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# MTC 2016 Measured Term Contract 2016

# 2016 MEASURED TERM CONTRACT

## Measured Term Contract (MTC)

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

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# Agreement

## This Agreement

is made the 11/03/2024 20 \_\_\_\_\_

## Between

### The Employer

Greater London Authority, a statutory corporation established by the Greater London Authority Act 1999, whose principal offices are at City Hall.

of City Hall, Kamal Churchie Way, London, E16 1ZE

## And

### The Contractor

Everwarm Limited

Place of incorporation: England and Wales

(Company No. SC390210)<sup>[1]</sup>

whose registered office is at 3 Inchcorse Place, Whitehall Industrial Estate, Bathgate, EH48 2EE

**[1]** Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number. As to execution by foreign companies and matters of jurisdiction, see the Measured Term Contract Guide.

## Recitals

### Whereas

#### First

the Employer requires maintenance and minor works to be carried out in:

Employer requires Retrofit works and services to be carried out in: The Contract Area (being the Greater London Area) and various, predominantly but not exclusively, Social Housing properties, predominately owned or managed by local authorities in the Greater London Area in accordance with the details set out or referred to in the Contract Particulars. ('the Contract Area') in accordance with the details set out or referred to in the Contract Particulars;

#### Second

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

#### Third

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

#### Fourth

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

#### Fifth

whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

## Articles

### Now it is hereby agreed as follows

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**Article 1 Contractor's obligations**

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

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**Article 2 Payment**

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The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 and 14).

---

**Article 3 Contract Administrator**

---

For the purposes of this Contract the Contract Administrator is

Austin Entonu

of

City Hall, Kamal Chunchie Way, London, E16 1ZE

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

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**Article 4 Principal Designer**

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The Principal Designer for the purposes of the CDM Regulations is

Everwarm Limited

of

3 Inchcorse Place, Whitehall Industrial Estate, Bathgate, EH48 2EE

or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

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**Article 5 Principal Contractor**

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

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**Article 6 Adjudication**

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

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**Article 7                      Arbitration**

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Not applicable

**Article 8                      Legal proceedings<sup>[2]</sup>**

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

**Article 9**

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

**Article 10                     Performance Bond**

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Not used.

**Article 11                    Parent Company Guarantee**

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Not used.

**Article 12                    Key Performance Indicators**

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

**Article 13                    Contract Review and Cost Saving, Value Engineering**

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13.1 The Employer and Contractor shall review the Contract [and any potential cost savings] in accordance with the provisions of Schedule 10 (Contract Review Procedures).

13.2 Without prejudice to the provisions of Clause 4 (Costs Reduction and Customer Service Proposals) of Schedule 10 (Contract Review Procedures), the Contractor shall propose amendments to any Service Orders or Orders for Works which, if implemented, would result in financial benefits for the Employer. Such benefits may arise in the form of:

- a) a reduction in the capital costs of the project of which the Order forms part;
- b) completion of the project at an earlier date or in a manner which will result in savings; and/or
- c) any other financial benefit to the Employer.

13.3 The Parties will discuss the details of any changes and any cost, time, quality and performance benefits to the Employer and shall agree (acting reasonably) the implementation of any changes and the financial effects of them. Once agreed, such change shall be implemented by means of an amendment to the relevant Order.

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**[2]** If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

---

**Article 14**                      **Funding Requirements**

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The Contractor shall perform the Works pursuant to each Order in a manner that is consistent with and which does not put the Employer in breach of the Funding Requirements.

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**Article 15**                      **Specified Materials**

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15.1 The Contractor shall source the Specified Materials from the Named Supplier or, with the prior written consent of the Employer, from a party other than the Named Supplier, provided always that if a party other than the Named Supplier is used the terms that such Specified Materials shall be procured on shall be on no less favourable terms than if the Named Supplier had been used]. The Contractor shall be responsible for sourcing the Specified Materials without causing delay to the Works, and shall not be entitled to an extension of time or any adjustment to the sums payable under this Contract to the extent there is any delay in receipt of the Specified Materials.

15.2 The Contractor shall be deemed to have satisfied itself as to the extent and nature of the Specified Materials to be supplied under this Contract, including, but not limited to personnel, materials and equipment, consumables and facilities required for the supply of the materials; the general and local conditions including climatic and weather conditions, and all other matters which could affect progress or performance of the supply of the materials. The Contractor shall be fully responsible for the Specified Materials, including (without limitation) design, installation and performance.

15.3 Any failure by the Contractor to take account of matters which affect the provision of the Specified Materials, including (but not limited to) matters set out at Article 15.2, will not relieve the Contractor from its obligations under this Contract or entitle the Contractor to an increase in any rate, percentage adjustment or price payable to it under this Contract.

15.4 The Contractor shall obtain all product warranties from the Named Supplier or, subject to obtaining consent pursuant to Article 15.1, from a party other than the Named Supplier in favour of the Employer and provide the same to the Employer immediately upon receipt.

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**Article 16**                      **Social Value**

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The Contractor is committed to ensuring that this Contract provides social value, as more specifically set out and required under the DPS Agreement.

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**Article 17**                      **Orders**

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Services Order

17.1 The Employer shall be entitled at any time during the Contract Period to issue an instruction to the Contractor to provide a range of services (the "Services Order") in relation to:

17.1.1 advising Customers, checking eligibility for funding and referring Customers onto third parties for the delivery of domestic retrofit services, as more particularly set out in Schedule 13 (Lot 1 Terms and Conditions) (the "Lot 1 Services"); and/or;

17.1.2 retrofit programme development, assessment, coordination and project management including PAS2035 roles, as more particularly set out in Schedule 14 (Lot 4 Terms and Conditions) (the "Lot 4 Services")

17.2 Any Services Order issued by the Employer to the Contractor (pursuant to Article 17.1) shall be in the form set out in Schedule 3 (Form of Order) which is attached to the terms and conditions for the delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract and shall include:

17.2.1 a summary of the Lot 1 Services and/or Lot 4 Services to be provided by the Contractor;

17.2.2 the timetable for providing the Lot 1 Services and/or Lot 4 Services, including any Milestones;

17.2.3 the fixed price for delivering the Lot 1 Services and/or Lot 4 Services which shall be calculated in accordance with Schedule 2 (Fee Schedule) which is attached to the terms and conditions for the

delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract.

17.3 If the Employer instructs the Contractor to carry out the Lot 1 Services and/or the Lot 4 Services pursuant to Article 17.1, the Contractor shall provide such services in accordance with the terms and conditions as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) of this Contract (as applicable). For the avoidance of doubt, the Parties are not required to enter into a separate contract for the delivery of any Lot 1 Services or Lot 4 Services. The issue of the relevant Services Order and instruction will have the effect of incorporating the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) for the delivery of the Lot 1 Services or Lot 4 Services under this Contract. In the event of any discrepancies or inconsistencies between the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) and other terms of this Contract, the Employer will determine (at its absolute discretion) which terms shall take precedence.

#### Order for Works

17.4 In addition to issuing a Services Order pursuant to Article 17.1, the Employer shall also be entitled at any time during the Contract Period to submit a request to the Contractor (the "Project Brief Request") to provide proposals that may inform any potential future Order for Works which is required.

17.5 Any Project Brief Request may include (without limitation):

- a) design/works/methodology requirements;
- b) an affordability envelope;
- c) any milestones that need to be completed and required dates for completion;
- d) any liquidated damages which may be established pursuant to clause

2.13 (if applicable) which the Employer may propose (acting reasonably);

- e) any recommendations by the Employer's retrofit managing agent;
- f) any required changes to this Contract;

17.6 The Contractor acknowledges and agrees that if the Employer issues any Services Order or Project Brief Request under this Article 17, the Employer:

- a) is not guaranteeing any volume or number of Orders for Works to the Contractor; and
- b) shall be entitled to use other contractors to deliver some or all of the relevant Works.

17.7 The Contractor shall submit its proposals in response to the Project Brief Request (the "Project Brief Response") to the Employer no later than 14 days from the date of either:

- a) the Project Brief Request; or
- b) the completion of the Lot 1 Services and/or Lot 4 Services where instructed and to the extent necessary to inform the Project Brief Response.

17.8 The Project Brief Response shall include (without limitation) the following information:

- a) the proposed detailed specification and proposals for the Order for the Works (including relevant works methodology)
- b) a fixed price proposal for the delivery of the Works based on the Contractor's Tendered Rates and the relevant milestones (if required as part of the Project Brief Request) and details demonstrating how such price has been calculated in accordance with the Contractor's Tendered Rates;
- c) a detailed programme for the design and construction of the proposed Works demonstrating achievement of the Order Date for Completion (if specified);
- d) the proposed Sub-Contractors and suppliers the Contractor intends to appoint to process the proposed Works and in compliance with the Contractor's tendered supply-chain solution;
- e) the Staff who will be responsible for the delivery of the proposed Works and in compliance with the Contractor's tendered supply-chain solution;

f) any project-specific amendments to this Contract required as a result of specific elements of the proposed Works to take account of the scope and nature of any Lot 1 Services and/or Lot 4 Services or in order to satisfy the Project Brief Request and/or any other requirements;

g) compliance with any other requirements set out in the Project Brief Request.

17.9 Upon receipt of the Project Brief Response under Article 17.4, the Employer may place an Order for the Works (whether in whole or in part) or ask the Contractor to submit up to one or more quotations for prior approval by the Employer in accordance with the procedure at clauses 3.5.8 to 3.5.13. The Employer may include any Works subsequently approved under an existing Order or instruct those Works under a new Order.

17.10 Following the agreement of costs in relation to an Order for Works which includes Properties owned by a freehold or leasehold owner of any Property, notwithstanding any other provision in this Contract to the contrary, the Employer shall only be responsible for paying the Employer's Contribution and shall have no liability whatsoever for payment of the Private Resident's Contribution.

#### Energy Retrofit Agreement

17.11 The Contractor acknowledge and agrees that it shall not commence any Works and/or services unless and until the Customer has entered into an Energy Retrofit Agreement with the Employer as set out in Schedule 15 (Energy Retrofit Agreement).

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## Article 18      Employer Objectives

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18.1 Where it is anticipated that the Employer may instruct multiple Orders, the Parties shall work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving the following objectives:

- a) zero-health and safety incidents;
- b) a shared commitment to objectives that benefit Customers;
- c) team working and consideration for others;
- d) to reduce design, supply and construction time;
- e) to demonstrate value for money and to drive down costs in real terms by maximising the efficiencies of scale, volume and certainty;
- f) to maximise the use of off-site manufacturing solutions and other modern methods of construction;
- g) greater predictability of out-turn cost and programme;
- h) improvements in quality, productivity and value for money;
- i) improvements in environment performance and sustainability and reductions in environmental impact;
- j) right first time with zero defects;
- k) the avoidance of disputes;
- l) Employer satisfaction with product and service

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## Article 19      Option to Extend

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The Employer may choose to extend the Contract Period by a further period or periods of up to 1 year plus a further 1 year at its sole discretion. The Employer acknowledges that in the event of a procurement challenge in respect of or in connection with the extension of the Contract Period (should the Employer exercise its option to extend the Contract Period), the Employer reserves the right to terminate the Contract by written notice with immediate effect. For the avoidance of doubt, in the event of the Contract coming to an end in this manner the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of a reduction in the Contract Period or the Contract coming to an end.

## Contract Particulars

**Note: An asterisk \* indicates where selection has been or should have been made.**

**1 Properties and description of the types of work**  
(First Recital)

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

The Contract Area (being the Greater London Area) and various, predominantly but not exclusively, Social Housing properties, predominately owned or managed by local authorities in the Greater London Area in accordance with the details set out or referred to in the Contract Particulars

1.2 Description of the types of work for which Orders may be issued:<sup>[3]</sup>

Domestic Retrofit Works

**2 Supplemental Provisions<sup>[4]</sup>**  
(Fifth Recital and Schedule 1)

*(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)*

Supplemental Provision 1: Collaborative working  
\* applies

Supplemental Provision 2: Health and safety  
\* applies

Supplemental Provision 3: Cost savings and value improvements  
\* applies

Supplemental Provision 4: Sustainable development and environmental considerations  
\* applies

Supplemental Provision 5: Performance Indicators and monitoring  
\* applies

Supplemental Provision 6: Notification and negotiation of disputes  
\* applies

Where Supplemental Provision 6 applies, the respective nominees of the Parties are

Employer's nominee

Senior Executive to be nominated by the Employer and notified in writing to the Contractor.

Contractor's nominee

**[3]** Where the National Schedule of Rates is to apply (see items 12.1 and 12.2 of the Contract Particulars) but some (or all) of the work is of a type for which it is appropriate to use as a basis for pricing a version of the National Schedule other than 'Building Works', the Parties, in addition to stating that in item 12.2, should make appropriate entries here (or in any separate document incorporated by reference here) indicating the types of work to which it is agreed that such alternative version of the National Schedule shall apply.

**[4]** Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Senior Executive to be nominated by the Contractor and notified in writing to the Employer.

or such replacement as each Party may notify to the other from time to time

**3 Contract Period<sup>[5]</sup>**  
(Article 1 and clause 7.1)

Subject to clause 7.1, the Contract Period will be Period of 1 year with the option to extend 1 year plus a further 1 year at the Employer's discretion

commencing on 8th March 2024

**4 Arbitration**  
(Article 7)

*(If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.)<sup>[6]</sup>*

Article 7 and clauses 9.3 to 9.8 (*Arbitration*)  
\* do not apply

**5 BIM Protocol**  
(Clause 1.1)

BIM Protocol (where applicable)  
*(State title, edition, date or other identifiers of the relevant documents.)*

Not applicable

**6 Orders – minimum and maximum value**  
(Clause 2.4)

Minimum value of any one Order to be issued

£Not applicable

*(words The Employer gives no guarantee as to the size or frequency of any orders)*

Maximum value of any one Order to be issued

£Not applicable

*(words The Employer gives no guarantee as to the value of any orders to be placed, if at all SAVE that any orders placed will be remunerated in accordance with the payment provisions herein)*

**7 Orders – value of work to be carried out**  
(Clause 2.5)

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

\* £13,767,978.33 (*words Thirteen million, seven hundred sixty-seven thousand, nine hundred seventy-eight pounds and thirty-three pence*) for the Contract Period

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[5] The period is envisaged as normally being at least one year.

[6] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Measured Term Contract Guide. See also footnote [2].

**8 Orders – priority coding<sup>[7]</sup>**  
(Clause 2.6)

Not required

**9 Construction Industry Scheme (CIS)**  
(Clause 4.2)

The Employer at the commencement of the Contract Period

\* is a 'contractor'

for the purposes of the CIS

**10 Payments**  
(Clauses 4.3, 4.4 and 4.5)

Estimated value of an Order above which progress payments can be applied for  
(If none is stated, it is £2,500.)

£Only those properties which have been accepted for handover by Contract Administrator will be considered for payment on the due date. Properties shall not be accepted for handover until the “handover pack” containing all certification has been passed received by the Contract Administrator.

Valuation Dates

(If no date is stated, the Valuation Date is the last day of each month.)

The Valuation Date in each month is the

The due date in each month is the 26th of the month (or nearest working day if the 26th falls on a non-working day of the month)

**11 Responsibility for measurement and valuation**  
(Clause 5.2)

(Unless one of the three options below is selected and, if relevant, an estimated value specified, the Contract Administrator shall measure and value all Orders.)

\* The Contractor shall measure and value all Orders

**12 Schedule of Rates**  
(Clauses 5.3, 5.6.1 and 5.6.2)

12.1 The Schedule of Rates is

\* the Schedule of Rates identified in Schedule 6 (Schedule of Rates) together with Schedule 5 (specification) applicable to this contract included in or annexed to it.  
(identify the Schedule of Rates to be used)

subject to adjustment of the rates listed in that Schedule by

\* the addition

of the Adjustment Percentage, which is

\* Nil per cent

12.2 Not applicable

12.3 Rates – Fluctuations

---

**[7]** To be completed if the Employer requires; as an example the code might be:  
'A': response time to be 4 hours;  
'B': to be commenced within 2 days;  
'C': to be commenced within 14 days;  
'D': to be commenced as agreed.

Clause 5.6.1  
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

\* does not apply

12.4 Basis and dates of revision

Not applicable

**13 Daywork**  
(Clauses 5.4, 5.6.3 and 5.6.4)

13.1 Valuation – percentage additions

Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:

Overheads and profit on Materials

Not applicable per cent

Overheads and profit on Plant, Services and Consumable Stores

Not applicable per cent

Overheads and profit on Sub-Contractors

Not applicable per cent

13.2 Revision of Schedule of Hourly Charges

Clause 5.6.3  
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

\* does not apply

**14 Overtime work**  
(Clause 5.7)

An all-in non-productive overtime rate is included in the Schedule of Hourly Charges.

**15 Insurance**  
(Clauses 6.4.1, 6.7, 6.8, 6.9 and 6.12)

15.1 Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than

£10,000,000  
for any one occurrence or series of occurrences arising out of one event

15.2 Percentage to cover professional fees  
(If no other percentage is stated, it shall be 15 per cent.)

15 per cent

15.3 Insurance of existing structures – clause 6.7.1<sup>[8]</sup>  
(Unless otherwise stated, clause 6.7.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)

\* is replaced by the provisions of the following document(s)

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[8] As to choice of applicable insurance provisions, see the Measured Term Contract Guide. In respect of existing structures, it is vital that any prospective Employer who is not familiar with clause 6.7 and the alternative solutions under clause 6.7.1 – in particular, any Employer who is a tenant – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

The Employer is not required to and shall not name the Contractor on a Joint Policy.  
(the 'Clause 6.7.1 Replacement Schedule')

- 15.4 Insurance of work or supply comprised in Orders – clause 6.8  
*(If neither entry is deleted, the clause does not apply.)*

\* applies

- 15.5 Where clause 6.8 applies and cover is to be provided under the Contractor's annual policy, the annual renewal date is (as supplied by the Contractor)  
30th September 2024

- 15.6 Terrorism Cover – details of the required cover  
*(Unless otherwise stated, Pool Re Cover is required.)*

are set out in the following document(s)

Not required

**16 Break Provisions – Employer or Contractor**  
(Clause 7.1)

The period of notice, if less than 13 weeks, is

13 weeks

**17 Settlement of Disputes**  
(Clauses 9.2, 9.3 and 9.4.1)

**Adjudication<sup>[9]</sup>**

The Adjudicator is

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[10]</sup>  
*(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)*

\* The Royal Institution of Chartered Surveyors

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**[9]** The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

**[10]** Delete all but one of the nominating bodies asterisked.

## Attestation

### Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Measured Term Contract Guide.

#### Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

#### Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

#### Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

*Execution under hand*

## As witness

the hands of the Parties  
or their duly authorised representatives

Signed by or on behalf of  
the Employer

*Robert Stirling*  
Robert Stirling (Mar 8, 2024 12:46 GMT)

in the presence of:

*Scott Paton*  
Scott Paton (Mar 8, 2024 13:30 GMT)

witness' signature

Scott Paton

witness' name

witness' address

Signed by or on behalf of  
the Contractor

*C Barber*  
C Barber (Mar 11, 2024 08:39 GMT)

in the presence of:

*Augustine Entonu*  
Augustine Entonu (Mar 11, 2024 10:14 GMT)

witness' signature

Augustine Entonu

witness' name

witness' address

# Conditions

## Section 1 Definitions and Interpretation

### 1.1 Definitions

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

**Adjudicator:** an individual appointed under **clause 9.2** as the Adjudicator.

**Adjustment Percentage:** the percentage tendered by the Contractor on or off the rates listed in the Schedule of Rates and stated in the **Contract Particulars (item 12.1)** (which shall not apply to any valuation of an Order or a part of it as daywork).

**Agreement:** the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.

**All Risks Insurance:** see **clause 6.6**.

**Arbitrator:** an individual appointed under **clause 9.4** as the Arbitrator.

**Article:** an article in the **Agreement**.

**BIM Protocol:** (where applicable) the document identified as such in the **Contract Particulars (item 5)**.

**Business Day:** any day which is not a Saturday, a Sunday or a Public Holiday.

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**Clause 6.7.1 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars (item 15.3)**.

**Conditions:** the clauses set out in sections 1 to 9 of these Conditions, together with and including Schedule 1 hereto.

**Construction Industry Scheme (or 'CIS'):** the current scheme under the Income and Corporation Taxes Act 1988.

**Construction Phase Plan:** the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.

**Contract Administrator:** the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.10**.

**Contract Area:** see the **First Recital**.

**Contract Documents:** the Agreement, these Conditions, the Schedule of Rates and (where applicable) the BIM Protocol.

**Contract Particulars:** the particulars in the **Agreement** and there described as such, as completed by the Parties.

**Contract Period:** subject to **clause 7.1**, the period stated in the **Contract Particulars (item 3)**.

**Contractor:** the person named as Contractor in the **Agreement**.

**Contractor's Persons:** the Contractor's employees and agents, all other persons employed or engaged in the execution of Orders or any part of them and any other person properly on the Site in connection therewith, excluding the Contract Administrator, the Employer, Employer's Persons and any Statutory Undertaker.

**Employer:** the person named as Employer in the **Agreement**.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Contract Administrator and any Statutory Undertaker.

**Excepted Risks:** see **clause 6.6**.

**Insolvent:** see **clause 8.1**.

**Interest Rate:** a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

**Joint Names Policy:** see **clause 6.6**.

**Local or Public Authority:** a body that is a 'contracting authority' as defined by the PC Regulations.

**National Schedule of Rates:** the National Schedule of Rates (Building Works) and/or such alternative version of the [National Schedule of Rates](#) (published by NSR Management Ltd.) identified in the **Contract Particulars (item 12.2)**.

**Order:** the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under this Contract on instructions from the Contract Administrator, including any Variation thereto.

**Order Completion Date:** see **clause 2.11**.

**Parties:** the Employer and the Contractor together.

**Party:** either the Employer or the Contractor.

**PC Regulations:** the Public Contracts Regulations 2015.

**Principal Contractor:** the Contractor or such other contractor as is either named in **Article 5** or appointed by the Employer in relation to any Order.

**Principal Designer:** the Contract Administrator or such other person as is either named in **Article 4** or appointed by the Employer in relation to any Order.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[11]</sup>

**Recitals:** the recitals in the **Agreement**.

**Schedule of Hourly Charges:** see **clause 5.4.1**.

**Schedule of Rates:** the schedule of rates identified in the **Contract Particulars (item 12)**, together with the preliminaries and specification preambles applicable to this Contract included in or annexed to it.

**Scheme:** Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

**Site:** the building(s) and/or land within the Contract Area to which an Order relates.

**Site Materials:** all unfixed materials and goods delivered to and placed on or adjacent to a Site which are intended for incorporation in the work under an Order relating to that Site.

**Specified Perils:** see **clause 6.6**.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the work in any Order or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to that work or with whose systems the work is, or is

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[11] Amend as necessary if different Public Holidays are applicable.

to be, connected.

**Statutory Undertaker:** any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

**Terrorism Cover:** see **clause 6.6**.

**Valuation Date:** each date as specified by the **Contract Particulars (item 10)**.

**Variation:** see **clause 5.1**.

**VAT:** Value Added Tax.

**Works Insurance Policy:** the Joint Names Policy or policies covering the work or supply comprised in Orders to be effected and maintained under clause 6.7.2 or 6.8.

## **1.2 Agreement etc. to be read as a whole**

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or in any drawing or specification issued as part of an Order shall override or modify the Agreement or these Conditions.

## **1.3 Headings, references to persons, legislation etc.**

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.3.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.3.2 the singular includes the plural and vice versa;
- 1.3.3 a gender includes any other gender;
- 1.3.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.3.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.3.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

## **1.4 Reckoning periods of days**

Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

## **1.5 Contracts (Rights of Third Parties) Act 1999**

Notwithstanding any other provision of this Contract, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

## **1.6 Notices and other communications**

- 1.6.1 Each Order, notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the recipient by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

**1.7 Applicable law**

This Contract shall be governed by and construed in accordance with the law of England.<sup>[12]</sup>

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**[12]** Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out Work

### 2.1 Contractor's obligations

On receipt of an Order the Contractor shall carry it out in a proper and workmanlike manner and in accordance with the Contract Administrator's instructions, the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

### 2.2 Materials, goods and workmanship

2.2.1 The Contractor in carrying out each Order shall use materials, goods and workmanship of the quality and standards specified in the Order or, if not so specified, as specified in the Schedule of Rates.

2.2.2 Insofar as the quality of materials or goods or of the standards of workmanship are stated to be a matter for the Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction.

2.2.3 To the extent that the quality of materials and goods or standards of workmanship are not described in the Order or Schedule of Rates nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the relevant work.

2.2.4 For the purposes of carrying out each Order the Contractor, subject to clause 2.3.1.2, shall:

2.2.4.1 provide all the labour, materials and goods necessary;

2.2.4.2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of all Orders, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and for subsequent removal;

2.2.4.3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of this Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

### 2.3 Rights of Employer

2.3.1 The Employer reserves the right:

2.3.1.1 to place orders for similar work with other contractors or his own labour within the Contract Area;

2.3.1.2 to supply any of the materials, goods or plant and equipment necessary for the carrying out of any Order.

2.3.2 Materials and goods supplied by the Employer under clause 2.3.1.2 shall remain the property of the Employer and shall be used by the Contractor for the carrying out of an Order and for no other purpose and the Contractor shall be responsible for their safe storage whilst on the Site. Any such materials or goods not required for the carrying out of an Order shall, on completion of the Order or on the termination of the Contractor's employment, whichever first occurs, be disposed of or dispatched by the Contractor as directed by the Contract Administrator; the cost of such disposal or dispatch shall be certified by the Contract Administrator for payment by the Employer under clause 4.6.

2.3.3 The Contractor shall give a receipt for any materials or goods handed over to him by the Contract Administrator and shall obtain a receipt for any returned.

- 2.3.4 The Contractor shall be responsible for the safe storage of any plant and equipment supplied for him by the Employer under clause 2.3.1.2 and shall return such plant and equipment to the Contract Administrator at the Site on completion of the Order for which it is supplied or on termination of the Contractor's employment, whichever first occurs. The Contractor shall give a receipt for such plant and equipment and obtain a receipt from the Contract Administrator on its return.
- 2.3.5 The Employer shall notify the Contractor of the then current value of any materials or goods or usage of plant supplied under this clause 2.3 and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge.
- 2.3.6 Materials and goods supplied by the Employer for any Order shall be of the respective kinds described in the Schedule of Rates; the Contractor shall not be liable for any loss or damage resulting from failure of such materials or goods to conform with this clause 2.3.6.

## **2.4 Size and duration of Orders**

Unless otherwise agreed between the Contractor and the Contract Administrator, Orders shall be of a size consistent with the Contract Particulars (item 6) and shall be reasonably capable of being carried out within the Contract Period.

## **2.5 Value of work to be carried out under this Contract**

With regard to the anticipated value of work as stated in the Contract Particulars (item 7), the Employer gives no warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment.

## **2.6 Orders – completion**

Unless covered by a priority coding referred to in the Contract Particulars (item 8), each Order shall state a commencement date and a reasonable date for its completion and, subject to clause 2.10.2, the Contractor shall complete each Order by that completion date.

## **2.7 Programme**

Where the Contract Administrator requests, the Contractor, without charge to the Employer, shall provide the Contract Administrator with a programme for carrying out the Orders identified by the Contract Administrator in his request and, within a reasonable time after the issue of a Variation, with amendments and revisions to that programme to take account of the Variation. Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents.

## **2.8 Divergences from Statutory Requirements**

- 2.8.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and either an Order or a Variation, he shall immediately give to the Contract Administrator a notice specifying the divergence.
- 2.8.2 Provided the Contractor is not in breach of clause 2.8.1, the Contractor shall not be liable under this Contract if the work comprised in an Order does not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Order or with any instruction requiring a Variation.

## **2.9 Fees or charges**

The Contractor shall pay all fees and charges (including any rates or taxes) legally demandable under any of the Statutory Requirements in respect of an Order. The Contractor shall be reimbursed for payment of such fees and charges to the extent that they are not included in the rates or prices in the Schedule of Rates.

## **2.10 Extension of time**

- 2.10.1 The Contractor shall forthwith give notice to the Contract Administrator of any matter which is causing or is likely to cause delay in the completion of an Order beyond the date stated for its completion but shall constantly use his best endeavours to carry out each Order by the stated date.

- 2.10.2 If the Contractor is unable to complete an Order by its stated date for completion, due to a suspension by the Contractor of the performance of his obligations under this Contract pursuant to clause 4.7 or for reasons beyond his control (including compliance with any instruction of the Contract Administrator that does not arise from the Contractor's default), the Contract Administrator shall fix such later date for completion as may be fair and reasonable and notify the Parties accordingly. Provided the Order when issued complied with clause 2.4, the Contractor shall not be relieved of his obligations to complete the Order by the later date so fixed by reason of that later date being outside the Contract Period.

## **2.11 Order Completion Date**

- 2.11.1 The Contractor shall notify the Contract Administrator the date when in his opinion an Order has been completed and/or supplied in accordance with this Contract. If the Contract Administrator does not dissent by notice, giving reasons, within 14 days of receipt of the Contractor's notice, the date so notified shall for all the purposes of this Contract be the date when the Order was completed and/or supplied in accordance with this Contract (the 'Order Completion Date').
- 2.11.2 If the Contract Administrator dissents, then, as soon as he is satisfied that the Order has been duly completed and/or supplied, he shall as soon as practicable notify the Contractor and, unless otherwise agreed or determined in accordance with the dispute resolution procedures of this Contract, the Order Completion Date shall be the date stated in the Contract Administrator's notice.

## **2.12 Defects**

Any defects, shrinkages or other faults which appear within 6 months of the Order Completion Date and which are due to materials or workmanship not in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer.

## Section 3 Control of Work

### 3.1 Assignment

Neither the Employer nor the Contractor shall, without the consent of the other, assign this Contract or any rights thereunder.

### 3.2 Sub-contracting

The Contractor shall not without the prior consent of the Contract Administrator sub-contract any Order or part of an Order. Such consent shall not be unreasonably delayed or withheld and shall apply to all Orders except to the extent otherwise stated in that consent. Where considered appropriate, the Contractor shall engage the Sub-Contractor using the JCT Short Form of Sub-Contract.

### 3.3 Contractor's representative

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

### 3.4 Access to the Site

3.4.1 Except to the extent that the Schedule of Rates otherwise provides, access to the Site shall be arranged by, and in accordance with instructions of, the Contract Administrator who, where the Site is occupied, shall also be responsible for ensuring that the occupier removes such fixtures, fittings or other items as are necessary to enable the Contractor to carry out the Order and does not otherwise unreasonably prevent or impede the Contractor from carrying out such Order.

3.4.2 If the Contractor is unable to gain access to the Site in accordance with the Contract Administrator's instructions or, having been granted access to an occupied Site, cannot reasonably carry out the Order by reason of the Contract Administrator's or occupier's non-compliance with clause 3.4.1, he shall forthwith notify the Contract Administrator; the time necessarily spent unproductively by the Contractor in consequence shall be assessed or recorded and valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

3.4.3 To the extent that clauses 3.4.1 and 3.4.2 do not apply because the Schedule of Rates provides otherwise, the Contractor shall comply with the access provisions of that Schedule.

### 3.5 Variations

3.5.1 The Contract Administrator may from time to time require Variations, through instructions and/or the issue of further drawings, details, directions and/or explanations.

3.5.2 The Contractor shall not make any alteration in, addition to or omission from the work and/or supply comprised in any Order except as required under clause 3.5.1. If the Contractor carries out a Variation otherwise than pursuant to an instruction or other requirement of the Contract Administrator, the Contract Administrator may sanction it.

3.5.3 No Variation required by the Contract Administrator or subsequently sanctioned by him shall invalidate the Order or vitiate this Contract.

3.5.4 The value of any Variation issued or sanctioned by the Contract Administrator shall be ascertained in accordance with section 5 and, as soon as ascertained in whole or in part, the ascertained amount shall be included in the estimated value of the relevant Order for the purposes of clause 4.3 (progress payments) and in the valuation of it for the purposes of clause 4.4 or 4.5 (final payment).

### 3.6 Cancellation of an Order

3.6.1 The Contract Administrator may cancel any Order.

3.6.2 On the cancellation of an Order:

3.6.2.1 the Contract Administrator shall value and certify, in accordance with clause 4.4, for payment by the Employer under that clause, any work or supply which in his opinion has been properly carried out or made by the Contractor against that Order, taking into account any amounts previously certified in respect of it; and

3.6.2.2 the Employer shall reimburse the Contractor such additional direct costs as may reasonably have been incurred by the Contractor as a result.

### **3.7 Exclusion from the Site**

The Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the Site of any person employed thereon.

### **3.8 Non-compliance with instructions**

If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrator's instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

### **3.9 CDM Regulations**

Each Party undertakes to the other that in relation to each Order and Site he will duly comply with applicable CDM Regulations. In particular but without limitation:

3.9.1 the Employer shall in each case ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

3.9.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[13]</sup>

3.9.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;

3.9.4 if the Employer appoints any other person as the Principal Designer or Principal Contractor either in relation to all Orders or for specific Orders, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

### **3.10 Replacement of Contract Administrator**

If the Contract Administrator at any time ceases to hold that post for the purposes of this Contract, the Employer shall as soon as reasonably practicable, and in any event within 14 days of the cessation, nominate a replacement. No replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

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[13] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8.

## Section 4 Payment

### 4.1 VAT

Sums certified for payment are exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

### 4.2 Construction Industry Scheme (CIS)

Where it is stated in the Contract Particulars (item 9) that the Employer is a 'contractor' for the purposes of the Construction Industry Scheme (CIS) or if at any time up to the final payment in respect of the last Order outstanding under this Contract the Employer becomes such a 'contractor', his obligation to make any payment under this Contract is subject to the provisions of the CIS.

### 4.3 Progress payments

4.3.1 Where at the date of issue of an Order or of any Variation to it (after adjustment for the effects of any relevant Variations):

4.3.1.1 the value of the Order is estimated by the Contract Administrator to exceed the amount stated in the Contract Particulars (item 10); and/or

4.3.1.2 the duration of the work comprised in that Order is estimated to be 45 days or more

the Contractor may not later than each subsequent Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order calculated as at the relevant Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.

4.3.2 The due date for a progress payment shall in each case be the date 7 days after the relevant Valuation Date.

4.3.3 Where an application is made in accordance with clause 4.3.1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be, or to have been, due to the Contractor at the due date in respect of the progress payment, after taking into account any amounts previously certified and (where relevant) any sums paid under clause 4.6.3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.

### 4.4 Final payment where Contract Administrator measures and values Orders

Where the Contract Administrator is to value an Order pursuant to clause 5.2:

4.4.1 the due date shall be 28 days after the Order Completion Date or, for Orders where progress payments are to be made, 51 days after the Order Completion Date;

4.4.2 the Contract Administrator shall not later than 5 days after the relevant due date issue a certificate stating as the sum due the total amount that he considers to be or have been due to the Contractor under these Conditions in respect of the completed Order, less any amounts previously certified in respect of it under clause 4.3.3 and (where relevant) any sums paid in respect of any such application as is mentioned in clause 4.3.3, and stating the basis on which the sum has been calculated;

4.4.3 if the Contract Administrator does not issue a certificate in respect of the Order in accordance with clause 4.4.2 within 33 days of the Order Completion Date or, for Orders where progress payments are to be made, within 56 days of the Order Completion Date, the Contractor may make an application stating the sum that he considers will or has become due to him in respect of the Order and the basis on which that sum has been calculated.

#### **4.5 Final payment where Contractor measures and values Orders**

Where the Contractor is to value an Order pursuant to clause 5.2:

- 4.5.1 the Contractor shall following the Order Completion Date make an application to the Contract Administrator in respect of the completed Order, stating the sum that the Contractor considers will become due to him on the due date in respect of the Order and the basis on which that sum has been calculated, accompanied by such further information as may be specified in the Contract Documents;
- 4.5.2 the due date for payment in respect of the completed Order shall be the date 7 days after the next monthly Valuation Date following receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum that he considers to be due to the Contractor in respect of the completed Order, after taking into account any amounts previously certified in respect of the Order, and the basis on which that sum has been calculated;
- 4.5.3 if the Contractor fails to make an application in accordance with clause 4.5.1 within 56 days after the Order Completion Date, the Contract Administrator may at any time give the Contractor notice that, unless the Contractor makes an application within a period of 28 days after the date of issue of the notice, the Contract Administrator will arrange for the measurement and valuation of the work and/or supply comprising the Order;
- 4.5.4 if the Contractor fails to make an application within the period of notice given under clause 4.5.3:
  - 4.5.4.1 the Contract Administrator shall arrange for measurement and valuation of the Order;
  - 4.5.4.2 the due date shall be 35 days from the date of expiry of the notice period; and
  - 4.5.4.3 the Contract Administrator shall not later than 5 days after the due date issue a certificate in accordance with clause 4.5.2 but, in addition to deducting any amounts previously certified in respect of the Order, shall also be entitled to deduct the amount of the costs reasonably and properly incurred by or on behalf of the Employer in respect of the measurement and valuation;
- 4.5.5 if clause 4.5.4 applies but the Contract Administrator fails to issue a certificate as required by clause 4.5.4.3, the Contractor may at any time after the expiry of the 5 day period referred to in clause 4.5.4.3 make an application giving the details required by clause 4.5.1.

#### **4.6 Payments – final date and amount**

- 4.6.1 Subject to clause 4.6.4, the final date for payment of each payment under clauses 4.3 to 4.5 shall be 14 days from its due date.
- 4.6.2 Subject to any notice given by the Employer under clause 4.6.5, the Employer shall pay the sum stated as due in the relevant certificate on or before the final date for payment.
- 4.6.3 If a certificate is not issued in accordance with clause 4.3.3, 4.4.2, 4.5.2 or 4.5.4, the Employer shall, subject to any notice given under clause 4.6.5, pay the Contractor the sum stated as due in the application.
- 4.6.4 Where an application is made by the Contractor in the circumstances mentioned in clause 4.4.3 or 4.5.5, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after the last date for issue of the certificate referred to in clause 4.4.2 or 4.5.4.3 that the application is made but notice by the Employer under clause 4.6.5 may not be given prior to the application being made.
- 4.6.5 Where the Employer intends to pay less than the sum stated as due from him in the certificate or application, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention specifying the sum he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.6.6 If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that

amount at the Interest Rate for the period from the final date for payment until payment is made.

- 4.6.7 Any such unpaid amount and any interest under clause 4.6.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 8.
- 4.6.8 A notice to be given by the Employer under clause 4.6.5 may be given on his behalf by the Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.6.9 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

#### **4.7 Contractor's right of suspension**

- 4.7.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.7.2 Where the Contractor exercises his right of suspension under clause 4.7.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.7.3 Applications in respect of any such costs and expenses shall be made to the Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next certificate.

## Section 5 Measurement and Valuation

### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of work or supply comprised in an Order;
- 5.1.2 any other addition to, omission from or alteration of any Order; or
- 5.1.3 the removal of any inconsistencies in or between any documents included in an Order.

