemic; and
* a competent contractor experienced in procuring, carrying out and completing works of a similar nature, value, scope, complexity and timescale to the Works could not reasonably have avoided, mitigated or allowed for in all the circumstances.”

1. CLAUSE 2.27A

Insert new clause 2.27A:

"It shall be a pre-requisite to sectional completion or practical completion that the Contractor shall have:

.1 completed the Works or Section 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 Works or Section by the Employer;

.2 delivered all collateral warranties required under clause 7 of this Contract;

.3 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the Works or the relevant Section, in accordance with the Contract Documents and the Employer's reasonable requirements; and

.4 satisfied any further pre-requisites to practical completion or sectional completion as may be stated in the Contract Particulars."

1. clause 2.29
   1. In clause 2.29.1 (final hanging paragraph), delete "5 days" and replace with "the day".
   2. Insert the following at the end of clause 2.29.2 as a new hanging paragraph:

“In circumstances where the employment of the Contractor is terminated after the Completion Date and prior to the date of practical completion of the Works:

* regardless of the reason for termination, the Employer shall remain entitled to recover, withhold or deduct liquidated damages for the period between the Completion Date and the date of termination of the Contractor’s employment; and
* where the Contractor’s employment is terminated under clause 8.4, 8.5 or 8.6, the Employer shall be further entitled to recover (in accordance with clause 8.7.4.1 and subject always to clause 8.8) any expense, loss and/or damage caused to the Employer by the delay to completion of the Works and relating to the period following the date of termination of the Contractor’s employment.”

1. CLAUSE 2.35
   1. In clause 2.35.2, delete "prior to issue of that schedule" and delete "after delivery of that schedule or".
   2. In the final paragraph, line 1, after "Within a reasonable time" insert:

"(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 Works)".

* 1. At the end of the clause insert:

"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 2.36

Add to the end of the first sentence in clause 2.36, before the full stop:

", provided that the Employer shall not be required to issue any Notice of Completion of Making Good earlier than the expiry of the Rectification Period"

1. clause 2.36A

Add a new clause 2.36A after clause 2.36:

"**Snagging list and defects, shrinkages or other faults remaining at practical completion or sectional completion**

Clauses 2.35 and 2.36 shall apply, without limitation, to:

.1 any items identified on any snagging list issued by or on behalf of the Employer at or around practical completion or sectional completion or attached to a Practical Completion Statement or Section Completion Statement;

.2 any defects, shrinkages or other faults in the Works or Section at practical completion or sectional completion; and

.3 any incomplete work, forming part of the Works or Section, remaining at practical completion or sectional completion."

1. clause 2.37

After "and use by the Employer" insert "operation and maintenance manuals and".

1. Clause 2.38
   1. Delete sub-clause 2.38.2 and replace with:

"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 the Works (and the completed Works) including any of the Permitted Uses.

* 1. Delete sub-clause 2.38.3 and replace with:

"The licence referred to in clause 2.38.2 carries the right to grant sub-licences and is freely transferable to third parties without the Contractor's consent."

* 1. Insert new clauses 2.38.5 to 2.38.7:

".5 The Employer may, at any time (whether before or after completion of the Works, 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.

.6 All royalties or other sums payable in respect of the supply and use of any patented articles processes or inventions required in connection with the Works 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 the Works.

.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 2.39

Add a new clause 2.39:

"**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 the Contractor's Persons 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 2.40

Insert a new clause 2.40:

“**Contractor’s additional information sharing requirements**

.1 The Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, a master programme showing how the Contractor intends to time and sequence the Works (including the design phase, lead-in times for procurement of materials, and the construction phase) in order to achieve practical completion and (where applicable) sectional completion on or before the relevant Completion Date. 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 Employer’s Agent, the Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, 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 (including without limitation information on the selection of goods and materials, buildability, procurement times and construction times).”

1. CLAUSE 3.2

Insert the following at the end of clause 3.2:

“The Employer shall be entitled (acting reasonably) to require the removal of the Site Manager or any other person engaged on the carrying out of the Works 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 the Site Manager or any other person engaged on the carrying out of the Works (in any circumstances) shall be borne by the Contractor. The Site Manager 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 sub-clause 3.4, after "Design and Build Sub-Contract." insert:

"The appointment of all Professional Consultants and 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 Employer's Agent, provide a full copy of the form of sub-contract to the Employer or the Employer's Agent (as applicable), redacted as necessary to remove commercially sensitive pricing information only."

