

DATED _____ **2020**

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL
BOROUGH OF KENSINGTON AND CHELSEA**

- (2) **[CONTRACTOR]**

BUILDING CONTRACT

Incorporating and amending the

**JCT Minor Works Building Contract, 2016
Edition**

Cremorne Estate – Sheds Project.



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

THIS AGREEMENT is dated

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of The Town Hall, Hornton Street, Kensington, London W8 7NX (**Employer**).
- (2) **[CONTRACTOR]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[ADDRESS]** (**Contractor**).

BACKGROUND:-

- (A) The Employer wishes to procure the carrying out of certain works.
- (B) The Contractor has agreed to carry out those works, as required by this agreement.
- (C) The Employer and the Contractor have agreed to incorporate and amend the JCT Minor Works Building Contract, 2016 edition ("**JCT MW 2016**") as set out in this agreement.

AGREED TERMS:-

1. Interpretation

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

1.1. Definitions:

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

1.2. Capitalised terms used in this agreement have the same meanings as in the JCT MW 2016,

unless the meaning in the JCT MW 2016 is different from, or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.

- 1.3. 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.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6. 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.
- 1.7. 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.
- 1.8. Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT MW 2016, the Schedule of Amendments shall prevail.
- 1.9. 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.

2. Incorporation and amendment of the JCT MW 2016

- 2.1. This agreement incorporates and amends the JCT MW 2016 as follows:
 - 2.1.1. it incorporates the JCT Recitals, as amended by Part 1 of Schedule 1;
 - 2.1.2. it incorporates the JCT Articles, as amended by Part 2 of Schedule 1;
 - 2.1.3. it incorporates the JCT Contract Particulars, as set out at Part 3 of Schedule 1; and
 - 2.1.4. it incorporates the JCT Conditions, as amended by Part 4 of Schedule 1.
- 2.2. This agreement does not incorporate the JCT Attestation.

3. 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** 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

SCHEDULE 1 - SCHEDULE OF AMENDMENTS

PART 1 - RECITALS

1 First Recital

Complete the First Recital with this description of the Works:

To supply labour, plant, materials and temporary materials to carry out the improvement works to the existing sheds located on the Cremorne Estate in North Kensington, London (as further detailed in the Contract Documents).

2 Second Recital

2.1 Complete the Second Recital with this description of the Contract Drawings:

As attached with the RFQ documents.

2.2 Delete the following:

2.3 Delete the final paragraph of the Third Recital and replace with:

"and those documents are attached to this Contract at **Annexes A and B.**"

3 Third Recital

Add to the end of the Third Recital: "or has otherwise provided a breakdown of the Contract Sum, which is **attached at Annex C** of this Contract."

PART 2 - ARTICLES

1 Article 2: Contract Sum

Complete Article 2 with this Contract Sum:

[SUM IN WORDS] (£[SUM IN FIGURES])

2 Article 3: Architect / Contract Administrator

Complete Article 3 with this Architect / Contract Administrator:

The Royal Borough of Kensington and Chelsea of The Town Hall, Hornton Street, Kensington,
London W8 7NX.

3 Article 4: Principal Designer

Complete Article 4 with this Principal Designer:

The Royal Borough of Kensington and Chelsea of The Town Hall, Hornton Street, Kensington,
London W8 7NX.

4 Article 5: Principal Contractor

Complete Article 5 with this Principal Contractor:

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

5 New Article 9: Contractor's Parent Company Guarantee [Additional Risk - Note: Delete if not required]

Insert new Article 9:

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

6 New Article 10: Performance Bond [Additional Risk - Note: Delete if not required]

Insert new Article 10:

Not required.

7 New Article 11: Effect of Approval

Insert new Article 11:

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

PART 3 - CONTRACT PARTICULARS

Clause Reference	Subject	Particulars	
<i>Fourth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)</i>	Base Date	The date of this Contract.	
<i>Fourth Recital and clause 4.2</i>	Construction Industry Scheme (CIS)	Employer at the Base Date for the purposes of the CIS	is a 'contractor'
<i>Fifth Recital</i>	CDM Regulations	The project is not notifiable.	
<i>Sixth Recital</i>	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>	Not applicable	
<i>Seventh Recital and Schedule 3</i>	Supplemental Provisions <i>(Where neither entry against an item below is deleted, the relevant Supplemental Provision applies.)</i>		
	Collaborative working	Supplemental Provision 1 applies	
	Health and safety	Supplemental Provision 2 applies	
	Cost savings and value improvements	Supplemental Provision 3 applies	
	Sustainable development and environmental considerations	Supplemental Provision 4 applies	
	Performance indicators and monitoring	Supplemental Provision 5 does not apply	
	Notification and negotiation of disputes	Supplemental Provision 6 applies	
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee: Dominic Davies	Contractor's nominee: [] [Note: To be completed by Contractor.] or such replacement as each Party may notify to the other from time to time.