### 5.2 Measurement and Valuation – responsibility

Unless otherwise agreed by the Contract Administrator and the Contractor, all work carried out pursuant to an Order (including any Variations required by the Contract Administrator or subsequently sanctioned by him) shall be valued in accordance with clauses 5.3 to 5.8. Such valuation of an Order shall be undertaken by whichever of them is designated in the Contract Particulars (item 11).

### 5.3 Valuation – measurement

- 5.3.1 Subject to clauses 2.3.5, 5.4.1 and 5.5 the valuation of an Order shall be ascertained by measurement and valuation in accordance with the principles of measurement and the rates or prices in the Schedule of Rates applicable at the date of the Order, insofar as such rates or prices apply, subject to adjustment by the Adjustment Percentage.
- 5.3.2 Where the Contract Administrator is to undertake measurement of an Order, he shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

### 5.4 Valuation – daywork

- 5.4.1 Where in the Contract Administrator's opinion the appropriate basis for valuation of an Order or part of an Order is daywork, the direct labour element shall be calculated in accordance with the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the Schedule of Hourly Charges annexed to this Contract, with related charges being calculated in accordance with that Schedule and/or the Contract Particulars<sup>[14]</sup>.
- 5.4.2 The Contractor shall give to the Contract Administrator reasonable prior notice of the commencement of any work (or supply of labour and/or materials) which he considers should be carried out as daywork and not later than 7 Business Days after the work has been executed the Contractor shall deliver to the Contract Administrator for verification return(s) in the form required by the Contract Administrator specifying the time spent daily upon the work, the workmen's names, and the plant, materials and other items employed. A copy of the returns, if approved by the Contract Administrator, shall be returned to the Contractor.

### 5.5 Derived rates

- 5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Charges, as the case may be, the value shall be based upon such rates or prices as may fairly be deduced therefrom, rates and prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.
- 5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be agreed between the Parties, failing which it shall be ascertained on a fair

**[14]** In addition to the inclusive labour rates set out in the Schedule of Hourly Charges, this Contract envisages that that Schedule, alone or in combination with the Contract Particulars, will set out the basis of charging for any daywork sub-contracted and will provide for any percentage or other handling charges that are to be added to the cost of materials, goods, plant, services, consumables and (if appropriate) sub-contract work supplied.

and reasonable basis by the Contract Administrator after consultation with the Contractor.

## **5.6 Rates – Fluctuations**

- 5.6.1 Unless it is stated in the Contract Particulars (item 12.3) that this clause 5.6.1 does not apply:
- 5.6.1.1 where the Schedule of Rates is the National Schedule of Rates, the rates in that Schedule current at the commencement of the Contract Period will apply to the valuation of Orders issued prior to the next following 1 August and subsequently the update for those rates at 1 August in each year will apply to Orders issued on or after 1 August; or
- 5.6.1.2 where the Schedule of Rates is not the National Schedule of Rates, the basis on which and the dates as at which the rates in that Schedule are to be revised during the Contract Period shall be those stated or referred to in the Contract Particulars (item 12.4).
- 5.6.2 If it is stated in the Contract Particulars that clause 5.6.1 does not apply or, where the Schedule of Rates is not the National Schedule of Rates, if there is no identified basis for revision as referred to in clause 5.6.1.2, the rates given in the Schedule of Rates current at the commencement of the Contract Period shall remain fixed for all Orders.
- 5.6.3 Unless it is stated in the Contract Particulars (item 13.2) that this clause 5.6.3 does not apply, the all-in labour rates set out in the Schedule of Hourly Charges shall be revised at 1 August in each year, or such other annual revision date as is stated in that item, in accordance with the basis (if any) set out in that Schedule or identified in the Contract Particulars or, if none, in accordance with clause 5.6.5.
- 5.6.4 Whether or not clause 5.6.3 applies, any all-in hourly rate deduced or fixed under clause 5.5 shall be revised on such revision date (if any) as is fixed for revision of the relevant Schedule or, if none is fixed, as at 1 August in each year.
- 5.6.5 In the absence of any express basis for revision where clause 5.6.3 applies or in the case of revision under clause 5.6.4, the revised rates shall be agreed between the Contractor and the Contract Administrator or, failing agreement, determined by the Contract Administrator on a fair and reasonable basis.

## **5.7 Overtime work**

- 5.7.1 For the purposes of this clause 5.7:
- 5.7.1.1 'overtime' means time worked in addition to 'normal working hours' as defined in the rules or decisions of the Construction Industry Joint Council or other wage-fixing body applicable to the work comprised in the Order, as promulgated at the date of the Order; and
- 5.7.1.2 'non-productive overtime rates' means the net amounts, in excess of the rates paid for work in normal working hours, which are to be paid for overtime in accordance with the rules or decisions mentioned above as promulgated at the date of the Order.
- 5.7.2 Where overtime work for an Order is specifically directed by the Contract Administrator, unless an all-in non-productive overtime rate is included in the Schedule of Hourly Charges, the Contractor, in addition to the amount otherwise due under this section 5 in respect of the valuation of the Order, shall be paid the amount of the non-productive overtime rates paid by the Contractor, adjusted by the percentage set out in the Contract Particulars (item 14).
- 5.7.3 No payment shall be due under clause 5.7.2 unless the Contractor has submitted to the Contract Administrator returns, in a format directed by the Contract Administrator or as provided in the preliminaries in the Schedule of Rates, stating the amount of overtime worked in accordance with the directions referred to in clause 5.7.2 and the amount of the non-productive overtime rates paid by the Contractor. A copy of those returns, if approved, shall be certified by the Contract Administrator and returned to the Contractor.

## **5.8 Interruption of work – unproductive costs**

If, while carrying out the work comprised in any Order, the Contractor is required by the Contract

Administrator during normal working hours (as referred to in clause 5.7.1) to interrupt such work and to carry out other work in priority to that comprised in the Order, any agreed lost time or other unproductive costs shall be valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

## Section 6 Injury, Damage and Insurance

### 6.1 Contractor's liability – personal injury or death

The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of an Order, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

### 6.2 Contractor's liability – loss, injury or damage to property

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of an Order and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

### 6.3 Loss or damage to existing structures or their contents

6.3.1 Where clause 6.7.1 applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to existing structures or to any of their contents required to be insured under clause 6.7 that is caused by any of the risks or perils required or agreed to be insured against under that clause.

6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

6.3.3 Where a Clause 6.7.1 Replacement Schedule applies in lieu of clause 6.7.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the existing structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the work comprised in an Order, work executed or Site Materials up to and including whichever is the earlier of the Order Completion Date or the date of termination of the Contractor's employment.

### 6.4 Contractor's insurance of his liability

6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[15]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars (item 15.1).<sup>[16]</sup>

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.11 shall apply.

[15] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 6.1 and 6.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[16] The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars (item 15).

## 6.5 Excepted Risks

Notwithstanding clauses 6.1, 6.2 and 6.4.1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to work or supply comprised in an Order, Site Materials, work executed, the Site or any other property, caused by the effect of an Excepted Risk.

## 6.6 Related definitions

In these Conditions the following phrases shall have the following meanings:

**All Risks Insurance**<sup>[17]</sup>: insurance which provides cover against any physical loss or damage to work executed or supplies made pursuant to an Order and Site Materials (whether supplied by the Employer or by the Contractor) and against the reasonable cost of the removal and disposal of debris and of any shoring and propping which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
  - (i) wear and tear,
  - (ii) obsolescence, or
  - (iii) deterioration, rust or mildew;
- (b) any work executed or supplies made or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[18]</sup>;
- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

**Excepted Risks:** the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and

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[17] The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and **in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered**. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of works insurance under this Contract also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the Contract**. See the Measured Term Contract Guide.

[18] In an All Risks Insurance policy in respect of works to be carried out under this Contract, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of clause 6.7.2 or 6.8 or that definition. Wider All Risks cover than that specified may be available, though it is not standard.

- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[19]</sup>

**Specified Perils:** fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed or supplies made pursuant to an Order and Site Materials (and/or, for the purposes of clause 6.13.1, to an existing structure and/or its contents) caused by or resulting from terrorism.<sup>[19]</sup>

#### **6.7 Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer<sup>[20]</sup>**

The Employer shall:

- 6.7.1 unless otherwise stated by the Contract Particulars (item 15.3) effect and maintain a Joint Names Policy in respect of the existing structures for which Orders may be issued, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 6.7.2 subject to clause 6.8 where the Contract Particulars state that that clause applies (item 15.4), effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6 for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars to cover professional fees (item 15.2))

and shall maintain such Joint Names Policies up to and including the end of the Contract Period (or up to the Order Completion Date of any Order which either pursuant to clause 2.10 or by agreement pursuant to clause 2.4 occurs after the end of the Contract Period), or (if earlier) the date of termination of the Contractor's employment under this Contract. In respect of the insurance referred to in this clause 6.7 the Employer shall notify his insurer of the identity of the properties in respect of which Orders may be issued and the Contract Period (but with the proviso that work or supply in respect of such properties may continue to be carried out or made by the Contractor until any later Order Completion Date).

#### **6.8 Joint Names Insurance of work or supply comprised in Orders by the Contractor**

If the Contract Particulars (item 15.4) state that this clause 6.8 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6<sup>[21]</sup> for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars (item 15.2) to cover professional

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[19] As respects Terrorism Cover and the insurance requirements, see footnote [17] and the Measured Term Contract Guide.

[20] **Clause 6.7 can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover referred to for the Contractor in respect of existing structures and their contents that are owned by the Employer or for which he is responsible.**

However, the Joint Names Policy required by clause 6.7.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where existing structures insurance is the landlord's responsibility.

Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or minor works to their property.

The Contract Particulars for clause 6.7.1 (item 15.3) therefore expressly allow the Parties in those circumstances to disapply clause 6.7.1 and, by means of a Clause 6.7.1 Replacement Schedule, to include in place of that clause provisions that are tailored to their particular requirements.

**In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.**

An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Measured Term Contract Guide.

[21] In some cases it may not be possible for insurance to be taken out against certain of the risks covered by the definition of All Risks Insurance and note the potential difficulty with respect to Terrorism Cover mentioned at footnote [17].

fees) up to and including the Order Completion Date for that Order and shall maintain that policy up to and including:

6.8.1 the end of the Contract Period or (if later) the last Order Completion Date; or

6.8.2 (if earlier) the date of termination of the Contractor's employment.

#### **6.9 Clause 6.8 – use of Contractor's annual policy – as alternative**

If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the work or supplies comprised in Orders:

6.9.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in clause 6.8; and

6.9.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under clause 6.8. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars (item 15.5).

#### **6.10 Notification by Contractor of occupation and use**

Where clause 6.8 applies, the Contractor shall before commencing to carry out the first Order under this Contract notify the insurer of the Joint Names Policy to which clause 6.8 refers that the Employer may have occupation and use of any property in respect of which Orders may be issued, and shall obtain the agreement of the insurer that any exclusion in the policy relating to such occupation and use shall not apply.

#### **6.11 Evidence of insurance**

6.11.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.7, 6.8 and 6.12, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

6.11.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be reimbursed to him by the Employer and shall be recoverable from the Employer as a debt; any costs payable to the Employer may be deducted by him from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

#### **6.12 Terrorism Cover – policy extensions and premiums**

6.12.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where clause 6.8 applies, or the Employer, where clause 6.7.2 applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars (item 15.6), subject to clauses 6.12.4 and 6.13.

6.12.2 Where clause 6.8 applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contractor's rates and prices save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the amounts payable to the Contractor shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

6.12.3 Where clause 6.8 applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the amounts payable to the Contractor.

6.12.4 Where clause 6.8 applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.14.5.3 shall apply with effect from the renewal date.

### **6.13 Terrorism Cover – non-availability – Employer's options**

- 6.13.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.13.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor:
- 6.13.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the work comprised in all or certain specified Orders continue to be carried out; and/or
- 6.13.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) work on all or certain specified Orders shall terminate.
- 6.13.3 Where clause 6.8 applies and the Employer gives notice under clause 6.13.2 requiring continuation of the work comprised in any Orders, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the amounts payable to the Contractor.
- 6.13.4 If the Employer gives notice of termination under clause 6.13.2 in respect of any Orders, a valuation of work completed (or of labour, materials and/or plant supplied) that has not been valued and certified before such termination shall be made and certified in respect of those Orders in accordance with sections 4 and 5 and the Employer shall pay the certified amount in accordance with clause 4.6.
- 6.13.5 In the case of any Orders in respect of which notice of termination is not given under clause 6.13.2.2, but work executed and/or Site Materials under any such Order thereafter suffer physical loss or damage caused by terrorism, clauses 6.14 and 6.15 shall as appropriate apply.

### **6.14 Loss or damage – insurance claims and reinstatement**

- 6.14.1 If loss or damage affecting any executed work, Site Materials or other supplies made pursuant to an Order is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Contract Administrator and to the Employer of its nature, location and extent.
- 6.14.2 Subject to clauses 6.14.5.1 and 6.14.6, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.
- 6.14.3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 6.14.4 Where loss or damage affecting executed work or Site Materials or other supplies made pursuant to an Order is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.15 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials or supplies made, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Order(s).
- 6.14.5 Where clause 6.8 applies:
- 6.14.5.1 unless the Employer cancels the Order affected by the loss or damage, the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the Contract Administrator at the same dates as those for certificates under section 4 less only the amounts referred to in clause 6.14.5.2;
- 6.14.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to

the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

- 6.14.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.12.4 or 6.13 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under section 4 or clause 6.14.5.1 included in Contract Administrator's certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.

- 6.14.6 Where clause 6.7.2 applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

**6.15 Loss or damage to existing structures – right of termination in respect of Orders**

If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, give notice to the other within 28 days of the occurrence of that loss or damage that work on any affected Orders shall terminate. If such notice is given, then:

- 6.15.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;
- 6.15.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.13.4 shall apply.

## Section 7 Break Provision – Rights of each Party

### 7.1 Break notice

Each Party shall have the right to reduce the duration of the Contract Period by giving the other Party not less than 13 weeks' notice to that effect (or such lesser period of notice as is stated in the Contract Particulars (item 16)). That notice may in either case expire at any time not less than 6 months after the date of commencement of the Contract Period.

### 7.2 Existing and subsequent Orders

As from receipt by the Employer or the Contractor, as the case may be, of notice under clause 7.1 the Contractor shall not, unless otherwise agreed between him and the Contract Administrator, be under any obligation to accept any subsequent Orders which cannot reasonably be completed before the expiration of the notice, but the Contractor shall not be relieved of his obligation to complete all Orders properly given prior to the receipt of the notice, even if such Orders cannot be, or are not, completed before the expiry of such notice, and to complete any subsequent Orders that can reasonably be completed before that expiration or that he otherwise accepts.

## Section 8 Termination for Default, etc.

### 8.1 Meaning of insolvency

For the purposes of these Conditions:

- 8.1.1 a company becomes Insolvent:
  - 8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.
- 8.1.2 a partnership becomes Insolvent:
  - 8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 8.1.2.2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 8.1.3 an individual becomes Insolvent:
  - 8.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
  - 8.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- 8.1.4 a person also becomes Insolvent if:
  - 8.1.4.1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - 8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

Each of clauses 8.1.1 to 8.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

### 8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

### 8.3 Other rights, reinstatement

- 8.3.1 The provisions of this section 8 are without prejudice to any other rights and remedies

available to either Party.

- 8.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated, either generally or in respect of any particular Order or Orders, if and on such terms as the Parties agree.

#### **8.4 Default by Contractor**

- 8.4.1 If the Contractor:

8.4.1.1 fails to comply with the CDM Regulations; or

8.4.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the carrying out of any Order or Orders is materially disrupted, suspended or delayed,

the Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).

- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

#### **8.5 Insolvency of Contractor**

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.

- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.

- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:

8.5.3.1 clause 8.10 shall apply as if such notice had been given;

8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended; and

8.5.3.3 the Employer may take reasonable measures to ensure that each Site, the work under each Order and any Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

#### **8.6 Corruption and regulation 73(1)(b) of the PC Regulations**

The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

#### **8.7 Default by Employer**

- 8.7.1 If the Employer:

8.7.1.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.6 and/or any VAT properly chargeable on that amount; or

8.7.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the ability of the Contractor to comply with his obligations under it is materially prejudiced; or

8.7.1.3 interferes with or obstructs the issue of any certificate; or

8.7.1.4 fails to comply with the CDM Regulations,

the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).

8.7.2 If the Employer continues a specified default for 14 days from the receipt of notice under clause 8.7.1, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

8.7.3 If the Contractor for any reason does not give the further notice referred to in clause 8.7.2, but the Employer repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

## **8.8 Insolvency of Employer**

8.8.1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;

8.8.2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;

8.8.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended pending such termination.

## **8.9 Termination by Employer – regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

## **8.10 Consequences of termination under clauses 8.4 to 8.6**

If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6:

8.10.1 the Employer may employ and pay other persons to carry out and complete uncompleted Orders;

8.10.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.10.3 and the Employer need not pay any sum that has already become due either:

8.10.2.1 insofar as the Employer has given or gives a notice under clause 4.6.5; or

8.10.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;

8.10.3 the Contract Administrator shall within 13 weeks of the date of termination make a valuation and issue a certificate showing:

8.10.3.1 the value of such work properly executed (or of labour, materials and/or plant supplied) and any other amounts due to the Contractor under this Contract that have not been valued and certified before such termination; and

8.10.3.2 the amount of any direct loss and/or damage caused to the Employer by the termination;

8.10.4 if the amount of direct loss and/or damage exceeds the value certified under clause 8.10.3 the difference shall be a debt payable by the Contractor to the Employer or, if it is less, by the Employer to the Contractor;

- 8.10.5 the final date for payment of the amount of the difference referred to in clause 8.10.4 shall be 28 days from the date of the certificate.

**8.11 Consequences of termination under clauses 8.7 to 8.9**

- 8.11.1 Where the Contractor's employment is terminated under clause 8.7, 8.8 or 8.9, the Contractor shall within 13 weeks of the date of termination submit an account in respect of:
- 8.11.1.1 the value of such work properly executed (or of labour, materials and/or plant supplied) as has not been valued and certified before such termination; and
- 8.11.1.2 only where the Contractor's employment is terminated under clause 8.7 or 8.8, the amount of any direct loss and/or damage caused to the Contractor by the termination.
- 8.11.2 The Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor.

## Section 9 Settlement of Disputes

### 9.1 Mediation

Subject to Article 6, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[22]</sup>

### 9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars (item 17).

### 9.3 Not applicable

### 9.4 Not applicable

### 9.5 Not applicable

### 9.6 Not applicable

### 9.7 Not applicable

### 9.8 Not applicable

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[22] See the Measured Term Contract Guide.

## Schedule 1 Supplemental Provisions

(Fifth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

### Collaborative working

- 1 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

### Health and safety

- 2
  - 2.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
  - 2.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
    - 2.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
    - 2.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
    - 2.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
    - 2.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Cost savings and value improvements

- 3
  - 3.1 The Contractor is encouraged to propose changes to designs and specifications for each Order and/or to the programme for its execution that may benefit the Employer, whether in the form of a reduction in the cost of the Order or its associated life cycle costs, through completion at a date earlier than the date for completion or otherwise.
  - 3.2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
  - 3.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the date for completion. Upon agreement, the change and the amount of any adjustment of the value of the Order shall be confirmed in a Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
  - 3.4 Original proposals by the Contractor under this Supplemental Provision 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after the Contract Period.

## **Sustainable development and environmental considerations**

**4**

- 4.1 The Contractor is encouraged to suggest economically viable amendments to any Order which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Order or of the completed Order.
- 4.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

## **Performance Indicators and monitoring**

**5**

- 5.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
- 5.2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
- 5.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

## **Notification and negotiation of disputes**

**6**

With a view to avoidance or early resolution of disputes or differences (subject to Article 6), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

## **Transparency**

**7**

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:

- 7.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
- 7.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

## **The Public Contracts Regulations 2015**

**8**

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[23]</sup>:

- 8.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 8.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
- 8.2.1 to supply and notify to the Contractor the information required (as applicable)

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**[23]** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Measured Term Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Short Form of Sub-Contract (ShortSub) meets the requirements of Supplemental Provision 8.

- under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;
- 8.3
- 8.3.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
- 8.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.



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# MTC 2016

## Measured Term Contract 2016

# 2016

## MEASURED TERM CONTRACT

## Measured Term Contract (MTC)

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

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For details of 2016 Edition changes, see the Measured Term Contract Guide (MTC/G) and the Tracked Change Document.

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# Agreement

## This Agreement

is made the \_\_\_\_\_ 20 \_\_\_\_\_

## Between

### The Employer

[\_\_\_\_\_]

(Company No. [\_\_\_\_\_] <sup>(1)</sup>Greater London Authority, a statutory corporation established by the Greater London Authority Act 1999, whose principal offices are at City Hall.

of ~~whose registered office is at~~ City Hall, Kamal Churchie Way, London, E16 1ZE

[\_\_\_\_\_]

## And

### The Contractor

[\_\_\_\_\_] Everwarm Limited

Place of incorporation: England and Wales

(Company No. [\_\_\_\_\_] SC390210)<sup>[1]</sup>

~~of~~ whose registered office is at 3 Inchcorse Place, Whitehall Industrial Estate, Bathgate, EH48 2EE

[\_\_\_\_\_]

[1] Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number. As to execution by foreign companies and matters of jurisdiction, see the Measured Term Contract Guide.

## Recitals

### Whereas

#### First

the Employer requires maintenance and minor works to be carried out in:

~~[ ]~~Employer requires Retrofit works and services to be carried out in: The Contract Area (being the Greater London Area) and various, predominantly but not exclusively, Social Housing properties, predominately owned or managed by local authorities in the Greater London Area in accordance with the details set out or referred to in the Contract Particulars. ('the Contract Area') in accordance with the details set out or referred to in the Contract Particulars;

#### Second

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

#### Third

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

#### Fourth

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

#### Fifth

whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

## Articles

### Now it is hereby agreed as follows

#### Article 1 Contractor's obligations

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

#### Article 2 Payment

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 and 14).

#### Article 3 Contract Administrator

For the purposes of this Contract the Contract Administrator is

[ ] Austin Entonu

of

[ ] City Hall, Kamal Churchie Way, London, E16 1ZE

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

#### Article 4 Principal Designer

The Principal Designer for the purposes of the CDM Regulations is ~~the Contract Administrator~~

(or)<sup>[2]</sup> [ ] Everwarm Limited

of

[ ] 3 Inchcorse Place, Whitehall Industrial Estate, Bathgate, EH48 2EE

or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

#### Article 5 Principal Contractor

~~The Principal Contractor for the purposes of the CDM Regulations is the Contractor~~

(or)<sup>[2]</sup> [ ]

[2] — Insert the name of the Principal Designer in Article 4 if the Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 5 if that is to be a person other than the Contractor.  
Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

of

[ ]

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

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**Article 6                      Adjudication**

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

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**Article 7                      Arbitration**

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Not applicable

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**Article 8                      Legal proceedings<sup>[3]</sup>**

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~~Where Article 7 applies<sup>[3]</sup> Subject, then, subject to Article 6 and (where it applies) to the exceptions set out below, Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (GIMAR). The exceptions to this Article 7, are:~~

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**Article 9                      -**

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

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**Article 10                      ~~{\*Article 10}any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and Performance Bond~~**

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Not used.

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**Article 11                      ~~{\*Article 11}any disputes or differences in connection with the enforcement of any decision of an Adjudicator.Parent Company Guarantee~~**

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Not used.

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**Article 12                      ~~{Article 8Article 12}Legal proceedings<sup>[3]</sup> Key Performance Indicators-~~**

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

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[3] **+++Now footnote [2]+++** If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

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**Article 13**      **Contract Review and Cost Saving, Value Engineering**

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13.1 The Employer and Contractor shall review the Contract [and any potential cost savings] in accordance with the provisions of Schedule 10 (Contract Review Procedures).

13.2 Without prejudice to the provisions of Clause 4 (Costs Reduction and Customer Service Proposals) of Schedule 10 (Contract Review Procedures), the Contractor shall propose amendments to any Service Orders or Orders for Works which, if implemented, would result in financial benefits for the Employer. Such benefits may arise in the form of:

- a) a reduction in the capital costs of the project of which the Order forms part;
- b) completion of the project at an earlier date or in a manner which will result in savings; and/or
- c) any other financial benefit to the Employer.

13.3 The Parties will discuss the details of any changes and any cost, time, quality and performance benefits to the Employer and shall agree (acting reasonably) the implementation of any changes and the financial effects of them. Once agreed, such change shall be implemented by means of an amendment to the relevant Order.

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**Article 14**      **Funding Requirements**

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The Contractor shall perform the Works pursuant to each Order in a manner that is consistent with and which does not put the Employer in breach of the Funding Requirements.

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**Article 15**      **Specified Materials**

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15.1 The Contractor shall source the Specified Materials from the Named Supplier or, with the prior written consent of the Employer, from a party other than the Named Supplier, provided always that if a party other than the Named Supplier is used the terms that such Specified Materials shall be procured on shall be on no less favourable terms than if the Named Supplier had been used]. The Contractor shall be responsible for sourcing the Specified Materials without causing delay to the Works, and shall not be entitled to an extension of time or any adjustment to the sums payable under this Contract to the extent there is any delay in receipt of the Specified Materials.

15.2 The Contractor shall be deemed to have satisfied itself as to the extent and nature of the Specified Materials to be supplied under this Contract, including, but not limited to personnel, materials and equipment, consumables and facilities required for the supply of the materials; the general and local conditions including climatic and weather conditions, and all other matters which could affect progress or performance of the supply of the materials. The Contractor shall be fully responsible for the Specified Materials, including (without limitation) design, installation and performance.

15.3 Any failure by the Contractor to take account of matters which affect the provision of the Specified Materials, including (but not limited to) matters set out at Article 15.2, will not relieve the Contractor from its obligations under this Contract or entitle the Contractor to an increase in any rate, percentage adjustment or price payable to it under this Contract.

15.4 The Contractor shall obtain all product warranties from the Named Supplier or, subject to obtaining consent pursuant to Article 15.1, from a party other than the Named Supplier in favour of the Employer and provide the same to the Employer immediately upon receipt.

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**Article 16**      **Social Value**

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The Contractor is committed to ensuring that this Contract provides social value, as more specifically set out and required under the DPS Agreement.

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**Article 17**      **Orders**

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Services Order

17.1 The Employer shall be entitled at any time during the Contract Period to issue an instruction to

the Contractor to provide a range of services (the "Services Order") in relation to:

17.1.1 advising Customers, checking eligibility for funding and referring Customers onto third parties for the delivery of domestic retrofit services, as more particularly set out in Schedule 13 (Lot 1 Terms and Conditions) (the "Lot 1 Services"); and/or:

17.1.2 retrofit programme development, assessment, coordination and project management including PAS2035 roles, as more particularly set out in Schedule 14 (Lot 4 Terms and Conditions) (the "Lot 4 Services")

17.2 Any Services Order issued by the Employer to the Contractor (pursuant to Article 17.1) shall be in the form set out in Schedule 3 (Form of Order) which is attached to the terms and conditions for the delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract and shall include:

17.2.1 a summary of the Lot 1 Services and/or Lot 4 Services to be provided by the Contractor:

17.2.2 the timetable for providing the Lot 1 Services and/or Lot 4 Services, including any Milestones:

17.2.3 the fixed price for delivering the Lot 1 Services and/or Lot 4 Services which shall be calculated in accordance with Schedule 2 (Fee Schedule) which is attached to the terms and conditions for the delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract.

17.3 If the Employer instructs the Contractor to carry out the Lot 1 Services and/or the Lot 4 Services pursuant to Article 17.1, the Contractor shall provide such services in accordance with the terms and conditions as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) of this Contract (as applicable). For the avoidance of doubt, the Parties are not required to enter into a separate contract for the delivery of any Lot 1 Services or Lot 4 Services. The issue of the relevant Services Order and instruction will have the effect of incorporating the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) for the delivery of the Lot 1 Services or Lot 4 Services under this Contract. In the event of any discrepancies or inconsistencies between the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) and other terms of this Contract, the Employer will determine (at its absolute discretion) which terms shall take precedence.

#### Order for Works

17.4 In addition to issuing a Services Order pursuant to Article 17.1, the Employer shall also be entitled at any time during the Contract Period to submit a request to the Contractor (the "Project Brief Request") to provide proposals that may inform any potential future Order for Works which is required.

17.5 Any Project Brief Request may include (without limitation):

- a) design/works/methodology requirements;
- b) an affordability envelope;
- c) any milestones that need to be completed and required dates for completion;
- d) any liquidated damages which may be established pursuant to clause

2.13 (if applicable) which the Employer may propose (acting reasonably);

- e) any recommendations by the Employer's retrofit managing agent;
- f) any required changes to this Contract;

17.6 The Contractor acknowledges and agrees that if the Employer issues any Services Order or Project Brief Request under this Article 17, the Employer:

- a) is not guaranteeing any volume or number of Orders for Works to the Contractor; and
- b) shall be entitled to use other contractors to deliver some or all of the relevant Works.

17.7 The Contractor shall submit its proposals in response to the Project Brief Request (the "Project Brief Response") to the Employer no later than 14 days from the date of either:

- a) the Project Brief Request; or

b) the completion of the Lot 1 Services and/or Lot 4 Services where instructed and to the extent necessary to inform the Project Brief Response.

17.8 The Project Brief Response shall include (without limitation) the following information:

a) the proposed detailed specification and proposals for the Order for the Works (including relevant works methodology)

b) a fixed price proposal for the delivery of the Works based on the Contractor's Tendered Rates and the relevant milestones (if required as part of the Project Brief Request) and details demonstrating how such price has been calculated in accordance with the Contractor's Tendered Rates;

c) a detailed programme for the design and construction of the proposed Works demonstrating achievement of the Order Date for Completion (if specified);

d) the proposed Sub-Contractors and suppliers the Contractor intends to appoint to process the proposed Works and in compliance with the Contractor's tendered supply-chain solution;

e) the Staff who will be responsible for the delivery of the proposed Works and in compliance with the Contractor's tendered supply-chain solution;

f) any project-specific amendments to this Contract required as a result of specific elements of the proposed Works to take account of the scope and nature of any Lot 1 Services and/or Lot 4 Services or in order to satisfy the Project Brief Request and/or any other requirements;

g) compliance with any other requirements set out in the Project Brief Request.

17.9 Upon receipt of the Project Brief Response under Article 17.4, the Employer may place an Order for the Works (whether in whole or in part) or ask the Contractor to submit up to one or more quotations for prior approval by the Employer in accordance with the procedure at clauses 3.5.8 to 3.5.13. The Employer may include any Works subsequently approved under an existing Order or instruct those Works under a new Order.

17.10 Following the agreement of costs in relation to an Order for Works which includes Properties owned by a freehold or leasehold owner of any Property, notwithstanding any other provision in this Contract to the contrary, the Employer shall only be responsible for paying the Employer's Contribution and shall have no liability whatsoever for payment of the Private Resident's Contribution.

#### Energy Retrofit Agreement

17.11 The Contractor acknowledge and agrees that it shall not commence any Works and/or services unless and until the Customer has entered into an Energy Retrofit Agreement with the Employer as set out in Schedule 15 (Energy Retrofit Agreement).

## **Article 18**

### Employer Objectives

18.1 Where it is anticipated that the Employer may instruct multiple Orders, the Parties shall work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving the following objectives:

a) zero-health and safety incidents;

b) a shared commitment to objectives that benefit Customers;

c) team working and consideration for others;

d) to reduce design, supply and construction time;

e) to demonstrate value for money and to drive down costs in real terms by maximising the efficiencies of scale, volume and certainty;

f) to maximise the use of off-site manufacturing solutions and other modern methods of construction;

g) greater predictability of out-turn cost and programme;

h) improvements in quality, productivity and value for money;

i) improvements in environment performance and sustainability and reductions in environmental

impact;

j) right first time with zero defects;

k) the avoidance of disputes;

l) Employer satisfaction with product and service

## **Article 19**

### **Option to Extend**

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~~Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract. The Employer may choose to extend the Contract Period by a further period or periods of up to 1 year plus a further 1 year at its sole discretion. The Employer acknowledges that in the event of a procurement challenge in respect of or in connection with the extension of the Contract Period (should the Employer exercise its option to extend the Contract Period), the Employer reserves the right to terminate the Contract by written notice with immediate effect. For the avoidance of doubt, in the event of the Contract coming to an end in this manner the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of a reduction in the Contract Period or the Contract coming to an end.~~

Contract Particulars

*Note: An asterisk \* indicates where selection has been or should have been made.*

1 Properties and description of the types of work  
(First Recital)

- 1.1 List of properties in the Contract Area in respect of which Orders may be issued:  

[ ]The Contract Area (being the Greater London Area) and various, predominantly but not exclusively, Social Housing properties, predominately owned or managed by local authorities in the Greater London Area in accordance with the details set out or referred to in the Contract Particulars
- 1.2 Description of the types of work for which Orders may be issued:[4]  

[ ]Domestic Retrofit Works

2 Supplemental Provisions[5]  
(Fifth Recital and Schedule 1)

*(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)*

- Supplemental Provision 1: Collaborative working  

\* ~~applies/does not apply~~  
\* applies
- Supplemental Provision 2: Health and safety  

\* ~~applies/does not apply~~  
\* applies
- Supplemental Provision 3: Cost savings and value improvements  

\* ~~applies/does not apply~~  
\* applies
- Supplemental Provision 4: Sustainable development and environmental considerations  

\* ~~applies/does not apply~~  
\* applies
- Supplemental Provision 5: Performance Indicators and monitoring  

\* ~~applies/does not apply~~  
\* applies
- Supplemental Provision 6: Notification and negotiation of disputes

[4] **+++Now footnote [3]+++** Where the National Schedule of Rates is to apply (see items 12.1 and 12.2 of the Contract Particulars) but some (or all) of the work is of a type for which it is appropriate to use as a basis for pricing a version of the National Schedule other than 'Building Works', the Parties, in addition to stating that in item 12.2, should make appropriate entries here (or in any separate document incorporated by reference here) indicating the types of work to which it is agreed that such alternative version of the National Schedule shall apply.

[5] **+++Now footnote [4]+++** Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

~~\* applies/does not apply~~  
\* applies

Where Supplemental Provision 6 applies, the respective nominees of the Parties are

Employer's nominee

[ ] Senior Executive to be nominated by the Employer and notified in writing to the Contractor.

Contractor's nominee

[ ] Senior Executive to be nominated by the Contractor and notified in writing to the Employer.

or such replacement as each Party may notify to the other from time to time

**3 Contract Period<sup>[6]</sup>**  
(Article 1 and clause 7.1)

Subject to clause 7.1, the Contract Period will be [ ] year(s)/months Period of 1 year with the option to extend 1 year plus a further 1 year at the Employer's discretion

commencing on [ ] 8th March 2024

**4 Arbitration**  
(Article 7)

*(If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.)<sup>[7]</sup>*

Article 7 and clauses 9.3 to 9.8 (Arbitration)

\* ~~apply~~/do not apply

**5 BIM Protocol**  
(Clause 1.1)

BIM Protocol (where applicable)  
(State title, edition, date or other identifiers of the relevant documents.)

[ ] Not applicable

**6 Orders – minimum and maximum value**  
(Clause 2.4)

Minimum value of any one Order to be issued

£ [ ] Not applicable

(words [ ] The Employer gives no guarantee as to the size or frequency of any orders.)

Maximum value of any one Order to be issued

£ [ ] Not applicable

(words [ ] The Employer gives no guarantee as to the value of any orders to be placed, if at all SAVE that any orders placed will be remunerated in accordance with the payment provisions herein.)

[6] **+++Now footnote [5]+++** The period is envisaged as normally being at least one year.

[7] **+++Now footnote [6]+++** On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Measured Term Contract Guide. See also footnote [3] **+++ now footnote [2] +++**.

**7 Orders – value of work to be carried out**  
(Clause 2.5)

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

\* £[ ] (words [ ]) per annum

\* £[ ] 13,767,978.33 (words [ ] *Thirteen million, seven hundred sixty-seven thousand, nine hundred seventy-eight pounds and thirty-three pence*) for the Contract Period

**8 Orders – priority coding<sup>[8]</sup>**  
(Clause 2.6)

[ ] Not required

**9 Construction Industry Scheme (CIS)**  
(Clause 4.2)

The Employer at the commencement of the Contract Period

\* is a 'contractor'

~~\* is not a 'contractor'~~

for the purposes of the CIS

**10 Payments**  
(Clauses 4.3, 4.4 and 4.5)

Estimated value of an Order above which progress payments can be applied for  
(If none is stated, it is £2,500.)

£[ ] Only those properties which have been accepted for handover by Contract Administrator will be considered for payment on the due date. Properties shall not be accepted for handover until the "handover pack" containing all certification has been passed received by the Contract Administrator.

Valuation Dates

(If no date is stated, the Valuation Date is the last day of each month.)

The Valuation Date in each month is the

[ ] The due date in each month is the 26th of the month (or nearest working day if the 26th falls on a non-working day of the month

**11 Responsibility for measurement and valuation**  
(Clause 5.2)

(Unless one of the three options below is selected and, if relevant, an estimated value specified, the Contract Administrator shall measure and value all Orders.)

~~\* The Contract Administrator shall measure and value all Orders~~

~~\* The Contract Administrator shall measure and value each Order with an estimated value of~~

£[ ]

~~or more; the Contractor shall measure and value all other Orders~~

\* The Contractor shall measure and value all Orders

[8] **+++Now footnote [7]+++** To be completed if the Employer requires; as an example the code might be:

'A': response time to be 4 hours;

'B': to be commenced within 2 days;

'C': to be commenced within 14 days;

'D': to be commenced as agreed.

**12 Schedule of Rates**  
(Clauses 5.3, 5.6.1 and 5.6.2)

12.1 The Schedule of Rates is

- \* ~~the National Schedule of Rates~~ the Schedule of Rates identified in Schedule 6 (Schedule of Rates) together with Schedule 5 (specification) applicable to this contract included in or annexed to it.

- \* ~~[ ]~~  
(identify the Schedule of Rates to be used)

subject to adjustment of the rates listed in that Schedule by

- \* the addition
- \* ~~the deduction~~

of the Adjustment Percentage, which is

- \* ~~[ ]~~ Nil per cent
- \* ~~as set out in the following document [ ]~~

~~{12.2} Where the Schedule of Rates is the National Schedule of Rates the version(s) identified below are to apply<sup>[9]</sup>.~~

- \* ~~National Schedule of Rates (Building Works)~~
- \* ~~National Schedule of Rates (Access Audit)~~
- \* ~~National Schedule of Rates (Electrical Services in Buildings)~~
- \* ~~National Schedule of Rates (Mechanical Services in Buildings)~~
- \* ~~National Schedule of Rates (Painting and Decorating)~~
- \* ~~National Schedule of Rates (Highways Maintenance)~~
- \* ~~National Housing Maintenance Schedule~~

12.2 ~~Not applicable~~

12.3 Rates – Fluctuations

Clause 5.6.1  
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

- \* ~~applies~~
- \* does not apply

12.4 Basis and dates of revision  
(~~Not applicable where the National Schedule of Rates applies~~)

~~Where clause 5.6.1 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6.1.2  
(If no basis is identified the rates remain fixed for all Orders.)~~

- \* ~~is as follows~~
- \* ~~is set out in the following document~~

~~[ ] Not applicable  
Where clause 5.6.1 applies, the dates as at which the Schedule of Rates is to be revised are  
(If no other date(s) are specified here or in the document setting out the basis for revision, the date shall be 1 August in each year.)~~

~~[ ]~~

[9] — Delete all versions that do not apply. See also footnote [4].