* 1. Delete the existing text of sub-clause 3.4.2.5 and replace with the following:

"where applicable, for the execution and delivery by the sub-contractor, in each case within 10 Business Days of receipt of a written request by the Contractor, of such collateral warranties as comply with this Contract;"

1. clause 3.5

Before the semi-colon at the end of clause 3.5.1 insert: "on the grounds of health and safety".

1. clause 3.8

Delete clause 3.8 and insert "Not used".

1. clause 3.9

In clause 3.9.1, delete from and including "and provided that" to and including the end of the sub-clause.

1. CLAUSE 3.12

Insert the following at the end of clause 3.12, before the full stop: “or unless the inspection or test was otherwise reasonable in all the circumstances”.

1. CLAUSE 3.13
   1. In clause 3.13.1, before "removal from" insert "rectification of or".
   2. In clause 3.13.3 delete from and including "but clauses 2.25" to and including the end of the sub-clause and replace with: "and there shall be no extension of time for completion".
2. CLAUSE 3.16
   1. In sub-clause 3.16.5, delete "immediately" and replace with "promptly".
   2. Add new clause 3.16.6:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, 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 3.16.7:

“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 3.16.8:

“the Contractor hereby warrants that in relation to the preparation of the design of the Works 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 3.17

Insert new clause 3.17:

"**Project meetings**

The Contractor shall attend project meetings convened by the Employer's Agent 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 Employer's Agent (including, without limitation, representatives of Purchasers, Tenants and/or Funders) shall be permitted to attend such meetings."

1. CLAUSE 4.1A

Insert a new clause 4.1A:

"**Covid preliminaries and fixed costs**

In respect of preliminaries and fixed costs which form part of the Contract Sum, the Contractor has identified a weekly amount of £[insert the weekly amount bid by the Contractor for Covid caused prelims etc.] which is attributable to the Covid-19 Pandemic. Upon any withdrawal or relaxation of the published industry guidance and/or Statutory Requirements on which such costs are based, the Employer (or the Employer’s Agent on his behalf) shall have the power to issue an instruction to the Contractor omitting from the Contract Sum all or part (as applicable) of the aforementioned weekly amount as is fair and reasonable in all the circumstances to reflect the reduction in preliminaries and fixed costs to be incurred by the Contractor following such withdrawal or relaxation. With effect from the date falling [x] days after the Employer’s (or the Employer’s Agent’s) instruction, the Contract Sum shall be adjusted to omit the value of the preliminaries and fixed costs reduction identified in the instruction.” **[Note: This clause is intended to protect RBKC from paying inflated prelims costs which are fixed at the outset of the project to deal with the anticipated effects of Covid-19 but which are not actually incurred by the Contractor for the entire duration of the project due to Covid-related measures being relaxed more swiftly than expected. Delete the new clause if this is not a material concern for the project in question.]**

1. Clause 4.2

Delete sub-clause 4.2.3 and replace with: "Number not used;"

1. CLAUSE 4.7
   1. In clause 4.7.2, delete “the date 7 days after”.
   2. In clause 4.7.3, delete “7 days after”.
2. CLAUSE 4.9
   1. In clause 4.9.1, delete “14 days” and replace with “30 days”.
   2. In clause 4.9.5 (final paragraph), delete "5 days" and replace with "1 day".
3. Clause 4.10

In sub-clause 4.10.4, delete "The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent him exercising" and replace with "The Employer is entitled to exercise".

1. Clause 4.11
   1. In clause 4.11.1, after "7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of" insert: "any or all of".
   2. In clause 4.11.3, 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 4.12
   1. Delete sub-clause 4.12.1.4 and replace with: "Number not used."
   2. In the last paragraph of clause 4.12.1, delete "any applicable Fluctuations Provision or".
   3. Delete sub-clause 4.12.2.5 and replace with: "Number not used."
   4. In sub-clause 4.12.3.2 delete: "or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1".
2. Clause 4.13
   1. Insert at the end of clause 4.13.1.2 “and provided that the Contractor has provided reasonable evidence that unencumbered title to the Site Materials shall pass to the Employer upon payment”.
   2. In the last paragraph of clause 4.13.1, delete "any applicable Fluctuations Provision or".
   3. Delete sub-clause 4.13.2.5 and replace with: "Number not used."
   4. In sub-clause 4.13.3.2 delete: "or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1".
3. Clause 4.16

Delete clause 4.16 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.14, the Employer shall be:

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

1. Clause 4.19

Insert new clause 4.19.3:

"The Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment in respect of any cost and/or loss and/or expense arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

1. CLAUSE 4.20

Delete the existing text of clause 4.20.4 and replace with the following:

"If the Contractor applies for the recovery of loss and/or expense in accordance with this clause 4.20, save where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause, the amount of the loss and/or expense incurred shall be ascertained and added to the Contract Sum."