Clause Reference	Subject	Particulars
Article 7	Arbitration <i>(If neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 7 and Schedule 1 apply.)</i>	Article 7 and Schedule 1 (<i>Arbitration</i>) do not apply
2.2	Works commencement date	26 October 2020
2.2	Date for Completion	21 November 2020 or such later date for completion as is fixed under clause 2.7
2.8	Liquidated damages	at the rate of £ 0 per week or pro-rata for part thereof.
2.9A	Pre-requisites to practical completion	In addition to the matters listed at clause 2.9A, the following shall be a pre-requisite to achievement of practical completion: All temporary hoardings and signage are to be removed by Friday 21 November 2020.
2.10	Rectification Period	12 months.
4.3	Interim payments - Interim Valuation Dates	The first Valuation Date is the date falling one month after the Works commencement date and thereafter the same day in each calendar month.
4.3	Payments due prior to practical completion - percentage of the total value of work etc. <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	95%

Clause Reference	Subject	Particulars
4.3	Payments becoming due on or after practical completion - percentage of total amount to be paid to the Contractor <i>(The percentage is 97.5 per cent unless a different rate is stated.)</i>	97.5%
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is 3 months unless a different period is stated.)</i>	Not applicable
5.3	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.]
5.3B	Third party consents, approvals, licences and permissions	The Contractor is responsible for obtaining the following without addition to the Contract Sum: planning permissions, building control approvals etc
5.4A, 5.4B and 5.4C	Insurance of the Works etc. – alternative provisions	Clause 5.4A (<i>Works insurance by Contractor in Joint Names</i>) applies
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15 per cent
5.4C	Insurance arrangements - details of the required policy or policies	are set out in the following document: [Insert details of insurance arrangements for Works and existing structures if clause 5.4C applies]
7.2	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) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	The Royal Institution of Chartered Surveyors

PART 4 – CONDITIONS

1 Clause 1.1

1.1 Amend these definitions:

1.1.1 Agreement: add to the end of the definition, before the full stop:

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

1.1.2 Article: add to the end of the definition, before the full stop:

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

1.1.3 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".

1.1.4 Conditions: add to the end of the definition, before the full stop:

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

1.1.5 Contract Particulars: add to the end of the definition, before the full stop:

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

1.1.6 Recitals: add to the end of the definition, before the full stop:

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

1.2 Add these definitions:

"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.

"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)."

"Contract Documents: the Agreement, these Conditions, the Contract Drawings, the Contract Specification, the Work Schedules, and the Contractor's priced Contract Specification or Schedule of Rates or pricing breakdown (as applicable)."

"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 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."

"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."

"Employer's Policies: any Employer's policies (if any) set **out at Annex D** to this Contract."

"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."

"Funder: 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."

"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 Contractor, or any sub-contractor, of the Works."

"Purchaser: a person to whom the Employer transfers or agrees to transfer a freehold interest in the Works or the site of the Works."

"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."

"Tenant: a person to whom the Employer transfers or agrees to transfer a leasehold interest in the Works or the site of 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 4 to the Schedule of Amendments, as supplemented by any instruction from the Architect / Contract Administrator referred to in clause 3.6."

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

2 Clause 1.2

In clause 1.2, after "the Contract Specification" insert ", the Contractor's pricing breakdown". After "override or modify", add "the Schedule of Amendments, "

3 Clause 1.5

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

4 Clause 1.7

In clause 1.7.2 delete "and either Party's consent under clause 3.1" and replace with "or clause 3.1.4".

5 Clause 1.9

Insert a new clause 1.9:

"The appointment of the Contractor 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 the Contractor warrants that he has carried out such services or works using the same standards of skill and care as those applicable under this Contract."