**13 Daywork**

(Clauses 5.4, 5.6.3 and 5.6.4)

**13.1 Valuation – percentage additions**

Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:

Overheads and profit on Materials

~~Not applicable~~ per cent

Overheads and profit on Plant, Services and Consumable Stores

~~Not applicable~~ per cent

Overheads and profit on Sub-Contractors

~~Not applicable~~ per cent

**13.2 Revision of Schedule of Hourly Charges**

Clause 5.6.3

*(Unless 'applies' is deleted, the clause shall be deemed to apply.)*

~~\*~~ ~~applies~~

\* does not apply

~~(Where clause 5.6.3 applies) the annual revision date (if other than 1 August) is~~

~~(Where clause 5.6.3 applies) the basis of revision of hourly charges, if not set out in the Schedule of Hourly Charges<sup>[10]</sup>~~

~~\* is as follows~~

~~\* is set out in the following document~~

**14 Overtime work**

(Clause 5.7)

~~The percentage addition in respect of overheads and profit on non-productive overtime rates is (Not applicable where an inclusive rate for such overtime. An all-in non-productive overtime rate is included in the Schedule of Hourly Charges.)~~

~~per cent~~

**15 Insurance**

(Clauses 6.4.1, 6.7, 6.8, 6.9 and 6.12)

**15.1 Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than**

£  ~~10,000,000~~

for any one occurrence or series of occurrences arising out of one event

**15.2 Percentage to cover professional fees**

*(If no other percentage is stated, it shall be 15 per cent.)*

~~15~~ per cent

**15.3 Insurance of existing structures – clause 6.7.1<sup>[11]</sup>**

**[10]** ~~—If clause 5.6.3 applies but the basis of revision is not set out in the Schedule of Hourly Charges or identified, clause 5.6.5 will apply.~~

**[11]** **+++Now footnote [8]+++** As to choice of applicable insurance provisions, see the Measured Term Contract Guide. In respect of existing

*(Unless otherwise stated, clause 6.7.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*

~~\* applies~~

\* is replaced by the provisions of the following document(s)

~~[ ] The Employer is not required to and shall not name the Contractor on a Joint Policy.~~

(the 'Clause 6.7.1 Replacement Schedule')

- 15.4 Insurance of work or supply comprised in Orders – clause 6.8  
*(If neither entry is deleted, the clause does not apply.)*

\* applies

~~\* does not apply~~

- 15.5 Where clause 6.8 applies and cover is to be provided under the Contractor's annual policy, the annual renewal date is (as supplied by the Contractor)

~~[ ] 30th September 2024~~

- 15.6 Terrorism Cover – details of the required cover  
*(Unless otherwise stated, Pool Re Cover is required.)*

are set out in the following document(s)

~~[ ] Not required~~

## 16 Break Provisions – Employer or Contractor (Clause 7.1)

The period of notice, if less than 13 weeks, is

~~[ ] 13 weeks~~

## 17 Settlement of Disputes (Clauses 9.2, 9.3 and ~~9.4.19.4.1~~)

### Adjudication<sup>[12]</sup>

The Adjudicator is [ ]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[13]</sup>

*(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)*

~~\* Royal Institute of British Architects~~

\* The Royal Institution of Chartered Surveyors

~~\* constructionadjudicators.com<sup>[14]</sup>~~

~~\* Chartered Institute of Arbitrators~~

### Arbitration<sup>[15]</sup>

structures, it is vital that any prospective Employer who is not familiar with clause 6.7 and the alternative solutions under clause 6.7.1 – in particular, any Employer who is a tenant – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

[12] ~~+++Now footnote [9]+++~~ The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body.  
The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

[13] ~~+++Now footnote [10]+++~~ Delete all but one of the nominating bodies asterisked.

[14] ~~constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.~~

[15] ~~This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and clauses 9.3 to 9.8 (Arbitration)~~

~~Appointor of Arbitrator (and of any replacement)<sup>[16]</sup>  
(If no appointor is selected, the appointor shall be the President or a Vice-President of The Royal Institution of Chartered Surveyors.)~~

~~President or a Vice-President:  
\* Royal Institute of British Architects  
\* The Royal Institution of Chartered Surveyors  
\* Chartered Institute of Arbitrators~~

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apply:

**[16]**—Delete all but one of the bodies asterisked.

## Attestation

### Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Measured Term Contract Guide.

#### Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

#### Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

#### Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

*Execution under hand*

**As witness**

the hands of the Parties  
or their duly authorised representatives

---

Signed by or on behalf of  
the Employer

---

in the presence of:

*witness' signature*

*witness' name*

*witness' address*

---

---

Signed by or on behalf of  
the Contractor

---

in the presence of:

*witness' signature*

*witness' name*

*witness' address*

---

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## Notes on Execution as a Deed

~~{1} For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, (A) to (D), for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.~~

~~{2} For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:~~

~~{{(A)}} through signature by a Director and the Company Secretary or by two Directors;~~

~~{{(B)}} by affixing the company's common seal in the presence of a Director and the Company Secretary or of two Directors or other duly authorised officers; or~~

~~{{(C)}} signature by a single Director in the presence of a witness who attests the signature.~~

~~Methods (A) and (C) are available to public and private companies whether or not they have a common seal. (Method (C) was introduced by section 44(2)(b) of the Companies Act 2006.) Methods (A) and (C) are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method (B).~~

~~{3} Where method (A) is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.~~

~~{4} If method (B) (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the Company Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to Company Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "Company" under the second signature should be deleted where appropriate.)~~

~~{5} Method (C) (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.~~

~~{6} Where the Employer or Contractor is an individual, he should use method (D) and sign where indicated in the presence of a witness who should then sign and set out his name and address.~~

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely<sup>1</sup> [\_\_\_\_\_]

**(A)**—acting by a Director and the Company Secretary/two Directors **of the company**<sup>2,3</sup>

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* \_\_\_\_\_ *Director*

and

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* \_\_\_\_\_ *Company Secretary/Director*

**(B)**—by affixing hereto the common seal **of the company/other body corporate**<sup>2,4</sup>

in the presence of

\_\_\_\_\_  
*Signature* \_\_\_\_\_ *Director*

\_\_\_\_\_  
*Signature* \_\_\_\_\_ *Company Secretary/Director*

*[Common seal of company]*

**(C)**—by attested signature of a single Director **of the company**<sup>2,5</sup>

\_\_\_\_\_  
*Signature* \_\_\_\_\_ *Director*

in the presence of

*Witness' signature* \_\_\_\_\_ *(Print name)* \_\_\_\_\_

*Witness' address* \_\_\_\_\_

**(D)**—by attested signature **of the individual**<sup>6</sup>

\_\_\_\_\_  
*Signature*

in the presence of

*Witness' signature* \_\_\_\_\_ *(Print name)* \_\_\_\_\_

*Witness' address* \_\_\_\_\_

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

## ~~Executed as a Deed by the Contractor~~

~~(A) — acting by a Director and the Company Secretary/two Directors of the company<sup>2,3</sup>~~

~~(B) — by affixing hereto the common seal of the company/other body corporate~~<sup>2,4</sup>

~~[Common seal of company]~~

~~(C) by attested signature of a single Director of the company~~<sup>2,5</sup>

~~(D) — by attested signature of the individual<sup>6</sup>~~

Witness' address

~~Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.~~

# Conditions

## Section 1 Definitions and Interpretation

### 1.1 Definitions

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

**Adjudicator:** an individual appointed under **clause 9.2** as the Adjudicator.

**Adjustment Percentage:** the percentage tendered by the Contractor on or off the rates listed in the Schedule of Rates and stated in the **Contract Particulars (item 12.1)** (which shall not apply to any valuation of an Order or a part of it as daywork).

**Agreement:** the Agreement to which these Conditions are annexed, including its Recitals, Articles and Contract Particulars.

**All Risks Insurance:** see **clause 6.6**.

**Arbitrator:** an individual appointed under **clause 9.4** as the Arbitrator.

**Article:** an article in the **Agreement**.

**BIM Protocol:** (where applicable) the document identified as such in the **Contract Particulars (item 5)**.

**Business Day:** any day which is not a Saturday, a Sunday or a Public Holiday.

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**Clause 6.7.1 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Contract Particulars (item 15.3)**.

**Conditions:** the clauses set out in sections 1 to 9 of these Conditions, together with and including Schedule 1 hereto.

**Construction Industry Scheme (or 'CIS'):** the current scheme under the Income and Corporation Taxes Act 1988.

**Construction Phase Plan:** the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.

**Contract Administrator:** the person named in **Article 3** or any successor nominated or otherwise agreed under **clause 3.10**.

**Contract Area:** see the **First Recital**.

**Contract Documents:** the Agreement, these Conditions, the Schedule of Rates and (where applicable) the BIM Protocol.

**Contract Particulars:** the particulars in the **Agreement** and there described as such, as completed by the Parties.

**Contract Period:** subject to **clause 7.1**, the period stated in the **Contract Particulars (item 3)**.

**Contractor:** the person named as Contractor in the **Agreement**.

**Contractor's Persons:** the Contractor's employees and agents, all other persons employed or engaged in the execution of Orders or any part of them and any other person properly on the Site in

connection therewith, excluding the Contract Administrator, the Employer, Employer's Persons and any Statutory Undertaker.

**Employer:** the person named as Employer in the **Agreement**.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Contract Administrator and any Statutory Undertaker.

**Excepted Risks:** see **clause 6.6**.

**Insolvent:** see **clause 8.1**.

**Interest Rate:** a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

**Joint Names Policy:** see **clause 6.6**.

**Local or Public Authority:** a body that is a 'contracting authority' as defined by the PC Regulations.

**National Schedule of Rates:** the National Schedule of Rates (Building Works) and/or such alternative version of the [National Schedule of Rates](#) (published by NSR Management Ltd.) identified in the **Contract Particulars (item 12.2)**.

**Order:** the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under this Contract on instructions from the Contract Administrator, including any Variation thereto.

**Order Completion Date:** see **clause 2.11**.

**Parties:** the Employer and the Contractor together.

**Party:** either the Employer or the Contractor.

**PC Regulations:** the Public Contracts Regulations 2015.

**Principal Contractor:** the Contractor or such other contractor as is either named in **Article 5** or appointed by the Employer in relation to any Order.

**Principal Designer:** the Contract Administrator or such other person as is either named in **Article 4** or appointed by the Employer in relation to any Order.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[17]</sup>

**Recitals:** the recitals in the **Agreement**.

**Schedule of Hourly Charges:** see **clause 5.4.1**.

**Schedule of Rates:** the schedule of rates identified in the **Contract Particulars (item 12)**, together with the preliminaries and specification preambles applicable to this Contract included in or annexed to it.

**Scheme:** Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

**Site:** the building(s) and/or land within the Contract Area to which an Order relates.

**Site Materials:** all unfixed materials and goods delivered to and placed on or adjacent to a Site which are intended for incorporation in the work under an Order relating to that Site.

**Specified Perils:** see **clause 6.6**.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the work in any Order or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to that work or with whose systems the work is, or is to be, connected.

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[17] **+++Now footnote [11]+++** Amend as necessary if different Public Holidays are applicable.

**Statutory Undertaker:** any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

**Terrorism Cover:** see **clause 6.6**.

**Valuation Date:** each date as specified by the **Contract Particulars (item 10)**.

**Variation:** see **clause 5.1**.

**VAT:** Value Added Tax.

**Works Insurance Policy:** the Joint Names Policy or policies covering the work or supply comprised in Orders to be effected and maintained under clause 6.7.2 or 6.8.

## **1.2 Agreement etc. to be read as a whole**

The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or in any drawing or specification issued as part of an Order shall override or modify the Agreement or these Conditions.

## **1.3 Headings, references to persons, legislation etc.**

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.3.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract;
- 1.3.2 the singular includes the plural and vice versa;
- 1.3.3 a gender includes any other gender;
- 1.3.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.3.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.3.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

## **1.4 Reckoning periods of days**

Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

## **1.5 Contracts (Rights of Third Parties) Act 1999**

Notwithstanding any other provision of this Contract, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

## **1.6 Notices and other communications**

- 1.6.1 Each Order, notice, instruction or other communication referred to in the Agreement or these Conditions shall be in writing.
- 1.6.2 Unless otherwise stated in these Conditions, any notice or other communication under this Contract may be given to or served on the recipient by any effective means at the address specified in the Agreement or such other address as he shall notify to the other Party. If no address is then current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered or principal office.

## 1.7 Applicable law

This Contract shall be governed by and construed in accordance with the law of England.<sup>[18]</sup>

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[18] +++Now footnote [12]+++ Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out Work

### 2.1 Contractor's obligations

On receipt of an Order the Contractor shall carry it out in a proper and workmanlike manner and in accordance with the Contract Administrator's instructions, the Contract Documents, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

### 2.2 Materials, goods and workmanship

2.2.1 The Contractor in carrying out each Order shall use materials, goods and workmanship of the quality and standards specified in the Order or, if not so specified, as specified in the Schedule of Rates.

2.2.2 Insofar as the quality of materials or goods or of the standards of workmanship are stated to be a matter for the Contract Administrator's approval, such quality and standards shall be to his reasonable satisfaction.

2.2.3 To the extent that the quality of materials and goods or standards of workmanship are not described in the Order or Schedule of Rates nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the relevant work.

2.2.4 For the purposes of carrying out each Order the Contractor, subject to clause 2.3.1.2, shall:

2.2.4.1 provide all the labour, materials and goods necessary;

2.2.4.2 provide, unless otherwise stated in the Contract Documents, the requisite plant and equipment for the proper execution of all Orders, including scaffolding, tackle, machinery, tools or other appliances and everything necessary for the use of his workmen and shall be responsible for carrying them to the place where they are required, for any necessary erection and for subsequent removal;

2.2.4.3 provide all items necessary to comply with the Statutory Requirements in respect of safety, health and welfare,

and for the purposes of this Contract shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the [Construction Skills Certification Scheme](#) (CSCS) or qualified under an equivalent recognised qualification scheme.

### 2.3 Rights of Employer

2.3.1 The Employer reserves the right:

2.3.1.1 to place orders for similar work with other contractors or his own labour within the Contract Area;

2.3.1.2 to supply any of the materials, goods or plant and equipment necessary for the carrying out of any Order.

2.3.2 Materials and goods supplied by the Employer under clause 2.3.1.2 shall remain the property of the Employer and shall be used by the Contractor for the carrying out of an Order and for no other purpose and the Contractor shall be responsible for their safe storage whilst on the Site. Any such materials or goods not required for the carrying out of an Order shall, on completion of the Order or on the termination of the Contractor's employment, whichever first occurs, be disposed of or dispatched by the Contractor as directed by the Contract Administrator; the cost of such disposal or dispatch shall be certified by the Contract Administrator for payment by the Employer under clause 4.6.

2.3.3 The Contractor shall give a receipt for any materials or goods handed over to him by the Contract Administrator and shall obtain a receipt for any returned.

- 2.3.4 The Contractor shall be responsible for the safe storage of any plant and equipment supplied for him by the Employer under clause 2.3.1.2 and shall return such plant and equipment to the Contract Administrator at the Site on completion of the Order for which it is supplied or on termination of the Contractor's employment, whichever first occurs. The Contractor shall give a receipt for such plant and equipment and obtain a receipt from the Contract Administrator on its return.
- 2.3.5 The Employer shall notify the Contractor of the then current value of any materials or goods or usage of plant supplied under this clause 2.3 and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge.
- 2.3.6 Materials and goods supplied by the Employer for any Order shall be of the respective kinds described in the Schedule of Rates; the Contractor shall not be liable for any loss or damage resulting from failure of such materials or goods to conform with this clause 2.3.6.

## **2.4 Size and duration of Orders**

Unless otherwise agreed between the Contractor and the Contract Administrator, Orders shall be of a size consistent with the Contract Particulars (item 6) and shall be reasonably capable of being carried out within the Contract Period.

## **2.5 Value of work to be carried out under this Contract**

With regard to the anticipated value of work as stated in the Contract Particulars (item 7), the Employer gives no warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment.

## **2.6 Orders – completion**

Unless covered by a priority coding referred to in the Contract Particulars (item 8), each Order shall state a commencement date and a reasonable date for its completion and, subject to clause 2.10.2, the Contractor shall complete each Order by that completion date.

## **2.7 Programme**

Where the Contract Administrator requests, the Contractor, without charge to the Employer, shall provide the Contract Administrator with a programme for carrying out the Orders identified by the Contract Administrator in his request and, within a reasonable time after the issue of a Variation, with amendments and revisions to that programme to take account of the Variation. Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents.

## **2.8 Divergences from Statutory Requirements**

- 2.8.1 If the Contractor becomes aware of any divergence between the Statutory Requirements and either an Order or a Variation, he shall immediately give to the Contract Administrator a notice specifying the divergence.
- 2.8.2 Provided the Contractor is not in breach of clause 2.8.1, the Contractor shall not be liable under this Contract if the work comprised in an Order does not comply with the Statutory Requirements to the extent that the non-compliance results from the Contractor having carried out work in accordance with the Order or with any instruction requiring a Variation.

## **2.9 Fees or charges**

The Contractor shall pay all fees and charges (including any rates or taxes) legally demandable under any of the Statutory Requirements in respect of an Order. The Contractor shall be reimbursed for payment of such fees and charges to the extent that they are not included in the rates or prices in the Schedule of Rates.

## **2.10 Extension of time**

- 2.10.1 The Contractor shall forthwith give notice to the Contract Administrator of any matter which is causing or is likely to cause delay in the completion of an Order beyond the date stated for its completion but shall constantly use his best endeavours to carry out each Order by the stated date.

- 2.10.2 If the Contractor is unable to complete an Order by its stated date for completion, due to a suspension by the Contractor of the performance of his obligations under this Contract pursuant to clause 4.7 or for reasons beyond his control (including compliance with any instruction of the Contract Administrator that does not arise from the Contractor's default), the Contract Administrator shall fix such later date for completion as may be fair and reasonable and notify the Parties accordingly. Provided the Order when issued complied with clause 2.4, the Contractor shall not be relieved of his obligations to complete the Order by the later date so fixed by reason of that later date being outside the Contract Period.

## **2.11 Order Completion Date**

- 2.11.1 The Contractor shall notify the Contract Administrator the date when in his opinion an Order has been completed and/or supplied in accordance with this Contract. If the Contract Administrator does not dissent by notice, giving reasons, within 14 days of receipt of the Contractor's notice, the date so notified shall for all the purposes of this Contract be the date when the Order was completed and/or supplied in accordance with this Contract (the 'Order Completion Date').
- 2.11.2 If the Contract Administrator dissents, then, as soon as he is satisfied that the Order has been duly completed and/or supplied, he shall as soon as practicable notify the Contractor and, unless otherwise agreed or determined in accordance with the dispute resolution procedures of this Contract, the Order Completion Date shall be the date stated in the Contract Administrator's notice.

## **2.12 Defects**

Any defects, shrinkages or other faults which appear within 6 months of the Order Completion Date and which are due to materials or workmanship not in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer.

## Section 3 Control of Work

### 3.1 Assignment

Neither the Employer nor the Contractor shall, without the consent of the other, assign this Contract or any rights thereunder.

### 3.2 Sub-contracting

The Contractor shall not without the prior consent of the Contract Administrator sub-contract any Order or part of an Order. Such consent shall not be unreasonably delayed or withheld and shall apply to all Orders except to the extent otherwise stated in that consent. Where considered appropriate, the Contractor shall engage the Sub-Contractor using the JCT Short Form of Sub-Contract.

### 3.3 Contractor's representative

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

### 3.4 Access to the Site

3.4.1 Except to the extent that the Schedule of Rates otherwise provides, access to the Site shall be arranged by, and in accordance with instructions of, the Contract Administrator who, where the Site is occupied, shall also be responsible for ensuring that the occupier removes such fixtures, fittings or other items as are necessary to enable the Contractor to carry out the Order and does not otherwise unreasonably prevent or impede the Contractor from carrying out such Order.

3.4.2 If the Contractor is unable to gain access to the Site in accordance with the Contract Administrator's instructions or, having been granted access to an occupied Site, cannot reasonably carry out the Order by reason of the Contract Administrator's or occupier's non-compliance with clause 3.4.1, he shall forthwith notify the Contract Administrator; the time necessarily spent unproductively by the Contractor in consequence shall be assessed or recorded and valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

3.4.3 To the extent that clauses 3.4.1 and 3.4.2 do not apply because the Schedule of Rates provides otherwise, the Contractor shall comply with the access provisions of that Schedule.

### 3.5 Variations

3.5.1 The Contract Administrator may from time to time require Variations, through instructions and/or the issue of further drawings, details, directions and/or explanations.

3.5.2 The Contractor shall not make any alteration in, addition to or omission from the work and/or supply comprised in any Order except as required under clause 3.5.1. If the Contractor carries out a Variation otherwise than pursuant to an instruction or other requirement of the Contract Administrator, the Contract Administrator may sanction it.

3.5.3 No Variation required by the Contract Administrator or subsequently sanctioned by him shall invalidate the Order or vitiate this Contract.

3.5.4 The value of any Variation issued or sanctioned by the Contract Administrator shall be ascertained in accordance with section 5 and, as soon as ascertained in whole or in part, the ascertained amount shall be included in the estimated value of the relevant Order for the purposes of clause 4.3 (progress payments) and in the valuation of it for the purposes of clause 4.4 or 4.5 (final payment).

### 3.6 Cancellation of an Order

3.6.1 The Contract Administrator may cancel any Order.

3.6.2 On the cancellation of an Order:

- 3.6.2.1 the Contract Administrator shall value and certify, in accordance with clause 4.4, for payment by the Employer under that clause, any work or supply which in his opinion has been properly carried out or made by the Contractor against that Order, taking into account any amounts previously certified in respect of it; and
- 3.6.2.2 the Employer shall reimburse the Contractor such additional direct costs as may reasonably have been incurred by the Contractor as a result.

### 3.7 Exclusion from the Site

The Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the Site of any person employed thereon.

### 3.8 Non-compliance with instructions

If within 7 days after receipt of a notice from the Contract Administrator requiring compliance with a Contract Administrator's instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and such costs may be withheld or deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

### 3.9 CDM Regulations

Each Party undertakes to the other that in relation to each Order and Site he will duly comply with applicable CDM Regulations. In particular but without limitation:

- 3.9.1 the Employer shall in each case ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
- 3.9.2 the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[19]</sup>
- 3.9.3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
- 3.9.4 if the Employer appoints any other person as the Principal Designer or Principal Contractor either in relation to all Orders or for specific Orders, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

### 3.10 Replacement of Contract Administrator

If the Contract Administrator at any time ceases to hold that post for the purposes of this Contract, the Employer shall as soon as reasonably practicable, and in any event within 14 days of the cessation, nominate a replacement. No replacement Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

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[19] **+++Now footnote [13]+++** Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8.

## Section 4 Payment

### 4.1 VAT

Sums certified for payment are exclusive of VAT and in relation to each payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

### 4.2 Construction Industry Scheme (CIS)

Where it is stated in the Contract Particulars (item 9) that the Employer is a 'contractor' for the purposes of the Construction Industry Scheme (CIS) or if at any time up to the final payment in respect of the last Order outstanding under this Contract the Employer becomes such a 'contractor', his obligation to make any payment under this Contract is subject to the provisions of the CIS.

### 4.3 Progress payments

4.3.1 Where at the date of issue of an Order or of any Variation to it (after adjustment for the effects of any relevant Variations):

4.3.1.1 the value of the Order is estimated by the Contract Administrator to exceed the amount stated in the Contract Particulars (item 10); and/or

4.3.1.2 the duration of the work comprised in that Order is estimated to be 45 days or more

the Contractor may not later than each subsequent Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order calculated as at the relevant Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.

4.3.2 The due date for a progress payment shall in each case be the date 7 days after the relevant Valuation Date.

4.3.3 Where an application is made in accordance with clause 4.3.1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be, or to have been, due to the Contractor at the due date in respect of the progress payment, after taking into account any amounts previously certified and (where relevant) any sums paid under clause 4.6.3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.

### 4.4 Final payment where Contract Administrator measures and values Orders

Where the Contract Administrator is to value an Order pursuant to clause 5.2:

4.4.1 the due date shall be 28 days after the Order Completion Date or, for Orders where progress payments are to be made, 51 days after the Order Completion Date;

4.4.2 the Contract Administrator shall not later than 5 days after the relevant due date issue a certificate stating as the sum due the total amount that he considers to be or have been due to the Contractor under these Conditions in respect of the completed Order, less any amounts previously certified in respect of it under clause 4.3.3 and (where relevant) any sums paid in respect of any such application as is mentioned in clause 4.3.3, and stating the basis on which the sum has been calculated;

4.4.3 if the Contract Administrator does not issue a certificate in respect of the Order in accordance with clause 4.4.2 within 33 days of the Order Completion Date or, for Orders where progress payments are to be made, within 56 days of the Order Completion Date, the Contractor may make an application stating the sum that he considers will or has become due to him in respect of the Order and the basis on which that sum has been calculated.

#### **4.5 Final payment where Contractor measures and values Orders**

Where the Contractor is to value an Order pursuant to clause 5.2:

- 4.5.1 the Contractor shall following the Order Completion Date make an application to the Contract Administrator in respect of the completed Order, stating the sum that the Contractor considers will become due to him on the due date in respect of the Order and the basis on which that sum has been calculated, accompanied by such further information as may be specified in the Contract Documents;
- 4.5.2 the due date for payment in respect of the completed Order shall be the date 7 days after the next monthly Valuation Date following receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum that he considers to be due to the Contractor in respect of the completed Order, after taking into account any amounts previously certified in respect of the Order, and the basis on which that sum has been calculated;
- 4.5.3 if the Contractor fails to make an application in accordance with clause 4.5.1 within 56 days after the Order Completion Date, the Contract Administrator may at any time give the Contractor notice that, unless the Contractor makes an application within a period of 28 days after the date of issue of the notice, the Contract Administrator will arrange for the measurement and valuation of the work and/or supply comprising the Order;
- 4.5.4 if the Contractor fails to make an application within the period of notice given under clause 4.5.3:
  - 4.5.4.1 the Contract Administrator shall arrange for measurement and valuation of the Order;
  - 4.5.4.2 the due date shall be 35 days from the date of expiry of the notice period; and
  - 4.5.4.3 the Contract Administrator shall not later than 5 days after the due date issue a certificate in accordance with clause 4.5.2 but, in addition to deducting any amounts previously certified in respect of the Order, shall also be entitled to deduct the amount of the costs reasonably and properly incurred by or on behalf of the Employer in respect of the measurement and valuation;
- 4.5.5 if clause 4.5.4 applies but the Contract Administrator fails to issue a certificate as required by clause 4.5.4.3, the Contractor may at any time after the expiry of the 5 day period referred to in clause 4.5.4.3 make an application giving the details required by clause 4.5.1.

#### **4.6 Payments – final date and amount**

- 4.6.1 Subject to clause 4.6.4, the final date for payment of each payment under clauses 4.3 to 4.5 shall be 14 days from its due date.
- 4.6.2 Subject to any notice given by the Employer under clause 4.6.5, the Employer shall pay the sum stated as due in the relevant certificate on or before the final date for payment.
- 4.6.3 If a certificate is not issued in accordance with clause 4.3.3, 4.4.2, 4.5.2 or 4.5.4, the Employer shall, subject to any notice given under clause 4.6.5, pay the Contractor the sum stated as due in the application.
- 4.6.4 Where an application is made by the Contractor in the circumstances mentioned in clause 4.4.3 or 4.5.5, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after the last date for issue of the certificate referred to in clause 4.4.2 or 4.5.4.3 that the application is made but notice by the Employer under clause 4.6.5 may not be given prior to the application being made.
- 4.6.5 Where the Employer intends to pay less than the sum stated as due from him in the certificate or application, he shall not later than 5 days before the final date for payment give the Contractor notice of that intention specifying the sum he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated. Where such notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.6.6 If the Employer fails to pay a sum, or any part of it, due to the Contractor under these Conditions by its final date for payment, the Employer shall, in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that

amount at the Interest Rate for the period from the final date for payment until payment is made.

- 4.6.7 Any such unpaid amount and any interest under clause 4.6.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.7 or to terminate his employment under section 8.
- 4.6.8 A notice to be given by the Employer under clause 4.6.5 may be given on his behalf by the Contract Administrator or by any other person who the Employer notifies the Contractor as being authorised to do so.
- 4.6.9 In relation to the requirements for the issue of certificates and the giving of notices under section 4, it is immaterial that the amount then considered to be due may be zero.

#### **4.7 Contractor's right of suspension**

- 4.7.1 If the Employer fails to pay a sum payable to the Contractor in accordance with clause 4.6 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Contract Administrator, of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 4.7.2 Where the Contractor exercises his right of suspension under clause 4.7.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.7.3 Applications in respect of any such costs and expenses shall be made to the Contract Administrator and the Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next certificate.

## Section 5 Measurement and Valuation

### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, quality or quantity of work or supply comprised in an Order;
- 5.1.2 any other addition to, omission from or alteration of any Order; or
- 5.1.3 the removal of any inconsistencies in or between any documents included in an Order.

### 5.2 Measurement and Valuation – responsibility

Unless otherwise agreed by the Contract Administrator and the Contractor, all work carried out pursuant to an Order (including any Variations required by the Contract Administrator or subsequently sanctioned by him) shall be valued in accordance with clauses 5.3 to 5.8. Such valuation of an Order shall be undertaken by whichever of them is designated in the Contract Particulars (item 11).

### 5.3 Valuation – measurement

- 5.3.1 Subject to clauses 2.3.5, 5.4.1 and 5.5 the valuation of an Order shall be ascertained by measurement and valuation in accordance with the principles of measurement and the rates or prices in the Schedule of Rates applicable at the date of the Order, insofar as such rates or prices apply, subject to adjustment by the Adjustment Percentage.
- 5.3.2 Where the Contract Administrator is to undertake measurement of an Order, he shall give the Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Contractor may require.

### 5.4 Valuation – daywork

- 5.4.1 Where in the Contract Administrator's opinion the appropriate basis for valuation of an Order or part of an Order is daywork, the direct labour element shall be calculated in accordance with the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the Schedule of Hourly Charges annexed to this Contract, with related charges being calculated in accordance with that Schedule and/or the Contract Particulars<sup>[20]</sup>.
- 5.4.2 The Contractor shall give to the Contract Administrator reasonable prior notice of the commencement of any work (or supply of labour and/or materials) which he considers should be carried out as daywork and not later than 7 Business Days after the work has been executed the Contractor shall deliver to the Contract Administrator for verification return(s) in the form required by the Contract Administrator specifying the time spent daily upon the work, the workmen's names, and the plant, materials and other items employed. A copy of the returns, if approved by the Contract Administrator, shall be returned to the Contractor.

### 5.5 Derived rates

- 5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Charges, as the case may be, the value shall be based upon such rates or prices as may fairly be deduced therefrom, rates and prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.
- 5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be agreed between the Parties, failing which it shall be ascertained on a fair

[20] **+++Now footnote [14]+++** In addition to the inclusive labour rates set out in the Schedule of Hourly Charges, this Contract envisages that that Schedule, alone or in combination with the Contract Particulars, will set out the basis of charging for any daywork sub-contracted and will provide for any percentage or other handling charges that are to be added to the cost of materials, goods, plant, services, consumables and (if appropriate) sub-contract work supplied.

and reasonable basis by the Contract Administrator after consultation with the Contractor.

## **5.6 Rates – Fluctuations**

- 5.6.1 Unless it is stated in the Contract Particulars (item 12.3) that this clause 5.6.1 does not apply:
- 5.6.1.1 where the Schedule of Rates is the National Schedule of Rates, the rates in that Schedule current at the commencement of the Contract Period will apply to the valuation of Orders issued prior to the next following 1 August and subsequently the update for those rates at 1 August in each year will apply to Orders issued on or after 1 August; or
- 5.6.1.2 where the Schedule of Rates is not the National Schedule of Rates, the basis on which and the dates as at which the rates in that Schedule are to be revised during the Contract Period shall be those stated or referred to in the Contract Particulars (item 12.4).
- 5.6.2 If it is stated in the Contract Particulars that clause 5.6.1 does not apply or, where the Schedule of Rates is not the National Schedule of Rates, if there is no identified basis for revision as referred to in clause 5.6.1.2, the rates given in the Schedule of Rates current at the commencement of the Contract Period shall remain fixed for all Orders.
- 5.6.3 Unless it is stated in the Contract Particulars (item 13.2) that this clause 5.6.3 does not apply, the all-in labour rates set out in the Schedule of Hourly Charges shall be revised at 1 August in each year, or such other annual revision date as is stated in that item, in accordance with the basis (if any) set out in that Schedule or identified in the Contract Particulars or, if none, in accordance with clause 5.6.5.
- 5.6.4 Whether or not clause 5.6.3 applies, any all-in hourly rate deduced or fixed under clause 5.5 shall be revised on such revision date (if any) as is fixed for revision of the relevant Schedule or, if none is fixed, as at 1 August in each year.
- 5.6.5 In the absence of any express basis for revision where clause 5.6.3 applies or in the case of revision under clause 5.6.4, the revised rates shall be agreed between the Contractor and the Contract Administrator or, failing agreement, determined by the Contract Administrator on a fair and reasonable basis.

## **5.7 Overtime work**

- 5.7.1 For the purposes of this clause 5.7:
- 5.7.1.1 'overtime' means time worked in addition to 'normal working hours' as defined in the rules or decisions of the Construction Industry Joint Council or other wage-fixing body applicable to the work comprised in the Order, as promulgated at the date of the Order; and
- 5.7.1.2 'non-productive overtime rates' means the net amounts, in excess of the rates paid for work in normal working hours, which are to be paid for overtime in accordance with the rules or decisions mentioned above as promulgated at the date of the Order.
- 5.7.2 Where overtime work for an Order is specifically directed by the Contract Administrator, unless an all-in non-productive overtime rate is included in the Schedule of Hourly Charges, the Contractor, in addition to the amount otherwise due under this section 5 in respect of the valuation of the Order, shall be paid the amount of the non-productive overtime rates paid by the Contractor, adjusted by the percentage set out in the Contract Particulars (item 14).
- 5.7.3 No payment shall be due under clause 5.7.2 unless the Contractor has submitted to the Contract Administrator returns, in a format directed by the Contract Administrator or as provided in the preliminaries in the Schedule of Rates, stating the amount of overtime worked in accordance with the directions referred to in clause 5.7.2 and the amount of the non-productive overtime rates paid by the Contractor. A copy of those returns, if approved, shall be certified by the Contract Administrator and returned to the Contractor.

## **5.8 Interruption of work – unproductive costs**

If, while carrying out the work comprised in any Order, the Contractor is required by the Contract

Administrator during normal working hours (as referred to in clause 5.7.1) to interrupt such work and to carry out other work in priority to that comprised in the Order, any agreed lost time or other unproductive costs shall be valued as daywork under clause 5.4.1, and clause 5.4.2 shall apply so far as relevant.

## Section 6 Injury, Damage and Insurance

### 6.1 Contractor's liability – personal injury or death

The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of an Order, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

### 6.2 Contractor's liability – loss, injury or damage to property

Subject to clause 6.3, the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of an Order and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

### 6.3 Loss or damage to existing structures or their contents

- 6.3.1 Where clause 6.7.1 applies, the Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to existing structures or to any of their contents required to be insured under clause 6.7 that is caused by any of the risks or perils required or agreed to be insured against under that clause.
- 6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.
- 6.3.3 Where a Clause 6.7.1 Replacement Schedule applies in lieu of clause 6.7.1, the Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the existing structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that schedule.
- 6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the work comprised in an Order, work executed or Site Materials up to and including whichever is the earlier of the Order Completion Date or the date of termination of the Contractor's employment.

### 6.4 Contractor's insurance of his liability

- 6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:
  - 6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
  - 6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[21]</sup>, shall indemnify the Employer in like manner to the Contractor (but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Contract Particulars (item 15.1).<sup>[22]</sup>
- 6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.11 shall apply.

[21] **+++Now footnote [15]+++** It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 6.1 and 6.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[22] **+++Now footnote [16]+++** The Contractor may, if he wishes, insure for a sum greater than that stated in the Contract Particulars (item 15).

## 6.5 Excepted Risks

Notwithstanding clauses 6.1, 6.2 and 6.4.1, the Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to work or supply comprised in an Order, Site Materials, work executed, the Site or any other property, caused by the effect of an Excepted Risk.

## 6.6 Related definitions

In these Conditions the following phrases shall have the following meanings:

**All Risks Insurance**<sup>[23]</sup>: insurance which provides cover against any physical loss or damage to work executed or supplies made pursuant to an Order and Site Materials (whether supplied by the Employer or by the Contractor) and against the reasonable cost of the removal and disposal of debris and of any shoring and propping which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
  - (i) wear and tear,
  - (ii) obsolescence, or
  - (iii) deterioration, rust or mildew;
- (b) any work executed or supplies made or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[24]</sup>;
- (c) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

**Excepted Risks:** the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or

[23] **+++Now footnote [17]+++** The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and **in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered**. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Contract Particulars. That extension and any other relevant details of works insurance under this Contract also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the Contract**. See the Measured Term Contract Guide.

[24] **+++Now footnote [18]+++** In an All Risks Insurance policy in respect of works to be carried out under this Contract, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of clause 6.7.2 or 6.8 or that definition. Wider All Risks cover than that specified may be available, though it is not standard.

supersonic speeds; and

- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Contract.

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed and Site Materials caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[25]</sup>

**Specified Perils:** fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed or supplies made pursuant to an Order and Site Materials (and/or, for the purposes of clause 6.13.1, to an existing structure and/or its contents) caused by or resulting from terrorism.<sup>[25]</sup>

## 6.7 Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer<sup>[26]</sup>

The Employer shall:

- 6.7.1 unless otherwise stated by the Contract Particulars (item 15.3) effect and maintain a Joint Names Policy in respect of the existing structures for which Orders may be issued, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
- 6.7.2 subject to clause 6.8 where the Contract Particulars state that that clause applies (item 15.4), effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6 for the full reinstatement value of each and every Order (plus the percentage, if any, stated in the Contract Particulars to cover professional fees (item 15.2))

and shall maintain such Joint Names Policies up to and including the end of the Contract Period (or up to the Order Completion Date of any Order which either pursuant to clause 2.10 or by agreement pursuant to clause 2.4 occurs after the end of the Contract Period), or (if earlier) the date of termination of the Contractor's employment under this Contract. In respect of the insurance referred to in this clause 6.7 the Employer shall notify his insurer of the identity of the properties in respect of which Orders may be issued and the Contract Period (but with the proviso that work or supply in respect of such properties may continue to be carried out or made by the Contractor until any later Order Completion Date).