1. CLAUSE 4.21

In sub-clause 4.21.2.2 add to the end of the sub-clause, before the semi-colon:

“or unless the inspection or test was otherwise reasonable in all the circumstances”.

1. CLAUSE 4.23

Delete the existing text of clause 4.23 (and its heading) and replace with the following:

“Payment by the Employer to the Contractor of the amount of any direct loss and/or expense ascertained in accordance with clauses 4.19 and 4.20 (subject to any rights of set-off which the Employer may have) shall, save where expressly stated otherwise in this Contract, be full compensation for the Contractor in respect of the matters which are the subject of the Contractor’s application to the Employer under clauses 4.19 and 4.20. Save where expressly stated otherwise in this Contract, the Employer shall have no further liability in respect of such matters whether under this Contract or otherwise.”

1. Clause 5.1

Change the full stop at the end of sub-clause 5.1.2.4 to a semicolon and add a new sub-clause 5.1.3:

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

1. Clause 5.6

Add to the end of clause 5.6, before the full stop:

"provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"

1. Clause 6.1

In clause 6.1, after "caused by the carrying out of the Works" 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 the Works" 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 be aware, arising out of the carrying out of the Works 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 for which it has been responsible. 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 new clause 6.3B after new 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 the Works 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, without addition or adjustment of the Contract Sum, 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.

.4 The Contractor shall comply, and shall procure that all Contractor’s Persons comply, in all respects with any third party consents, approvals, licences or permissions referenced in this clause 6.3B, as the same may be varied from time to time."

1. CLAUSE 6.4

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”.

1. ~~[CLAUSE 6.8~~

~~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 6.9

Delete the opening paragraph of sub-clause 6.9.1 and replace with "Where the Contractor is required under Schedule 3 to take out a Works Insurance Policy, it shall ensure that the Works Insurance Policy shall either:".

1. CLAUSE 6.10
   1. In sub-clause 6.10.1, delete "the Contractor, where Insurance Option A applies, or the Employer, where Insurance Option B or C applies" and replace with "the Contractor, where it is required under Schedule 3 to take out a Works Insurance Policy".
   2. In each of sub-clauses 6.10.2 to 6.10.4 inclusive, delete "Where Insurance Option A applies" and replace with "Where the Contractor is required under Schedule 3 to take out a Works Insurance Policy".
2. clause 6.11

In sub-clause 6.11.3, delete "Where Insurance Option A applies" and replace with "Where the Contractor is required under Schedule 3 to take out a Works Insurance Policy".

1. CLAUSE 6.13
   1. In sub-clause 6.13.5, delete "Where Insurance Option A applies" and replace with " Where the Contractor is required under Schedule 3 to take out a Works Insurance Policy".
   2. In sub-clause 6.13.6, delete "Where Insurance Option B or paragraph C.2 of Insurance Option C applies" and replace with "Where the Employer is required under Schedule 3 to take out a Works Insurance Policy".] **[Note: These amendments are only required if Insurance Option C applies and the Contractor will be responsible for taking out and maintaining an All Risks policy in respect of the Works.]**
2. CLAUSE 6.14

In the opening paragraph of clause 6.14, delete “either Party” and replace with “the Employer”. Delete “the other” and replace with “the Contractor”.

1. Clause 6.15

Delete the text of clause 6.15, but not its heading, and replace with:

"The Contractor shall maintain professional indemnity insurance with a minimum limit of indemnity and on the basis and for the duration as set out in the Contract Particulars, provided that (subject to clause 6.15A) such insurance is available at commercially reasonable rates. The Contractor shall maintain such professional indemnity insurance:

.1 with reputable insurers lawfully carrying on insurance business in the UK;

.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

.3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010."

1. clause 6.15A

Add new clause 6.15A, after clause 6.15:

"**Commercially reasonable rates**

Any increased or additional premium required by insurers for the insurance referred to in clause 6.15 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."

