**DATED                                                    202[\*]**

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) | The mayor and burgesses of the Royal Borough of Kensington and Chelsea |  |
|  | (2) | CONSULTANT |  |

|  |  |  |
| --- | --- | --- |
|  | PROFESSIONAL APPOINTMENT  Incorporating and amending the  **JCT Consultancy Agreement, 2016 Edition**  **Relating to Whitchurch and Blechynden - District Heating Consultancy Services** |  |



**THIS AGREEMENT is dated ………………… 2020**

**BETWEEN**

1. **The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea** ofThe Townhall, Hornton Street, London W8 7NX (**Client**)
2. [Consultant] incorporated and registered in England and Wales with company number [….....] whose registered office is at […........................] incorporated and registered in England and Wales with company number [….....] whose registered office is at [….........................................].

BACKGROUND:-

1. The Client wishes to procure the carrying out of certain Services.
2. The Consultant has agreed to carry out those Services, as required by this agreement.
3. The Client and the Consultant have agreed to incorporate and amend the JCT Consultancy Agreement, 2016 edition ("**JCT CA 2016**") as set out in this agreement.

**AGREED TERMS: -**

# Interpretation

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

## Definitions:

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

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

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

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

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

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

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

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

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

# Incorporation and amendment of the JCT CA 2016

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

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

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

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

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

## This agreement does not incorporate the JCT Attestation.

# Governing law

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.

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 of The Townhall, Hornton Street, London W8 7NX** was hereunto affixed in the presence of: | ) |  |
|  | ) |  |
|  | ) |  |
|  | ) | ……………………………………………….. |
|  | ) | Authorised signatory |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by [Consultant] | ) |  |
| 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 Project:

Whitchurch and Blechynden - District Heating Consultancy Services at the following locations: -

Whitchurch House 1-40 Kingsdown Close Blechynden & Whitchurch London W10 6SL

as more particularly described in the Client's Brief.

1. - Articles
2. Article 3: Principal Designer

Complete Article 3 with this Principal Designer:

1. New Article 7: Effect of Approval

Insert new Article 7:

"Notwithstanding any other provision of this Contract, the Consultant shall not be relieved from its obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by any approval or inspection of the Project, the site of the Project or any designs or specifications for the Project, any testing of any work, goods, materials, plant or equipment, or any omission to approve, inspect or test, by or on behalf of the Client."