## 6.8 Joint Names Insurance of work or supply comprised in Orders by the Contractor

If the Contract Particulars (item 15.4) state that this clause 6.8 applies, the Contractor shall effect and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.6<sup>[27]</sup> for the full reinstatement value of each and every

[25] +++Now footnote [19]+++ As respects Terrorism Cover and the insurance requirements, see footnote [23] +++ now footnote [17] +++ and the Measured Term Contract Guide.

[26] +++Now footnote [20]+++ Clause 6.7 can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover referred to for the Contractor in respect of existing structures and their contents that are owned by the Employer or for which he is responsible.  
However, the Joint Names Policy required by clause 6.7.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where existing structures insurance is the landlord's responsibility.  
Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or minor works to their property.  
The Contract Particulars for clause 6.7.1 (item 15.3) therefore expressly allow the Parties in those circumstances to disapply clause 6.7.1 and, by means of a Clause 6.7.1 Replacement Schedule, to include in place of that clause provisions that are tailored to their particular requirements.  
**In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.**  
An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Measured Term Contract Guide.

[27] +++Now footnote [21]+++ In some cases it may not be possible for insurance to be taken out against certain of the risks covered by the

Order (plus the percentage, if any, stated in the Contract Particulars (item 15.2) to cover professional fees) up to and including the Order Completion Date for that Order and shall maintain that policy up to and including:

6.8.1 the end of the Contract Period or (if later) the last Order Completion Date; or

6.8.2 (if earlier) the date of termination of the Contractor's employment.

#### **6.9 Clause 6.8 – use of Contractor's annual policy – as alternative**

If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the work or supplies comprised in Orders:

6.9.1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in clause 6.8; and

6.9.2 is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under clause 6.8. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars (item 15.5).

#### **6.10 Notification by Contractor of occupation and use**

Where clause 6.8 applies, the Contractor shall before commencing to carry out the first Order under this Contract notify the insurer of the Joint Names Policy to which clause 6.8 refers that the Employer may have occupation and use of any property in respect of which Orders may be issued, and shall obtain the agreement of the insurer that any exclusion in the policy relating to such occupation and use shall not apply.

#### **6.11 Evidence of insurance**

6.11.1 Where a Party is required by this Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.7, 6.8 and 6.12, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.

6.11.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Contractor shall be reimbursed to him by the Employer and shall be recoverable from the Employer as a debt; any costs payable to the Employer may be deducted by him from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

#### **6.12 Terrorism Cover – policy extensions and premiums**

6.12.1 To the extent that the Works Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Contractor, where clause 6.8 applies, or the Employer, where clause 6.7.2 applies, shall unless otherwise agreed effect and maintain, either as an extension to the Works Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Works Insurance Policy, such Terrorism Cover as is specified in or by the Contract Particulars (item 15.6), subject to clauses 6.12.4 and 6.13.

6.12.2 Where clause 6.8 applies and the Contractor is required to take out and maintain Pool Re Cover, the cost of that cover and its renewal shall be deemed to be included in the Contractor's rates and prices save that, if at any renewal of the cover there is a variation in the rate on which the premium is based, the amounts payable to the Contractor shall be adjusted by the net amount of the difference between the premium paid by the Contractor and the premium that would have been paid but for the change in rate.

6.12.3 Where clause 6.8 applies and Terrorism Cover other than Pool Re Cover is specified as required, the cost of such other cover and of its renewal shall be added to the amounts payable to the Contractor.

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definition of All Risks Insurance and note the potential difficulty with respect to Terrorism Cover mentioned at footnote [23] **+++ now**  
**footnote [17] +++.**

- 6.12.4 Where clause 6.8 applies and the Employer is a Local or Public Authority, if at any renewal of the Terrorism Cover (of any type) there is an increase in the rate on which the premium is based, he may instruct the Contractor not to renew the Terrorism Cover. If he so instructs, clause 6.14.5.3 shall apply with effect from the renewal date.

### **6.13 Terrorism Cover – non-availability – Employer's options**

- 6.13.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately notify the other Party.
- 6.13.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Contractor:
- 6.13.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the work comprised in all or certain specified Orders continue to be carried out; and/or
- 6.13.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) work on all or certain specified Orders shall terminate.
- 6.13.3 Where clause 6.8 applies and the Employer gives notice under clause 6.13.2 requiring continuation of the work comprised in any Orders, he may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor; the net additional cost to the Contractor of any such cover and its renewal shall be added to the amounts payable to the Contractor.
- 6.13.4 If the Employer gives notice of termination under clause 6.13.2 in respect of any Orders, a valuation of work completed (or of labour, materials and/or plant supplied) that has not been valued and certified before such termination shall be made and certified in respect of those Orders in accordance with sections 4 and 5 and the Employer shall pay the certified amount in accordance with clause 4.6.
- 6.13.5 In the case of any Orders in respect of which notice of termination is not given under clause 6.13.2.2, but work executed and/or Site Materials under any such Order thereafter suffer physical loss or damage caused by terrorism, clauses 6.14 and 6.15 shall as appropriate apply.

### **6.14 Loss or damage – insurance claims and reinstatement**

- 6.14.1 If loss or damage affecting any executed work, Site Materials or other supplies made pursuant to an Order is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith upon it occurring or becoming apparent give notice both to the Contract Administrator and to the Employer of its nature, location and extent.
- 6.14.2 Subject to clauses 6.14.5.1 and 6.14.6, the occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under this Contract.
- 6.14.3 The Contractor, for himself and his sub-contractors, shall authorise the insurers to pay to the Employer all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the Employer.
- 6.14.4 Where loss or damage affecting executed work or Site Materials or other supplies made pursuant to an Order is occasioned by any risk covered by the Works Insurance Policy, and subject to clause 6.15 where relevant, the Contractor shall after any inspection required by the insurers under the Works Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials or supplies made, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Order(s).
- 6.14.5 Where clause 6.8 applies:
- 6.14.5.1 unless the Employer cancels the Order affected by the loss or damage, the Employer shall pay all monies from such insurance to the Contractor by instalments under separate reinstatement work certificates issued by the

Contract Administrator at the same dates as those for certificates under section 4 less only the amounts referred to in clause 6.14.5.2;

6.14.5.2 the Employer may retain from those monies any amounts properly incurred by the Employer and notified by him to insurers in respect of professional fees up to the aggregate amount of the percentage cover for those fees or (if less) the amount paid by insurers in respect of those fees;

6.14.5.3 in respect of reinstatement work, the Contractor shall not be entitled to any payment other than amounts received under the Works Insurance Policy except where there has been a cessation of or reduction in Terrorism Cover under clause 6.12.4 or 6.13 and loss or damage is then caused by or results from terrorism, in which case the reinstatement work shall, to the extent that its cost is no longer recoverable under the policy, be treated as a Variation and under section 4 or clause 6.14.5.1 included in Contract Administrator's certificates. In neither case shall there be any reduction in any amount payable by reason of any act or neglect of the Contractor or of any sub-contractor which may have contributed to the physical loss or damage.

6.14.6 Where clause 6.7.2 applies or where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

#### **6.15 Loss or damage to existing structures – right of termination in respect of Orders**

If there is material loss of or damage to any existing structure, the Employer shall be under no obligation to reinstate that structure, but either Party may, if it is just and equitable, give notice to the other within 28 days of the occurrence of that loss or damage that work on any affected Orders shall terminate. If such notice is given, then:

6.15.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Contract to determine whether the termination is just and equitable, it shall be deemed to be so;

6.15.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 6.13.4 shall apply.

## Section 7 Break Provision – Rights of each Party

### 7.1 Break notice

Each Party shall have the right to reduce the duration of the Contract Period by giving the other Party not less than 13 weeks' notice to that effect (or such lesser period of notice as is stated in the Contract Particulars (item 16)). That notice may in either case expire at any time not less than 6 months after the date of commencement of the Contract Period.

### 7.2 Existing and subsequent Orders

As from receipt by the Employer or the Contractor, as the case may be, of notice under clause 7.1 the Contractor shall not, unless otherwise agreed between him and the Contract Administrator, be under any obligation to accept any subsequent Orders which cannot reasonably be completed before the expiration of the notice, but the Contractor shall not be relieved of his obligation to complete all Orders properly given prior to the receipt of the notice, even if such Orders cannot be, or are not, completed before the expiry of such notice, and to complete any subsequent Orders that can reasonably be completed before that expiration or that he otherwise accepts.

## Section 8 Termination for Default, etc.

### 8.1 Meaning of insolvency

For the purposes of these Conditions:

- 8.1.1 a company becomes Insolvent:
  - 8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.
- 8.1.2 a partnership becomes Insolvent:
  - 8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 8.1.2.2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
- 8.1.3 an individual becomes Insolvent:
  - 8.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
  - 8.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
- 8.1.4 a person also becomes Insolvent if:
  - 8.1.4.1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - 8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

Each of clauses 8.1.1 to 8.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

### 8.2 Notices under section 8

- 8.2.1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
- 8.2.2 Such termination shall take effect on receipt of the relevant notice.
- 8.2.3 Each notice referred to in this section shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

### **8.3 Other rights, reinstatement**

- 8.3.1 The provisions of this section 8 are without prejudice to any other rights and remedies available to either Party.
- 8.3.2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated, either generally or in respect of any particular Order or Orders, if and on such terms as the Parties agree.

### **8.4 Default by Contractor**

- 8.4.1 If the Contractor:
- 8.4.1.1 fails to comply with the CDM Regulations; or
- 8.4.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the carrying out of any Order or Orders is materially disrupted, suspended or delayed,
- the Contract Administrator may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.4.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment.

### **8.5 Insolvency of Contractor**

- 8.5.1 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
- 8.5.2 The Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3 As from the date the Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 8.5.3.1 clause 8.10 shall apply as if such notice had been given;
- 8.5.3.2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended; and
- 8.5.3.3 the Employer may take reasonable measures to ensure that each Site, the work under each Order and any Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.

### **8.6 Corruption and regulation 73(1)(b) of the PC Regulations**

The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

### **8.7 Default by Employer**

- 8.7.1 If the Employer:
- 8.7.1.1 does not pay by the final date for payment the amount due to the Contractor in

accordance with clause 4.6 and/or any VAT properly chargeable on that amount;  
or

8.7.1.2 without reasonable cause fails in such a manner to comply with his obligations under this Contract that the ability of the Contractor to comply with his obligations under it is materially prejudiced; or

8.7.1.3 interferes with or obstructs the issue of any certificate; or

8.7.1.4 fails to comply with the CDM Regulations,

the Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).

8.7.2 If the Employer continues a specified default for 14 days from the receipt of notice under clause 8.7.1, the Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

8.7.3 If the Contractor for any reason does not give the further notice referred to in clause 8.7.2, but the Employer repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

## **8.8 Insolvency of Employer**

8.8.1 If the Employer is Insolvent, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract;

8.8.2 the Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;

8.8.3 as from the date the Employer becomes Insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete any Orders shall be suspended pending such termination.

## **8.9 Termination by Employer – regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

Where this Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

## **8.10 Consequences of termination under clauses 8.4 to 8.6**

If the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6:

8.10.1 the Employer may employ and pay other persons to carry out and complete uncompleted Orders;

8.10.2 no further sum shall become due to the Contractor under this Contract other than any amount that may become due to him under clause 8.10.3 and the Employer need not pay any sum that has already become due either:

8.10.2.1 insofar as the Employer has given or gives a notice under clause 4.6.5; or

8.10.2.2 if the Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;

8.10.3 the Contract Administrator shall within 13 weeks of the date of termination make a valuation and issue a certificate showing:

8.10.3.1 the value of such work properly executed (or of labour, materials and/or plant supplied) and any other amounts due to the Contractor under this Contract that have not been valued and certified before such termination; and

8.10.3.2 the amount of any direct loss and/or damage caused to the Employer by the termination;

- 8.10.4 if the amount of direct loss and/or damage exceeds the value certified under clause 8.10.3 the difference shall be a debt payable by the Contractor to the Employer or, if it is less, by the Employer to the Contractor;
- 8.10.5 the final date for payment of the amount of the difference referred to in clause 8.10.4 shall be 28 days from the date of the certificate.

**8.11 Consequences of termination under clauses 8.7 to 8.9**

- 8.11.1 Where the Contractor's employment is terminated under clause 8.7, 8.8 or 8.9, the Contractor shall within 13 weeks of the date of termination submit an account in respect of:
  - 8.11.1.1 the value of such work properly executed (or of labour, materials and/or plant supplied) as has not been valued and certified before such termination; and
  - 8.11.1.2 only where the Contractor's employment is terminated under clause 8.7 or 8.8, the amount of any direct loss and/or damage caused to the Contractor by the termination.
- 8.11.2 The Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor.

## Section 9 Settlement of Disputes

### 9.1 Mediation

Subject to Article 6, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[28]</sup>

### 9.2 Adjudication

If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars (item 17).

### 9.3 ~~Arbitration – Conduct of arbitration~~Not applicable

~~Any arbitration pursuant to Article 7 shall be conducted in accordance with the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of CIMAR.<sup>[29]</sup>~~

### 9.4 ~~Notice of reference to arbitration~~Not applicable

~~{9.4.1} Where pursuant to Article 7 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars (item 17).~~

~~{9.4.2} Where two or more related arbitral proceedings in respect of any Orders or work under this Contract fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.~~

~~{9.4.3} After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.~~

### 9.5 ~~Powers of Arbitrator~~Not applicable

~~Subject to the provisions of Article 7 the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.~~

### 9.6 ~~Effect of award~~Not applicable

Subject to clause 9.7 the award of the Arbitrator shall be final and binding on the Parties.

### 9.7 ~~Appeal – questions of law~~Not applicable

~~The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):~~

[28] +++Now footnote [22]+++ See the Measured Term Contract Guide.

[29] — Arbitration or legal proceedings are ~~not~~ an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

~~{9.7.1} apply to the courts to determine any question of law arising in the course of the reference; and~~

~~{9.7.2} appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.~~

**9.8 ~~Arbitration Act 1996~~ Not applicable**

~~The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.~~

## Schedule 1 Supplemental Provisions

(Fifth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

### Collaborative working

- 1 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

### Health and safety

- 2
- 2.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
- 2.2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
- 2.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
- 2.2.2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
- 2.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
- 2.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Cost savings and value improvements

- 3
- 3.1 The Contractor is encouraged to propose changes to designs and specifications for each Order and/or to the programme for its execution that may benefit the Employer, whether in the form of a reduction in the cost of the Order or its associated life cycle costs, through completion at a date earlier than the date for completion or otherwise.
- 3.2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
- 3.3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the date for completion. Upon agreement, the change and the amount of any adjustment of the value of the Order shall be confirmed in a Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
- 3.4 Original proposals by the Contractor under this Supplemental Provision 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after the Contract Period.

## **Sustainable development and environmental considerations**

**4**

- 4.1 The Contractor is encouraged to suggest economically viable amendments to any Order which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Order or of the completed Order.
- 4.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

## **Performance Indicators and monitoring**

**5**

- 5.1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
- 5.2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
- 5.3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

## **Notification and negotiation of disputes**

**6**

With a view to avoidance or early resolution of disputes or differences (subject to Article 6), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

## **Transparency**

**7**

Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding any other term of this Contract:

- 7.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;
- 7.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

## **The Public Contracts Regulations 2015**

**8**

Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[30]</sup>:

- 8.1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 8.2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
- 8.2.1 to supply and notify to the Contractor the information required (as applicable)

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[30] **+++Now footnote [23]+++** An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Measured Term Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Short Form of Sub-Contract (ShortSub) meets the requirements of Supplemental Provision 8.

- under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
- 8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;
- 8.3
- 8.3.1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
- 8.3.2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.



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SWEET & MAXWELL



**Transport for London**

**On behalf of**

**The Greater London Authority**

**and**



**Everwarm Limited**

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

relating to

**PP230508 (tenDPS) GLA HUG2 Turnkey 2325**

Signed by.....  
For and on behalf of the Employer

Signed for.....  
For and on behalf of the Contractor

## Articles

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

### **Article 1: Contractor's obligations**

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

### **Article 2: Payment**

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

### **Article 3: Contract Administrator**

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

### **Article 4: Principal Designer**

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

### **Article 5: Principal Contractor**

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

### **Article 6: Adjudication**

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

### **Article 7: Arbitration**

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

- ~~any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and~~

- ~~any disputes or differences in connection with the enforcement of any decision of an Adjudicator.~~

## **Article 8: Legal Proceedings**

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

## **Article 9:**

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

## **Article 10 – Performance Bond**

~~The Contractor shall procure the execution and delivery to the Employer within 14 days of a written request from the Employer of a performance bond in the sum of 15% of the annual contract value under this Contract in the form of Schedule 3 to this Contract with only such amendments as the Employer may approve and after any such request for a performance bond under this clause, the Employer may withhold any sums owed under the Contract until such bond has been provided.~~

## **Article 11 – Parent Company Guarantee**

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

## **Article 12 – Key Performance Indicators**

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

## **Article 13 – Contract Review and Cost Saving, Value Engineering**

- 13.1 The Employer and Contractor shall review the Contract [and any potential cost savings] in accordance with the provisions of Schedule 10 (Contract Review Procedures).
- 13.2 Without prejudice to the provisions of Clause 4 (Costs Reduction and Customer Service Proposals) of Schedule 10 (Contract Review Procedures), the Contractor shall propose amendments to any Service Orders or Orders for Works which, if implemented, would result in financial benefits for the Employer. Such benefits may arise in the form of:
  - a) a reduction in the capital costs of the project of which the Order forms part;

- b) completion of the project at an earlier date or in a manner which will result in savings; and/or
  - c) any other financial benefit to the Employer.
- 13.3 The Parties will discuss the details of any changes and any cost, time, quality and performance benefits to the Employer and shall agree (acting reasonably) the implementation of any changes and the financial effects of them. Once agreed, such change shall be implemented by means of an amendment to the relevant Order.

#### **Article 14 – Funding Requirements**

The Contractor shall perform the Works pursuant to each Order in a manner that is consistent with and which does not put the Employer in breach of the Funding Requirements.

#### **Article 15 – Specified Materials**

- 15.1 The Contractor shall source the Specified Materials from the Named Supplier or, with the prior written consent of the Employer, from a party other than the Named Supplier, provided always that if a party other than the Named Supplier is used the terms that such Specified Materials shall be procured on shall be on no less favourable terms than if the Named Supplier had been used]. The Contractor shall be responsible for sourcing the Specified Materials without causing delay to the Works, and shall not be entitled to an extension of time or any adjustment to the sums payable under this Contract to the extent there is any delay in receipt of the Specified Materials.
- 15.2 The Contractor shall be deemed to have satisfied itself as to the extent and nature of the Specified Materials to be supplied under this Contract, including, but not limited to personnel, materials and equipment, consumables and facilities required for the supply of the materials; the general and local conditions including climatic and weather conditions, and all other matters which could affect progress or performance of the supply of the materials. The Contractor shall be fully responsible for the Specified Materials, including (without limitation) design, installation and performance.
- 15.3 Any failure by the Contractor to take account of matters which affect the provision of the Specified Materials, including (but not limited to) matters set out at Article 15.2, will not relieve the Contractor from its obligations under this Contract or entitle the Contractor to an increase in any rate, percentage adjustment or price payable to it under this Contract.
- 15.4 The Contractor shall obtain all product warranties from the Named Supplier or, subject to obtaining consent pursuant to Article 15.1, from a party other than the Named Supplier in favour of the Employer and provide the same to the Employer immediately upon receipt.

#### **Article 16 – Social Value**

The Contractor is committed to ensuring that this Contract provides social value, as more specifically set out and required under the DPS Agreement.

#### **Article 17 – Orders**

##### **Services Order**

- 17.1 The Employer shall be entitled at any time during the Contract Period to issue an instruction to the Contractor to provide a range of services (the “**Services Order**”) in relation to:
- 17.1.1 advising Customers, checking eligibility for funding and referring Customers onto third parties for the delivery of domestic retrofit services, as more particularly set out in Schedule 13 (Lot 1 Terms and Conditions) (the “**Lot 1 Services**”); and/or;
  - 17.1.2 retrofit programme development, assessment, coordination and project management including PAS2035 roles, as more particularly set out in Schedule 14 (Lot 4 Terms and Conditions) (the “**Lot 4 Services**”)
- 17.2 Any Services Order issued by the Employer to the Contractor (pursuant to Article 17.1) shall be in the form set out in Schedule 3 (Form of Order) which is attached to the terms and conditions for the delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract and shall include:
- 17.2.1 a summary of the Lot 1 Services and/or Lot 4 Services to be provided by the Contractor;
  - 17.2.2 the timetable for providing the Lot 1 Services and/or Lot 4 Services, including any Milestones;
  - 17.2.3 the fixed price for delivering the Lot 1 Services and/or Lot 4 Services which shall be calculated in accordance with Schedule 2 (Fee Schedule) which is attached to the terms and conditions for the delivery of the Lot 1 Services or Lot 4 Services as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (respectively) of this Contract.
- 17.3 If the Employer instructs the Contractor to carry out the Lot 1 Services and/or the Lot 4 Services pursuant to Article 17.1, the Contractor shall provide such services in accordance with the terms and conditions as set out in Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) of this Contract (as applicable). For the avoidance of doubt, the Parties are not required to enter into a separate contract for the delivery of any Lot 1 Services or Lot 4 Services. The issue of the relevant Services Order and instruction will have the effect of incorporating the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) for the delivery of the Lot 1 Services or Lot 4 Services under this Contract. In the event of any discrepancies or inconsistencies between the terms and conditions of Schedule 13 (Lot 1 Terms and Conditions) or Schedule 14 (Lot 4 Terms and Conditions) (as applicable) and other terms of this Contract, the Employer will determine (at its absolute discretion) which terms shall take precedence.

#### **Order for Works**

- 17.4 In addition to issuing a Services Order pursuant to Article 17.1, the Employer shall also be entitled at any time during the Contract Period to submit a request to the Contractor (the “**Project Brief Request**”) to provide proposals that may inform any potential future Order for Works which is required.
- 17.5 Any Project Brief Request may include (without limitation):

- a) design/works/methodology requirements;
  - b) an affordability envelope;
  - c) any milestones that need to be completed and required dates for completion;
  - d) any liquidated damages which may be established pursuant to clause 2.13 (if applicable) which the Employer may propose (acting reasonably);
  - e) any recommendations by the Employer's retrofit managing agent;
  - f) any required changes to this Contract;
- 17.6 The Contractor acknowledges and agrees that if the Employer issues any Services Order or Project Brief Request under this Article 17, the Employer:
- a) is not guaranteeing any volume or number of Orders for Works to the Contractor; and
  - b) shall be entitled to use other contractors to deliver some or all of the relevant Works.
- 17.7 The Contractor shall submit its proposals in response to the Project Brief Request (the "**Project Brief Response**") to the Employer no later than 14 days from the date of either:
- a) the Project Brief Request; or
  - b) the completion of the Lot 1 Services and/or Lot 4 Services where instructed and to the extent necessary to inform the Project Brief Response.
- 17.8 The Project Brief Response shall include (without limitation) the following information:
- a) the proposed detailed specification and proposals for the Order for the Works (including relevant works methodology)
  - b) a fixed price proposal for the delivery of the Works based on the Contractor's Tendered Rates and the relevant milestones (if required as part of the Project Brief Request) and details demonstrating how such price has been calculated in accordance with the Contractor's Tendered Rates;
  - c) a detailed programme for the design and construction of the proposed Works demonstrating achievement of the Order Date for Completion (if specified);
  - d) the proposed Sub-Contractors and suppliers the Contractor intends to appoint to process the proposed Works and in compliance with the Contractor's tendered supply-chain solution;
  - e) the Staff who will be responsible for the delivery of the proposed Works and in compliance with the Contractor's tendered supply-chain solution;

- f) any project-specific amendments to this Contract required as a result of specific elements of the proposed Works to take account of the scope and nature of any Lot 1 Services and/or Lot 4 Services or in order to satisfy the Project Brief Request and/or any other requirements;
  - g) compliance with any other requirements set out in the Project Brief Request.
- 17.9 Upon receipt of the Project Brief Response under Article 17.4, the Employer may place an Order for the Works (whether in whole or in part) or ask the Contractor to submit up to one or more quotations for prior approval by the Employer in accordance with the procedure at clauses 3.5.8 to 3.5.13. The Employer may include any Works subsequently approved under an existing Order or instruct those Works under a new Order.
- 17.10 Following the agreement of costs in relation to an Order for Works which includes Properties owned by a freehold or leasehold owner of any Property, notwithstanding any other provision in this Contract to the contrary, the Employer shall only be responsible for paying the Employer's Contribution and shall have no liability whatsoever for payment of the Private Resident's Contribution.

#### **Energy Retrofit Agreement**

- 17.11 The Contractor acknowledge and agrees that it shall not commence any Works and/or services unless and until the Customer has entered into an Energy Retrofit Agreement with the Landlord as set out in Schedule 15 (Energy Retrofit Agreement).

#### **Article 18 – Employer Objectives**

- 18.1 Where it is anticipated that the Employer may instruct multiple Orders, the Parties shall work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect with a view to achieving the following objectives:
  - a) zero-health and safety incidents;
  - b) a shared commitment to objectives that benefit Customers;
  - c) team working and consideration for others;
  - d) to reduce design, supply and construction time;
  - e) to demonstrate value for money and to drive down costs in real terms by maximising the efficiencies of scale, volume and certainty;
  - f) to maximise the use of off-site manufacturing solutions and other modern methods of construction;
  - g) greater predictability of out-turn cost and programme;
  - h) improvements in quality, productivity and value for money;
  - i) improvements in environment performance and sustainability and reductions in environmental impact;

- j) right first time with zero defects;
- k) the avoidance of disputes;
- l) Employer satisfaction with product and service

#### **Article 19 – Option to Extend**

The Employer may choose to extend the Contract Period by a further period or periods of up to 1 year plus a further 1 year at its sole discretion. The Employer acknowledges that in the event of a procurement challenge in respect of or in connection with the extension of the Contract Period (should the Employer exercise its option to extend the Contract Period), the Employer reserves the right to terminate the Contract by written notice with immediate effect. For the avoidance of doubt, in the event of the Contract coming to an end in this manner the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of a reduction in the Contract Period or the Contract coming to an end.

**Execution – the contract will be executed underhand.**

## SCHEDULE OF AMENDMENTS TO JCT MEASURED TERM CONTRACT 2016

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

### SECTION 1 – DEFINITIONS AND INTERPRETATION

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

Clause 1.1 – Delete the definition of Conditions and insert: “Conditions: the clauses as amended by the Schedule of Amendments and as set out in sections 1 to 27 of the Conditions.”

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

Clause 1.1 – Delete definition of National Schedule of Rates.

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

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

Clause 1.1 – Delete definition of Valuation Date.

Clause 1.1 – add new definitions as follows:

<i>Word or phrase</i>	<i>Meaning</i>
British Standards:	documentation that sets out a technical specification or other precise criteria for materials, products, systems and services. British Standards can indicate that materials and products meet a certain safety or environmental standard.
Certificate of Completion of Making Good Defects:	means the certificate issued in accordance with Clause 2.12.5.
Confidential Information:	any information concerning, comprising or relating to the business affairs of the other party, this contract, any other contractor involved in cost sharing arrangements and all related documents, and personal information or details in respect of any employee of either party, or any tenant or any resident of the Employer.
Contractor Default:	any of the circumstances set out in Clause 8.4.1 ( <i>Default by Contractor</i> ).
Contractor’s IT System:	the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Contractor in connection with the Works.
Contractor’s Tendered Rates or Rates or Prices:	the rates and prices as set out in Schedule 6 ( <i>Schedule of Rates and Price Framework</i> ).
Controller	has the meaning given in the Data Protection Legislation;

Core Group:	the Contract Administrator and two members of senior management that may be appointed from time to time by the Employer and the Contractor's senior day to day manager of the Contract and any one other member of senior management appointed by the Contractor.
Customer:	a tenant, leaseholder or licensee of the Employer or of another landlord for whom the Employer undertakes housing management;
Customer Damage:	vandalism or other damage to a Property caused or suspected to be caused by a Customer or member of a Customer's household or visitor to the Customer (excluding fair wear and tear).
Data Breach	any event that results, or may result, in lack of availability of key systems, unauthorised access to Personal Data held by the Contractor under this Contract and/or any accidental or unlawful actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach in accordance with Data Protection Legislation;
Data Processing Operations	the processing of Personal Data relating to employees and officers of the Employer, its service providers, service users and/or other third parties, as necessary for the provision of the Works during the Contract Period, and for such periods after the expiry or end of the Contract Period as are required for compliance with applicable Laws, together with such ancillary processing of Personal Data relating to employees and officers of the Employer, its service providers, service users and/or other third parties as is necessary for the performance of the Contractor's obligations under this Contract or the administration of this Contract and as further set out in clause 14.1.16;
Data Protection Legislation:	all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the (i) Data Protection Act 2018 (ii) the General Data Protection Regulations ((EU) 2016/679) (iii) Law Enforcement Directive (Directive (EU) 2016/680); (iv) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended and any applicable national implementing Laws as amended from time to time and all applicable Law, guidance, codes of practice issued relating to data protection or issued by a supervisory authority related to Personal Data and privacy;
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Officer	has the meaning given in the Data Protection Legislation;
Data Subject:	has the meaning given in the Data Protection Legislation;

Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Defect Rectification Period:	<ul style="list-style-type: none"> <li>- Where the Contractor is notified of a defect which is immediately dangerous or of an emergency nature, the defect must be attended and made safe by the Contractor within 4 hours and remedied on the same Business Day or such other time as notified by the Employer.</li> <li>- Where the Contractor is notified of a defect of an urgent nature it must be attended to and made safe by the Contractor within 4 hours and remedied within 2 Business Days or such other time as notified by the Employer.</li> <li>- Where the Employer is notified of a defect of a non-urgent nature, it must be remedied within 5 calendar days.</li> </ul>
Direct Losses	means all damage, losses, liabilities, claims, actions, costs, fees, expenses (including the cost of legal or professional services, legal costs being on an agent/client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law.
Documents and Data:	all documents, data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium used or created in connection with this Contract or the Works.
DPS Agreement	means the dynamic purchase system agreement for domestic retrofit works and services dated 1 <sup>st</sup> June 2021 between Procure Plus Holdings Limited and the Contractor.
Employer's Contribution	[two thirds] of the Order Price or such other sum as specified in the Order following approval by the Employer of the works schedule and prices submitted in relation to an Order.
Employer Data:	all data, information records and documentation in any electronic or tangible form relating to the Properties, the Customers or the Works (including the identity of the Staff carrying out each Order) that is held on the Employer's IT System, the Contractor's IT System or in paper form.
Employer Default:	any of the circumstances set out in Clause 8.7 ( <i>Default by Employer</i> ).
Employer Party:	the Employer any board member of the Employer, any employee of the Employer and any Advisor or contractor to the Employer other than the Contractor or any Subcontractor.
Employer's Proprietary Material:	all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts

contained in them) prepared, conceived or developed by or on behalf of the Employer in connection with this Contract and/or any Order.

Employer's IT System:

the Employer's information technology system (including both software and hardware) as specified in the Details for Schedule 5 (*Specification*) which is to be used and/or connected to by the Contractor in connection with the Works, further details of which are set out in an appendix to Schedule 5 (*Specification*).

Energy Retrofit Agreement:

means the agreement set out in Schedule 15 (Energy Retrofit Agreement).

Environmental Laws:

any law, statute, statutory instrument or legislation of the European Union having effect in the United Kingdom, or circulars, guidance notes and the like issued by the United Kingdom Government or relevant regulatory agencies relating to the protection or pollution of the environment (within the meaning of the Environmental Protection Act 1990).

Equality and Diversity Law:

means all Law preventing unlawful discrimination, including unlawful checks on the basis of colour, race, nationality, ethnic group, regional or national origin, gender, marital status, civil partnership status, pregnancy, maternity, sexual orientation, gender reassignment, religious or similar belief, age, disability or part time or fixed term status.

Expiry Date:

the end of the Contract Period, extended, where applicable, under Clause 8.12 (*Expiry*).

Final Account:

the account issued by the Contract Administrator under Clause 4.6 (*Final Account*) indicating any amount remaining due to the Contractor or the Employer.

[Final Certificate:

the certificate issued by the Contract Administrator on the expiration of the defects liability period of the last Order issued prior to the termination or expiration of the Contract Period]<sup>1</sup>.

Force Majeure:

any event beyond the reasonable control of the affected Party which does not relate to its fault or negligence including Act of God, expropriation or confiscation of property or other Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes, power shortages and computer viruses. Force Majeure does not include:

- any failure by the Contractor adequately to test any equipment or any materials before their use; and
- strikes or other industrial action by employees of the affected Party or any Subcontractors;

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<sup>1</sup> Definition to be considered/reviewed against provisions of Clause 2.12

- any inability of the Contractor or its Subcontractors to obtain labour or Materials or any delays in being able to do so; or
- anything caused by a breach of this Contract by the affected Party.

Funding Requirements	means Homes Upgrade Grant (HUG2) and other funding sources as agreed.
Hazardous Substances:	any substances which are capable of carrying or causing harm to man or any other living organisms supported by the environment (within the meaning of the Environmental Protection Act 1990).
Health and Safety Law:	all Law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents.
Intellectual Property Rights:	means all intellectual property rights including patents, inventions, trademarks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off.
IT System:	the Employer's IT System or the Contractor's IT System (as applicable), as set out in the Specification.
KPI or Key Performance Indicator:	a Key Performance Indicator by which the Contractor's performance of the Works is measured as set out in Schedule 7 ( <i>KPI Framework</i> ).
KPI Target	the KPI targets set out in the KPI Framework at Schedule 7.
Law(s):	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, 'enforceable right' within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
Milestone(s)	means one or more of the milestones set out in Schedule 12 (Milestone Payment Schedule) or as otherwise agreed as part of an Order for Works.
Milestone Payment Schedule	means the schedule setting out details of the Milestones and the payments due on completion of each Milestone as contained in Schedule 12 (Milestone Payment Schedule) or as otherwise agreed as part of an Order for Works.
Minimum Level of Acceptable Performance:	the minimum level of acceptable performance thresholds set out in the KPI Framework at Schedule 7.

Named Supplier	means a supplier referred to in the Specification or as otherwise notified by the Employer.
Normal Working Hours:	the hours of 8 am to 5 pm on Monday to Friday, excluding weekends and public holidays.
Order Date for Completion	the date for completion of each order stated within the Order or as otherwise referred to by any priority coding or as set out in the Specification or the Price Framework.
Order Price:	means the fixed price payable for the Works in an Order which shall be paid to the Contractor upon the completion of the relevant Milestone(s).
Order Variation:	a variation to the extent of Works undertaken under an Order from that originally included in the Order.
Personal Data:	has the meaning given in the Data Protection Legislation;
Personal Data Breach:	has the meaning given in the Data Protection Legislation;
Price Framework:	Schedule 6 ( <i>Schedule of Rates and Price Framework</i> ) setting out the basis of payment for the Works and including the Contractor's Tendered Rates.
Private Resident's Contribution	the sums payable for the Works by one or more private freehold or leasehold owner(s) of a Property or Properties, as more particularly set out in the Order or as agreed between the Parties.
Processor:	has the meaning given in the Data Protection Legislation and <b>Process, Processed and Processing</b> shall be construed accordingly;
Property or Properties:	the sites at which Works will be undertaken, estates, dwellings, blocks, sheltered schemes, hostels, like properties and related common and communal areas, environs and assets within any area specified in the Contract Particulars or such other area as the Employer specifies by written notice to the Contractor that are included in the property portfolio owned or managed by the Employer and in relation to which the Employer or any other third party provider of property is responsible for maintenance.
Proprietary Material:	all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in connection with this Contract and/or any Order.
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored

in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Public Health Measures:

mandatory public health measures issued by the United Kingdom Government or a Local or Public Authority after the date of this Contract in connection with any epidemic or pandemic as defined by the World Health Organization from time to time, which directly affects the execution of the Works in any of the following ways:

- (a) unavailability of labour as a result of preventative measures to alleviate the outbreak spreading and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar; or
- (b) reduced efficiency and outputs at the site of the Works due to the requirement for the Contractor's labour force to practise social distancing, provided this excludes any measures that a competent contractor would have expected to have put in place on the date of this Contract; or
- (c) unavailability of plant, equipment or materials due to delays in their manufacture, importation or transportation;

but only to the extent that any of the events in (a) to (c) above are:

- unforeseeable to a reasonably competent contractor undertaking works similar in nature, scale and cost to the Works; and
- not capable of mitigation or avoidance, either in whole or in part, by a reasonably competent contractor using best endeavours in respect of such mitigation or avoidance; and
- not caused or contributed to by the Contractor's or the Contractor's Persons' negligence, default, breach of this Contract, failure to follow official governmental guidance (whether mandatory or otherwise) or Statutory Requirements relating to any epidemic or pandemic as defined by the World Health Organization from time to time.

Quality Inspector:

an independent quantity surveyor and member of the Royal Institute of Chartered Surveyors or Chartered Institute of Building Services Engineers employed by an independent firm of chartered surveyors to be appointed by the Employer and notified to the Contractor.

Remedial Plan:

a plan prepared by the Contractor under Clause 24.3 (*Remedial Plan*) following a breach of this Contract setting out how the Contractor will prevent a further breach.