6 Clause 2.1

Insert a new clause 2.1.4: "The Contractor shall not use anything in the Works, which, at the time of use, is Deleterious."

7 Clause 2.1A

Insert new clause 2.1A:

"FOIA, EIR, Employer Policies and publicity

- .1 The Contractor acknowledges that, in order to be compliant with the FOIA and the EIR, the Employer 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 Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to facilitate the Employer's compliance with the FOIA and/or EIR in that regard.
- .2 The Contractor shall:
 - (i) transfer any Request for Information that it or its sub-contractors receive, to the Employer as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and
 - (ii) provide the Employer with a copy of all Information in its or its sub-contractors' possession or power that the Employer reasonably considers is relevant to the Request in the form that the Employer requires as soon as practicable and in any event within 5 Working Days of the Employer requesting that Information and any follow up Information required by the Employer thereafter within 2 Working Days of the Employer's follow up request.
- .3 The Contractor acknowledges that the Employer 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 Contractor, or
- (ii) following consultation with the Contractor and having taken the Contractor's views into account;

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

- .4 Subject to the Employer complying with its obligations under this clause 2.1A, the Employer shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor or any sub-contractor arising from the disclosure of any Information whether or not such Information is Confidential Information falling within the scope of the FOIA or EIR.
- .5 The Contractor shall indemnify the Employer against all claims, demands, actions, costs proceedings and liabilities that the Employer incurs due to the Contractor's or any sub-contractor's breach of this clause 2.1A.
- .6 The Contractor shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 2.1A such that the Employer has the same rights against a sub-contractor as it does against the Contractor under this clause 2.1A.
- .7 The provisions of clauses 2.1A.1 to 2.1A.6 (inclusive) are without prejudice to paragraph 7 (Transparency) of Schedule 3 (Supplemental Provisions) to the JCT Conditions.
- .8 The Contractor shall comply with all Equalities Legislation.
- .9 The Contractor shall comply with the Employer's Policies (if any).
- .10 The Contractor 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."

8 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 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 2.1B.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 2.1B.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 Schedule 6 to the Schedule of Amendments, 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 2.1B 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 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)."

9 Clause 2.1C

Insert new clause 2.1C:

"Site conditions

Additional Risk Option 2:

The Contractor shall be deemed to be fully acquainted with any physical and other conditions of or affecting the site of the Works (including but not limited to the sub-surface conditions, drainage and location of service media and conducting media) which a competent and experienced contractor should have reasonably foreseen and made allowance for, having regard to any opportunity afforded to the Contractor to survey and/or inspect the site before the date of this Contract, the information contained in any site reports provided to the Contractor by the Employer before the date of this Contract and any publicly available information regarding the site. The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances relating to such site conditions as ascertainable from the aforementioned surveys, inspections and information which may influence or affect the execution of the 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."

10 Clause 2.1D

11 Clause 2.4

Delete the existing text of clause 2.4 and replace with the following:

- .1 Any inconsistency in or between documents prepared by or on behalf of the Employer shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.6.1.
- .2 Any inconsistency in or between documents prepared by or on behalf of the Contractor, and any inconsistency between such documents and any documents prepared by or on behalf of the Employer, shall be corrected by the Contractor at his own expense after the Architect / Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency."

12 Clause 2.7

Insert the following at the end of clause 2.7:

"The Contractor shall not be entitled to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or any agent, employee or other person engaged by the Contractor."

13 Clause 2.9A

Insert new clause 2.9A:

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

- .1 completed the Works 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 by the Employer;
- .2 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the Works, in accordance with the Contract Documents and the Employer's reasonable requirements; and
- .3 satisfied any further pre-requisites to Practical Completion as may be stated in the Contract Particulars."

14 Clause 2.10

Add the following to the end of clause 2.10:

"Any defects, shrinkages and other faults notified in accordance with this clause 2.10 shall be made good by the Contractor within a reasonable time (and forthwith in the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation or use of the relevant part of the Works). 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."

15 Clause 2.10A

Add a new clause 2.10A after clause 2.10:

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

Clause 2.10 shall, without limitation, apply to:

- .1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion;
- .2 any defects, shrinkages or other faults in the Works at practical completion; and
- .3 any incomplete work, forming part of the Works, remaining at practical completion."