1. - Contract Particulars

part 1: general

| **Clause Reference** | **Subject** | **Particulars** | | |
| --- | --- | --- | --- | --- |
| *Second Recital* | The Consultant is appointed as | Consultancy Services Provider | | |
| *Article 5* | Arbitration  *(If neither entry is deleted, Article 5 and clauses 12.3 to 12.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 5 and clauses 12.3 to 12.8 apply.)* | Article 5 and clauses 12.3 to 12.8 *(Arbitration)* do not apply | | |
| 1.1 | BIM Protocol  *(Not applicable unless it is stated to apply, with the title, edition, date, or other identifiers of the relevant documents stated, and the identified protocol is included in the Client's Brief.)* | does not apply | | |
| 1.1 | Client's Brief  *(State reference number and date or other identifier of the relevant document(s) in which this is set out.)* | Attached as separate document | | |
| 1.1 | Client's Representative  *(as at the date of this Agreement)* | Billy White of Unit 292a The Network Hub, Kensal Road, North Kensington, London W10 5BE. | | |
| 1.1 | Consultant's Representative  *(as at the date of this Agreement)* | [NAME] of [ADDRESS]  **[Note: To be completed by the Consultant.]** | | |
| 1.1 | Consultant Team  *(other than the Consultant)* |  | Lead Consultant | |
|  | Lead Designer | |
| RBKC - HM | Contract Administrator | |
|  |  | |
| 1.1 | Cost Plan  *(State reference number and date or other identifier of the relevant document(s) in which this is set out.)* | Attached as separate document. | | |
| 1.1 | Key Personnel  *(Names and functions.)* | [NAME] | | [ROLE IN CONSULTANT FIRM] |
|  | |  |
|  | |  |
|  | |  |
| 1.1 | Programme  *(State reference number and date or other identifier of the relevant document(s) in which this is set out.)* | Attached as separate document. | | |
| 1.1 | Programme dates under the current Programme | the date of commencement of the Services is 28 February 2022  the intended duration of the Consultant's engagement is 1 (one) year. | | |
| 1.1 | Project Team  *(other than Consultant Team members)* | [NAME] | | Contractor |
| To be advised | | [INSERT OTHER NON-CONSULTANT ROLES] |
|  | |  |
|  | |  |
| 1.1 | Third Party Agreements | Attached and/or listed at Schedule 4 to the Schedule of Amendments. | | |
| 1.5 | Addresses for service of notices by the Parties  *(If none is stated, the address in each case, subject to clause 1.5.3, shall be that shown at the commencement of the Agreement.)* | Client: The Town Hall, Hornton Street, Kensington, London W8 7NX.  Consultant: [ADDRESS] **[Note: To be completed by the Consultant.]** | | |
| 3.2.3 | Contract administration - site visits  The requirements for visits | are as follows / are set out in the following document: To be advised.  **[Note: Only applicable where the Consultant is appointed as Contract Administrator under the Building Contract.]** | | |
| 3.3.1.4.2 | Limits of Consultant's authority  Maximum increase in overall Project cost is  *(If no limit is specified, any increase requires Client approval.)* | £ plus VAT.  Nil. | | |
| 8.1.1 | 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.)* | Amount of indemnity required relates to claims or series of claims arising out of one event | | |
| *(If no amount is stated, insurance under clause 8.1.1 shall not be required.)* | and is £ 5M.  **[Note: Consultant to provide evidence of professional indemnity insurance cover.]** | | |
| Sub-limits within the overall level of 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 limit of indemnity of £ 1M.  **[Note: Consultant to provide evidence of pollution and contamination cover.]**  **~~OR~~**  ~~is not required~~ | | |
| Cover for asbestos 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 limit of indemnity of £ 1M.  **[Note: Consultant to provide evidence of asbestos cover.]**  **~~OR~~**  ~~is not required~~ | | |
| Cover for toxic mould claims | is required ~~/ is not required~~  **[Note: Consultant to provide evidence of toxic mould claims cover.]** | | |
| 8.1.2 | Public Liability insurance  *(If neither entry is deleted or cover level is not stated, such insurance is not required.)* | is required, with a cover level of £ 10M.  **[Note: Consultant to provide evidence of public liability insurance cover.]**  **~~OR~~**  ~~is not required~~ | | |
| 8.2.1 | Professional indemnity insurance - expiry of required period of insurance is | 12 years from the date of completion of the Services | | |
| 8.2.2 | Public Liability insurance - required period (if shorter than the period of the Consultant's engagement) is | 1 (one) year. | | |
| 10.2 | Novation | | | |
| Clause 10.2 | ~~applies /~~ does not apply | | |
| Where clause 10.2 applies, the form of Novation Agreement | is attached at Schedule 3 to the Schedule of Amendments. | | |
| 11.2 | Suspension: Remobilisation - period for recommencement instructions (if other than 2 months) is | 2 (two) months. | | |
| 12.2 | Adjudication | The Adjudicator is to be nominated by the nominating body | | |
| Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) | The Royal Institution of Chartered Surveyors | | |

part 2: THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

Delete the whole of Part 2 of the JCT Contract Particulars and replace with "Not used".

PART 4 – Conditions

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

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

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

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

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

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

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

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

* + 1. Contract 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 and replace with:

"a person that has provided, or is to provide, finance in connection with the whole or any part of the Project; or the site of the Project, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise".