Response Period:	the time for completion of each Order or each item of Work in an Order as specified in the Order or as otherwise referred to by any priority coding.
Schedule of Amendments:	as referred to at Article 9.
Schemes Plus	means the purchase to pay software system operated by Procure Plus Holdings Limited.
Services Order	has the meaning given to it in Article 17
Specification:	the Specification for the works as set out at Schedule 5 ( <i>Specification</i> ).
Specified Material	means the materials to be sourced from the Named Supplier as more particularly set out in the Specification or as otherwise notified by the Employer.
Staff:	all persons employed or engaged by the Contractor or any tier of Sub-Contractor (where applicable) to perform the Contract including directors, officers, and employees and Sub-Contractors and their respective directors, officers, and employees.
Sub-Contract:	a contract between the Contractor and a Sub-Contractor.
Sub-Contractor:	a person or organisation who has a contract with the Contractor to undertake part of the Works or to design all or part of the Works and who has been approved as a Sub-Contractor by the Contract Administrator.
Sub-processor	any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;
Termination Date:	the date this Contract is terminated or determined for any reason (including by expiry) in whole or in part.
Valuation:	either an “application for payment” or an invoice, as set out in section 4.
Works:	any works carried out under this Contract within any of the Workstreams and which are the subject of an Order.
Workstreams:	whichever of the following Workstreams that are the subject of this Contract as set out in the Schedule 5 ( <i>Specification</i> ):

-Domestic Retrofit Works

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

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

1.2.1 Conditions, as amended by the Schedule of Amendments;

1.2.2 Specification;

1.2.3 Price Framework;

1.2.4 Key Performance Indicators."

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

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

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

**SECTION 2 – CARRYING OUT WORK**

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

**"Contractor's Obligations**

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

- .1 undertake the Works set out in the Order in a proper and workmanlike manner and fully in accordance with Schedule 5 (*Specification*), Schedule 6 (*Schedule of Rates and Price Framework*), Schedule 7 (*KPI Framework*), the Contract Administrator's instructions, any instructions of the Employer, the Contract Documents, the Construction Phase Plan and other Statutory Requirements and shall give all notices required by the Statutory Requirements; and
- .2 use materials that are new, sound and of satisfactory quality and workmanship and fabrication will be to the standards consistent with the Specification (or if not specified in the Specification they shall be to a standard that is appropriate to the type of Works being carried out); and
- .3 to the extent that the Order contains any design, be responsible for carrying out and completing the entire design of the Works in the Order, which shall be carried

out by using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent professional designer who is experienced in carrying out work (and preparing design) of a similar scope, nature and complexity and size to the works in the Order; and

- .4 take due account of the terms of any agreements between the Employer and third parties as are from time to time disclosed to him and shall perform his obligations under this Contract in such a manner as not to constitute, cause or contribute to any breach by the Employer of his obligations under such agreements and shall indemnify the Employer in respect of any loss and/or damage which he incurs as a result of any breach by the Contractor of this clause where such loss and/or damage arises under such agreements.
- .2 The Contractor shall not use, generate, dispose of or transport to the Site any Hazardous Substances otherwise than in accordance with Environmental Laws.
- .3 To the extent the standard of any Works has not been specified in this Contract, the Contractor must agree the relevant standard for the Works with the Contract Administrator prior to their execution.
- .4 All materials used in the Works must:
  - .1 comply with all applicable standards;
  - .2 be to the standards specified in the Specification; and
  - .3 be to the reasonable satisfaction of the Contract Administrator.
- .5 In relation to the design for the Works the Contractor further warrants and undertakes to the Employer that:
  - .1 the various elements of the design for the Works shall be properly coordinated and integrated, one with another;
  - .2 the Works comprise or will comprise only materials and goods which are new and of sound and satisfactory quality and all workmanship, and fabrication will be to standards consistent with the Contract requirements; and
  - .3 the Works shall, when completed, comply with the Specification and any performance specification or other relevant criteria or specifications referred to therein and with Statutory Requirements.

#### Protocol for Design

- .6 Where the Contractor is required to design any element of the Works, those Works shall be designed so that they strictly comply with any design requirement set out within the Specification or within any other relevant Contract Document.
- .7 Where the Specification or relevant Contract Document does not provide sufficient information to enable the Contractor to design any element of the Works then the Contractor shall obtain approval for its proposed design from the Contract Administrator prior to implementing the design into the Works."

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

#### **"Materials, goods and workmanship**

- 2.2 .1 The Contractor in carrying out each Order shall not specify or use materials which are generally known at the time of use to be deleterious to health and safety or to durability

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

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

**Clause 2.2.3 – Delete this clause and replace with:** "Any materials and/or goods that the Contractor intends to use in respect of the Works shall be subject to the approval of the Contract Administrator."

**Insert a new clause 2.2.5:**

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

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

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

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

**Clause 2.3.5 – delete this clause.**

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

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

**Clause 2.3.6 – Insert a new clause 2.3.6 as follows:**

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

this Contract under clause 2.3.1.3 to a third party (or alternatively undertake the relevant Works itself)."

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

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

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

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

**"Orders – completion**

"2.6 In respect of Order completion:

- 2.6.1 unless covered by a priority coding referred to in the Contract Particulars (item 8) and/or Specification each Order shall state a commencement date and a date for its completion. The Contractor shall ensure that all of the work covered by and included in the Order shall be completed in full by the date for its completion specified in the Order and/or in accordance with the Specification[; and
- 2.6.2 without prejudice to the Employer's rights under clause 2.13, if an Order is not completed within the time specified in the priority coding (or the appointment time or date for completion, whichever is the earlier) or by any later date fixed under clause 2.10, the Employer will be entitled to deduct as liquidated damages from payments due to the Contractor, its loss of rent and/or any claims and/or losses it becomes liable to pay]."

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

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

entitled to instruct an alternative contractor to carry the programme of works within an Order or a programme of Orders in accordance with clause 2.5.1."

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

**Clause 2.8.2** – delete this clause.

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

**"Extension of Time**

- 2.10 If, at any time during the course of completing an Order, the Contractor shall establish that the progress of the Works under the Order shall have been affected by reason of:
- .1 Force Majeure; or
  - .2 fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from them, riot or civil commotion or any other risks insured against; or
  - .3 exceptionally adverse weather; or
  - .4 a delay in obtaining access to a Property to carry out the Works where the Contractor has complied with its obligations under the Contract in relation to securing such access;
  - .5 a delay in receiving any statutory permission required for the Works where the Contractor has applied for such permission promptly and pursued the application diligently; or
  - .6 Public Health Measures, to the extent the Contractor can demonstrate that this has a direct impact on the Works,

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

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

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

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

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

the Works required to a Property that is subject to an Order have been completed in accordance with this Contract.

- .4 Where the Contract Administrator dissents, then as soon as the Contract Administrator is satisfied that the Works required to the Property that is subject to an Order have been completed, the Contract Administrator shall notify the Contractor.
- .5 If the Contract Administrator or an authorised representative of the Employer is required to attend any Property for the purposes of assessing whether or not an Order or the Works required to a Property that is subject to an Order have been completed in accordance with this Contract on more than one occasion, then the cost to the Employer of any further attendance by the Contract Administrator or an authorised representative of the Employer shall be borne by the Contractor. The Contract Administrator shall be entitled to dissent to the Contractor's notification that an Order or the Works required to a Property that is subject to an Order have been completed where the Works contain defects, shrinkages, faults or any incomplete items of Work. The Contract Administrator shall also be entitled to dissent where one or more of the following items of information have not been provided in respect of the relevant Order or Works completed at a Property that is subject to an Order:
  - .1 all guarantee documents and instruction booklets;
  - .2 all necessary test and servicing certificates;
  - .3 all building control certificates;
  - .4 collaboration tests, and commissioning certificates for new installations;
  - .5 product and equipment warranties (as applicable), including evidence of registration of those warranties;
  - .6 a comprehensive operation and maintenance manual for each new installation, enabling the new installation to be operated and maintained efficiently and safely;
  - .7 photographs of completed Works;
  - .8 all other certification or documentation more particularly described in the Specification or would typically be expected following completion of the Works or as otherwise requested by the Employer."

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

- “.1 Notwithstanding any failure by the Contract Administrator to dissent to the Contractor's notification that an Order or the Works required to a Property that is subject to an Order have been completed pursuant to clause 2.11.1 or 2.11.3, the Contract Administrator may deliver to the Contractor as an instruction a schedule of defects, shrinkages, faults or any incomplete items of work outstanding at or after the Order Completion Date or the completion date of Works required to a Property that is subject to an Order which he requires to be completed or made good within 5 Business Days (or such other time specified by the Contract Administrator) following receipt by the Contractor of the instruction under this clause 2.12.1.
- .2 The Contractor shall at no cost to the Employer complete or make good all defects, shrinkages, faults and any outstanding items of work and defects referred to in the said instruction.

- .3 If the Contractor fails to rectify the defects under this clause within 5 Business Days (or such other time specified by the Contract Administrator), following receipt by the Contractor of the instruction under this clause 2.12, the Employer may instruct another contractor to carry out the required works, and the cost of such works shall be deducted from any sums owing to the Contractor or shall otherwise be recovered as a debt.
- .4 Any defects, shrinkages or other faults which appear within 12 months of the Order Completion Date or following completion of all Works required to a Property that is subject to an Order (unless the defect relates to materials, goods, a part or component for which the manufacturer or supplier provides a warranty for a longer period than 12 months in which case the longer period shall apply) and which are due to materials, goods or workmanship not being in accordance with this Contract, shall be made good by the Contractor at no cost to the Employer within its Defects Rectification Period. Where the Contractor fails to carry out the necessary remedial works required by the Defects Rectification Period, the Employer shall be entitled to exercise its rights pursuant to clause 2.14 and/or 2.15."
- .5 When all defects, shrinkages or other faults have been made good pursuant to Clause 2.12.4, the Contract Administrator shall issue a certificate to that effect and completion of making good defects, shrinkages or other faults shall be deemed for all the purposes of this Contract to have taken place on the day stated in such notice (the "**Certificate of Completion of Making Good Defects**") provided that the Contract Administrator shall not be required to issue any Certificate of Completion of Making Good Defects any earlier than ten (10) Business Days after the expiry of the Defects Rectification Period. The issue of any Certificate of Completion of Making Good Defects shall not affect the continuing liability of the Contractor in respect of any defects, shrinkages or other faults.

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

**"Liquidated and Ascertained Damages**

- 2.13 .1 If the Contractor fails to complete all of the Works required to a Property that is subject to an Order or otherwise complete the Works required to a Property that is subject to an Order free of any defects, shrinkages, faults or any incomplete items of work by the date for completion specified in the Order in relation to Works required to a Property, then the Contractor shall, if requested by the Employer, pay the sum of liquidated and ascertained damages for each week or pro rata part thereof that the completion of Works required to a Property is delayed (such damages being a pre-estimate of loss of rental income, service charges and the Employer's administrative costs), calculated from the date for completion specified within the Order for Works required to the Property until the Works required to the Property are completed. The levels of liquidated and ascertained damages are set out in Schedule 11, and shall apply to a delay in completing Works required to each Property that is subject to an Order.
- .2 The Employer's entitlement to liquidated and ascertained damages shall be in full settlement of any claim arising from such delay but shall be in addition and without prejudice to any other rights and remedies available to it for any other breach.
- .3 If the Contractor fails to attend a prearranged appointment the Employer may recover liquidated and ascertained damages from the Contractor of the applicable amount set out in Schedule 11 (such damages being a pre-estimate of both any amount the Employer has to pay to the Customer(s) and the Employer's administrative costs);

- .4 The Employer shall be entitled to increase the amount of liquidated and ascertained damages for the purposes of clause 2.13.1 throughout the Contract Period provided the Contractor is given no less than four weeks written notice of such an increase.
- .5 Any stated figure for liquidated and ascertained damages shall be subject to fluctuation at each anniversary date of the Contract in accordance with the mechanism for calculating any fluctuation in accordance with clause 5.6.

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

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

- 2.14 .1 In the event that the Contractor fails to complete an Order or any item of Work in an Order, the Contract Administrator may instruct the Contractor either:
- .1 to complete any Order or item of Work within an Order which has not been completed within its Response Period within 2 (two) Business Days (which for the purposes of this clause 2.14.1 shall become the new Response Period); or
  - .2 not to undertake that Order at all, on the basis that the Employer will get an alternative contractor to carry out the Works in accordance with Clause 2.15.
- .2 The Contract Administrator may instruct the Contractor in accordance with Clause 2.12 (Defects) either:
- .1 to rectify any defect, shrinkage, fault or outstanding item of work that has not been completed or made good before the end of its Defect Rectification Period within 2 (two) Business Days of such instruction (which for the purposes of this clause 2.14.2 shall become the new Defect Rectification Period); or
  - .2 not to complete or make good that defect, shrinkage, fault or outstanding item of work at all, on the basis that the Employer will engage another contractor to complete or make good that defect, shrinkage, fault or outstanding item of work in accordance with Clause 2.15.”

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

**“Diversion or Suspension of Orders**

- 2.15 .1 The Employer may arrange for a contractor other than the Contractor to undertake any Works (including the rectification of any defects, shrinkages or other faults) if the Contractor:
- .1 refuses to accept an Order for those Works;
  - .2 cannot be contacted by the Contract Administrator, despite the Contract Administrator having made reasonable endeavours to do so;
  - .3 fails to complete or make good any defect, shrinkage, fault or outstanding item of work notified to the Contractor pursuant to clause 2.12 within its Defect Rectification Period;
  - .4 fails to complete an Order or item of Work in an Order within its Response Period;
  - .5 fails to complete any Works within an Order in accordance with the Specification or any other express requirement of this Contract; or
  - .6 is not able to carry out the Works within a reasonable time frame.

- .2 Where the Employer engages a contractor other than the Contractor to undertake Works under Clause 2.15.1:
- .1 the Employer may recover from the Contractor:
- a any additional costs of having those Works done by another contractor (either compared to the amount that would have been paid to the Contractor for that Order or, where the Works are to rectify any defect, shrinkages or other faults, in addition to the amount paid to the Contractor);
  - b any Direct Losses suffered by the Employer as a result of the circumstances referred to in clause 2.15.1; and
  - c an administrative fee, which will be set at 15% of the value of the Order.
- .3 Where due to a default by the Contractor, compensation becomes payable to a Customer, the amount of such compensation payable by the Employer shall be reimbursed by the Contractor with the addition of 15% of the compensation amount to cover the Employer's administration costs, and such sums may be recoverable as a debt or may otherwise be deducted by the Employer from sums payable to the Contractor."

### **SECTION 3 – CONTROL OF WORK**

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

##### **"Assignment**

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

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

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

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

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

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

- “3.2 .3 The Contractor must include the following terms in all Sub-Contracts:
- .1 that the Contractor will pay all sums due from the Contractor to the Sub-Contractor within no more than 30 (thirty) days from receipt of a valid invoice under the Sub-Contract;
  - .2 that the Sub-Contractor’s liability under the Sub-Contract shall be unlimited;
  - .3 that a Sub-Contractor must provide a collateral warranty to the Employer in accordance with the terms of this Contract if required by the Employer;
  - .4 that the Sub-Contractor will comply with all the terms and conditions of this Contract.”

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

**“Contractor’s representative**

- 3.3 .1 The Contractor shall employ a competent Contractor’s representative and any Orders or Variations given to him by the Contract Administrator shall be deemed to have been issued to the Contractor.
- .2 The Contractor must ensure that the Contractor’s representative or a nominated deputy is contactable by the Employer at any time inside or outside Normal Working Hours during the Contract Period.
- .3 The Contractor may replace the Contractor’s representative at any time. Wherever possible the Contractor must notify the Employer in writing of the details of any new Contractor’s representative under Clause 3.3.5 before removing any person as Contractor’s representative.
- .4 The Contractor must appoint a replacement Contractor’s representative either before or as soon as practicable after and in any event within 10 (ten) Business Days after the date of any person ceasing to be its Contractor’s representative.
- .5 Before or within 2 (two) Business Days of appointing any person as Contractor’s representative the Contractor must notify the Employer in writing of:
- .1 the name of the Contractor’s representative;
  - .2 the post held by the Contractor’s representative; and
  - .3 contact details for the Contractor’s representative.
- .6 The Contractor must also inform the Employer in writing of any person(s) authorised to act as deputy for the Contractor’s representative.
- .7 Any communication given by the Employer or Contract Administrator to the Contractor’s representative will be deemed to have been given to the Contractor.”

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

- “3.4 Access to the Site is to be carried out in accordance with the procedures as set out in the Specification.”

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

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

**Clause 3.5 – insert new clauses 3.5.5 to 3.5.13 (inclusive) as follows:**

- 3.5 .5 The Contractor must immediately seek the Contract Administrator’s instructions whilst its Staff (or its Sub-Contractor’s Staff) are still at the Property where extra or varied Works will or may result in an increase in the Order Price of any Order.
- .6 Despite the issue of an Order the Contractor must also obtain further prior permission from the Contract Administrator to carry out any Work in excess of the price indicated in the Order for that Work where (in the Contractor’s opinion) it arises because of Customer Damage.
- .7 Where the Specification requires full details of an Order Variation to be included in the Valuation for that Order, it is a condition precedent to payment for that Order Variation that the Contractor provides those details.

**Quotation for a proposed Instruction**

- .8 Before giving any instruction to do anything that is not already an obligation of the Contractor under this Contract, the Contract Administrator may require the Contractor to provide one or more quotations setting out the consequences (in terms of both time and cost) of that instruction being given.
- .9 The Contractor must provide the quotation to the Contract Administrator:
- .1 within any period specified by the Contract Administrator; or
  - .2 if the Contract Administrator does not specify any period, within 5 (five) Business Days of the request.
- .10 Each quotation must set out the consequences of the instruction being given in terms of both time and cost, with costs being split between any increases to the Order Prices for the Orders affected and any additional payment.
- .11 On receipt of a quotation under Clause 3.5.10 the Contract Administrator may:
- .1 issue the instruction to proceed;
  - .2 ask for a revised quotation (giving reasons), in which case Clauses 3.5.8 to 3.5.10 are to apply to that request; or
  - .3 inform the Contractor that the instruction is not being proceeded with.
- .12 If the Contract Administrator does not issue an instruction under Clause 3.5.11 within 20 (twenty) Business Days of the date the quotation is provided (or such longer period as the Contractor agrees with the Contract Administrator) the quotation shall be considered invalid.
- .13 Where an instruction is issued under Clause 3.5.12 within the period specified in clause 3.5.12 the resulting extensions to the Response Periods and/or increases to any Order Prices must not exceed the times or amounts specified in the quotation or the timeframe and amount specified in a new Order in respect of the approved quotation.

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

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

- “3.6 .2 .2 save as provided under clause 3.6.2.1, cancellation of an Order shall not give rise to any entitlement for the Contractor to claim any abortive costs, demobilisation costs, or any direct or indirect costs or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity or any indirect or consequential loss of any kind or for any other amount under this Contract; and
- .3 clause 3.6.2.1 does not apply where Orders are cancelled before any physical works have commenced.”

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

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

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

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

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

**“Roles and Instructions of the Contract Administrator**

- 3.11 .1 Subject to Clause 3.11.2, the Contractor must comply with all oral and written instructions given by the Contract Administrator:
- .1 within any period specified in the Contract Documents;
- .2 if no period is specified in the Contract Documents, within any period specified by the Contract Administrator; and
- .3 if no period is specified either in this Contract or by the Contract Administrator within 5 (five) Business Days of the date of the instruction.
- .2 If the Contractor does not receive written confirmation of an oral instruction within 5 (five) Business Days the Contractor must confirm that instruction back to the Contract Administrator within 10 (ten) Business Days of the date of the oral instruction. If the Contractor does not provide written confirmation of the oral instruction within this period, it will be deemed not to have been given.
- .3 The Contract Administrator may exercise all functions and rights of the Employer under this Contract except to the extent that either:
- .1 the Specification states otherwise; or
- .2 the Employer notifies the Contractor in writing of any restrictions.
- .4 The signing by the Contract Administrator of time sheets or similar documents are not to imply the Contractor's compliance with the Contract.”

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

**“Complaints Handling**

- 3.12 .1 The Contractor must deal with any complaints received in a prompt, courteous and efficient manner within a period of five calendar days from the date the complaint is received (whether such complaint is made verbally or in writing), and in accordance with the procedures set out in the Employer’s complaints policy included in the Specification.
- .2 The Contractor must keep written records of all complaints received and of the action taken in relation to each of them. Such records must be kept available for inspection by the Contract Administrator at any reasonable time.
- .3 The Contractor must notify the Contract Administrator as soon as reasonably practicable in writing of all complaints received by it and all the steps it has taken (or intends to take) to deal with the complaint
- .4 The Contractor must promptly provide all information the Employer requires in order to deal with any complaints the Employer receives in connection with the Works or the Contractor.
- .5 The Contractor must at the request of the Contract Administrator arrange for notice(s) to be permanently displayed giving information on how to complain about the Works. The notice(s) must be in a form and displayed in places approved by the Contract Administrator.
- .6 Where any complaint that involves a breach by the Contractor of any of its obligations under this Contract and which gives rise to any regulatory or statutory sanction including the payments of any fine or compensation then the Employer may demand payment of that sum from the Contractor and the Contractor shall make such payment within seven days of receiving the Employer’s written demand.
7. The Employer may carry out its own investigation of any complaint notified to it (whether by the Contractor or any other person). In the event the Employer carries out its own investigation, it shall notify the Contractor accordingly and shall provide the Contractor with its findings and/or conclusions on completion of the investigation. In the event those findings and/or conclusions recommend any remedial action, the Contractor shall ensure that such remedial action is undertaken forthwith and no later than 5 Business Days after receipt of the Employer’s notification.”

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

**“Publicity**

- 3.13 .1 The Contractor must not and must ensure that Sub-Contractors do not give any information about the Works for publication in the press or on radio, television, via the internet, or for any other medium without the prior written consent of the Employer.
- .2 The Contractor must not, and must ensure that Sub-Contractors do not take photographs of any Properties or any Works without the prior consent of the Employer.
- .3 The Contractor must take all measures needed to prevent Staff taking, publishing or otherwise circulating such photographs.
- .4 The Contractor must not advertise on any of the Properties or in connection with the Contract unless the Contract Administrator has previously approved the content, duration and location of the advertisement.”

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

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

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

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

**SECTION 4 – PAYMENT**

**Section 4 – at the start of Section 4 insert a new clause 4A, 4B, [and 4C] as follows:**

- "4A All applications for payment under clause 4 shall be made via the Schemes Plus system and shall:
- .1 describe the relevant addresses where the Works are carried out and the corresponding Order number or project title;
  - .2 include the name of the Employer representative that placed the Order;
  - .3 include a breakdown of the Works that have been carried out by reference to the item code in the Price Framework and/or Specification (as applicable) and description, together with confirmation that they have been fully and properly carried out in accordance with and to the standard required by the Contract, provided that the Contractor shall not be entitled to any payments over and above the relevant Milestones (where applicable) and/or the Order Price;
  - .4 describe the precise period to which the application for payment relates;
  - .5 include the amount the Contractor considers to be due in respect of Milestones that have been certified as complete in accordance with Clause 4.3.2;
  - .6 be in accordance with the values set out in the Price Framework, provided that the Contractor shall not be entitled to any payments over and above the relevant Milestones (where applicable) and/or the Order Price; and
  - .7 include any other information or documents which the Contract Administrator has given notice to the Contractor it considers is necessary in its reasonable opinion to approve payment;

.8 be in the format set out at Schedule 8;

For the avoidance of doubt, the valuation of each application for payment shall be subject to an adjustment for KPI performance as set out in the KPI Framework and/or the Price Framework.

4B The Contractor shall make each application for payment under this Contract through the Schemes Plus system. The Employer shall record all payments made to the Contractor through the Schemes Plus system.”

**4C Retention**

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

.2 Payment of one half of the monies retained pursuant to clause 4C.1 shall be due upon the payment due date of the final Milestone certified in accordance with Clause 4.3.2. The balance of the monies so retained shall be due ten (10) Business Days following the issue of the Certificate of Completion of Making Good Defects.

.3 The Employer shall be entitled to retain and utilise the retention in the following circumstances:

.1 Where before the Certificate of Making Good Defects, the Contractor is notified of a defect and has failed to remedy that defect within the period set out at clauses 2.14.2 or at all; or

.2 the Employer has established a set-off, deduction or counterclaim against any sums due to the Contractor, including but not limited to where the Contract is terminated as a result of the Contractor’s breach or where the Contractor has become Insolvent.<sup>2</sup>

**Delete Clause 4.3 and substitute:**

**“Payment**

4.3 .1 The Employer shall pay the Contractor the Order Price for the carrying out of the Works, as adjusted (if at all) by this Contract and in accordance with the Milestone Payment Schedule.

**Certification of Milestones**

.2 The Contractor shall give not less than five (5) Business Days’ notice to the Contract Administrator of the date when it considers a Milestone will be completed and the Contract Administrator shall, within such five (5) Business Days or longer notice period carry out any inspections and testing necessary to confirm that the relevant Milestone has been achieved. As soon as practicable, and in any event, within five (5) Business Days of any such inspection, the Contract Administrator shall either:

a) certify that the relevant Milestone has been completed; or

b) advise what further works need to be carried out or what further steps need to be taken before the relevant Milestone can be certified as being complete.

If the Milestone is not certified as completed, the procedure set out in this clause shall be repeated as often as is necessary (but with the notice period being reduced from

five (5) to two (2) Business Days) until the relevant Milestone is certified as completed. A Milestone shall be deemed to have been completed when it has been certified as completed by the Contract Administrator.

### **Applications for Payment**

- .3 No earlier than five (5) Business Days following completion of each Milestone in accordance with this Contract the Contractor will provide the Employer with an application for payment showing the amount the Contractor considers to be due on the payment due date determined in accordance with clause 4.3.15 together with the basis on which the sum is calculated. The application for payment shall be supported with all the documentation required and set out within clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator.
- .4 No amount shall be due to the Contractor in respect of any Milestone until it has been completed in accordance with this Contract.
- .5 The Contractor will provide any additional information and explanation that the Employer may reasonably request.

### **Payment Notice**

- .6 Not later than five (5) Business Days after the relevant payment due date the Employer or the Contract Administrator shall give notice to the Contractor of the sum (the "Notified Sum") that the Employer or the Contract Administrator considers to be or to have been due at the payment due date and the basis on which that sum is calculated. It is immaterial that the Notified Sum may be zero. Subject to the issue of any Pay Less Notice pursuant to clause 4.3.14 the Employer shall pay the Notified Sum (less any retention pursuant to Clause 4C) to the Contractor by the final date for payment referred to in clause 4.3.16. Any failure to reach agreement shall be resolved in accordance with Section 9 (Settlement of Disputes).
- .7 If the Employer or the Contract Administrator does not give notice to the Contractor in accordance with clause 4.3.6 the payment to be made by the Employer to the Contractor by the final date for payment shall, subject to any Pay Less Notice which may be issued in accordance with clause 4.3.14, be the amount in the Contractor's application for payment submitted in accordance with clause 4.3.3.
- .8 Any payments that are due to the Contractor shall be subject to the Employer's rights of set off without limitation.
- .9 The Employer shall be entitled to deduct any liquidated and ascertained damages established pursuant to clause 2.13 from any application for payment or recover the same from the Contractor as a debt, provided a notice has been issued in accordance with clause 4.3.6.
- .10 The Employer shall have no liability to make any payment to the Contractor for any [Milestones] [Works] that are completed more than three months prior to the date of an application for payment. Where an application for payment has been made that consists of or includes any [Milestones] [Works] completed more than three months prior to the date of the application for payment then those [Milestones] [Works] shall have a £NIL value and the Employer shall have no liability to make any payment in respect of them whatsoever. Where the Employer or the Contract Administrator identifies within any application for payment [Milestones] [Works] completed more than three months prior to the date of the application, then it shall be entitled to apply a £NIL

valuation against such [Milestones] [Works] pursuant to clause 4.3.6 or otherwise issue a pay less notice pursuant to clause 4.3.14.

- .11 No later than 7 days after receiving payment from the Employer pursuant to this clause 4, the Contractor shall provide the Employer with evidence that it has paid all Sub-Contractors (where such sums have been included in the application for payment). The Employer shall be under no obligation to make any further payment under this Contract (subject to issuing a relevant notice under clause 4.3.6 until evidence is provided by the Contractor to the satisfaction of the Employer (acting reasonably)).
- .12 Neither the issue by the Employer or the Contract Administrator of any certificate nor the payment of any amount by the Employer to the Contractor pursuant thereto shall prejudice or adversely affect the right of the Employer to contend that any Order has not been properly valued.

#### **VAT Notice**

- .13 On receipt of the Employer's notice under clause 4.3.6 the Contractor shall issue a VAT invoice for the Notified Sum. If the Employer does not issue a notice in accordance with clause 4.3.6 the Contractor shall issue a VAT invoice for the amount set out in the application for payment submitted in accordance with clause 4.3.3.

#### **Pay Less Notice**

- .14 At least two (2) Business Days before the final date for payment the Employer or the Contract Administrator may give notice to the Contractor that the Employer intends to pay less than the Notified Sum (a "Pay Less Notice") or the amount in the Contractor's application for payment submitted in accordance with clause 4.3.3 as the case may be. It is immaterial that the amount then considered to be due may be zero.

Any Pay Less Notice shall set out:

- a) The sum that the Employer considers to be due to the Contractor when the Pay Less Notice is served; and
- b) The basis on which the sum is calculated.

#### **Payment Due Date**

- .15 The payment due date for any sums due to the Contractor which have been applied for in accordance with clause 4.3.3, will be ten (10) Business Days after the receipt by the Employer of the Contractor's application for payment submitted in accordance with clause 4.3.3. In the case of any VAT payable to the Contractor, if submitted later than the application for payment, the VAT payment due date shall be fourteen (14) days after receipt by the Employer of a valid VAT invoice.

#### **Final Date for Payment**

- .16 The final date for payment of any sums referred to in clauses 4.3.6, 4.3.14 and 4.3.15 and shall be fourteen (14) days after the relevant payment due date.

#### **Adjustments to the Order Price and Milestone Payment Schedule**

- .17 Whenever there is any adjustment to the amounts due to the Contractor (either upwards or downwards) as a result of an Order Variation, the Order Price shall then be adjusted accordingly and the Parties shall endeavour to agree an appropriate adjustment to the Milestone Payment Schedule, failing which such adjustments shall be determined in accordance with Section 9 (Settlement of Disputes).

## **Interest on Late Payments**

- .18 If the Employer is late in making any payment due to the Contractor in accordance with this Contract which for the avoidance of doubt shall not include any amounts withheld by the Employer in accordance with clause 4.3.14 (Pay Less Notice) unless it is subsequently determined that any such amount should not have been withheld), the Employer shall pay interest on the amount of the late payment at the Interest Rate from the final date for payment of that amount until the date on which the relevant payment is received by the Contractor.

## **Right to Suspend Performance for Non-Payment**

- .19 In addition to the right to the right to claim interest on late payments in accordance with clause 4.3.18, the Contractor shall be entitled to exercise its statutory right to suspend the performance of any or all of its obligations under this Contract in accordance with Section 112 of the HGCRA.

## **Set-Off**

- .20 The Contractor shall not be entitled to retain or set off any amount due to the Employer by the Contractor under or pursuant to this Contract or any other agreement.

## **The Public Contracts Regulations 2015**

- .21 The Contractor shall include in any Sub-Contract entered into by him suitable provisions to impose the requirements of Regulation 113(2)(c)(i) and (ii).

## **Delete Clause 4.4 and substitute:**

### **“Audit**

- 4.4 .1 If at any time, and notwithstanding the issue of the [Final Certificate], it is discovered that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts in respect of Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer, then the Employer shall have the right to:
- .1 inspect any/all premises in respect of which Works have been instructed to the Contractor since the start of the Contract Period where it is purported that Work has been carried out by the Contractor under the Contract, and
  - .2 determine at their sole discretion the extent of such inspection that is deemed necessary for the purposes of further checking, and
  - .3 recover from the Contractor all reasonable costs and/or expenses which the Employer has incurred or may incur consequential to carrying out such inspection (only where the inspection finds that the Contractor has included in valuations/invoices submitted, quantities and/or monetary amounts in respect of Work which has not been carried out and/or properly executed in accordance with the Contract, whether or not payment for such Work has already been made by the Employer), and
  - .4 determine and recover from the Contractor the apparent excess amount in respect of any overcharge and/or overpayment as appropriate.

- .2 Any amount due to the Employer arising from the above provisions shall be recoverable as a debt from the Contractor to the Employer and may also be set-off or deducted from any monies due or which may become due to the Contractor, provided a notice has been issued in accordance with clause 4.3.7. Provided always that the recovery of such debt shall be without prejudice to any other rights or remedies the Employer may have.
- .3 The Employer may appoint the Quality Inspector to carry out an audit which shall include any such inspection and/or investigation, which the Employer has the right to undertake pursuant to clause 4.4.1.
- .4 If having carried out the audit, the Quality Inspector determines that a sum of money is due to the Employer then the Contractor shall pay that sum of money forthwith, or subject to clause 4.3.7, the Employer shall have the right to set-off such sum against any sums owed to the Contractor under this Contract or otherwise recover such sums as a debt.
- .5 In the event the Quality Inspector finds a sum of money is due to the Employer, the Contractor shall pay the reasonable cost of the Quality Inspector for carrying out the audit. The Employer may pay the Quality Inspector and recover the cost from the Contractor as a debt or, subject to clause 4.3.7, set-off such cost against any sums owed to the Contractor under this Contract.
- .6 Any audit undertaken by the Quality Inspector for the purpose of clause 4.4.3 shall be final and binding upon the Parties provided that a copy of all reports prepared by the Quality Inspector are made available in full to the Contractor and the Quality Inspector acts in accordance with the terms of his/her appointment at all times.”

**Delete Clause 4.5.**

**Delete Clause 4.6 and substitute:**

**“Final Account**

- 4.6 The Final Account process shall be processed through Schemes Plus and shall proceed as follows:
  - .1 The Contractor must submit a final application for payment, for Works it considers it has carried out and completed, to the Contract Administrator within 40 Business Days after the earlier of:
    - .1 the Termination Date, where termination is for a Contractor Default or Employer Default; or
    - .2 the Expiry Date or, if earlier, the expiry of a notice served by the Employer under clause 7.1 (Break Notice).
  - .2 Within the final application for payment the Contractor must provide such information as required by clause 4.3.1, 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator and if such documentation is not provided the final application for payment will not be valid and will be rejected accordingly.
  - .3 The Contract Administrator must issue the Final Account to the Employer and the Contractor indicating the amount due to the Contractor or due to the Employer as the case may be within 40 Business Days of receipt of the final application for payment and all documentation required by clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator.

- .4 In the Final Account, the Contract Administrator must set out:
  - .1 all amounts valued as due to the Contractor under previous applications for payment;
  - .2 all subsequent adjustments to those approved valuations in accordance with this Contract;
  - .3 any sums the Employer may recover from the Contractor in accordance with the terms of the Contract including but not limited to any liquidated and ascertained damages established pursuant to clause 2.13;
  - .4 the amount (even if the amount is zero) of the actual payment proposed to be made by the Employer to the Contractor or of any amount due from the Contractor to the Employer;
  - .5 the basis on which that amount is calculated.
- .5 If the Contractor does not submit its final application for payment and other documentation as required by this clause 4.6.2 the Contract Administrator may calculate all amounts that are to be included in the Final Account based on the information the Contract Administrator has available at that time.
- .6 Within 20 Business Days of receipt of the Final Account under clause 4.6.3, if the Final Account is agreed, the Contractor must sign and return a copy of the Final Account to the Employer. By doing so, the Contractor accepts that the stated amount to be paid will be in full and final settlement of all amounts due to the Contractor under the Contract and that no further payment will be due to the Contractor.
- .7 Following signature of the Final Account the Contractor must issue an invoice within 10 Business Days.
- .8 An invoice will not be a valid invoice under clause 4.6.7 unless:
  - .1 all conditions precedent to payment becoming due in relation to the final valuation to which it relates have been satisfied;
  - .2 it is for the amount due as set out in the Final Account.
- .9 The date of the invoice submitted by the Contractor is the due date for payment of the amount stated in the Final Account.
- .10 The final date for payment shall be 21 days from the due date for payment.
- .11 The Contract Administrator or Employer may issue a pay less notice no later than 5 Business Days prior to the final date for payment setting out the sums it considers due and the basis upon which such sums have been calculated. A pay less notice shall be issued by the Contract Administrator or Employer even where the sum due to the Contractor in respect of any application for payment is zero.
- .12 The Contractor shall not be entitled to submit an interim application for payment once the Parties have commenced negotiations in respect of the Final Account. The Employer shall be entitled at any time to recover any overpayment it considers it has made to the Contractor in respect of any interim application for payment or the Final Account or shall otherwise be entitled to recover such sum as a debt from the Contractor.

- .13 In the event of the Contractor suffering an event of insolvency as described in clause 8.1:
- (i) the Employer need not pay any sum that has already become due to the Contractor insofar as the Employer has given or gives a notice in accordance with clause 4.3.7 or 4.6.11;
  - (ii) the Employer need not pay any sum that has already become due to the Contractor if the event occurs after the date on which the notice in relation to that sum would have been served in accordance with clause 4.3.7 or 4.6.11.

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

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

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

## **SECTION 5 – MEASUREMENT AND VALUATION**

**Delete clause 5.2 and substitute:**

**“Measurement and Valuation – responsibility**

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

**Delete clause 5.3 and substitute:**

- 5.3 .1 Insofar as the measurement and valuation of an Order or Works within the Order cannot be readily ascertained by reference to the Price Framework then the valuation of the Order or Works within the Order shall be ascertained by the Contractor who shall act reasonably at all times and provide the Contract Administrator with an opportunity to be present at the measurement for such Order or Works, and whether or not the Contract Administrator is present for each measurement, the Contractor shall provide the Contract Administrator with such information as may be required by the Contract Administrator to demonstrate that each Order has been measured reasonably. The measurement and/or valuation of such Orders by the Contractor shall be subject to the approval of the Contract Administrator.
- .2 The Contractor has examined the Contract Documents and confirms that the tendered Rates and Prices include for all items and contingencies except where the Contract expressly provides for additional payment.
- .3 The Contractor is deemed to have:
- .1 inspected the Properties (or a representative sample of them);
  - .2 satisfied itself regarding the conditions under which the Works are to be carried out;
  - .3 satisfied itself to the extent and accuracy of any information provided by the Employer; and

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

**Delete clause 5.4.**

**Delete clause 5.5.**

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

**[“Rates—Fluctuations**

**5.6**

- ~~.1 The Contractor’s Tendered Rates or Prices shall remain fixed for the first [ ] months following the commencement of the Contract Period. Thereafter any adjustment to the Contractor’s Tendered Rates or Prices may be considered by the Employer on the [ ] anniversary of the commencement of the Contract Period and each anniversary date thereafter (“Inflation Date”) in accordance with the mechanism at clauses 5.6.2 and 5.6.3.~~
- ~~.2 Should the Contractor wish to propose a change to the prices payable (a “Price Change”) following an Inflation Date, it shall complete a price change form in the form prescribed by Procure Plus Holdings Limited and shall submit it to Procure Plus Holdings Limited and the Employer no later than forty five (45) days in advance of the Inflation Date. The Contractor shall ensure that the completed price change form shall include details of the rationale for the Price Change, the impact on the prices currently payable under the Contract, together with any steps taken or proposed to mitigate the change as appropriate.~~
- ~~.3 The Contractor shall assess and discuss the proposed Price Change with the Employer and Procure Plus Holdings Limited, provided the Contractor acknowledges that it shall be at the Employer’s final determination on whether to accept or reject the Price Change.~~
- ~~.4 Upon receipt of a written request and supporting calculation pursuant to clause 5.6.2, the Employer shall ascertain the increase or decrease applicable to the Contractor’s Tendered Rates or Prices and shall provide written notice of that calculation as soon as reasonably practicable.~~
- ~~.5 Following the Employer’s assessment pursuant to clause 5.6.4, any adjustment to the Contractor’s Tendered Rates or Prices that are agreed by the Employer shall apply in respect of all Works ordered by the Employer after the Inflation Date. For the avoidance of doubt, and notwithstanding anything to the contrary in the Price Framework, the Employer does not have an obligation to agree any adjustment to the Contractor’s Tendered Rates or Prices or any revised rates.~~

~~.6 In the event the Contractor fails to provide the written request in accordance with clause 5.6.2, then it shall be at the Employer's discretion as to whether any adjustment is made for that particular year in accordance with this clause 5.6.]~~

**Clause 5.7 – delete this clause.**

**Clause 5.8 – delete this clause.**

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

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

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

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

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

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

### **Clause 6.7A**

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

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

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

In the final paragraph, delete the final sentence.

