The Mayor & Burgesses of the London Borough of Enfield

and

[CONTRACTOR]

SCHEDULE OF AMENDMENTS
TO THE JCT MEASURED TERM CONTRACT 2016 EDITION

relating to

AFDS and Emergency Lighting

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Agreement

This Agreement is made the _____ 20_____

Between **The Employer**: The Mayor & Burgesses of the London Borough of Enfield of Civic Centre,Silver Street, Enfield EN1 3KA

And **The Contractor: [ ]** (Company No. [_____]) whose registered office is at [_____]

Recitals

Whereas

First the Employer requires installation of AFDS and emergency lighting systems:

Various addresses as may be identified in the London Borough of Enfield ('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 is stated in the Contract Particulars apply.

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 (TBC) of **Enfield Council** 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 Agreement, Recitals, Articles, Contract Particulars and the Conditions shall have effect as modified by the schedule of amendments attached hereto.

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 10% 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 in Schedule 1. 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.

Execution – the contract will be executed as a deed.

Contract Particulars

Note: An asterisk * indicates text that is to be deleted as appropriate.

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

.1 Various addresses as may be identified in the London Borough of Enfield ('the Contract Area') in accordance with the details set out or referred to in the Contract Particulars;

.2 Description of the types of work for which Orders may be issued:

As set out within the Specification

2 **Supplemental Provisions**
(Fifth Recital and schedule)

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

Collaborative working	*	Supplemental Provision 1 applies
Health and safety	*	Supplemental Provision 2 applies
Cost savings and value improvements	*	Supplemental Provision 3 does not apply
Sustainable development and environmental considerations	*	Supplemental Provision 4 does not apply
Performance Indicators and monitoring	*	Supplemental Provision 5 applies
Notification and negotiation of disputes	*	Supplemental Provision 6 applies
Where Supplemental Provision 6 applies, the respective nominees of the Parties are		Employer's nominee TBC Contractor's nominee [ ] or such replacement as each Party may notify to the other from time to time

3 **Contract Period**
(Article 1 and clause 7.1)

Subject to Article 13 and clause 7.1, the Contract Period will be 52weeks, commencing on TBC with the option to extend the contract for a futher 52 weeks

4 **Arbitration**
(Article 7)

* Article 7 and clauses 9.3 to 9.8 (*Arbitration*) apply

5 **BIM Protocol**

(Clause 1.1)

BIM Protocol (where applicable) Not Applicable
(State title, edition, date or other Identifiers of the relevant documents)

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

Minimum value of any one Order to be issued

NA

Maximum value of any one Order to be issued

NA

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

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

* £ as per tender return

8 **Orders – priority coding**[1]
(Clause 2.6)

As set out in the Preliminaries /Specification

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

The Employer at the commencement of the Contract Period is not 'contractor' for the purposes of the CIS

10 **Payments**
(Clause 4.3.1)

Estimated value of an Order above which progress payments can be applied for (*if none is stated, it is £2,500.*) £ Not Applicable

Valuation Dates
(if no date is stated the Valuation Date is the last day of each month)

11 **Responsibility for measurement and valuation**

(Clause 5.2)

The Contractor shall measure and value all Orders, which shall be validated by the Contract Administrator

12 **Schedule of Rates**
(Clause 5.3, 5.6)

.1 **The Schedule of Rates** is

.1	As set out in the following document	Price Framework
.2	Where the Schedule of Rates is the National schedule of Rates the version(s) identified opposite are to apply	Not applicable

.3 **Rates – Fluctuations**

Clause 5.6 (*Unless 'applies' is deleted, the clause shall be deemed to apply*)	does not apply [2]

.4 **Basis and dates of revision**
(*Not applicable where the National Schedule of Rates applies*)

Where clause 5.6 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6 (*If no basis is identified the rates remain fixed for all Orders*)	Does Not Apply
Where clause 5.6 applies, the date at which the Contractor's Tendered Prices are to be revised:	Not Applicable

13 **Daywork**

(Clause 5.4, 5.6)

.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 profits on Materials	As per Price Framework
Overheads and profit on Plant, Services and Consumable Stores	As per Price Framework
Overheads and profit on Sub-Contractors	As per Price Framework

.2 **Revision of Schedule of Hourly Charges**

Clause 5.6	does not apply[3]
(Where clause 5.6 applies) the annual revision date (if other than 1 August) is	Not applicable
(Where clause 5.6 applies) the basis of revision of hourly charges, if not set out in the Schedule of Hourly Charges[4]	Not applicable

14 **Overtime work**

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

15 **Insurance**
(Clauses 6.4.1, 6.7A, 6.7B, 6.8, 6.11, 6.15 and 6.16)

[3] To be amended subject to whether the Contractor's tendered hourly rates are fixed for the Contract Period or if they are subject to inflation after a fixed period of 12 months or 24 months or any other period.