1. clause 6.15B

Add new clause 6.15B, after clause 6.15A:

"**Evidence of professional indemnity insurance etc.**

.1 Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the insurance required to be maintained under clause 6.15 is in force.

.2 The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements.

.3 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 6.16A

Add a new clause 6.16A , after clause 6.16:

"**Key Sub-contractors' professional indemnity insurance**

The Contractor shall procure that the Key Sub-contractors shall maintain professional indemnity insurance in accordance with the required form of sub-contractor's deed of collateral warranty and Part 2 of Schedule E to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the Key Sub-contractors' insurance referred to in this clause is in force."

1. clause 6.16B

Add a new clause 6.16B , after clause 6.16A:

"**Professional Consultants' professional indemnity insurance**

The Contractor shall procure that the Professional Consultants shall maintain professional indemnity insurance in accordance with the required form of professional consultant's deed of collateral warranty and Part 2 of Schedule D to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Professional Consultant), the Contractor shall procure and shall send to the Employer evidence that the Professional Consultant's insurance referred to in this clause is in force."

1. CLAUSE 6.20A

Add a new clause 6.20A, after clause 6.20:

"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 7.1

Delete the whole of clause 7.1 and its heading and replace with:

"**General right to assign**

.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 7.1 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 7.2

Delete the whole of clause 7.2 and its heading and replace with: "Number not used."

1. CLAUSE 7.3

Insert the following at the end of clause 7.3:

"If the Contractor does not procure execution and delivery of the parent company guarantee and/or performance bond (as applicable) within 10 Business Days of the date of this Contract, 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 security is executed and delivered."

1. Clauses 7.4 to 7E (inclusive)

Delete existing clauses 7.4 to 7E (inclusive) and their headings.

Replace clause 7.4 with:

"**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 request in the form of the Contractor's deed of collateral warranty contained in Schedule G to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably require.

**[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 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 warranty is executed and delivered."

1. clause 7.5

Insert a new clause 7.5:

"**Professional Consultants - collateral warranties**

.1 The Contractor shall ensure, within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Professional Consultant), that the Professional Consultant 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 Employer's request, in the relevant form set out in Part 3 of Schedule D to the Schedule of Amendments,with such amendments as the relevant beneficiary may reasonably require.

**[Note – Please delete the third party beneficiaries (Funder, Tenant or Purchasers) who will not require Professional Consultant 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-consultant warranties will not be required at all (not even in RBKC’s favour), delete clause 7.5 entirely.]**

.2 If the Contractor fails to procure any executed deed of collateral warranty from any Professional Consultant within the time period required under clause 7.5.1, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Professional Consultant and claimed by the Contractor in its application for payment until such time as the required warranty is executed and delivered."

1. clause 7.6

Insert new clause 7.6:

"**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 3of Schedule E 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 RBKC’s favour), delete clause 7.6 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 7.6.1, 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."

1. clause 7.7

Insert new clause 7.7:

"**Contractor's duty not to terminate or vary appointments or sub-contracts**

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

1. [CLAUSE 7.8

Insert new clause 7.8:

~~"~~**~~Professional Consultants - novation~~**

~~No later than the date of this Contract, the Contractor shall execute and deliver the Deeds of Novation to the Employer and, following such novation, shall procure the delivery of collateral warranties from the novated Professional Consultants in favour of the Employer in accordance with clause 7.5."]~~ **~~[Note: Only required if the Employer's design consultants will be novated to the Contractor.]~~**

1. Clause 8.4
   1. In sub-clause 8.4.1.3 after "requiring him to remove" insert: "or rectify". Delete "and by such refusal or neglect the Works are materially affected".
   2. Insert new sub-clause 8.4.1.6:

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

* 1. Insert new sub-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 8.5

In sub-clause 8.5.3.3 at the start of the sub-clause, after "the Employer may", insert: ", at the Contractor's expense,"

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 8.7
   1. In sub-clause 8.7.2 after "the Contractor shall" and before the colon, insert: ", at the Contractor's expense"
   2. At the end of the first paragraph of sub-clause 8.7.4, before the colon, insert: ", at the Contractor's expense"
2. clause 8.11
   1. In the final paragraph of clause 8.11.1, delete "either Party, subject to clause 8.11.2," and replace with "the Employer". Delete "the other" and replace with "the Contractor".
   2. Delete clause 8.11.2 and replace with "Not used".
3. CLAUSE 10
   1. 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 RBKC is setting up a detailed ‘defects protocol’ under which the Contractor will be given names, contact details etc. of the resident occupier where a defect in a new home need to be rectified).]**

.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 Design and Build Contract, 2016 edition, Schedule 1: Contractor's Design Submission Procedure

This agreement incorporates Schedule 1 to the JCT Conditions.