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

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

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

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

**Clause 6.13.6 – delete this clause**

**Insert a new clause 6.15 and 6.16 as follows:**

## **"Professional Indemnity Insurance**

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

## **Product Liability Insurance**

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

## **SECTION 7 – BREAK PROVISION**

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

- "1 The Employer has the right to bring the Contract to an end or reduce the Contract Period by giving not less than 13 weeks' notice to the Contractor, provided such notice is not given before the first 6 months following the commencement of the Contract Period.] [The Contractor has the right to bring the Contract to an end by giving not less than 36 weeks' notice to the Employer, provided such notice is not given before the first 12 months following the commencement of the Contract Period. ~~In the event the Contractor gives notice pursuant to this clause 7.1.1 it shall at the same time as the notice pay to the Employer the sum of £100,000 (one hundred thousand pounds) ("the Break Payment") or such lesser amount as determined by this clause 7.1.1. If the Contractor does not pay the Break Payment then any notice given by it pursuant to this clause 7.1.1 shall be deemed invalid and shall have no effect. The Break Payment shall not be subject to any set-off or counterclaim. The Break Payment shall be fixed at £100,000 (one hundred thousand pounds) for the first 12 months of the Contract Period and shall thereafter reduce by a sum of £10,000 (ten thousand pounds) upon each anniversary of the commencement of the Contract Period.~~
- .2 Without prejudice to clause 7.1.1, the Employer shall have the right to reduce the scope of Works or remove a Workstream or part thereof by giving the Contractor not less than 13 weeks' notice, provided such notice is not given before the first 6 months following the commencement of the Contract Period. Such notice can be revoked by the Employer at any time."

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

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

### **Insert new Clause 7.2.2:**

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

## **SECTION 8 – TERMINATION**

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

**Clause 8.4.1 – insert additional sub-clauses 8.4.1.3 – 8.4.1.9 inclusive as follows:**

- "8.4 .1 .3 without reasonable cause significantly suspends, disrupts or delays the carrying out of any work pursuant to any Order or Orders;
- .4 fails to proceed regularly and diligently with any work pursuant to any Order or Orders;
- .5 fails to carry out any Works pursuant to any Order or Orders in accordance with this Contract;
- .6 purports to assign, novate or appoint an agent to deliver this Contract without the consent of the Employer in breach of Clause 3.1 (*Assignment*) or sub-contracts or purports to sub-contract any part of the Works without the Employer's consent;
- .7 fails to achieve the [Minimum Level of Acceptable Performance] for any KPI on 3 subsequent monthly periods or on 4 occasions during a 12 month period;
- .8 fails to comply with any of its obligations including any conditions contained in the Contract Documents;
- .9 fails to remedy any other breach of this Contract which, in the reasonable opinion of the Employer, is sufficiently serious to entitle the Employer to terminate this Contract if it is not remedied,"

**Insert a new clause 8.5A as follows:**

### **"8.5A Change of Control**

In this clause, the following definitions shall apply:

**Control:** in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- b. as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate

**Change of Control:** occurs if a person who controls any body corporate ceases to do so or if another person acquires Control of it by way of an asset sale or share sale of the body corporate or otherwise.

- .1 The Contactor shall notify the Employer immediately if the Contractor will undergo or undergoes a Change of Control. The Employer may terminate the Contract by notice in writing with immediate effect within 21 days of:

- (a) being notified that a Change of Control has occurred; or
  - (b) the date that the Employer becomes aware of the Change of Control where no notification has been made.
- .2 In the event the Employer provides notice to terminate the Contract pursuant to this clause 8.5A, the Contractor shall complete all Orders that remain outstanding unless the Employer instructs otherwise. If the Contractor's employment is terminated pursuant to this clause 8.5A, clauses 8.10, 8.11A, 8.13 and 8.14 of the termination provisions shall apply and the Contractor's obligations in respect of any terms of the Contract that will survive termination shall continue to apply.
- .3 For the avoidance of doubt, in the event of the Contract coming to an end pursuant to this clause, the Employer shall not be liable for any direct or indirect loss of profits, loss of contracts or other costs, expenses or consequential losses suffered or incurred by the Contractor."

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

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

**Clause 8.10 - insert “, 8.5A” after “8.5”**

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

**Clause 8 – insert new clause 8.11A as follows:**

**“Termination by either party –Obligations of the Contractor**

- 8.11 A .1 Upon any determination of the Contractor's employment under this Contract the Contractor shall immediately vacate the Site and shall comply with all instructions of the Employer for the protection of any works and any goods and materials and the safe and orderly removal of all plant equipment and other items belonging to the Contractor and shall immediately deliver to the Employer possession of the Site and any works in a neat and tidy condition.
- .2 Upon any determination of the Contractor's employment under this Contract, the provisions of Clause 22 (*Transferring Employees*) and Schedule 9 TUPE shall apply."

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

**“Expiry**

- 8.12 .1 During the 3 (three) months preceding the Expiry Date or the end of this Contract by any means the Contractor must continue to carry out and complete Orders except as set out below:
- .1 need not carry out any Order instructed during those 3 (three) months which cannot be reasonably completed before the Expiry Date unless the Contract Administrator and Contractor agree otherwise and the Contractor must notify the Contract Administrator of the fact that the Order cannot be completed before the Expiry Date immediately on receipt of the Order; and
  - .2 must complete all Orders instructed before the start of such 3 (three) month period, even if such Works cannot be completed before the Expiry Date.
- .2 Where the Contractor completes Orders under Clause 8.12.1 the Expiry Date will be the date of completion of the last Order to the reasonable satisfaction of the Contract Administrator.

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

**“Obligations to Co-operate at Termination**

- 8.13 .1 On termination of this Contract the Contractor must co-operate fully with the Employer in relation to the legal and operational handover of responsibilities between the Contractor and the Employer.
- .2 The Contractor must use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation and service agreements relating to the Works that are in force on the Termination Date are assigned to the Employer or as the Contract Administrator may instruct.
- .3 Except where this Contract is terminated for Contractor Default, and subject to the Contractor obtaining permission to do so from any Customer occupying the affected Properties, the Contractor may go onto any of the Properties in the 5 (five) Business Days after the Termination Date to remove any materials or equipment which either it or a Sub-Contractor owns or has hired and which are not to be transferred to the Employer on the Termination Date.
- .4 The Contractor must deliver all materials and equipment paid for by the Employer to the Employer or as the Contract Administrator directs within 5 (five) Business Days of:
- .1 the Termination Date, where the reason for termination is any reason other than Employer Default; or
- .2 where the termination is for Employer Default, the date on which the Contractor receives payment for those plant and materials under Clause 8.7 (*Default by Employer*).
- .5 The Contractor must ensure that all rubbish, debris, and site waste has been removed from the Properties within 5 (five) Business Days of the Termination Date but the Contractor's attendance at any Properties for the purpose of such removal is subject to:
- .1 any direction of the Contract Administrator; and
- .2 the Contractor obtaining permission to do so from any Customer occupying those Properties.
- .6 If the Contractor fails to remove all rubbish, debris and site waste from the Properties within 5 (five) Business Days of the Termination Date the Employer may do so and recover its reasonable costs of doing so from the Contractor through the Final Account.
- .7 Within 5 (five) Business Days of the Termination Date, the Contractor must:
- .1 return to the Employer the Employer Data and all Documents and Data provided by the Employer;
- .2 provide copies of all other Documents and Data used in connection with the Works to the Employer; and
- .3 return to the Employer all keys, passes, door entry codes and other information relating to the Properties.
- .8 All the Documents and Data (including Employer Data) provided under Clause 8.13.7 must be supplied in the formats required by the Employer and must be up-to-date to midnight on the Termination Date.

- .9 Following the later of the rectification of defects and payment of the Final Account the Contractor must delete all copies of all Documents and Data relating to this Contract from the Contractor's IT System except:
- .1 those required to be kept under Clause 8.14 (*Post Termination*); and
  - .2 any in which the Contractor has the Intellectual Property Rights under Clause 11 (*Copyright Licence, Proprietary Material and Employer Data*)”

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

**“Post Termination**

- 8.14 .1 For a period of 12 (twelve) years after the Termination Date the Contractor must maintain full records of:
- .1 this Contract;
  - .2 the Works done under it;
  - .3 all payments received from the Employer; and
  - .4 any expenditure of the Contractor that the Employer reimburses,
- and shall provide such documents to the Employer upon request.”

**SECTION 9 – SETTLEMENT OF DISPUTES**

**Clause 9 – Insert new clause 9.9:**

**“Governing Law and enforcement**

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

**Insert new clauses 10 to 27 (inclusive) as follows:**

**SECTION 10 – COLLATERAL WARRANTIES**

**Contractor Warranties in favour of others**

- 10.1 The Contractor shall execute and deliver to the Employer deeds of collateral warranty in favour of any owner of a Property, any occupier of a Property or any person with a bona fide interest in a Property that is subject to Works pursuant to an Order in the form as set out in Schedule 1 (*Form of Contractor's Collateral Warranty*), and in each case such deed to be procured and provided to the Employer within 14 days of the Employer's written request to do so.

**Sub-contractor Warranties**

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

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

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

### **Copyright Licence**

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

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

### **Confidential Information**

- 12.1 .1 During the term of this Contract and after its expiry or termination for any reason, each of the parties undertakes to the other to keep the Confidential Information confidential, except to the extent that:
- .1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;
  - .2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;
  - .3 disclosure or use is necessary by the relevant party in connection with entry into this deed or for the proper and effective performance of his obligations under this deed (including disclosure by either party to his insurers and professional advisers); or
  - .4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).
- .2 The Contractor must not discuss any aspect of the Works or this Contract with the press or on radio, television, internet or any other medium without the consent of the Employer.

### **Security of Confidential Information**

- 12.2 .1 In order to ensure that no unauthorised person gains access to any Confidential Information or any Personal Data obtained in the performance of this Contract, the Contractor must maintain such information security systems as are approved by the Employer.
- .2 Where necessary to prevent such access, the Employer may require the Contractor to alter any security systems at any time during the Contract Period at the Contractor's expense.
- .3 The Contractor must immediately notify the Employer of any breach of security in relation to Confidential Information or Personal Data obtained in connection with this Contract and will keep a record of such breaches. The Contractor must use its best

endeavours to recover such Confidential Information or Personal Data (however it was recorded). This obligation is in addition to the Contractor's obligations under Clause 12.1 (*Confidential Information*).

- .4 The Contractor must co-operate with the Employer in any investigation that the Employer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or Personal Data.
- .5 This Clause 12.2 is to apply during the Contract Period and for six years after the Termination Date.

## **SECTION 13 – SAFEGUARDING**

### **Safeguarding**

- 13.1 The Contractor shall ensure that it has in place a policy that provides for the following:
  - .1 No Works are to be carried out unless an adult is present within the Property. Should only a minor be present in the Property the Contractor must refuse to enter the Property.
  - .2 In respect of any sheltered accommodation, the warden shall be contacted and consulted prior to any Works commencing.
  - .3 In respect of vulnerable tenants the Contractor will follow the customer liaison provisions in the Specification.
- 13.2 The Contractor shall provide the Employer with a copy of its policy if requested to do so on the execution of this Contract.
- 13.3 The Contractor shall further ensure that all Sub-Contractors comply with the requirements of this section 13 and each Sub-Contract contains equivalent requirements.
- 13.4 The Contractor shall immediately notify the Employer if it considers a child or a vulnerable resident is at risk or if there has been a breach of the obligations set out in this clause 13 or pursuant to the Safeguarding Vulnerable Groups Act 2006.

## **SECTION 14 – DATA PROTECTION**

### **Data Protection**

- 14.1 .1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor in respect of Personal Data. Unless otherwise agreed in writing, the Data Processing Operations (as reviewed from time to time) and as set out in clause 14.1.16 is the only processing that the Contractor is authorised to do by the Employer.
- .2 The Contractor shall notify the Employer immediately if it considers that any of the Employer's instructions infringe Data Protection Legislation.
- .3 The Contractor shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include:

- .1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - .2 an assessment of the necessity and proportionality of the processing operations in relation to the Works;
  - .3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - .4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- .4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- .1 process that Personal Data only in accordance with the Data Processing Operations, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Employer before processing the Personal Data unless prohibited by Law;
  - .2 ensure that it has in place Protective Measures to protect against a Data Breach, which can include but is not limited to accidental, unauthorised, or unlawful destruction, loss, alteration or access, having taken account of the:
    - a) nature of the data to be protected;
    - b) harm that might result from a Data Breach;
    - c) state of technological development; and
    - d) cost of implementing any measures;
  - .3 ensure that:
    - a) the Contractor's Persons do not process Personal Data except in accordance with this Contract (and in particular the Data Processing Operations);
    - b) it takes all reasonable steps to ensure the reliability and integrity of any of the Contractor's Persons who have access to the Personal Data and ensure that they:
      - (i) are aware of and comply with the Contractor's duties under this clause;
      - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer or as otherwise permitted by this Contract; and
      - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - .4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

- a) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Legislation) as determined by the Employer;
  - b) the Data Subject has enforceable rights and effective legal remedies;
  - c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and
  - d) the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- .5 at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination or expiry of this Contract unless the Contractor is required by Law to retain the Personal Data.
- .5 Subject to clause 14.1.6, the Contractor shall provide written notice to the Employer's Data Protection Officer immediately if it:
  - .1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - .2 receives a request to rectify, block or erase any Personal Data;
  - .3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - .4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - .5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - .6 becomes aware of a Data Breach.
- .6 The Contractor's obligation to notify under clause 14.1.5 shall include the provision of further information to the Employer in phases, as details become available.
- .7 Taking into account the nature of the processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.1.5 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:
  - .1 the Employer with full details and copies of the complaint, communication or request;
  - .2 such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - .3 the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;

- .4 assistance as requested by the Employer following any Data Breach;
- .5 assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- .8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- .9 The Contractor shall allow for audits of its Data Processing activity, including security and other organisational and technical measures by the Employer or the Employer's designated auditor. This will include evidence of testing system security on an annual basis, as a minimum through independent penetration tests, the results of which will be made known to the Employer.
- .10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- .11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
  - .1 notify the Employer in writing of the intended Sub-processor and Processing;
  - .2 obtain the written consent of the Employer;
  - .3 enter into a written agreement with the Sub-processor which are equivalent to and give effect to the terms set out in this clause 14 such that they apply to the Sub-processor; and
  - .4 provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.
- .12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- .13 The Employer may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (in either case in accordance with Data Protection Legislation which shall apply when incorporated by attachment to this Contract).
- .14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Employer may on not less than 30 Business Days' notice to the Contractor amend this Contract to ensure that they comply with any guidance issued by the Information Commissioner's Office.
- .15 The Contractor shall indemnify the Employer against all liabilities, costs, expenses, damages, and losses (and all other reasonable professional costs and expenses) suffered or incurred by the Employer arising out of or in connection with:
  - .1 any breach of the obligations contained within this clause 14.1 (Data Protection); or
  - .2 any failure to comply with its obligations as a Processor under the Data Protection Legislation.
- .16 The following Data Processing Operations shall apply to this Contract:

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

### **Employer Data held on the Contractor's IT Systems**

- 14.2 .1 The Contractor must:
- .1 store all Employer Data safely and separately from any data not relating to the Employer or the Works;
  - .2 provide, maintain and update (where necessary) the Contractor's IT System so that, at all times during the Contract Period, it is suitable for the delivery of the Works and for keeping the Employer Data up to date in connection with this;
  - .3 make all Employer Data maintained on the Contractor's IT System readily available to the Employer at all times during the Contract Period; and
  - .4 return that Employer Data to the Employer following the Termination Date.
- .2 Each Party warrants to the other that:
- .1 it will not introduce any virus, malware, keylogger or other harmful software into the other's IT System;
  - .2 it will regularly check all software and transfer media used in connection with this Contract (including any software and transfer media used on or connected to the

other Party's IT System) with an up-to-date virus checker throughout the Contract Period;

- .3 it will grant access to its IT System to the other Party during Normal Working Hours (other than when it is necessary to close down its IT System to rectify faults or undergo maintenance of which the other Party has been given reasonable notice); and
  - .4 granting the other Party access to its IT System does not breach any Intellectual Property Rights of any third party.
- .3 The Contractor:
- .1 acknowledges that the Employer Data belongs solely to the Employer;
  - .2 must not remove any copyright notices contained in or relating to the Employer Data;
  - .3 must not modify, alter or reconfigure the Contractor's IT System other than as required by the Specification in order to provide the required functionality;
  - .4 must not modify, alter, or overwrite any Employer Data stored on the Contractor's IT System without the prior written consent of the Employer;
  - .5 must always maintain a back-up and records of any Employer Data it has so modified for a minimum of 3 (three) months after the modification or deletion;
  - .6 must, if any Employer Data is lost or corrupted, restore or procure the restoration of the Employer Data to its state immediately before the corruption or loss;
  - .7 must access and use the Employer's IT System only for the purpose of and to the extent required for the Works and when doing so must comply with any reasonable rules on its use that are issued by the Employer from time to time; and
  - .8 must ensure that the Employer is able to use any software necessary to access and use the Employer Data both during the Contract Period and after the Termination Date.
- .4 The Contractor warrants that:
- .1 the Contractor's IT System will operate and interface seamlessly with the Employer's IT System to the extent required by the Specification; and
  - .2 the Contractor must enhance the interfaces between the Employer's IT System and the Contractor's IT System from time to time to the extent instructed to do so by the Contract Administrator to develop the Employer's service to Customers.
- .5 The Contractor must notify the Employer promptly and, in any event, within 2 (two) Business Days if it becomes aware of any actual, potential or threatened breach of Clause 14.2.2 or of any of the warranties in Clause 14.2.3 or Clause 14.2.4.
- .6 Each Party must indemnify the other in respect of all liability incurred as a result of a breach of any of Clauses 14.2.2.1 to 14.2.2.4 (inclusive).

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

### **Notification of Claims**

- 15.1 Notwithstanding the Contractor's obligations the Contractor immediately upon becoming aware of the same or likelihood of the same shall notify the Contract Administrator and appropriate insurance companies of any:-
- .1 accident involved a member of the public on the Site within the Contract Area or an employee of any contractor or any Sub-contractor;
  - .2 damage caused by the Contractor or any sub-contractor or any of their employees;
  - .3 breach of any relevant statutory provision by the Contractor or any sub-contractor or any of their employees;
  - .4 investigation, enquiry or adverse report or comment by the Health and Safety Executive or any successor or comparable agency in relation to the Contractor;
  - .5 any legal proceedings notified to or commenced against the Contractor in relation to any event or occurrence within the Contract Area; and
  - .6 any enforcement action of whatever nature notified to or commenced against the Contractor;
- 15.2 Any other matter which may in the Contractor's opinion result in any claim of whatever nature against the Employer or which might reasonably be expected to damage public confidence in the Employer or adversely affect the Employer's reputation.
- 15.3 If requested to do so by the Contract Administrator, the Contractor shall provide the Contract Administrator with any relevant information in connection with any of the matters referred to in clause 15 or any legal inquiry, arbitration or court proceedings in which the Employer may become involved or any relevant disciplinary hearing internal to the Employer and shall give evidence in any such inquiry or proceedings or hearing.
- 15.4 Except for any claims made by third parties, the Employer shall, if so requested by the Contractor, provide the Contractor with any relevant information in connection with any of the matters referred to in clause 15 for the purposes of any legal inquiry, arbitration or court proceedings in which the Contractor may become involved.

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

### **Contractor's Staff**

- 16.1
- .1 The Contractor shall ensure that its staff, servants and agents carrying out any Works under the Contract shall confine themselves to the locality of their work, cause as little interference as possible to the Employer's tenants and/or tenants premises, and ensure that all works are carried out with the least possible inconvenience to occupants of dwellings, premises and tenants and occupiers of adjoining premises taking into account any special needs of such persons or any cultural sensitivities.
  - .2 The Contractor must employ sufficient competent Staff to undertake the Works.
  - .3 The Contractor must obtain the consent of the Contract Administrator before employing as a member of Staff any person who is:
    - .1 a board member of the Employer (as applicable);

- .2 any employee of the Employer; or
- .3 any close relative (spouse, civil partner, parent, grandparent, child, grandchild (including an illegitimate child or grandchild), brother or sister) of any such person; or
- .4 any person with whom such person has a close personal relationship that is equivalent to their being a close relative.

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

- .1 are appropriately qualified and experienced;
- .2 are properly trained and supervised;
- .3 when undertaking the Works:
  - a act in the best interests of the Employer;
  - b comply with all applicable Law including Health and Safety Law, Equality and Diversity Law, the Human Rights Act 1998 and Data Protection Legislation; and
  - c comply with any direction given by the Contract Administrator under this Contract.

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

## **SECTION 17 – CONTRACTOR'S ASSETS**

- 17.1 The Contractor shall at all times during the Contract Period provide and maintain all such equipment, vehicles, materials and all other physical resources, referred to as "**Assets**", as may be necessary from time to time for the carrying out of the Contractor's obligations under this Contract.
- 17.2 The Contractor shall be responsible for the maintenance and repair of all Assets, and shall maintain all Assets at all times in good and serviceable repair and in such condition as is required for the proper performance by the Contractor of its obligations under this Contract. The Contractor shall at all times be responsible for any necessary licensing and for the payment of all licensing fees, taxes and insurances as may be required in connection with the possession of or use of any of the Assets.
- 17.3 All Assets used by the Contractor shall conform to any applicable minimum standards as set by Law.
- 17.4 The Contractor shall only keep such hazardous materials or equipment as are necessary for the carrying out of the Contractor's obligations under this Contract and are approved in writing by the Contract Administrator, such approval not to be unreasonably withheld or delayed, and such materials or equipment shall at all times be kept under proper control and the Contractor

shall ensure that all such materials or equipment and their usage, storage and transportation comply with all applicable Law.

- 17.5 For the avoidance of doubt, the Contractor shall be responsible for the replacement cost of any Assets, even though deployed in carrying out the Contractor's obligations under this Contract.

## **SECTION 18 – SECURITY**

- 18.1 The Contractor shall issue to all of its personnel who shall at any time have access to any of the Employer's Properties identification badges in such form as the Employer may from time to time determine.
- 18.2 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Employer and shall only permit such keys, passes and other means of access to be given to those of the Contractor's employees, agents or Sub-Contractors whose names and addresses have been given to the Employer and then only to the extent required for the purpose of carrying out the Contractor's obligations under this Contract. In addition, the Contractor shall ensure that the Contract Administrator is informed immediately of the loss of any keys, passes and other means of access and shall reimburse the Employer any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

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

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

## **SECTION 20 – EQUALITIES**

- 20.1 In all its activities carried out pursuant to the Contract, the Contractor shall comply with and shall ensure that its employees, agents, sub-contractors and their employees and agents comply with the Equality Act 2010 as well as statutory and other official guidance and codes of practice and any amendments to each of the same, including, without limitation the Code of Practice for the elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment and will indemnify the Employer for any loss, expense or damage incurred as a result of any breach of such obligations.
- 20.2 The Contractor agrees that it will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the Equality Act 2010 and any code of practice issued thereunder and to discharge its own obligations.
- 20.3 The Contractor must notify the Contract Administrator in writing as soon as possible and in any event within 2 (two) Business Days of first becoming aware of any investigation or proceedings brought against the Contractor for unlawful discrimination or harassment.
- 20.4 Where there is a finding against the Contractor in any investigation or proceedings for unlawful discrimination or harassment:
- .1 the Contractor must indemnify the Employer against all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with that investigation or proceedings;
  - .2 the Contractor must take all appropriate steps to prevent any repetition of the unlawful discrimination; and

- .3 the Contractor must provide the Contract Administrator with such information as the Contract Administrator requests about such steps.
- 20.5 The Contractor must set out its policy on equality and diversity:
- .1 in instructions to those concerned with recruitment, training and promotion;
  - .2 in documents available to employees, recognised trade unions or other representative groups of employees; and
  - .3 in recruitment advertisements or other literature.
- 20.6 The Contractor must, on request, provide the Employer with examples of the instructions and other documents, recruitment advertisement or other literature.
- 20.7 Where the Contractor's or any Sub-Contractor's Staff are required to carry out Works alongside the Employer's employees, the Contractor must use all reasonable endeavours to ensure those Staff comply with the Employer's equality and diversity policy.
- 20.8 The Contractor shall become accredited with the CITB's 'Be Fair' Scheme within 18 months of the commencement of the Contract Period and provide evidence to the Employer.

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

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

## **SECTION 22 – TRANSFERRING EMPLOYEES**

- ~~22.1 The terms at Schedule 9 TUPE shall apply.~~

## **SECTION 23 – RELIEF FROM OBLIGATIONS**

### **Early Warning**

- 23.1 .1 Each Party must notify the other in writing (copied to the Contract Administrator) of any matter they become aware of which could lead to either Party being unable to comply with its obligations under this Contract to any extent that is material.
- .2 Following a notification under Clause 23.1.1 the Contract Administrator may require the Contractor to attend a risk reduction meeting to consider:
- .1 the likely impact of the matter that has been notified;
  - .2 the steps that should be taken (in accordance with this Contract) for managing avoiding or reducing the effect of it; and
  - .3 the likely cost of those steps and who (in accordance with this Contract) should bear that cost.

### **Change in Law risk**

- 23.2 .1 Changes in the Law are to be a Contractor's risk. The Contractor will not be entitled to claim for any increase to the Order Prices, extension to the Response Periods, or additional payment under this Contract that results from a change in Law.

- .2 Where a change in Law was not foreseeable on the date of this Contract and has a significant impact on the Rates, the Employer and Contractor may (but are not required to) agree a change to the Rates or an additional payment due to the Contractor to reflect the Contractor's additional costs due to that change in Law.

## **SECTION 24 – MONITORING, KPI'S, BREACHES AND REMEDIES**

### **Monitoring and KPI's**

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

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

- .1 KPI Targets
- .2 KPI Minimum Levels of Acceptable Performance
- .3 The removal, adjustment or replacement of a KPI

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

- .3 The Contractor must grant access to the Employer and/or Contract Administrator to any premises where Works are being undertaken and for any period required by the Employer and/or Contract Administrator.
- .4 If either Party reasonably considers there to be any error or omission in the other Party's KPI data for a particular month, the notifying Party shall notify the other Party and the Contract Administrator of the error or omission within five (5) Business Days of the issue of the KPI data. That notification shall be in writing and properly particularised. Following such notification, the Contractor and the Employer shall meet to discuss and seek to agree an amendment to the relevant KPI data. The Contract Administrator's decision regarding any amendments shall be final.
- .5 The Employer may at any time monitor or direct the Contractor to monitor the Contractor's performance in relation to any KPI over such period as the Employer reasonably determines.
- .6 The Core Group members will review monthly and quarterly throughout the Contract Period (as required by the Employer), including a review on the anniversary of the Contract and during the remainder of the Contract Period, at a meeting, the performance of the Contractor against the Key Performance Indicators set out in Schedule 7 (*KPI Framework*) and will consider the extent to which the Employer is obtaining best value from the Contract.
- .7 Having considered the outcome of the review set out at clause 24.1.6, if the Contractor fails to achieve the [Minimum Level of Acceptable Performance] in one or more KPIs

(as set out in the KPI Framework) for that monthly period, quarter or annual period subject to the review, then the Contractor shall, within ten (10) Business Days from the date of the relevant monthly/quarterly/annual review meeting under clause 24.1.6, issue to the Contract Administrator and the Employer its proposals for how intends to rectify those failures within a 2 (two) month period (or a shorter period, as reasonably determined by the Employer) from the date of the Core Group review meeting pursuant to clause 24.1.6 ("the Action Plan").

- .8 The Core Group shall following ten (10) Business Days after receipt of the Contractor's Action Plan under clause 24.1.7 meet to consider such proposals provided by the Contractor and amend or clarify them as may be agreed whereupon the Contract Administrator shall issue the agreed finalised proposals as an improvement plan ("**the Improvement Plan**") no later than 10 days thereafter. In the event the Core Group cannot agree finalised proposals or the Contractor fails to provide its proposals in accordance with clause 24.1.7, the Employer is entitled to exercise all and any of the rights available to it at clause 24.1.9.
- .9 The Core Group shall meet within three (3) months from the date of the Core Group review meeting under clause 24.1.6, to review the performance of the Contractor and the Contract Administrator shall within ten (10) Business Days from the date of such meeting issue a report of the outcome of this review, taking into account any Improvement Plan that may have been agreed pursuant to clause 24.1.8. If this report notifies a continued failure by the Contractor to achieve the [Minimum Level of Acceptable Performance] on one (1) or more of the KPIs then the Employer shall be entitled to terminate this Contract for breach of contract, shorten the Contract Period or reduce the scope of works and services to be carried out by the Contractor under the Contract or remove a Workstream or part thereof in each case by notice with immediate effect and in such circumstances the Contractor shall not have a claim against the Employer (whether under contract, statute, tort or otherwise) in respect of any consequential or indirect loss or any actual or expected loss of profit, loss of revenue, loss of goodwill, or loss of opportunity other than payments for Orders already completed in accordance with the Contract.

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

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

### **Remedial Plan**

- 24.3
  - .1 The Employer may (but is under no obligation to do so) by written notice require the Contractor to produce a Remedial Plan if the Contractor is in breach of this Contract.
  - .2 A Remedial Plan must demonstrate to the satisfaction of the Employer how such a breach will be avoided in future.
  - .3 The Contractor must provide a draft of the Remedial Plan within 10 (ten) Business Days of the Employer's written notice under Clause 24.3.1.
  - .4 Within 10 (ten) Business Days of the receipt of the draft Remedial Plan under Clause 24.3.3 (or such longer period as the Employer and Contractor agree) the Employer must by written notice to the Contractor:
    - .1 approve the draft Remedial Plan; or

- .2 approve the draft Remedial Plan subject to the Contractor making specific changes to it that are set out in the notice; or
- .3 reject the draft Remedial Plan and inform the Contractor of the contents of it that need to be changed to secure the Employer's approval; or
- .4 reject the draft Remedial Plan and inform the Contractor of the Employer's reasons for doing so.
- .5 Where the Employer approves the draft Remedial Plan under Clause 24.3.4, the Contractor must implement that Remedial Plan.
- .6 Where the Employer approves a draft Remedial Plan under Clause 24.3.4 subject to amendments being made by the Contractor, the Contractor must indicate by written notice to the Employer within 5 (five) Business Days whether those amendments are acceptable. Where the Contractor's notice indicates that the amendments are:
  - .1 acceptable, the Contractor must implement that Remedial Plan within the timescales set out in that Remedial Plan;
  - .2 not acceptable, then clause 24.3.7 will apply.
- .7 Where the Employer rejects the draft Remedial Plan:
  - .1 the Contractor must provide the revised Remedial Plan within 10 (ten) Business Days of the date of rejection or such shorter period stated in the notice of rejection within which the Employer (acting reasonably) considers that it should be provided having regard to the nature of the breach; and
  - .2 Clauses 24.3.2 to this Clause 24.3.7 will apply to the revised Remedial Plan and any further revisions to it.

#### **Remedies cumulative**

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

#### **Indemnity**

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

## **SECTION 25 – GENERAL PROVISIONS**

#### **Third party rights and groups**

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

- 2 Subject to Clauses 25.1.1, nothing in this Contract confers any benefit on any person or organisation who is not a Party or gives any such person or organisation any right to enforce it.

### **Waiver and severability**

- 25.2 .1 A failure by the Employer in enforcing any rights, powers or privileges under this Contract must not be construed as a waiver of that provision. Such waiver must not affect the validity of the Contract or the Employer's right to enforce it in accordance with its terms.
- .2 The single or partial exercise of any right, power or privilege under the Contract does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
- .3 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiving its entitlement.
- .4 No waiver is to be deemed a waiver of any subsequent breach or default not is it to affect the other terms of this Contract.
- .5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount of any other statement in respect of money.
- .6 If any term of this Contract is illegal, void or unenforceable the remainder of this Contract will continue in force as though that term had not been included in it.

### **Entire agreement**

- 25.3 .1 Subject as provided in Clause 25.3.3, this Contract sets out the whole agreement between the Parties in relation to the Works. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
- .2 Each Party warrants that it has not entered into any this Contract in reliance on any representation made by the other except to the extent that such representation is expressly included in it.
- .3 Nothing in this Clause 25.3 excludes any liability for fraudulent misrepresentation.

### **Extent of obligations and further assurance**

- 25.4 .1 Where the Employer is a charity and/or a registered provider of social housing, nothing in this Contract requires the Employer to act in any way which is inconsistent with its obligations as such.
- .2 Each Party undertakes (subject to Clause 25.4.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.

### **No partnership or agency**

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

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

#### **Variations of the contract**

- 25.5 .1 No variation of this Contract is to bind either Party and no person has authority on behalf of either Party to agree to any variations to this Contract except where the amendment is agreed to in writing by both Parties.
- .2 No consents to any variation to this Contract are required from any person who is not a Party.

#### **Counterparts**

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

#### **Legal costs**

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

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

- 26.1 The Contractor shall and shall procure that any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor's Persons or other persons associated with it shall:
- .1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption (and for this purpose the UK's Bribery Act 2010 (the **Bribery Act**) shall be deemed to apply (**Relevant Laws**).
- .2 not do, or omit to do, any act that will cause or lead the Employer or any of its group companies to be in breach of any of the Relevant Laws or the Employer's anti-bribery policy (the **Policy**), a copy of which will be provided to the Contractor upon request;
- .3 have and shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Relevant Laws and the Policy, and will enforce them where appropriate;
- .4 promptly report to the Employer (in writing) any breach of the Relevant Laws or the Policy by it or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor's Persons or other persons associated with it;
- .5 promptly report to the Employer (in writing) any request or demand for any undue financial or other advantage of any kind received by the Contractor (or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor's Persons or other persons associated with it) in connection with the performance of this Contract; and
- .6 if requested, provide the Employer with any reasonable assistance, at the Employer's reasonable cost, to enable the Employer to perform any activity required for the purpose of compliance with any of the Relevant Laws or the Policy.
- 26.2 The Contractor shall indemnify the Employer or any of its group companies against any losses, damages, claims or expenses incurred by, or awarded against, the Employer or any

of the Employer's group companies as a result of any breach of this clause 26 by the Contractor or any of its officers, employees, agents, advisers, suppliers, sub-contractors, service providers, Contractor's Persons or other persons associated with it.

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

- .1 has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
- .2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; or
- .3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

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

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

- .1 breaches clause 26.1;
- .2 is unable to repeat the warranties set out in clause 26.3;
- .3 pleads guilty to or is convicted of any offence involving bribery or corruption, fraud or dishonesty;
- .4 is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; and/or
- .5 is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

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

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

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

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

27.3 The Contractor warrants to the Employer that:

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

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

27.4 The Contractor undertakes that it shall:

- .1 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains; and
- .2 undertake such training as may be reasonably required to procure that its business and supply chain are and remain free of any human trafficking or slavery.

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

DATED

20

**(CONTRACTOR)**

**(BENEFICIARY)**

**(EMPLOYER)**

**DEED OF COLLATERAL WARRANTY**

relating to a project at  
( )

## DATED

## PARTIES

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

## RECITALS

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

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

or

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

or

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

or

The Beneficiary has agreed to take an interest in (*part of*) the Property.)

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

## OPERATIVE PROVISIONS

### 1 Definitions and interpretation

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

<i>Beneficiary</i>	includes any person to whom the benefit of this deed and/or any rights arising under it have been validly assigned in accordance with clause (7);
<i>Contract</i>	the contract dated ( 20 ) between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to carry out and complete the Orders;
<i>Contract Period</i>	the Contract Period more particularly described in the Contract;
<i>Employer</i>	(( <i>insert name of Employer</i> ) and) includes any person to whom the benefit of the Contract has been validly assigned;
( <i>Fund</i>	( <i>insert name of Fund</i> );)



## **2 Contractor's warranties**

- 2.1 The Contractor warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Contract in accordance with the terms of the Contract, provided always that:
- 2.1.1 the Contractor shall owe no greater obligations to the Beneficiary under this deed than it owes to the Employer under the Contract;
  - 2.1.2 the Contractor shall be entitled in any proceedings under this deed to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint employer with the Employer under the Contract; and
  - 2.1.3 the Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Orders (unless and until the Beneficiary has given notice to the Contractor under clause 4.1 or clause 4.3).
- 2.2 Without limiting clause 2.1, the Contractor warrants to the Beneficiary that:
- 2.2.1 it has exercised and will continue to exercise, in the performance of its obligations under the Contract, all the skill, care and diligence which may reasonably be expected of a qualified and competent design and build contractor experienced in carrying out work of a similar size, scope, nature and complexity to the Orders;
  - 2.2.2 the Orders as completed will comply with any performance specification or requirement included or referred to in the Contract;
  - 2.2.3 the Orders have been and will be carried out and completed in a good, sound, substantial and workmanlike manner using good quality and appropriate materials and in all respects in accordance with the Contract;
  - 2.2.4 unless otherwise instructed or authorised by the Employer or the Contract Administrator on his behalf under the Contract, none of the materials referred to in clause 2.2.1 of the Contract has been or will be used in the completion of the Orders; and
  - 2.2.5 the Orders as completed will in all respects comply with the Statutory Requirements.
- 2.3 The Contractor extends to the Beneficiary the benefit of all warranties on the part of the Contractor contained in the Contract.
- 2.4 The Contractor acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Contractor under this clause 2.
- 2.5 The Contractor acknowledges to the Beneficiary that, at the date of this deed, the Contract remains in full force and effect and the Employer has paid all sums properly due to the Contractor under the Contract.

## **3 (Obligations prior to determination of the Contractor's employment**

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

- 3.2 Any period stipulated in the Contract for the exercise by the Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under clause 3.1.
- 3.3 Compliance by the Contractor with clause 3.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination, nor otherwise prevent the Contractor from exercising its rights after the expiration of notice, unless the right of determination shall have ceased under the provisions of clause 4.

#### **4 “Step-in” right**

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

- 4.1.1 requiring it to continue its obligations under the Contract;
- 4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Contract; and
- 4.1.3 undertaking to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Contract and to pay to the Contractor within 7 days any sums which have become due and payable to it under the Contract but which remain unpaid.(.)(;)

(provided that:

- 4.1.4 in this proviso and in clause (4.8) *Fund Warranty* means a deed made or to be made between the Contractor, the Fund and the Employer in respect of the Orders under which the Fund has a right equivalent (with the appropriate changes) in all material respects to the right granted by clause 4.1 to the Beneficiary, save that the period for the exercise of that right by the Fund shall expire 14 days after service of the Contractor’s simultaneous notices on the Beneficiary and the Fund of its intention to determine its employment under the Contract;
- 4.1.5 any notice served by the Contractor on the Beneficiary pursuant to clause 3.1 shall be invalid unless a similar notice has been simultaneously served upon the Fund;
- 4.1.6 the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 within the period of 14 days referred to in clause 4.1.4 unless the Fund shall previously have notified the Beneficiary that it will not exercise its equivalent right under the Fund Warranty;
- 4.1.7 the Beneficiary shall have no power to give notice to the Contractor under clause 4.1 in response to a notice under clause 3.1 if the Fund has already exercised its equivalent right under the Fund Warranty in response to the Contractor’s simultaneous notice to the Fund; and
- 4.1.8 any notice given by the Beneficiary which is in breach of clause 4.1.6 or clause 4.1.7 shall be invalid.)<sup>3</sup>

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<sup>3</sup> Include if Beneficiary has step-in rights which are sub-ordinated to the Fund.