* + 1. Purchaser: delete "named or identified as such in or by Part 2 of the Contract Particulars".
    2. Recital: add to the end of the definition, before the full stop:

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

* + 1. Tenant: delete "named or identified as such in or by Part 2 of the Contract Particulars".
  1. Add these definitions:

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

“Client’s Policies: any Client's policies (if any) set out at Annex F to this Contract.”

“Confidential Information: information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of Data Protection Legislation.”

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

"Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998."

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

“EIR: the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relative Government department in relation to such regulations.”

“Equalities Legislation: all applicable laws and regulations which make unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or any preceding, successor or amending laws or regulations concerning the same.”

“FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioners or relevant Government department in relation to that Act.”

“FOIA Code: “the Department of Constitutional Affairs Code of Practice on the Discharge of functions of Public Authorities under Part I FOIA or any replacement or revision of that Code.”

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

“Information: information as defined in Section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the Consultant, or any sub-consultant, of the Services.”

"Key Sub-Consultant: a sub-consultant appointed by the Consultant to perform any part of the Services and/or named or identified in Part 1 of Schedule 2 to the Schedule of Amendments, and any replacement of a Key Sub-Consultant."

"Material: all 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 materials provided in connection with the Project (and completed Project) and all updates, amendments, additions and revisions to them and any work, 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 Project (and the completed Project)."

“Request for Information (or "Request"): a request for Information within the meaning given in Section 1 of the FOIA or any request for Information under the EIR.”

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession, undertaking services similar to the Services on a project equivalent in scope, character, value and complexity to the Project."

“Working Day: the meaning given in Section 10 of the FOIA.”

1. Clause 1.3

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

1. Clause 1.4

In clause 1.4 delete "Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clause 10.3.1" and replace with "Subject to clause 10".

1. Clause 1.7

Insert a new clause 1.7:

"The appointment of the Consultant shall be deemed to have commenced with effect from the date when the Consultant first began to carry out any services relating to the Project. To the extent that any such services were carried out prior to or otherwise than pursuant to this Contract the Consultant warrants that he has carried out such services using the same standards of skill and care as those applicable under this Contract."

1. Clause 2.1

In clause 2.1, delete "level of skill, care and diligence reasonably to be expected of a consultant holding himself out as competent to take on the performance of the Services and experienced in projects of similar size, scope and complexity" and replace with "Standard of Care".

1. Clause 2.1A

Insert new clause 2.1A:

"FOIA, EIR, Client Policies and publicity

.1 The Consultant acknowledges that, to be compliant with the FOIA and the EIR, the Client may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 2.1A, the Consultant shall assist and co-operate with the Client (at the Consultant's expense) to facilitate the Client's compliance with the FOIA and/or EIR in that regard.

.2 The Consultant shall:

(i) transfer any Request for Information that it or its sub-consultants receive, to the Client as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and

(ii) provide the Client with a copy of all Information in its or its sub-consultants' possession or power that the Client reasonably considers is relevant to the Request in the form that the Client requires as soon as practicable and in any event within 5 Working Days of the Client requesting that Information and any follow up Information required by the Client thereafter within 2 Working Days of the Client's follow up request.

.3 The Consultant acknowledges that the Client may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:

(i) in certain circumstances without consulting the Consultant, or

(ii) following consultation with the Consultant and having taken the Consultant's views into account.

provided always that where clause 2.1A.3 applies, the Client shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Consultant prior to any disclosure.

.4 Subject to the Client complying with its obligations under this clause 2.1A, the Client shall not be liable for any loss, damage, harm, or other detriment suffered by the Consultant or any sub-consultant arising from the disclosure of any Information whether or not such Information is Confidential Information falling with the scope of the FOIA or EIR.

.5 The Consultant shall indemnify the Client against all claims, demands, actions, costs proceedings and liabilities that the Client incurs due to the Consultant’s or any sub-consultant's breach of this clause 2.1A.