16 Clause 2.12

Add a new clause 2.12 after clause 2.11:

"Third Party Agreements

- .1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.
- .2 The Contractor shall ensure that no act or default or omission on its part or on the part of any of its employees or sub-contractors in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

17 Clause 3.1

Delete clause 3.1 and replace with:

- ".1 The Employer may on two occasions without the consent of the Contractor assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.
- .2 The Employer shall notify the Contractor of any assignment within 10 Business Days. If the Employer fails to do this, the assignment shall still be valid.
- .3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 3.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.
- .4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion."

18 Clause 3.4

Delete the final sentence of clause 3.4.1 and replace with "If instructions are given orally the Architect / Contract Administrator shall confirm them in writing as soon as reasonably practicable".

19 Clause 3.6

Insert the following at the end of clause 3.6.1:

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

20 Clause 3.9

20.1 Delete clause 3.9.1 and replace with: "Number not used."

20.2 In clause 3.9.4, delete "immediately" and replace with "promptly".

20.3 Add new clause 3.9.5:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before 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 at no cost to the Employer and without any entitlement to an extension of time."

21 Clause 3.10

Insert new clause 3.10:

"Project meetings

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Architect/Contract Administrator shall be permitted to attend such meetings."

22 Clause 4.3

In the final sentence, delete "14 days" and replace with "21 days".

23 Clause 4.5

In clause 4.5.4, delete "5 days" and replace with "1 day".

24 Clause 4.10

Insert new clause 4.10:

"Retention

The Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.3 shall be:

- .1 without fiduciary obligation to the Contractor or any third party;
- .2 without obligation to set aside any amount representing that percentage in a separate bank account; and
- .3 a full beneficial interest, including a full beneficial interest in any interest accruing on that percentage without obligation to account to the Contractor for any such interest."

25 Clause 5.1

In clause 5.1, 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".

26 Clause 5.2

In clause 5.2, 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".

27 Clause 5.3A

Add new clause 5.3A after clause 5.3:

"Contractor to prevent nuisance and indemnify Employer

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending

any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for 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 5.3A."

28 Clause 5.3B

Add a new clause 5.3B after clause 5.3A:

"Trespass and third party consents

- .1 Without prejudice to clauses 5.1, 5.2 and 5.3A, 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. The Contractor shall comply with any condition or obligation contained in such consents, approvals, licences or permissions, at no cost to the Employer, and the Contractor shall not be entitled to any extension of time as a result of any such condition or obligation.
- .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 5.3B.2."

29 Section 5A

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

"5A Contractor's collateral warranty

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

[Note – please delete the beneficiaries of collateral warranties (Funder, Tenant or Purchasers who will not be required. If in doubt, leave all in the document as the obligation to provide the warranty only arises upon request from RBKC.

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

30 Clause 6.4

Insert a new clause 6.4.3:

"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 7 days of being notified of the same."

31 Clause 6.7

Insert the following at the end of clause 6.7.3 (as a final hanging paragraph):

"provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this clause 6.7.3, the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract".

32 Clause 6.8

In clause 6.8.3, delete both references to "7" and replace with "30".

33 JCT MW 2016, Schedule 1: Arbitration

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

34 JCT MW 2016, Schedule 2: Fluctuations - Contribution, levy and tax changes

Delete Schedule 2 to the JCT Conditions and replace with "Schedule 2 not used".

35 JCT MW 2016, Schedule 3: Supplemental Provisions

This agreement incorporates Schedule 3 to the JCT Conditions.

SCHEDULE 2 - PARENT COMPANY GUARANTEE

Not Used.

SCHEDULE 3 - PERFORMANCE BOND

Not used

SCHEDULE 4 - THIRD PARTY AGREEMENTS

Not applicable

SCHEDULE 5 - CONTRACTOR'S COLLATERAL WARRANTY

Not Used

SCHEDULE 6 - DATA PROCESSING INSTRUCTIONS 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 - Contract Drawings

See appendix 6 to RFQ document.

Annex B - Specification / Scope of Works

See appendix 4a and 4b to RFQ document.

Annex C - Contractor's pricing breakdown

See appendix 5 of RFQ document.

Annex D - Employer's Policies

See separate documents as listed below

Appendix 8 – Schedule 11 PROCESSING