- 4.2 Upon compliance by the Beneficiary with the requirements of clause 4.1, the Contract shall continue as if the right of determination on the part of the Contractor had not arisen and as if the Contract had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.
- 4.3 Notwithstanding that as between the Employer and the Contractor the Contractor's right of determination of its employment under the Contract may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Contractor and the Employer to that effect and the Beneficiary complies with the requirements on its part under clause 4.1(, provided that the Beneficiary may only give notice under this clause 4.3 if it shall first have given the Fund and the Contractor notice of its intention to do so and the Fund has consented expressly to the exercise of such right by the Beneficiary).
- 4.4 (Any notice given by the Beneficiary which is in breach of clause 4.3 shall be invalid.)
- 4.5 The Contractor shall be bound to assume that, as between the Employer(the Fund) and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.
- 4.6 The Contractor, acting in accordance with the provisions of this clause 4, shall not incur any liability to the Employer.
- 4.7 (If the Beneficiary appoints a Nominee to exercise its rights under this clause 4, the Nominee shall act on behalf of the Employer and shall have no personal liability to the Contractor, but the Beneficiary shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Nominee.)
- 4.8 (If the Fund exercises its equivalent right under clause 4.1 or clause 4.3 of the Fund Warranty, the provisions of clauses 3 and 4 shall have effect as if all references to the Fund and the Fund Warranty had been deleted and as if all references to the Employer were references to the Fund.)

## **5 Use of Proprietary Material**

- 5.1 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Orders and/or the Property, including (without limitation) the execution and completion of the Orders and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.
- 5.2 The licence referred to in clause 5.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor's employment under the Contract.
- 5.3 Insofar as the Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Proprietary Material and/or of the Orders, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of them.
- 5.4 The Contractor shall procure for the Beneficiary a waiver corresponding to that in clause 5.3 from any sub-contractor employed by the Contractor who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Proprietary Material and/or of the Orders in respect of them.
- 5.5 The Contractor shall provide a complete set of copies of the Proprietary Material to the Beneficiary without charge within one month of the end of the Contract Period and shall

provide further copies of any or all of the Proprietary Material to the Beneficiary on request and upon payment by the Beneficiary of the Contractor's reasonable copying charges.

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

## **6 (Insurance)**

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

- 6.2 The insurance referred to in clause 6.1 shall:

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

6.2.2 be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this deed and for a period expiring not less than 12 years after the end of the Contract Period and notwithstanding the determination (for any reason) of the Contractor's employment under the Contract.

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

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

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

## **7 Assignment**

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

## **8 Third parties**

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

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

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

## **9 (Warranties in favour of others)**

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

## **10 Other remedies**

- 10.1 Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.
- 10.2 The liability of the Contractor under this deed shall not be released, diminished or in any other way affected by:
- 10.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Orders or to inspect any documents relating to them on behalf of the Beneficiary or the failure to appoint such a person;
  - 10.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or
  - 10.2.3 any other independent inquiry into any relevant matter which the Beneficiary may make or fail to make.

## **11 Limitation**

No action or proceedings for any breach of this deed shall be commenced against the Contractor after the expiry of 12 years following the end of the Contract Period.

## **12 Notices**

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

## **13 Governing law and disputes**

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

Delivered as a deed on the date of this document.

Executed under the common seal of:

[CONTRACTOR] in the presence of:

Director

Director / Secretary

Executed under the common seal of

[EMPLOYER] in the presence of:

Authorised Signatory

Authorised Signatory

Executed under the common seal of

(BENEFICIARY) in the presence of:

Director

Director / Secretary

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

DATED

20

**(SUB-CONTRACTOR)**

**(EMPLOYER / BENEFICIARY)**

**DEED OF WARRANTY**  
relating to a project at  
( )

## DATED

## PARTIES

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

## RECITALS

- A By the Contract, the Employer has employed the Contractor to carry out and complete the Orders.
- B Pursuant to the provisions of the Contract, the Contractor with the consent of the Employer has employed the Sub-Contractor under the Sub-Contract to carry out and complete the Sub-Contract Works.
- (C Recite nature of the Beneficiary's interest in the Property.)
- D In consideration of the foregoing the Sub-Contractor has agreed to enter into this deed in favour of the (Employer/Beneficiary).

## OPERATIVE PROVISIONS

### 1 Definitions and interpretation

- 1.1 Unless the contrary intention appears, the following definitions apply:

<i>(Beneficiary</i>	includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 5.1;)
<i>Contract</i>	the contract dated ( ) between the Employer (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has undertaken to carry out and complete the Orders;
<i>Contract Period</i>	the Contract Period more particularly described in the Contract;
<i>Contractor</i>	( ) (company no ( ) whose registered office is at ( )
<i>(Employer</i>	includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 6.1;)
<i>(Employer</i>	( ) (company no ( )) whose registered office is at ( )



- 2.1.1.4 in the satisfaction of any performance specification or requirement included or referred to in the documents comprising the Sub-Contract;
  - 2.1.1.5 that the Sub-Contract Works have been and will be carried out and completed in a good, sound, substantial and workmanlike manner using good quality and appropriate materials and in all respects in accordance with the Sub-Contract;
- 2.1.2 that he has observed and performed and will continue to observe and perform all the terms and obligations on his part to be observed and performed under the Sub-Contract; and
- 2.1.3 that none of the materials referred to in clause 2.2.1 of the Contract has been or will be used in the Sub-Contract Works.
- 2.2 The Sub-Contractor acknowledges that the (Employer/Beneficiary) shall be deemed to have relied and to continue to rely upon the warranties and undertakings given by the Sub-Contractor under this clause 2, provided always that:
  - 2.2.1 the Sub-Contractor shall owe no greater obligations to the (Employer/Beneficiary) under this deed than he owes to the Contractor under the Sub-Contract; and
  - 2.2.2 no action or proceedings for any breach of this deed shall be commenced against the Sub-Contractor after the expiry of 12 years after the end of the Contract Period.

### **3 (Determination and Novation of the Sub-Contract)**

- 3.1 The Sub-Contractor shall not, without first giving to the Employer not less than 21 days' prior notice, exercise any right he may have to determine his employment under the Sub-Contract or treat the same as having been repudiated by the Contractor or withhold performance of his obligations thereunder.
- 3.2 In the event that the employment of the Contractor under the Contract is determined for any reason whatsoever, the Sub-Contractor shall continue to carry out and complete his obligations under the Sub-Contract and shall within 7 days of the Employer's request so to do execute a deed of novation in such form as the Employer may reasonably require transferring the rights and obligations of the Contractor under the Sub-Contract to the Employer (in which event the Sub-Contractor shall not thereafter unreasonably withhold his consent to a further novation of the Sub-Contract by the Employer) or to any person nominated by the Employer. Provided always that the provisions of this clause 3.2 shall not apply if the Employer shall so notify the Sub-Contractor within 14 days of the date of determination as aforesaid.
- 3.3 If the Employer shall notify the Sub-Contractor under clause 3.2, the Sub-Contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with such notification or this deed.)

### **4 Use of Proprietary Material**

- 4.1 The copyright in the Proprietary Material shall remain vested in the Sub-Contractor, but the Sub-Contractor grants to the (Employer/Beneficiary) an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose whatsoever connected with the Orders and/or the Property, including (without

limitation) the execution and completion of the Orders and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.

- 4.2 The licence referred to in clause 4.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Sub-Contractor's employment under the Sub-Contract.
- 4.3 The Sub-Contractor shall provide copies of any or all of the Proprietary Material to the (Employer/Beneficiary) upon request and upon payment by the (Employer/Beneficiary) of the Sub-Contractor's reasonable copying charges.
- 4.4 The Sub-Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared.

## **5 Insurance**

- 5.1 The Sub-Contractor undertakes to the (Employer/Beneficiary) to maintain with a reputable insurance company with a place of business in the United Kingdom, from the date hereof and for a period expiring no earlier than 12 years after the end of the Contract Period and notwithstanding the determination for any reason of the Sub-Contractor's employment under the Sub-Contract, (professional indemnity/product liability) insurance without unusual or onerous conditions or excesses to cover its liabilities under this deed, with a limit of indemnity of not less than £5,000,000 (in respect of each and every claim/in the aggregate in any period of insurance), provided always that such insurance continues to be available in the United Kingdom market upon reasonable terms and at commercially reasonable premium rates.
- 5.2 As and when he is reasonably required to do so by the (Employer/Beneficiary), the Sub-Contractor shall produce for inspection by the (Employer/Beneficiary) documentary evidence that such insurance is being properly maintained.
- 5.3 The Sub-Contractor shall forthwith notify the (Employer/Beneficiary) if such insurance ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Sub-Contractor is unable to continue to maintain such insurance.

## **6 Assignment and Third Parties**

- 6.1 The (Employer/Beneficiary) may at any time assign, charge or transfer the benefit of this deed and/or any rights arising hereunder to any person acquiring an interest in the whole or any part of the Property upon notice to the Sub-Contractor provided that (save in the case of an assignment to any company or other body corporate which is a subsidiary or associated company of the (Employer/Beneficiary) or which is wholly owned directly or indirectly by the (Employer/Beneficiary)) not more than two such assignments shall be permitted without the consent of the Sub-Contractor being required.
- 6.2 Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce a provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **7 Other remedies**

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

- 7.2 The liability of the Sub-Contractor under this deed shall not be released, diminished or in any other way affected by:
- 7.2.1 the appointment by the (Employer/Beneficiary) of any person to survey the Property or to monitor the carrying out of the Orders or to inspect any documents relating to them on behalf of the (Employer/Beneficiary) or the failure to appoint such a person;
  - 7.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the (Employer/Beneficiary); or
  - 7.2.3 any other independent inquiry into any relevant matter which the (Employer/Beneficiary) may make or fail to make.

## **8 Notices**

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

## **9 Governing law and disputes**

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

Delivered as a deed on the date of this document.

Executed under the common seal of

(BENEFICIARY) in the presence of:

Director

Director / Secretary

Executed under the common seal of:

(SUBCONTRACTOR) in the presence of:

Director

Director / Secretary

### SCHEDULE 3 – FORM OF PERFORMANCE BOND

~~THIS GUARANTEE BOND~~ is made on \_\_\_\_\_ 20

~~BETWEEN~~

(1) \_\_\_\_\_ ~~[CONTRACTOR]~~ as principal;

(2) \_\_\_\_\_ ~~[GUARANTOR]~~ as guarantor; and

(3) \_\_\_\_\_ ~~[EMPLOYER]~~

~~WHEREAS:~~

~~By a contract ("Contract") entered into or to be entered into between the Employer and Contractor particulars of which are set out in the schedule the Contractor has agreed with the Employer to execute works ("Works") upon and subject to the terms and conditions therein set out.~~

~~The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.~~

~~NOW THIS DEED WITNESS~~ as follows:

~~1. \_\_\_\_\_~~ **Promise to pay**

~~The Guarantor guarantees to the Employer that in the event of failure by the Contractor to fulfil its obligations under the Contract (an Employer's valid determination of the Contractor's employment under clause 8 of the Contract being deemed to be such a failure) the Guarantor shall subject to the provision of this Guarantee Bond satisfy and discharge the losses sustained by the Employer and the debts payable by the Contractor to the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.~~

~~2. \_\_\_\_\_~~ **Extent of liability**

~~2.1 \_\_\_\_\_ The maximum aggregate liability of the Guarantor and the Contractor under the Guarantee Bond shall not exceed the sum set out in the schedule ("Bond Amount") but subject to such~~

~~limitation and to clause 3 the liability of the Guarantor shall be coextensive with the liability of the Contractor under the Contract.~~

~~2.2 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extend or nature of the Works and no forbearance or allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.~~

### ~~3. Expiry of obligations~~

~~Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in wiring containing particulars of such breach has been made upon the Guarantor before Expiry.~~

### ~~4. Contractor's obligations~~

~~The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.~~

### ~~5. Assignment~~

~~The Employer may without the consent of the Guarantor assign or charge the benefit of this Guarantee Bond to any person to whom the Employer lawfully assigns or charges the benefit of the Contract.~~

### ~~6. Third Party Rights~~

~~A person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.~~

### ~~7. Governing Law~~



**SCHEDULE 4 – FORM OF PARENT COMPANY GUARANTEE**

DATED \_\_\_\_\_ 20

~~(EMPLOYER)~~

~~(GUARANTOR)~~

**PARENT COMPANY GUARANTEE**

relating to a project at  
( \_\_\_\_\_ )

## DATED

## PARTIES

- 1      Employer      ( \_\_\_\_\_ ) (company no ( \_\_\_\_\_ )) whose  
registered office is at ( \_\_\_\_\_ )
- 2      Guarantor      ( \_\_\_\_\_ ) (company no ( \_\_\_\_\_ ))  
whose registered office is at ( \_\_\_\_\_ )

## RECITALS

- A \_\_\_\_\_ By the Contract, the Employer has employed the Contractor to carry out and complete the Orders.
- B \_\_\_\_\_ The Guarantor is the ultimate parent company of the Contractor.
- C \_\_\_\_\_ The Guarantor has agreed to guarantee the due performance by the Contractor of his obligations under the Contract in the manner set out in this deed.

## OPERATIVE PROVISIONS

### 1 \_\_\_\_\_ Definitions and interpretation

- 1.1 \_\_\_\_\_ Unless the contrary intention appears, the following definitions apply:

<i>Contract</i>	the contract dated ( _____ 20 ) between the Employer (1) and the Contractor (2) whereby the Contractor has undertaken to carry out and complete the Orders;
<i>Contractor</i>	( _____ ) (company no _____ ) whose registered office is at ( _____ )
<i>Employer</i>	includes any person to whom the benefit of the Contract has been validly assigned, charged or transferred pursuant to clause 3.1 of the Contract; and
<i>Orders</i>	the written description and/or drawings of any work and/or the supply of labour, plant, materials and/or goods to be carried out under the Contract.

- 1.2 \_\_\_\_\_ The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.3 \_\_\_\_\_ Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.4 \_\_\_\_\_ Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.5 \_\_\_\_\_ Where the context so admits, references in this deed to a clause are to a clause of this deed.

~~1.6 — References in this deed to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.~~

## **~~2 — Guarantee~~**

~~In consideration of the Employer agreeing to enter into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees and undertakes to the Employer that:~~

~~.1 — the Contractor will perform and observe all his obligations under the Contract on the days and at the times and in the manner provided in the Contract; and~~

~~.2 — in the event of any breach of such obligations by the Contractor, the Guarantor shall procure that the Contractor makes good the breach or shall otherwise cause it to be made good and shall indemnify and hold harmless the Employer against any loss, damage, demands, charges, payments, liability, proceedings, claims, costs and expenses suffered or incurred by the Employer arising from or in connection with it;~~

~~provided that (subject to clause 5) any limitation or defence which would have been available to the Contractor in an action under the Contract shall likewise be available to the Guarantor in a corresponding action under this deed, and for the avoidance of doubt, the Guarantor's liability under this deed shall be no greater than the liability of the Contractor under the Contract.~~

## **~~3 — Guarantor's liability~~**

~~3.1 — The obligations of the Guarantor under this deed shall be in addition to and shall be independent of any other security which the Employer may at any time hold in respect of the Contractor's obligations under the Contract and may be enforced against the Guarantor without first having recourse to any such security.~~

~~3.2 — The liability of the Guarantor under this deed shall in no way be discharged, lessened or affected by:~~

~~3.2.1 — the bankruptcy, insolvency, liquidation, reorganisation, dissolution, amalgamation, reconstruction or any analogous proceeding relating to the Contractor or any change in the status, function, control or ownership of the Contractor;~~

~~3.2.2 — any time given or forbearance or other indulgence shown by the Employer to the Contractor;~~

~~3.2.3 — the assertion or failure to assert or delay in asserting any rights or remedies of the Employer or the pursuit of any right or remedy of the Employer;~~

~~3.2.4 — the giving by the Contractor of any security or the release, modification or exchange of any such security or the liability of any person; or~~

~~3.2.5 — any other act, event, omission or circumstance which but for this provision might operate to discharge, lessen or otherwise affect the liability of the Guarantor.~~

#### **4—Variations to the Contract**

~~The Guarantor authorises the Contractor and the Employer to make any addition or variation to the Contract, the due and punctual performance of which shall likewise be guaranteed by the Guarantor in accordance with the terms of this deed. The liability of the Guarantor under this deed shall in no way be discharged or lessened by any such addition or variation.~~

#### **5—Liquidation of Contractor**

~~The Guarantor covenants with the Employer that if the Contractor shall go into liquidation and the liquidator shall disclaim the Contract or if the Contractor's employment under the Contract shall be determined for any reason the liability of the Guarantor under this deed shall remain in full force and effect.~~

#### **6—Waiver**

~~The Guarantor waives any right to require the Employer to pursue any remedy (whether under the Contract or otherwise) which it may have against the Contractor before proceeding against the Guarantor under this deed.~~

#### **7—Rights of Guarantor against Contractor**

~~The Guarantor shall not by any means or on any ground seek to recover from the Contractor (whether by instituting or threatening proceedings or by way of set-off or counterclaim or otherwise) or otherwise to prove in competition with the Employer in respect of any payment made by the Guarantor under this deed nor be entitled in competition with the Employer to claim or have the benefit of any security which the Employer holds for any money or liability owed by the Contractor to the Employer. If the Guarantor shall receive any monies from the Contractor in respect of any payment made by the Guarantor under this deed, the Guarantor shall hold such monies in trust for the Employer for so long as the Guarantor shall remain liable or contingently liable under this deed.~~

#### **8—Continuing guarantee**

~~The terms of this deed shall be a continuing guarantee and shall remain in full force and effect until each and every part of every obligation of the Contractor under the Contract shall have been performed and observed and until each and every liability of the Contractor under the Contract shall have been satisfied in full. Provided that the liability of the Guarantor under this deed shall cease on the expiry of 12 years following the end of the Contract Period under the Contract save to the extent of any claims notified by the Employer to the Guarantor in writing prior to the expiry of such period.~~

#### **9—Third party rights**

~~Unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.~~

#### **10—Notices**

~~Any notice or other communication required under this deed shall be given in writing. A party being served with a notice is deemed to have received the same on actual receipt or on 2 Business Days (as defined in the Contract) after the notice is sent by registered post to the recipient's registered address, whichever is the earlier.~~

**11 — Governing law**

~~The application and interpretation of this deed shall in all respects be governed by English law.~~

~~Delivered as a deed on the date of this document.~~

~~Executed as a deed by (GUARANTOR)     }  
in the presence of:                             }~~

~~Director~~

~~Director/Secretary~~

~~Executed as a deed by [————]     }  
in the presence of:                             }~~

~~Authorised Signatory~~

~~Authorised Signatory~~

**SCHEDULE 5 –SPECIFICATION**



Document B1 - RMA  
specification.pdf



Document B2 -  
Works specification.pdf



Document B4 -  
Materials specification

## SCHEDULE 6 – SCHEDULE OF RATES AND PRICE FRAMEWORK

Item Code	Item Description	
RMA Services		£ 191,900.00
CWI	Variation Costs	£ 185,992.40
EWI	Variation Costs	£ 5,450,363.20
IWI	Variation Costs	£ 540,974.65
Floor	Variation Costs	£ 603,862.50
Loft	Variation Costs	£ 11,495.15
ASHP	Variation Costs	£ 3,573,350.00
High Heat Retention Storage Heaters	Material Costs	£ 458,549.53
Solar PV	Material Costs	£ 1,176,450.00
Windows & Doors	Variation Costs	£ 892,479.50
Smart heating controls	Variation Costs	£ 17,688.00
Ventilation	Variation Costs	£ 15,046.00
Low Energy Lighting	Variation Costs	£ 70,145.10
Solar Thermal	Variation Costs	£ 564,298.90
Draught proofing	Variation Costs	£ 14,283.40
Hot Water Cylinder Jacket	Variation Costs	£ 1,100.00
<b>Total Cost for Evaluation</b>		<b>£ 13,767,978.33</b>

Item Code	Item Description	UOM (Item / Linear metre / Litre)	Provisional Quantity Only	Everwarm		
RMA Services				Materials	Labour	Total
[MOD] GLA-RD0001A	Retrofit lead generation and management to deliver up sufficient eligible Customer referrals* to deliver the required programme outputs (290 properties that receive measures).	Item	100	£ -	£ 115.00	11500
[MOD] GLA-RD0001B	Programme management to deliver required programme outputs (290 properties that receive measures).	Item	1	£ -	£ 2,900.00	£ 2,900.00
[MOD] GLA-RD0002	Retrofit Advice, Assessment and Coordination Pre-Works and pre Customer acceptance	Item	100	£ -	£ 300.00	£ 30,000.00
[MOD] GLA-RD0003	Retrofit Advice, Assessment and Coordination - Pre-works, post Customer acceptance	Item	100	£ -	£ 300.00	£ 30,000.00
[VAR] GLA-RD0003A	Deliver air permeability test to a dwelling	Item	100	£ -	£ 600.00	£ 60,000.00
[VAR] GLA-RD0003B	Deliver damp survey to a dwelling	Item	100	£ -	£ 150.00	£ 15,000.00
[VAR] GLA-RD0003C	Deliver thermographic image survey to a dwelling	Item	100	£ -	£ 125.00	£ 12,500.00
[VAR] GLA-RD0003D	Deliver an Energy Performance Certificate to a dwelling	Item	100	£ -	£ 75.00	£ 7,500.00
[VAR] GLA-RD0004	Retrofit Coordination and Evaluation	Item	100	£ -	£ 225.00	£ 22,500.00
Cavity Wall Insulation						£ 191,900.00
[VAR] GLA-RD0004A	Design, Supply and Install New Cavity Wall Insulation - End Terrace	Item	10	£ 720.18	£ 1,080.26	£ 18,004.40
[VAR] GLA-RD0004B	Design, Supply and Install New Cavity Wall Insulation - Mid Terrace	Item	10	£ 430.54	£ 645.81	£ 10,763.50
[VAR] GLA-RD0004C	Design, Supply and Install New Cavity Wall Insulation - Semi Detached	Item	10	£ 743.66	£ 1,115.49	£ 18,591.50
[VAR] GLA-RD0004D	Design, Supply and Install New Cavity Wall Insulation- Detached	Item	10	£ 1,072.44	£ 1,608.65	£ 26,810.90
[VAR] GLA-RD0004E	Design, Supply and Install New Cavity Wall Insulation - Bungalow	Item	10	£ 563.62	£ 845.42	£ 14,090.40
[VAR] GLA-RD0005A	Remove existing and supply and install new cavity wall insulation - End Terrace	Item	10	£ 797.46	£ 1,196.18	£ 19,936.40
[VAR] GLA-RD0005B	Remove existing and supply and install new cavity wall insulation - Mid Terrace	Item	10	£ 476.74	£ 715.11	£ 11,918.50
[VAR] GLA-RD0005C	Remove existing and supply and install new cavity wall insulation - Semi Detached	Item	10	£ 823.46	£ 1,235.19	£ 20,586.50
[VAR] GLA-RD0005D	Remove existing and supply and install new cavity wall insulation- Detached	Item	10	£ 1,187.52	£ 1,781.27	£ 29,687.90
[VAR] GLA-RD0005E	Remove existing and supply and install new cavity wall insulation - Bungalow	Item	10	£ 624.10	£ 936.14	£ 15,602.40
External Wall Insulation						£ 185,992.40
[VAR] GLA-RD0006A	Design, supply and install EWI system - smooth render finish - end terrace	Item	30	£ 10,869.98	£ 7,246.66	£ 543,499.20
[VAR] GLA-RD0006B	Design, supply and install EWI system - smooth render finish - mid terrace	Item	40	£ 6,025.75	£ 4,017.17	£ 401,716.80
[VAR] GLA-RD0006C	Design, supply and install EWI system - smooth render finish - semi detached	Item	20	£ 11,224.44	£ 7,482.96	£ 374,148.00
[VAR] GLA-RD0006D	Design, supply and install EWI system - smooth render finish - detached	Item	10	£ 16,186.82	£ 10,791.22	£ 269,780.40
[VAR] GLA-RD0006E	Design, supply and install EWI system - smooth render finish - bungalow	Item	4	£ 8,506.94	£ 5,671.30	£ 56,712.96
[VAR] GLA-RD0007A	Design, supply and install EWI system - brick effect render finish - end terrace	Item	4	£ 13,629.98	£ 9,086.66	£ 90,866.56
[VAR] GLA-RD0007B	Design, supply and install EWI system - brick effect render finish - mid terrace	Item	20	£ 7,555.75	£ 5,037.17	£ 251,858.40
[VAR] GLA-RD0007C	Design, supply and install EWI system - brick effect render finish - semi detached	Item	30	£ 14,074.44	£ 9,382.96	£ 703,722.00
[VAR] GLA-RD0007D	Design, supply and install EWI system - brick effect render finish - detached	Item	30	£ 20,296.82	£ 13,531.22	£ 1,014,841.20
[VAR] GLA-RD0007E	Design, supply and install EWI system - brick effect render finish - bungalow	Item	10	£ 10,666.94	£ 7,111.30	£ 177,782.40
[VAR] GLA-RD0008A	Design, supply and install EWI system - brick slip finish - end terrace	Item	10	£ 14,733.98	£ 9,822.66	£ 245,566.40
[VAR] GLA-RD0008B	Design, supply and install EWI system - brick slip finish - mid terrace	Item	4	£ 8,167.75	£ 5,445.17	£ 54,451.68
[VAR] GLA-RD0008C	Design, supply and install EWI system - brick slip finish - semi detached	Item	4	£ 15,214.44	£ 10,142.96	£ 101,429.60
[VAR] GLA-RD0008D	Design, supply and install EWI system - brick slip finish - detached	Item	10	£ 21,940.82	£ 14,627.22	£ 365,680.40
[VAR] GLA-RD0008E	Design, supply and install EWI system - brick slip finish - bungalow	Item	30	£ 11,530.94	£ 7,687.30	£ 576,547.20
[VAR] GLA-RD0009A	Eaves extension - end terrace	Item	10	£ 1,804.80	£ 1,203.20	£ 30,080.00
[VAR] GLA-RD0009B	Eaves extension - mid terrace	Item	10	£ 1,056.00	£ 704.00	£ 17,600.00
[VAR] GLA-RD0009C	Eaves extension - semi detached	Item	10	£ 1,900.80	£ 1,267.20	£ 31,680.00
[VAR] GLA-RD0009D	Eaves extension - detached	Item	10	£ 2,304.00	£ 1,536.00	£ 38,400.00
[VAR] GLA-RD0009E	Eaves extension - bungalow	Item	10	£ 2,496.00	£ 1,664.00	£ 41,600.00
[VAR] GLA-RD0010A	Verge extension - end terrace	Item	10	£ 702.00	£ 468.00	£ 11,700.00
[VAR] GLA-RD0010B	Verge extension - mid terrace	Item	10			£ -
[VAR] GLA-RD0010C	Verge extension - semi detached	Item	10	£ 702.00	£ 468.00	£ 11,700.00
[VAR] GLA-RD0010D	Verge extension - detached	Item	10	£ 1,080.00	£ 720.00	£ 18,000.00
[VAR] GLA-RD0010E	Verge extension - bungalow	Item	10	£ 1,260.00	£ 840.00	£ 21,000.00
Internal Wall Insulation						£ 5,450,363.20
[VAR] GLA-RD0011A	Design, supply and install IWI system - Per room - single external wall - end terrace	Item	10	£ 464.42	£ 696.63	£ 11,610.50
[VAR] GLA-RD0011B	Design, supply and install IWI system - Per room - single external - mid terrace	Item	10	£ 427.27	£ 640.90	£ 10,681.70
[VAR] GLA-RD0011C	Design, supply and install IWI system - Per room - single external wall - semi detached	Item	15	£ 501.58	£ 752.36	£ 18,809.10
[VAR] GLA-RD0011D	Design, supply and install IWI system - Per room - single external wall - detached	Item	15	£ 544.92	£ 817.38	£ 20,434.50
[VAR] GLA-RD0011E	Design, supply and install IWI system - Per room - single external wall - bungalow	Item	15	£ 464.42	£ 696.63	£ 17,415.75
[VAR] GLA-RD0012A	Design, supply and install IWI system - Per room - two external walls - end terrace	Item	15	£ 928.85	£ 1,393.27	£ 34,831.80
[VAR] GLA-RD0012B	Design, supply and install IWI system - Per room - two external walls - mid terrace	Item	15	£ 854.54	£ 1,281.81	£ 32,045.25
[VAR] GLA-RD0012C	Design, supply and install IWI system - Per room - two external walls - semi detached	Item	15	£ 1,009.34	£ 1,514.02	£ 37,850.40
[VAR] GLA-RD0012D	Design, supply and install IWI system - Per room - two external walls - detached	Item	10	£ 1,083.65	£ 1,625.48	£ 27,091.30
[VAR] GLA-RD0012E	Design, supply and install IWI system - Per room - two external walls - bungalow	Item	10	£ 928.85	£ 1,393.27	£ 23,221.20
[VAR] GLA-RD0013A	Design, supply and install IWI system - Per room - three external walls - end terrace	Item	10	£ 1,393.27	£ 2,089.90	£ 34,831.70
[VAR] GLA-RD0013B	Design, supply and install IWI system - Per room - three external walls - mid terrace	Item	15	£ 1,275.61	£ 1,913.42	£ 47,835.45
[VAR] GLA-RD0013C	Design, supply and install IWI system - Per room - three external walls - semi detached	Item	15	£ 1,510.92	£ 2,266.38	£ 56,659.50
[VAR] GLA-RD0013D	Design, supply and install IWI system - Per room - three external walls - detached	Item	15	£ 1,628.57	£ 2,442.86	£ 61,071.45
[VAR] GLA-RD0013E	Design, supply and install IWI system - Per room - three external walls - bungalow	Item	15	£ 1,393.27	£ 2,089.90	£ 52,247.55
[VAR] GLA-RD0014A	Design, supply and install IWI system - Per room - room in roof - end terrace	Item	15	£ 347.76	£ 521.64	£ 13,041.00
[VAR] GLA-RD0014B	Design, supply and install IWI system - Per room - room in roof - mid terrace	Item	15	£ 289.80	£ 434.70	£ 10,867.50
[VAR] GLA-RD0014C	Design, supply and install IWI system - Per room - room in roof - semi detached	Item	10	£ 347.76	£ 521.64	£ 8,694.00
[VAR] GLA-RD0014D	Design, supply and install IWI system - Per room - room in roof - detached	Item	10	£ 434.70	£ 652.05	£ 10,867.50
[VAR] GLA-RD0014E	Design, supply and install IWI system - Per room - room in roof - bungalow	Item	10	£ 434.70	£ 652.05	£ 10,867.50
Floor insulation						£ 540,974.65

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## SCHEDULE 7 – KPI FRAMEWORK

### Framework Performance Indicators

Through the life of the Framework Agreement, Procure Plus wishes to assess the quality and performance of Contractors. Procure Plus will monitor, review and evaluate the performance of the Contractors under the Framework Agreement, the underlying contracts and the Framework Performance Indicators (FPIs).

A 'traffic' light system, or RAG (Red, Amber, Green) status, will be used to denote how a Contractor is performing. Collected data will be shared with Customers upon request and may be used to inform call off decisions.

1. Cost Predictability means; % accuracy between target cost and projected cost
2. Material Management means; % of receipted deliveries within 5 days of dispatch, prompting payment liability
3. Project Punctuality means; time between order dispatch and handover of property in days; monitored specific to workstreams undertaken.
4. Supply Chain Financial Management means; the monitoring of financial performance of each Contractor and will be considered at call off stage
5. Social Value means; 1 trainee per £500,000

The FPI performance bands are indicated below, these may be changed from time to time. Contractors will be informed if the thresholds or FPIs are amended during the term of the framework.

KPI traffic light	Green category	Amber category	Red category
Cost Predictability	≥95%	90 – 95%	<90%
Material Management	≥95%	90 - 95%	<90%
Project Punctuality	≥95%	90 - 95%	<90%
Social value	See below		

### Social Value – Key Performance Indicators

Contractors will be required to achieve the target set out in clause 30.1 (unless Alternative Social Value Activity has been agreed). With regard to the employment requirement set out in clause 30.1, Contractors will be required to select from priority groups and retain any trainees upon completion. The KPIs in relation to this will be set annually and applied consistently across the Lot. Where Alternative Social Value Activity has been agreed, the specific KPIs in relation to these targets will be agreed before commencement.

There may be instances where, due to changes in the contract or reasons beyond the Supplier's control, the FPI scores are affected adversely. If this is the case, the Contractor may submit a report to Procure Plus for consideration. If accepted, this mitigation will be recorded, and due consideration given in all future call off decisions within any relevant category of work or FPI.

# TRAFFIC LIGHT CATEGORIES

## Green category

All suppliers begin here. Suppliers who have not carried out any work through the Framework Agreement are here. Suppliers who have carried out work and who have scored within the parameters of the green FPI category will be.

## What it means

Supplier is eligible for selection. This is where we expect Suppliers to be.

Performance deteriorates below the parameters of the green FPI category

Performance improves to green FPI category; or the Supplier satisfies the action plan

## Amber category

Suppliers whose performances Re:allies deems to require moving to the red category will be in the amber category and advised of the issue(s) and given sufficient time to rectify it with an action plan.

## What it means

Customers can decide to exclude these Suppliers from any selection until their status is changed to green. Customers can also decide to waive this right and continue to select the Supplier if they have internal justification for the decision.

Performance deteriorates below the parameters of the amber FPI category; or Supplier fails to deliver the action plan

Performance improves to amber FPI category; or the Supplier satisfies the action plan

## Red category

Suppliers who breach the terms of the Framework Agreement or underlying contracts can be placed into the red category. Re:allies will advise the Supplier they are within the red category and state the action(s) required to be resolved.

## What it means

While in the red category, the Supplier will be suspended from the framework.

Supplier fails to deliver the action plan

## Black category

If a Supplier is continually within the red category and does not rectify the reasons for suspension from the framework Re:allies will terminate their appointment to the Framework Agreement.

## **SCHEDULE 8 – FORMAT OF APPLICATION FOR PAYMENT**

Schemes Plus will be used for the following and it is a requirement that the Contractor completes the following tasks or controls the completion of the tasks to meet the delivery requirements of the project..

- Building and approving project costs, this task is to be completed by the Contractor for labour cost models. It will be the Contractor's responsibility to ensure all the cost models are built in enough time for the Customers to review the target costs and approve for the commencement of a project.
- Uploading of address lists. This task will be completed by the Customer or Contractor as agreed, although the editing and management of the property work allocation may be completed by the Contractor at the request of the Customer.
- Planning of handovers and progress. This will be completed with information on programme and cashflow provided by the Contractor. Information will be input into the system by the Customer and/or Contractor.
- Handover of completed is a task to be completed by the Contractor. The Schemes Plus system will only allow 1 handover per property therefore only 1 labour payment will be made per property. This will act as the final account and payment for each property.
- Offer and Acceptance of a payment stage. The Contractor will prepare and claim a stage payment via the system and the Customer will accept this.
- Production of invoices. The Schemes Plus system will produce invoices for payment by the Customer. Action triggers within the system will produce the invoices such as acceptance of a property offered for handover or approval of a stage payment. Disputed invoices may also require a credit for labour charges provided by the Contractor via the Schemes Plus system.
- Recording of payment. The Customer will mark an invoice as paid, this will be visible to the Contractor.
- Receipt of payment. The Contractor will mark the appropriate payments as received once they have received payment.