.6 The Consultant shall ensure that the terms of any sub-contract which it enters with a sub-consultant replicate the provisions of this clause 2.1A such that the Client has the same rights against a sub-consultant as it does against the Consultant under this clause 2.1A.

.7 The provisions of clauses 2.1A.1 to 2.1A.6 (inclusive) are without prejudice to paragraph 1 (Transparency) of Schedule 2 (Supplemental Provisions) to the JCT Conditions.

.8 The Consultant shall comply with all Equalities Legislation.

.9 The Consultant shall comply with the Client’s Policies (if any).

.10 The Consultant shall not without the prior written consent of the Client publish alone or in conjunction with any other person any articles, illustrations, photographs, videos or press announcements relating to the Services, or otherwise publicise this Contract or the Services, save in accordance with any legal obligation upon the Consultant to do so."

1. Clause 2.1B

Insert new clause 2.1B:

"Data Protection

.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2.1B 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 Client is the data controller, and the Consultant 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 2.1B.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Consultant for the duration and purposes of this Contract.

.4 Without prejudice to the generality of clause 2.1B.1, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this Contract:

.1 process that Personal Data only on the written instructions of the Client as set out in the Data Processing Instructions Schedule attached at Schedule 6 to the Schedule of Amendments, or otherwise provided by the Client, unless the Consultant is required by Applicable Laws. Where the Consultant is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Consultant shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Client.

.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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.

.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

.1 the Client or the Consultant has provided appropriate safeguards in relation to the transfer.

.2 the data subject has enforceable rights and effective legal remedies.

.3 the Consultant 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 Consultant complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.

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

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

.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client 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 2.1B and allow for audits by the Client or the Client's designated auditor.

.5 The Client does not consent to the Consultant appointing any third-party processor of Personal Data under this Contract.

.6 Either party may, at any time on not less than 30 days’ notice, revise this clause 2.1B 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)."

1. Clause 2.4

Insert the following at the end of clause 2.4:

"The Consultant shall not specify anything for use in the Project, which, at the time of specification, is Deleterious."

1. Clause 2.7

Insert the following at the end of clause 2.7: "The appointment of all Key Sub-Consultants shall be on terms and conditions which are to be approved by the Client (such approval not to be unreasonably withheld or delayed). The Consultant shall upon reasonable request (but not later than 14 days from request) by the Client, provide a full copy of the form of sub-contract to the Client, redacted as necessary to remove commercially sensitive pricing information only."

1. Clause 2.9
   1. Insert the following at the end of clause 2.9.1: "or unless the Consultant in the ordinary course of carrying out its Services (exercising the Standard of Care) ought to have established the existence of the inaccuracy or inconsistency in any such Design Information and brought this to the Client's attention".
   2. Insert the following at the end of clause 2.9.3: "Reasons within the Consultant's control shall include (but not be limited to) the acts and omissions of its employees, agents, servants and sub-consultants".
2. Clause 2.11

~~[Additional Risk Option 1: This amendment results in the Consultant's liability under the appointment being completely uncapped. Advantage - Provides the Council with maximum rights of recourse against the Consultant in the event that the Services are not carried out to the required standards. Disadvantage -May lead to push-back from the Consultant and/or a disproportionate increase in the Consultant's pricing (to account for the additional risk involved).]~~

Delete clause 2.11 and replace with "Not used".

~~OR~~

Additional Risk Option 2: 'Halfway house' provision, whereby the Consultant's liability is limited, but on an each and every claim basis (as opposed to the unamended JCT position whereby the liability cap is an aggregate sum). Likely to be more acceptable to the Consultant 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 Services are not carried out to the required standards. In no event should the cap be less than the Consultant's level of PI insurance cover.

Delete clause 2.11 and replace with the following:

".1 Subject always to clause 2.11.2, the Consultant's maximum liability to the Client arising out of or in connection with this Contract (whether arising in contract, tort or otherwise) shall be limited to £[SUM] for each and every claim.