1. JCT Design and Build Contract, 2016 edition, Schedule 2: Supplemental Provisions

This agreement incorporates Schedule 2 to the JCT Conditions.

1. JCT Design and Build Contract, 2016 edition, Schedule 3: Insurance Options

~~[This agreement incorporates Schedule 3 to the JCT Conditions.]~~ **~~[Note: Use this option if Insurance Option C applies and the Council will take out an All Risks policy in respect of the Works.]~~**

**~~OR~~**

[Schedule 3 to the JCT Conditions is amended as follows:

* 1. Delete the heading "(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)".
  2. At the start of paragraph C.2 delete "The Employer" and replace with "The Contractor".] **[Note: Use this option if Insurance Option C applies and the Contractor will take out an All Risks policy in respect of the Works.]**

1. JCT Design and Build Contract, 2016 edition, Schedule 4: Code of Practice

This agreement incorporates Schedule 4 to the JCT Conditions.

1. JCT Design and Build Contract, 2016 edition, Schedule 5: Third Party Rights

Delete Schedule 5 to the JCT Conditions and replace with: "Schedule 5 not used."

1. JCT Design and Build Contract, 2016 edition, Schedule 6: Forms of Bonds

Delete Schedule 6 to the JCT Conditions and replace with "Schedule 6 not used."

1. JCT Design and Build Contract, 2016 edition, Schedule 7: Fluctuations Options

Delete Schedule 7 to the JCT Conditions and replace with: "Schedule 7 not used."

1. - Parent company guarantee
2. – peformance bond
3. - Professional Consultants, PROFESSIONAL CONSULTANTS' PROFESSIONAL INDEMNITY INSURANCE AND Professional Consultant's deed of collateral warranty
4. Professional Consultants

The Professional Consultants identifiable at the date of this Contract are:

* [LIST BY NAME OR SPECIALISM]

[The Professional Consultants to be novated to the Contractor are:

* [LIST BY NAME OR SPECIALISM]] **[Note: Only required if the Employer's design consultants will be novated to the Contractor.]**

1. Professional Consultants' professional indemnity insurance

Each Professional Consultant shall maintain professional indemnity insurance in the following amounts on an each and every claim basis:

* [NAME OR SPECIALISM] - £[SUM]

1. Professional Consultant's collateral warranty

**[Note: Attach agreed form(s) of design consultant collateral warranty.]**

1. Deed of novation

[The Parties have attached the form of Deed of Novation to this schedule.] **[Note: Only required if the Employer's design consultants will be novated to the Contractor.]**

1. - Key Sub-contractors, Key Sub-contractors' insurance and Key Sub-contractor's deed of collateral warranty
2. Key Sub-contractors

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

* [LIST BY NAME OR SPECIALISM]

1. Key Sub-contractors' professional indemnity insurance

Each Key Sub-Contractor shall maintain professional indemnity insurance in the following amounts on an each and every claim basis:

* [NAME OR SPECIALISM] - £[SUM]

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).]**

1. - Third party agreements

**[Note: Attach any agreements between the Employer and third parties that may affect the carrying out of the Works (e.g. lease / licence arrangements, funding agreements etc.). If there are no such agreements, insert in this Schedule "Not applicable".]**

1. **- CONTRACTOR'S DEED OF 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 H – LIVING WAGE**

**X. Living Wage**

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

X.1.3. provide to the Employer such information concerning the Contractors compliance with its obligations in this Clause X 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.

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.

1. Employer's Requirements

**See ITT documentation**

1. Contractor's Proposals
2. Contract Sum Analysis

**See appendix 5 of ITT documentation**

1. Employer's Policies

**See ITT documentation**

1. Data processing instructions schedule

|  |  |
| --- | --- |
| Subject matter of Processing | To be inserted |
| Duration of Processing | To be inserted |
| Nature and Purpose of Processing | To be inserted |
| Types of Personal Data | To be inserted |
| Categories of Data Subjects | To be inserted |

**[Note: To be populated by RBKC’s data protection team, if clause 10 ‘Option 2’ applies. If clause 10 ‘Option 1’ applies, delete this Annex in its entirety.]**