## SCHEDULE 9 – TUPE SCHEDULE

### Definitions

The following definitions apply to this Schedule 9. Save as otherwise stated in this Definitions Clause the definitions and interpretation set out in this Contract shall also apply to this Schedule 9:

Word or phrase	Meaning
Commencement Date:	the date of commencement of the Contract Period;
Former Employee:	an employee who was employed by the Contractor in the performance of the service undertaken by the Contractor under this Contract (the <b>Services</b> ) whose contract of employment has been terminated for whatever reason at the Termination Date;
New Contractor:	each and every contractor (which shall include the Employer if activities cease to be carried out by a contractor and are instead carried by the Employer on their own behalf) who shall provide an equivalent service to any of the Services after the Termination Date;
Second Transferring Employees:	those persons who immediately prior to the Termination Date are employed by the Contractor in the performance of the Services who have a right under the Transfer Regulations to transfer to any new provider of the Services;
Termination Date:	the date this Contract is terminated or determined for any reason (including by expiry) in whole or in part;
Transferring Employee:	those persons whose names are set out in clause 4 of this Schedule 9 and “ <b>Transferring Employees</b> ” shall be construed accordingly;
Transfer Regulations:	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

## **~~1. TRANSFERRING EMPLOYEES~~**

- ~~1.1. The Contractor hereby acknowledges to the Employer that with effect from the Commencement Date the Contractor will become the employer of the Transferring Employees as if (which both parties believe to be the case) the engagement of the Contractor as agent for the performance of the Services gives rise to a transfer to which the Transfer Regulations apply.~~
- ~~1.2 All salaries and other emoluments including holiday pay, taxation and national insurance contributions and contributions to retirement benefit schemes relating to the Transferring Employees shall be borne by the Contractor with effect from the Commencement Date.~~
- ~~1.3 The Contractor shall indemnify the Employer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Employer including without limitation all legal expenses and other professional fees in relation to:~~
- ~~1.3.1 any failure by the Contractor to comply with its obligations pursuant to the Transfer Regulations; and~~
- ~~1.3.2 anything done or omitted to be done by the Contractor in respect of any of the Transferring Employees whether before, on or after the Commencement Date.~~

## **~~2. PENSIONS~~**

~~The Contractor shall offer the Transferring Employees' pension provisions in accordance with the sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 (S.I.2005/649).~~

## **~~3. TERMINATION~~**

- ~~3.1. The provisions of this Schedule 9 will continue notwithstanding the termination of this Contract.~~
- ~~3.2. If this Contract is terminated or determined in circumstances in which the Transfer Regulations apply the following provisions will apply:~~
- ~~3.2.1. with effect from the Termination Date the Employer or the New Contractor will become the employer of the Second Transferring Employees;~~
- ~~3.2.2. the Contractor shall be liable for all salaries, wages, bonuses, pension contributions, income tax and National Insurance contributions or other emoluments relating to the Second Transferring Employees up to and including the Termination Date and shall indemnify the Employer and or, as the case may be, the New Contractor in respect thereof;~~
- ~~3.2.3. the Contractor will indemnify the Employer and/or the New Contractor against any loss, damage, expenses and costs (including reasonable legal fees) suffered or incurred by reason of any proceeding, claim or demand by or on behalf of any Second Transferring Employee or Former Employee relating to any act or omission by the Contractor whether before, on or after the Termination Date in relation to the employment of any Second Transferring Employee or Former Employee;~~

- ~~3.2.4. The Contractor warrants that it will comply in full with its obligations under Regulations 11, 13 and 14 of the Transfer Regulations and will indemnify the Employer and/or the New Contractor against any loss, damage, expenses and costs (including reasonable legal fees) suffered or incurred by the Employer as a result of a breach of this warranty.~~
- ~~3.3. 12 months prior to the expiry of this Contract, following notice to terminate this Contract or whenever the Contractor is on notice that the Employer will terminate this Contract whichever is the earlier, the Contractor shall:~~
- ~~3.3.1. not vary and shall not make any promises or proposal to vary any terms or conditions of employment of any employee employed by the Contractor in the performance of the Services at that time (the **Assigned Employees**) without the Employer's prior written consent;~~
- ~~3.3.2. be precluded from making any material increase or decrease in the numbers of, or from replacing any Assigned Employee(s) save in circumstances where an Assigned Employee resigns and then only with the Employer's prior written consent;~~
- ~~3.3.3. be precluded from transferring any Assigned Employee to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Services to provide the Services or from materially decreasing/increasing the number of hours worked by any Assigned Employee in connection with the Services save with the Employer's prior written consent;~~
- ~~3.4. The Contractor agrees that on request by the Employer during any time within 12 months prior to expiry of this Contract, following notice to terminate this Contract or whenever the Contractor is on notice that the Employer will terminate this Contract whichever is the earlier, the Contractor shall provide to the Employer or at the Employer's direction, to the New Contractor:~~
- ~~3.4.1. a complete and accurate list of Assigned Employees or Second Transferring Employees as appropriate~~
- ~~3.4.2. such updates of the information set out in clause 3.4.1 and 3.4.3~~
- ~~3.4.3. complete and accurate copies of the employment records and/or employee information in relation to the Assigned Employees as the Employer reasonably requests.~~
- ~~3.5 The Contractor warrants that the information listed in Clause 3.4 will be complete and accurate in all respects as at the date it is provided. The Contractor will keep the Employer indemnified in full against any loss, damage, expense and costs (including reasonable legal fees) suffered or incurred by the Employer from any inaccuracy or incompleteness in such information or by any changes in the information which have not been communicated to the Employer which occur prior to the Termination Date.~~

#### ~~4. **EMPLOYEES**~~

~~(Employer to provide list of employees to Contractor when known)~~

## **SCHEDULE 10 – CONTRACT REVIEW PROCEDURES**

### **Definitions**

The following definitions apply to this Schedule 10. Save as otherwise stated in this Definitions Clause the definitions and interpretation set out in this Contract shall also apply to this Schedule 10:

Word or phrase	Meaning
Cost Reduction Proposal:	changes proposed by the Contractor to designs and specifications for any Works under the Contract that will result in a reduction in the cost to the Employer of any Order or its associated life cycle costs;
Customer Service Proposal:	changes proposed by the Contractor to work practices and procedures that will result in improvements to customer service;
Supply Chain Agreement	any agreement established between the Contractor and other contractors and any Sub-contractors or Suppliers that secures the Employer a cost reduction and the benefits as set out in clause 4 to this Schedule 10.

### **1 CONTRACT ADMINISTRATOR'S POWER TO CALL A MEETING**

Meetings will be held as and when requested by the Contract Administrator and the Contractor and such other attendees as may be requested shall attend all such meetings at no additional cost. Such meetings may be held out of normal office hours. The Contractor shall inform any Subcontractors or suppliers when their presence is required. For the avoidance of doubt, all costs arising from attending such a meeting are deemed to be included in the Contractor's tender. At each meeting under this Schedule 10, the Core Group shall attend.

### **2 MONTHLY KPI REVIEW MEETINGS:**

A monthly review meeting will be held between the Core Group, and any other person the Contract Administrator requires to attend. The meeting will be held each month to review the Contractor's performance over the previous month in respect of the KPI's. Prior to such meetings the Contractor shall supply the Contract Administrator with such information that is required. The agenda will cover but not be limited to the following:

- review of KPIs
- tenant satisfaction in accordance with KPI's
- complaints received from tenants
- the Contractor's performance in relation to the priority times
- an update on jobs outstanding beyond priority times
- any invoice queries
- defects & standards of materials and workmanship
- any general queries the Contract Administrator may wish to raise from time to time

- budget spend to date, budget commitment to date, expected end of year spend
- no. of properties where handover accepted to date, number of properties completed and awaiting handover to date
- no. of properties where work has started and is in progress (not just where survey done)
- no. of Orders or items of Work refused by the Contractor
- no. of occasions where Contractor has failed to gain access due to Customer not responding
- outstanding issues log, including identified risks
- accidents, near misses and RIDDORS

### **3 QUARTERLY REVIEW MEETINGS**

A quarterly review meeting will be held between the Core Group, and any other person the Contract Administrator requires to attend. The quarterly review meeting shall review the overall performance of the Contractor under the Contract, with a view to the improving the delivery of the Contract for the benefit of the Employer and its tenants/residents. Prior to such meeting the Contractor shall supply the Contract Administrator with such information that the Contract Administrator requires. At each quarterly review meeting the Contractor will be invited to submit to the Contract Administrator Cost Reduction Proposals in accordance with clause 4 of this schedule 10.

The Contractor is advised that there will be occasions when the tenants or tenants' representatives will need to be present and will have a role to play in satisfying maintenance needs.

### **4 COSTS REDUCTION AND] CUSTOMER SERVICE PROPOSALS**

- 4.1 At the quarterly review meeting the Contractor **shall** propose his Cost Reduction Proposals. At each quarterly review meeting the Contract Administrator may invite other contractors engaged by the Employer to the meeting where the Contractor shall work together with such other contractors and shall participate in joint initiatives with the Employer to establish Supply Chain Agreements so as to secure:-
- i) better prices;
  - ii) improved warranties and other added value;
  - iii) improved plant and/or materials;
  - iv) improved working practices that lead to a reduction in Price.
- 4.2 The Contractor shall wherever possible participate with the Employer and other contractors in sharing its knowledge of any Supply Chain Agreements it is currently party to that may benefit the Employer and achieve the aims set out at Clause 4.1.
- 4.3 The Contractor's participation in Supply Chain Agreements shall be subject to such Supply Chain Agreements offering the Employer best value compared to the Contractor's own supply chain arrangements for which purposes the Contractor shall provide such information regarding its own supply chain arrangements as the Employer may require and the Employer shall treat such information as confidential in accordance with clause 12.

- 4.4 The Contractor **shall** propose his Customer Service Proposals. At each quarterly meeting the Contract Administrator may invite other contractors engaged by the Employer to the meeting in order to encourage the sharing of innovation and ideas for the improvement of customer service and in particular:
- 4.4.1 faster response times
  - 4.4.2 improved customer satisfaction
  - 4.4.3 more efficient use of resources and IT support.
- 4.5 The acceptance of any Cost Reduction Proposal or Customer Service Proposal shall be at the Employer's sole discretion and the Contract Administrator on behalf of the Employer shall be entitled to ask for any supporting information in order to verify or evidence any Cost Reduction Proposal or Customer Service Proposal and their effectiveness.
- 4.6 The acceptance of any Cost Reduction Proposal or Customer Service Proposal shall be subject to the parties agreeing (if appropriate) the reward, be it financial or otherwise, in accordance with paragraph 3 of the Contract Supplemental Provisions (*Sixth Recital and Schedule*). Without prejudice to the generality of the foregoing where the Contractor is able to advance a Cost Reduction Proposal or Customer Service Proposal that will result in a demonstrable saving for the Employer then the Employer may consider a 50/50 share of any profit achieved by that proposal or any other such mechanism as the parties may agree in writing.

## **5 ANNUAL REVIEW MEETING**

There will be an annual review meeting on each anniversary of the Contract between the Core Group, and any other person the Contract Administrator requires to attend. At each review meeting the KPI's, the Works and the price for the Works shall be reviewed. There shall be no obligation on the Employer to make any alteration to the Contractor's Tendered Rates (whether adjusted by fluctuation or otherwise).

## SCHEDULE 11 – LIQUIDATED DAMAGES

### CA4 Liquidated Damages

For the purposes of this Clause CA4, unless the context indicates otherwise, the following expressions shall have the following meaning:

**“Required Date”** subject to any extension of time granted by the Authority to the Service Provider in accordance with a Call-Off Contract, the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the Services are required to be provided as set out in the Project Plan;

- CA4.1 The Service Provider shall provide the Services (including each Milestone) on or by (as the case may be) the Required Date.
- CA4.2 Without prejudice to the Authority’s other rights, powers or remedies (including termination) if the Service Provider fails to comply with Clause CA4.1, it shall pay to the Authority on demand reasonable costs and financial losses as evidenced by the employer and incurred as a result of delays for every day, or part thereof, which elapses between the Required Date and the earlier of:
- CA4.2.1 the date on or by which the Services are actually performed or provided or such Milestone is actually completed (as the case may be) in accordance with the Call-Off Contract; and
- CA4.2.2 if the Authority has terminated the Call-Off Contract under Clause 29, the date of such termination.
- CA4.3 All sums payable by the Service Provider to the Authority pursuant to Clause CA4.2 shall be paid as liquidated damages for delay and not as a penalty and the Parties acknowledge that such amounts are a genuine pre-estimate of the loss that may be suffered by the Authority in the event of any such failure of the Service Provider to comply with Clause CA4.1.
- CA4.4 The Parties acknowledge that they are each of comparable bargaining power and have each had the opportunity to seek legal advice in relation to this Call-Off Contract.

## **SCHEDULE 12 – MILESTONE PAYMENT SCHEDULE**

- As set out in the Order.
- Schedule of Interim dates to be agreed between the Employer and Contractor

## **SCHEDULE 13 – LOT 1 TERMS AND CONDITIONS**

**As contained in the DPS Agreement**

## **SCHEDULE 14 – LOT 4 TERMS AND CONDITIONS**

**As contained in the DPS Agreement**

## **SCHEDULE 15 – Energy Retrofit Agreement**

# HOMEOWNER RETROFIT AGREEMENT

## INTRODUCTION

As Greater London Authority (**We, Us, Our**), We have secured Home Upgrade Grant 2 (**HUG2**) funding from the Department of Energy Security and Net Zero.

We are using the HUG2 funding to deliver a programme of domestic energy retrofit works and services to improve the energy efficiency and reduce the carbon footprint of various off-gas private sector homes including Your Home (**You, Your**).

We have appointed **[Insert Contractor Name]** (a company registered in England and Wales (Company Number **[insert number]**) having a registered office at **[insert registered office address]** (the **Contractor**) to deliver retrofit advice, assessment and coordination services in relation to Your Home. We call these services the **Retrofit Services**.

Following the completion of the Retrofit Services We may offer You a package of works that are designed to improve the energy efficiency of Your Home. We call

this offer the **Retrofit Works Offer** and these works the **Retrofit Works**.

This Homeowner Retrofit Agreement governs Our relationship with You in respect of the delivery of the Retrofit Services (and where applicable, the Retrofit Works) at Your Home. You should be aware that this Homeowner Retrofit Agreement is a legally binding agreement.

Please note that words and phrases starting with capital letters have specific meanings given to them in Clause 13 (Interpretation).

To help make the terms of this Homeowner Retrofit Agreement as transparent and easy to understand as possible, We have summarised the key provisions below in the form of FAQs.

## FREQUENTLY ASKED QUESTIONS

### What will the Contractor be doing in Your Home?

The Contractor will be carrying out an initial assessment of Your Home to determine what measures can be taken to improve the energy efficiency of Your Home. This may lead to an offer of future works being carried out in Your Home.

### What are the key benefits for You?

The aim of these measures is to improve the energy efficiency of Your Home.

### What are Your responsibilities?

You must provide access to Your Home to the Contractor who will be carrying out the energy efficiency improvements to Your Home.

### Who do You contact if there are issues with the delivery of the Retrofit Services and/or Retrofit Works?

## HOMEOWNER RETROFIT AGREEMENT

In the first instance, you should contact [X]<sup>1</sup> whose details are contained below.

You agree that We are not responsible for any losses, costs, expenses, damages or claims (however arising) that You may incur which arise as a consequence of the performance or non-performance of the Retrofit Services and/or the Retrofit Works.

Your right of recourse in this instance shall be against the Contractor.

### How do You end this Agreement?<sup>2</sup>

You can end this Agreement if:

- a) at any point prior to a package of Retrofit Works being offered to You in accordance with Clause 3.5 by providing Us with thirty (30) days' written notice; or
- b) if You notify Us within seven (7) working days of Your Receipt of a Retrofit Works Offer that you are rejecting such Retrofit Works Offer in accordance with Clause 4.3.2

**Please read the terms of this Homeowner Retrofit Agreement carefully and ensure You fully understand each term.**

**If You have any queries relating to the terms or think that there is a mistake in these terms please contact [Our Resident Care Team]<sup>3</sup> on:**

**[INSERT TELEPHONE NUMBER/EMAIL**

**ADDRESS]<sup>4</sup>**

**Once you have read these terms carefully We ask that you confirm You want to enter into this**

**Homeowner Retrofit Agreement by completing and signing the boxes on the following page.**

**By completing this information and signing,**

**You confirm:**

- **You agree to enter into this legally binding Homeowner Retrofit Agreement;**
- **You agree to comply with the terms of this Homeowner Retrofit Agreement in particular Your Responsibilities under Clause 4.**

Please provide the address of Your Home where the Contractor will deliver the Retrofit Services:

.....  
.....  
.....

**When you are ready to enter this Homeowner Retrofit Agreement, please sign below:**

Your name: .....

Your signature: .....

<sup>2</sup> We have considered and proposed some rights of termination for the Homeowner in light of the principles of fairness under consumer protection legislation. GLA to review and confirm.

<sup>3</sup> GLA to confirm.

<sup>4</sup> GLA to confirm.

## HOMEOWNER RETROFIT AGREEMENT

Date: .....

Once completed, please return the signed Homeowner Retrofit Agreement to the Contractor who will then deliver it to Us. The delivery of any Retrofit Works cannot commence without You having signed and returned the Homeowner Retrofit Agreement to the Contractor.

We will keep Your signed Homeowner Retrofit Agreement for Our records. You should also keep a copy for Your records.

# HOMEOWNER RETROFIT AGREEMENT

## TERMS AND CONDITIONS

### 1 INTRODUCTION

This Homeowner Retrofit Agreement is between:

Greater London Authority (**We, Us, Our**); and

You as the Homeowner (**You, Your**).

- 1.1 This Homeowner Retrofit Agreement will become effective as soon as You (or Your representative) accept the terms of this Homeowner Retrofit Agreement by signing a paper copy of this Homeowner Retrofit Agreement.
- 1.2 After You have accepted this Homeowner Retrofit Agreement, **You are entitled to a cooling-off period** which means You can cancel within fourteen (14) days' of the date the Homeowner Retrofit Agreement is entered into.
- 1.3 This Homeowner Retrofit Agreement is based on information You provide to Us and confirm is accurate. You must let Us know if Your situation or the information provided changes.
- 1.4 **This Homeowner Retrofit Agreement will come to an end when You or We end the Homeowner Retrofit Agreement in accordance with Clause 7 (Ending This Homeowner Retrofit Agreement) below.**

### 2 RETROFIT SERVICES

- 2.1 Whilst this Homeowner Retrofit Agreement is effective (save where Our Responsibilities are suspended in accordance with this Homeowner Retrofit Agreement) **We will instruct the Contractor to deliver the Retrofit Services in Your Home provided You**

**comply with Your Responsibilities (see Clause 4 below for Your Responsibilities).**

- 2.2 **You acknowledge that the Contractor may suspend or cease to provide the Retrofit Services and/or Retrofit Works (as applicable) if:**

**You have not complied with Your Responsibilities** (see Clause 4 below);

**there is a reason the Contractor must suspend** all or part of the delivery of the Retrofit Services and/or Retrofit Works (as applicable) because the Contractor believes on reasonable grounds that it is necessary to do so to avoid:

**endangering the life** of any person; or

**endangering any physical property**, provided that both the relevant damage to such property and its economic impact are likely to be material.

### 3 OUR RESPONSIBILITIES

- 3.1 **Provided You meet Your Responsibilities, We are responsible for instructing the Contractor to deliver the Retrofit Services.**

- 3.2 **You agree that:**

**We are not responsible for** any losses, costs, expenses, damages or claims (however arising) that You may incur which arise as a consequence of the performance

## HOMEOWNER RETROFIT AGREEMENT

or non-performance of the Retrofit Services and/or the Retrofit Works; and

**Your right of recourse** in the event of any losses, costs, expenses, damages or claims that You may incur under Clause 3.2.1 above **shall be against the Contractor** under the terms and conditions of the collateral warranty that you will be provided with pursuant to Clause 3.6.

3.3 **To enable the Contractor to deliver the Retrofit Services and/or Retrofit Works (as applicable), the Contractor will need to access Your Home.** Where reasonably practicable We shall arrange for the Contractor to have access to Your Home at a mutually convenient time by giving You reasonable notice of not less than **X**<sup>5</sup> days' notice for the delivery of the Retrofit Works.

3.4 Where the Contractor has accessed Your Home in order to deliver the Retrofit Services and/or Retrofit Works (as applicable) and they are unable to carry out the Retrofit Services and/or Retrofit Works (as applicable) We will agree a time and date with You for a return visit as soon as reasonably practicable.

3.5 Upon the completion of the Retrofit Services, We will (where appropriate) work with the Contractor to develop a scope of the Retrofit Works that are to be delivered in Your Home. If the Contractor advises us

that there is a suitable package of Retrofit Works that can be delivered in Your Home, We will make You a Retrofit Works Offer.

3.6 A collateral warranty (in the form at **Error! Reference source not found.** (Collateral Warranty)) which has been signed by the Contractor will be provided to You before the commencement of such Retrofit Works. This collateral warranty will give You a right of recourse against the Contractor in the event that there are any issues with the delivery of the Retrofit Works.

3.7 If You notify Us of any problems that You encounter in respect of the Retrofit Works, We will use Our reasonable endeavours to assist You so that the Contractor fulfils its obligations in respect of the delivery of the Retrofit Works as soon as reasonably practicable.

## 4 YOUR RESPONSIBILITIES

4.1 **At all times during the term of this Homeowner Retrofit Agreement, You must comply with Your Responsibilities** as detailed in this Clause 4.

4.2 **If You do not comply with Your Responsibilities, this may affect Your entitlement to receive the Retrofit Services and/or Retrofit Works (as applicable).**

4.3 Within seven (7) Working Days of Your receipt of any Retrofit Works Offer that We make to You under Clause 3.5, **You must notify Us in writing whether You wish to:**

accept the Retrofit Works Offer; or

<sup>5</sup> GLA to confirm.

## HOMEOWNER RETROFIT AGREEMENT

reject the Retrofit Works Offer.

4.4 **You will inform Us** as soon as reasonably practicable after You discover that there are any issues in respect of the delivery of the Retrofit Services and/or Retrofit Works (as applicable).

4.5 **You agree that the Contractor will not be required to provide the Retrofit Services and/or Retrofit Works (where applicable)** where there is a health and safety risk, including the presence of dangerous materials, infestations, or harassment to any personnel carrying out the Retrofit Services and/or Retrofit Works (as applicable) (including any verbal or physical abuse or threat of physical abuse) to the extent such risk affects the delivery of the Retrofit Services and/or Retrofit Works (as applicable).

4.6 **You must allow the Contractor access to Your Home.** (See Clause 5 below for more details about accessing Your Home).

### 5 ACCESS TO YOUR HOME

5.1 **You must allow the Contractor appropriate, full, free, safe, and unobstructed access to Your Home** to the extent that they reasonably require such access under this Homeowner Retrofit Agreement.

### 6 SUSPENSION

6.1 **The Contractor may (at its discretion and acting reasonably) suspend** in whole or in part the delivery of the Retrofit Services and/or the Retrofit Works (as

applicable) to the extent that it is necessary to do so to **avoid endangering:**

**the life of any person;** or

**any physical property**, provided that both the relevant damage to such property and its economic impact are likely to be material.

## 7 ENDING THIS HOMEOWNER RETROFIT AGREEMENT<sup>6</sup>

### Our rights to end this Homeowner Retrofit Agreement

7.1 **We may end this Homeowner Retrofit Agreement if:**

You do not allow the Contractor access to Your Home in accordance with Clause 3.3;

after the completion of the Retrofit Services, the Contractor advises Us that there is not a suitable package of Retrofit Works for Your Home;

We conclude that the delivery of Retrofit Works in Your Home is not commercially viable;

You cannot provide sufficient written evidence (to the reasonable satisfaction of the Contractor) that You are eligible to receive the Retrofit Services and/or Retrofit Works;

<sup>6</sup> GLA to review and confirm this is agreed.

## HOMEOWNER RETROFIT AGREEMENT

You fail to respond to Our Retrofit Works Offer  
in accordance with Clause 4.3;

You are declared bankrupt, or an individual or  
organisation takes formal steps to  
have You declared bankrupt;

We need to do so for any other reason by giving  
you thirty (30) days' written notice.

7.2 If we have the right to end this Homeowner Retrofit Agreement pursuant to Clauses 7.1.1 to 7.1.5 then **we must serve at least fourteen (14) days' advance written notice of our intention to end this Homeowner Retrofit Agreement** and upon the expiry of such notice period this Homeowner Retrofit Agreement shall end.

**Your rights to end this Homeowner Retrofit Agreement**

**You may end this Homeowner Retrofit Agreement:**

**at any point prior to a Retrofit Works Offer being made to You in accordance with Clause 3.5 by providing Us with 30 days' written notice; or**

**if You notify Us within seven (7) working days of Your receipt of a Retrofit Works Offer that you are rejecting the Retrofit Works Offer in accordance with Clause 4.3.2**

**where You are permitted to do so by applicable Law and/or the terms of this Agreement**, in which case You must serve Us at least fourteen (14) days' written notice and upon the expiry of such notice period this Homeowner Retrofit Agreement shall end.

### 8 CONSEQUENCES OF ENDING THIS AGREEMENT

8.1 **You will remain liable following the end of this Homeowner Retrofit Agreement for any other previous breach of this Homeowner Retrofit Agreement by You, and We will remain liable for any previous breach by Us.**

### 9 LIABILITY

9.1 **Nothing in this Homeowner Retrofit Agreement:**

**excludes or limits Our liability for fraud or fraudulent misrepresentation;**

**excludes or limits Our liability for death or personal injury; and**

**seeks to limit Your statutory rights as a consumer.**

9.2 **We will not be liable for any losses caused by You.**

This Clause 9 (Liability) survives the end of this Homeowner Retrofit Agreement.

### 10 COMPLAINTS<sup>7</sup>

<sup>7</sup> GLA to confirm the steps to be followed as part of the complaints procedure so that Clause 10 can be amended as appropriate. Clause 13 (Interpretation)

currently includes the defined terms "Complaint Procedure" and "Resident Care Team".

## HOMEOWNER RETROFIT AGREEMENT

10.1 If You are dissatisfied with, and/or You wish to make a complaint about, the Retrofit Services, the Retrofit Works and/or this Homeowner Retrofit Agreement, please contact [TBC] in the first instance.

10.2 [TBC] will handle any enquiries or complaints You raise in accordance with [Our Complaints Procedure].

10.3 If You are not satisfied with the way in which Your complaint has been dealt with, You may refer the complaint to the Ombudsman Services ([www.ombudsman-services.org](http://www.ombudsman-services.org)) who resolve disputes on a free and impartial basis and We are bound by any decision.

10.4 You may also seek advice from the Citizens Advice Bureau ([www.citizenadvice.org.uk/energy](http://www.citizenadvice.org.uk/energy)) for free, independent and impartial advice.

### 11 HOW WE USE YOUR PERSONAL DATA

11.1 For the purpose of this Homeowner Retrofit Agreement  
**We will process Personal Data about You as a Data Controller** in accordance with:

Data Protection Legislation; and

Our Fair Processing Notice.

11.2 You will find Our Fair Processing Notice (as amended from time to time) at [link to be inserted](#)

11.3 If You have a query or request relating to how We process Your Personal Data, contact Our Data Protection Officer at: [TBC]

### 12 OTHER IMPORTANT TERMS

**We may transfer this Homeowner Retrofit Agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and We will ensure that the transfer will not affect your rights under this Homeowner Retrofit Agreement. If You are unhappy with the transfer You may contact us to end this Homeowner Retrofit Agreement within fourteen (14) days of us telling you about it.

**You need Our consent to transfer your rights to someone else.** You may only transfer Your rights or your obligations under this Homeowner Retrofit Agreement to another person if We agree to this in writing.

**How We will send you notices.** Any notices We are required or wish to give You under this Homeowner Retrofit Agreement will be accepted by You as properly given if delivered or sent to Your address (including electronic address) for correspondence as stated in this Homeowner Retrofit Agreement or such other address as You may in future request Us to use. Any notices sent through the post will be deemed to be delivered upon the earlier of actual receipt, or three (3) days from posting. Any notices delivered by hand will be effective on delivery.

**Even if You or We delay enforcing this Homeowner Retrofit Agreement, You or We can still enforce it later.** If We do not insist immediately that You do anything You are required to do under these terms, or if We delay in taking steps against You in respect of your breaking this Homeowner Retrofit Agreement, that will not mean that you do not have to do those

## HOMEOWNER RETROFIT AGREEMENT

things and it will not prevent us taking steps against you at a later date.

12.1 **Nobody else has any rights under this Homeowner Retrofit Agreement.** This Homeowner Retrofit Agreement is between You and Us. No other person shall have any rights to enforce any of its terms.

12.2 **Each of the Clauses of this Homeowner Retrofit Agreement are separate.** If We or You are told by a court or other authority that We or You cannot rely on a certain Clause, the other Clauses of this Homeowner Retrofit Agreement will still apply.

12.3 **This Homeowner Retrofit Agreement will be governed by and construed in accordance with the laws of England,** and both You and Us agree to submit to the exclusive jurisdiction of the English Courts.

### 13 INTERPRETATION

The following definitions (sorted in alphabetical order) apply to this Homeowner Retrofit Agreement:

**Complaints Procedure** means Our complaints process included in [TBC]<sup>8</sup> (as amended from time to time).

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time.

**Fair Processing Notice** has the meaning given to it in Clause 11.2;

**HUG2** means Home Upgrade Grant Phase ;

**Homeowner Retrofit Agreement** means these terms and conditions and the schedules.

**Law** means:

- any applicable statute or proclamation or any delegated or subordinate legislation;
- any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- any applicable guidance, direction or determination with which We are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to them; and
- any applicable judgement of a relevant court of law which is binding in England.

<sup>8</sup> GLA to confirm if there will be a "Complaints Procedure" and where it will be located so this

definition can be updated as appropriate. See also Clause 12 (Complaints) above.

## HOMEOWNER RETROFIT AGREEMENT

**Our Responsibilities** means Our responsibilities under this Homeowner Retrofit Agreement set out in this Homeowner Retrofit Agreement (see Clause 3 (Our Responsibilities) above).

**Personal Data** has the meaning given to it under Data Protection Legislation.

**[Resident Care Team<sup>9</sup>** means Our team who are tasked to respond to Your enquiries and handle Your complaint (if any) and are contactable:

- by writing at: [INSERT ADDRESS DETAILS]
- by phone at: [INSERT PHONE]; and
- by email at: [INSERT EMAIL ADDRESS]]

**Retrofit Services** means the retrofit advice, assessment and coordination services that are carried out by the Contractor in relation to Your Home.

**Retrofit Works** means any works that are carried by the Contractor to improve the energy efficiency of Your Home.

**Retrofit Works Offer** means the offer We may make to You in accordance with Clause 3.5 for the delivery of a package of Retrofit Works;

**UK GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;

**Your Home** means the property as detailed by You on the front page of this Homeowner Retrofit Agreement at which the Contractor will be providing You the Retrofit Services [and the relevant Contractor will be providing You with the Retrofit Works] under this Homeowner Retrofit Agreement.

**Your Responsibilities** means Your responsibilities under this Homeowner Retrofit Agreement as set out in Clause 4 (Your Responsibilities) above.

Headings shall not affect the interpretation of this Homeowner Retrofit Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

This Homeowner Retrofit Agreement shall be binding on, and enure to the benefit of, the parties to this Homeowner Retrofit Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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<sup>9</sup> GLA to confirm.

## HOMEOWNER RETROFIT AGREEMENT

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after exit day.

A reference to writing or written includes fax and email.

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

References to Clauses and Schedules are to the Clauses and Schedules of this Homeowner Retrofit

Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

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

## **HOMEOWNER RETROFIT AGREEMENT**

### **SCHEDULE 1 – COLLATERAL WARRANTY**

## **HOMEOWNER RETROFIT AGREEMENT**

### **FORM OF COLLATERAL WARRANTY**

DATED

202[ ]

**[CONTRACTOR]**

**[BENEFICIARY]**

**[[CLIENT]]**

### **DEED OF COLLATERAL WARRANTY**

in respect of retrofit services provided in relation to [ ]

## HOMEOWNER RETROFIT AGREEMENT

DATED [ ]

### PARTIES

1 Contractor [ ] (company no [ ]) whose registered office is at [ ]

2 Beneficiary [ ]

3 [Client [ ] (company no [ ]) whose registered office is at [ ]]

### RECITALS

A By the Appointment, the Client has employed the Contractor to perform the Services.

B The Beneficiary is the [owner / occupier] of the Property.

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

### OPERATIVE PROVISIONS

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

*Appointment* the contract dated [ ] between the Client (1) and the Contractor (2) (and any further agreement varying or supplementing it) under which the Contractor has agreed to perform the Services;

*Beneficiary* includes any person to whom the benefit of this deed and/or any rights under it have been validly assigned in accordance with clause 7;

*[Contractor* includes any person who may become a partner of the Contractor after the date of this deed;]

*Client* [[insert name of Client] and] includes any person to whom the benefit of the Appointment has been validly assigned

*Property* the property at [ ];

## HOMEOWNER RETROFIT AGREEMENT

### *Proprietary Material*

all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in the course of or as a result of performing the Services whether in existence or to be made or produced and including all amendments and additions to them including, but not limited to, all drawings, details, plans, models, specifications, schedules, reports, calculations and 2D and 3D BIM (Building Information Modelling) information produced at any time during the design process to completion of the design; and

### *Services*

the services performed or to be performed by the Contractor in respect of the Property as more particularly described in the Appointment.

- 1.2 Any obligation on a party to this deed to do an act includes an obligation to procure that it is done.
- 1.3 If a party is placed under a restriction in this deed, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.6 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.7 The clause headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.8 Unless the contrary intention appears, references in this deed to numbered clauses are references to the relevant clause in this deed.

## HOMEOWNER RETROFIT AGREEMENT

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

1.10 If the Contractor is two or more persons, the expression “the Contractor” includes the plural number and obligations in this deed expressed or implied to be made with or by the Contractor are to be treated as made with or by such persons jointly and severally.

### 2. **Contractor’s warranties**

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

2.1.1 the Contractor shall owe no greater obligations to the Beneficiary under this deed than it owes to the Client under the Appointment; and

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

2.2 The Contractor warrants to the Beneficiary that, in the performance of the Services, it has exercised and will continue to exercise all the skill, care and diligence which may reasonably be expected of a qualified and competent contractor of the relevant discipline experienced in the provision of such services in respect of works of a similar size, scope, nature and complexity to the Services.

2.3 Without limiting clause 2.2, the Contractor warrants to the Beneficiary that it has not specified or authorised for use and will not specify or authorise for use in connection with the Services:

2.3.1 any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices report *Good practice in the selection*

## HOMEOWNER RETROFIT AGREEMENT

*of construction materials* (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; and

- 2.3.2 any other material which (or the use of which as specified by the Contractor) does not comply with relevant British Standard specifications and codes of practice and good building practice or is otherwise generally known within the Contractor's profession at the time of specification to be deleterious or harmful to health or to the durability of the Property in the particular circumstances in which it is proposed to be used;

and the Contractor shall notify the Beneficiary promptly if it becomes aware of any proposed or actual use in connection with the Services of any materials otherwise than in accordance with this clause.

- 2.4 The Contractor extends to the Beneficiary the benefit of all warranties on the part of the Contractor contained in the Appointment.
- 2.5 The Contractor acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Contractor under this clause 2.
- 2.6 The Contractor acknowledges to the Beneficiary that, at the date of this deed, the Appointment remains in full force and effect and the Client has paid all sums properly due to the Contractor under the Appointment.

### **3. [Obligations prior to determination of the Contractor's engagement]**

- 3.1 The Contractor shall not exercise nor seek to exercise any right to determine its engagement under the Appointment for any reason, including any breach on the part of the Client, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.
- 3.2 Any period stipulated in the Appointment for the exercise by the Contractor of a right of determination shall be extended, as necessary, to take account of the period of notice required under clause 3.1.
- 3.3 Compliance by the Contractor with clause 3.1 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination, nor

## HOMEOWNER RETROFIT AGREEMENT

otherwise prevent the Contractor from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of clause 4.

### **4. “Step-in” right**

4.1 The right of the Contractor to determine its engagement under the Appointment shall cease if, within the period of 21 days referred to in clause 3.1, the Beneficiary shall give notice to the Contractor, copied to the Client:

4.1.1 requiring the Contractor to continue its obligations under the Appointment;

4.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Client under the Appointment; and

4.1.3 undertaking to the Contractor to discharge all payments which may subsequently become due to the Contractor under the terms of the Appointment and to pay to the Contractor within 21 days any sums which have become due and payable to it under the Appointment but which remain unpaid.

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

4.3 Notwithstanding that as between the Client and the Contractor the Contractor’s right of determination of its engagement under the Appointment may not have arisen, the provisions of clause 4.2 shall apply if the Beneficiary gives notice to the Contractor and the Client to that effect and the Beneficiary complies with the requirements on its part under clause 4.1.

4.4 The Contractor shall be bound to assume that, as between the Client and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under clause 4.3.

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

## HOMEOWNER RETROFIT AGREEMENT

### **5. Use of Proprietary Material**

- 5.1 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Services and/or the Property, including (without limitation) the execution and completion of the Services and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.
- 5.2 The licence referred to in clause 5.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the expiry or determination (for any reason) of the Contractor's engagement under the Appointment.
- 5.3 The Contractor acknowledges that it is the author (as referred to in the Copyright, Designs and Patents Act 1988) of the Proprietary Material and waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of the Proprietary Material and of the Services.
- 5.4 The Contractor shall provide a complete set of copies of the Proprietary Material to the Beneficiary without charge on completion of the Services under the Appointment and shall provide further copies of any or all of the Proprietary Material to the Beneficiary on request and upon payment by the Beneficiary of the Contractor's reasonable copying charges.
- 5.5 The Contractor shall not be liable for the consequences of any use of the Proprietary Material for any purpose other than that for which it was prepared by the Contractor.

### **6. Insurance**

- 6.1 Without limiting its other obligations under this deed or otherwise at law, the Contractor shall maintain professional indemnity insurance with insurers of good repute and substance based in the United Kingdom to cover each and every professional liability which it may incur under this deed, with a limit of indemnity not less than £[ ] in respect of each and every claim, for the period from the date of the Appointment to the date that is twelve (12) years after the completion of all

## HOMEOWNER RETROFIT AGREEMENT

Services under the Appointment provided always that such insurance is available to persons carrying out services of a similar scope, value and nature to the Services in the market at commercially reasonable rates and terms.

- 6.2 The insurance referred to in clause 6.1 shall be subject only to such conditions and excesses as may be usual in the United Kingdom insurance market at the time.
- 6.3 As and when reasonably required to do so by the Beneficiary, the Contractor shall produce documentary evidence that the insurance required by this clause 6 is being properly maintained.
- 6.4 The Contractor shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this clause 6 on reasonable terms and at commercially reasonable premium rates or at all or if there is any material reduction in the scope or level of cover offered by such insurance.
- 6.5 The Contractor shall not compromise, settle or waive any insurance claim which it may have in respect of any professional liability under this deed without the prior consent of the Beneficiary, provided that nothing in this clause precludes the Contractor's insurers from taking over (in the name of the Contractor) the defence of any claim made by the Beneficiary under this deed and (in that capacity) from conducting and settling it as they see fit.

### **7. Assignment**

The Beneficiary may at any time assign the benefit of this deed and/or any rights arising under it by way of absolute legal assignment to any subsequent purchaser of the Beneficiary's interest in the Property or to any third party (subject to a maximum of two such assignments without the Contractor's consent being required) or to any further person providing finance or re-finance in connection with the Services or by way of charge to any mortgagee of the Property or to any group company of the Beneficiary on notice to the Contractor, without the consent of the Contractor being required. Assignment to a party providing finance or a group company of the Beneficiary shall not count towards such two occasions. The Contractor shall not be permitted to assign this deed to a third party.

### **8. Third parties**

## HOMEOWNER RETROFIT AGREEMENT

- 8.1 Any holding or subsidiary company of the Beneficiary or any company associated with it may in its own right enforce any term of this deed.
- 8.2 Except as provided in clause 8.1, it is not intended that any third party (other than the Beneficiary) should have the right to enforce a provision of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.3 The parties may rescind or vary this deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

### 9. Other remedies

- 9.1 Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.
- 9.2 The liability of the Contractor under this deed shall not be released, diminished or in any other way affected by:
  - 9.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Services or to inspect any documents relating to them on behalf of the Beneficiary or the failure to appoint such a person;
  - 9.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or
  - 9.2.3 any other independent inquiry into any relevant matter which the Beneficiary may make or fail to make.

### 1. Limitation

No action or proceedings for any breach of this deed shall be commenced against the Contractor after the expiry of 12 years following completion of the Services under the Appointment.

### 2. Notices

Any notice or other communication required under this deed shall be given in writing and shall be deemed to have been properly given if compliance is made

## HOMEOWNER RETROFIT AGREEMENT

with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

### **3. Governing law and disputes**

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

## HOMEOWNER RETROFIT AGREEMENT

Delivered as a deed on the date of this document.

Executed as a deed by **[CONTRACTOR]** in  
the presence of:

Director

Director/Secretary

Executed as a deed by **[BENEFICIARY]** in  
the presence of:

Director

Director/Secretary

Executed as a deed by **[CLIENT]** in the presence of:

Director

Director/Secretary

## HOMEOWNER RETROFIT AGREEMENT

### SCHEDULE 2– PRIVATE RESIDENT’S CONTRIBUTION<sup>10</sup>

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<sup>10</sup> GLA to confirm key principles for Private Resident’s Contribution from landlords of the private rental sector, including:

- a) what the level of contribution is;
- b) what the method(s) of payment are and when it needs to be paid;
- c) the process for collecting the money;
- d) what happens if the landlord does not pay the Private Resident’s Contribution after [X] reminders, i.e. does it lead to a right of termination;
- e) any obligations of the landlord to pay for any sums properly due and owing up to and including the date of termination

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