.2 Nothing in this Contract shall exclude or limit the Consultant's liability in respect of death, personal injury, fraud, fraudulent misrepresentation or any other liability which cannot be excluded or limited by law."

1. Clause 2.12

Add a new clause 2.12 after clause 2.11:

"**Third Party Agreements**

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

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

.3 The Client may, without invalidating this Contract, issue instructions supplementing or amending the Third-Party Agreements."

1. Clause 4.2

Delete clause 4.2 and replace with "Not used".

1. Clause 4.5

In clause 4.5.1, delete "and such reallocation". After "material breach of his obligations" insert: "or is otherwise (in the Client's opinion) unable to perform the relevant element(s) of the Services in accordance with this Contract such that reallocation".

1. Clause 6.1

Insert the following at the end of clause 6.1: "If the Consultant performs any Optional Services without receiving an instruction as referred to in this clause 6.1 then, notwithstanding any other term in this Contract, the Consultant shall not be entitled to any payment in respect of the Optional Services in question."

1. Clause 6.3
   1. In clause 6.3.3, after "Cost Plan" insert: ", Third Party Agreements".
   2. Insert the following at the end of clause 6.3 (as a new hanging paragraph):

"The Consultant shall not be entitled to any additional payment (whether by adjustment to the Fee or otherwise) where and to the extent that a Change results from any error or default of the Consultant or any of its sub-consultants. If the Consultant implements any Change under clauses 6.3.1 to 6.3.3 (inclusive) without first receiving confirmation of the Client's instruction under clause 6.6 then, notwithstanding any other term in this Contract, the Consultant shall not be entitled to any payment in respect of the Change in question."

1. [Clause 7.6

In clause 7.6 delete "14 days" and replace with "28 days".] [Note: The amended JCT provides for 28-day payment terms from receipt of the Consultant's invoice (or from the relevant instalment date, if later). Amend as necessary if a different payment period is required for a particular project.]

1. Clause 7.7
   1. In clause 7.7.1, after "Consultant's invoice" insert: "(or the sum specified in any payment notice given by the Client pursuant to section 110A of the Housing Grants, Construction & Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009))".
   2. In clause 7.7.1, delete "5 days" and replace with "1 day".
   3. Insert at the end of clause 7.7.2, before the full stop: "(or the sum specified in any payment notice given by the Client pursuant to section 110A of the Housing Grants, Construction & Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009))".
2. Clause 7.9
   1. In clause 7.9.1, before "Pay Less Notice" insert: "payment notice or".
   2. Delete the final sentence of clause 7.9.1 and replace with "When payment is made in full the Consultant shall promptly resume performance of the Services".
3. Clause 8.1A

Insert new clause 8.1A:

"The Consultant shall maintain the professional indemnity insurance required under clause 8.1:

.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 Consultant 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 8.1B

Insert new clause 8.1B:

"**Consultant may not settle, compromise or affect a claim**

In relation to the professional indemnity insurance referred to in clause 8.1, the Consultant shall not, without the Client's consent:

.1 settle or compromise any claim with the insurers that relates to a claim by the Client against the Consultant: or

.2 by any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers."

1. Clause 8.1C

Insert new clause 8.1C:

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

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

1. Clause 8.4

Insert the following at the end of clause 8.4: "Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates."

1. Clause 9.1
   1. Delete clause 9.1.2 and replace with the following:

"The Consultant grants to the Client, 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 Consultant for any purpose relating to the Project (and the completed Project) including any of the Permitted Uses."

* 1. Insert at the end of clause 9.1.3.2: "and is transferable to third parties without the Consultant's consent".
  2. Delete clause 9.1.4 and replace with the following:

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

.2 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 Services shall be paid by the Consultant and the Consultant shall indemnify the Client from and against all claims, proceedings, damages, costs, and expenses suffered or incurred by the Client by reason of the Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Services.

.3 The Consultant 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 Consultant pursuant to this Contract."

1. Clause 10.1

Delete clause 10.1 (and its heading) and replace with:

"**Assignment**

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

.2 The Client shall notify the Consultant of any assignment within 10 Business Days. If the Client fails to do this, the assignment shall still be valid.

.3 The Consultant shall not contend that any person to whom the benefit of this Contract is assigned under this clause 10.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Consultant shall not assign or charge the benefit of this Contract or any right arising under it without the Client's prior consent, which the Client may withhold at its absolute discretion."

1. Clause 10.2
   1. In clause 10.2, delete "28 days" and replace with "10 Business Days".
   2. Insert at the end of clause 10.2: "If the Consultant does not procure execution and delivery of the novation agreement within the time period required under this clause 10.2 then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Consultant under this Contract shall be extended until such time as the required novation agreement is executed and delivered."
2. Clause 10.3

Delete clause 10.3 (and its heading) and replace with the following:

"**Collateral warranties**:

**.1** **Consultant's collateral warranty**

.1 Within 10 Business Days of a request from the Client, the Consultant shall execute and deliver a deed or deeds of collateral warranty in favour of any [Funder, any Purchaser, and any Tenant] identified in the Client's request, in the form of the Consultant's deed of collateral warranty contained in Schedule 5 to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably require.

.2 If the Consultant does not procure execution and delivery of any such warranty within the time period required under clause 10.3.1 then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Consultant under this Contract shall be extended until such time as the required warranty is executed and delivered.

**.2** **Sub-Consultant collateral warranties**

.1 The Consultant shall ensure, within 10 Business Days of a request from the Client (or, if later, within 10 Business Days of the appointment of a Key Sub-Consultant), that each Key Sub-Consultant has executed and delivered a deed of collateral warranty in favour of the Client and/or in favour of any [Funder, any Purchaser and any Tenant] identified in the Client's request, in the form set out in Part 3 of Schedule 2 to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably require.

.2 If the Consultant fails to procure any executed deed of collateral warranty from any Key Sub-Consultant within the time period required under this clause 10.3.2, the Client in its absolute discretion may withhold payment for the elements of the work undertaken by that Key Sub-Consultant and claimed by the Consultant in its application for payment until such time as the required warranty is executed and delivered.

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

1. Clause 11.6
   1. In sub-clause 11.6.1.2, delete from and including "provided that" to and including the end of the sub-clause.
   2. In clause 11.6.2 (final hanging paragraph), insert after "by others": "and any other direct loss and/or damage caused to the Client as a result of the termination".
   3. Insert the following at the end of clause 11.6.2:

"(provided that if the Client procures the completion of the outstanding Services for less than the Client would have had to pay the Consultant to complete the outstanding Services, then for the purposes of this clause 11.6.2, the Client shall be deemed to have paid the same amount to procure the completion of the outstanding Services as the Client would have had to pay the Consultant to complete the outstanding Services under this Contract)".

1. JCT CA 2016, Schedule 1: Third Party Rights

Delete Schedule 1 to the JCT Conditions and replace with "Schedule 1 not used".

1. JCT CA 2016, Schedule 2: Supplemental Provisions

This agreement incorporates Schedule 2 to the JCT Conditions.

1. - Key Sub-Consultants, Key Sub-Consultants' insurance and Key Sub-Consultants' deed of collateral warranty

1. Key Sub-Consultants

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

* [LIST, BY NAME AND/OR SPECIALISATION]

1. - Key Sub-Consultants' professional indemnity insurance

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

* [NAME OR SPECIALISM] - £[SUM].

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

**Not applicable**

1. - DEED OF NOVATION

**Not applicable**

1. - Third party agreements

**Not applicable**

1. - CONSULTANT COLLATERAL WARRANTY

**Not applicable**

SCHEDULE 6 - Data Processing Instructions Schedule

See separate document – GDPR schedule.

|  |  |
| --- | --- |
| Subject matter of Processing | [INSERT] |
| Duration of Processing | [INSERT] |
| Nature and Purpose of Processing | [INSERT] |
| Types of Personal Data | [INSERT] |
| Categories of Data Subjects | [INSERT] |

Annex A - Fee

1. The Fee

Complete paragraph 1.1 of Annex A with the following details:

The Fee is:

the fixed sum of £ plus VAT

other agreed details

Insert daywork rates for ad hoc items - not to be carried forward to summary

Design Management Post Contract

Partner/Director £0.00 £0.00 £0.00

Senior Surveyor £0.00 £0.00 £0.00

Standard Surveyor £0.00 £0.00 £0.00

Graduate Surveyor £0.00 £0.00 £0.00

2. Payment of Fee etc.

The Fee shall be payable in accordance with section 7 in the following amounts or percentages:

|  |  |
| --- | --- |
| *[Invoice date or stage / milestone]* | *[Percentage or Fee amount]* |
|  |  |
|  |  |
|  |  |
|  |  |

3. Incentive Payments

Not applicable

4. Optional Services

The following comprise the Optional Services which, where required, shall be for the following amounts or calculated and charged on the following basis: [Note: Complete this table if there will be any 'Optional Services' that the Council may instruct at its discretion at a later date. If no Optional Services are to be included, insert 'Not applicable'.]

|  |  |
| --- | --- |
| *[Optional Service]* | *[Amount / basis of calculation]* |
|  |  |
|  |  |
|  |  |
|  |  |

5. Applicable rates

The daily/weekly all-in rate for any necessary extension of the Services work (and for the purposes of any apportionment under clause 11.6.2.1) is £[SUM] based on the Consultant's Project Staff of:

|  |  |
| --- | --- |
| *[Person / Grade]* | *[Rate per hour / day]* |
| As shown above | As shown above |
|  |  |
|  |  |
|  |  |

6. Additional Services

The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed or other Changes within clause 6.3, subject to the following:

[Insert any agreed qualifications / exceptions to the above rates, for the purpose of calculating the fee for Additional Services etc. (or insert 'Not applicable' if there are none).]

7. Reimbursable Expenses

Subject to their being properly and necessarily incurred for the purposes of the Project, the following expenses / disbursements of the Consultant shall be reimbursable by the Client up to any maximum amount or rate specified below or as otherwise agreed in writing from time to time:

|  |  |
| --- | --- |
| *[Type]* | *[Maximum amount / rate]* |
| Not applicable | Not applicable |
|  |  |
|  |  |
|  |  |

Save as otherwise agreed in writing all other expenses and disbursements shall be deemed to be included in the Fee.

8. Supporting documents and accounting records

.1 Each invoice that includes any of the following types of charge or expenditure should be accompanied by the following documents:

|  |  |
| --- | --- |
| *[Charge / Expenditure]* | *[Documentation]* |
| Not applicable | Not applicable |
|  |  |
|  |  |
|  |  |

.2 The accounting requirements and procedures referred to in clause 2.8 (if any) are as follows:

The Consultant is to adhere to the RBKC processes for accounting and payment purposes.

9. Consultant's designs - additional usage

The terms upon which the Consultant is prepared to license such use of his designs as is mentioned in clause 9.1.3 are as follows:

[Insert details of any agreed licensing arrangements allowing the Client to reproduce any of the Consultant's designs for an extension of the Project (or insert 'Not applicable' if there are none).]

Annex B -Services

Scope of services – see separate document

Annex C - Client's Brief

Council's overarching brief for the Project – see separate document

Annex D - Cost Plan

Council's budget details for the Project – see separate document

Annex E - Programme

Programme for the Project and Services – see separate document

Annex F - Client's Policies

See separate documents