[4] If clause 5.6 applies but the basis of revision is not set out in the Schedule of Hourly Charges or identified, clause 5.6 will apply.

.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£ 10,000,000.00 for any one occurrence or series of occurrences arising out of one event
	Employers' Liability insurance: injury to employees of the Contractor – the required level of cover is not less than	£ 10,000,000.00 for any one occurrence or series of occurrences arising out of one event
.2	Percentage to cover professional fees *(if no other percentage is stated, it shall be 15 per cent.)*	NA
.3	Insurance of existing structures – clause 6.7A.1	(the Employer is not required to and shall not name the Contractor on a Joint Names Policy)
.4	Insurance of work or supply comprised in Orders – clause 6.7B *(If neither entry is deleted, the clause does not apply.)*	applies (Contractor to maintain)/
.5	Where clause 6.7B applies and cover is to be provided under the Contractor's annual policy, the annual renewal date is (as supplied by the Contractor)	Applies
.6	Terrorism Cover – details of the required cover (*Unless otherwise state, Pool Re Cover is required*)	are set out in the following document(s) Not Applicable

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

The period of notice if less than 13 weeks is	4 weeks

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

Adjudication	The Adjudicator is: to be appointed by the President or Vice President of:
Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)	* the Royal Institution of Chartered Surveyors *

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.

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.

Executed as a Deed by the Employer

namely [1] [ ]

(A) acting by a Director and the Company Secretary/two Directors **of the company** [2, 3]

_____ and _____
(*Print name of signatory*) (*Print name of signatory*)

_____ _____
Signature *Director* *Signature* *Company Secretary/Director*

(B) by affixing hereto the common seal **of the company/other body corporate** [2, 4]

in the presence of

_____
Signature *Director*

_____
Signature *Company Secretary/Director*

[*Common seal of a company*]

(C) by attested signature of a single Director **of the company** [2, 5]

_____
Signature *Director*

in the presence of

Witness' signature _____ (*Print name*) _____

Witness' address _____

(D) by attested signature **of the individual** [6]

_____
Signature *Director*

in the presence of

Witness' signature _____ (*Print name*) _____

Witness' address _____

Executed as a Deed by the Contractor

namely [1] [ ]

(A) acting by a Director and the Company Secretary/two Directors **of the company** [2, 3]

_____ and _____
(*Print name of signatory*) (*Print name of signatory*)

_____ _____
Signature *Director* *Signature* *Company Secretary/Director*

(B) by affixing hereto the common seal **of the company/other body corporate** [2, 4]

in the presence of

_____
Signature *Director*

_____
Signature *Company Secretary/Director*

[*Common seal of a company*]

(C) by attested signature of a single Director **of the company** [2, 5]

_____
Signature *Director*

in the presence of

Witness' signature _____ (*Print name*) _____

Witness' address _____

(D) by attested signature **of the individual** [6]

_____
Signature *Director*

in the presence of

Witness' signature _____ (*Print name*) _____

Witness' address _____

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 – Amend definition of Conditions to read: the clauses set out in sections 1 to 25 of these Conditions together with and including the Schedules 1 – 2 hereto.

Clause 1.1 – add new definitions as follows:

Word or phrase	*Meaning*
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 1
KPI Target	the KPI targets set out in the Specification at Schedule 1
Price Framework:	Schedule 2 *(Schedule of Rates and Price Framework)* setting out the basis of payment for the Works and including the Contractor's tendered Rates.

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 the Schedules 1 and 2, 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 for 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."

Clause 2.3.5 – delete this clause.

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 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.

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; or

.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;

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."

SECTION 3 – CONTROL OF WORK

Clause 3.2 – Re-number clause 3.2 as 3.2.1

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."

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 – insert new clause 3.5.5 as follows:

3.5 .5 Where any new Properties are added to the Contract, the price for such new Properties shall be the Contractor's Tendered Rates or pro rata such Rates as the Contract Administrator and Contractor may agree for Properties of a similar location/content.

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"

Insert a new clause 3.11 as follows:

"Complaints Handling

3.11 .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 as set out 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 3.12 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."

SECTION 4 – PAYMENT

Section 4 – at the start of Section 4 insert a new clause 4A and 4B[5] as follows:

"4A All applications for payment under clause 4 shall set out and be accompanied by:

.1 the relevant addresses where Works are carried out and the corresponding Order number;

.2 a breakdown of the Works that have been carried out by reference to the item code in the Price Framework and/or Specification 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;

.3 the precise period to which the request for payment relates, together with a breakdown of the time worked;

.4 a breakdown of the costs submitted as part of an application for payment, including the net price payable for the Works;

.5 and be in accordance with the values set out in the Price Framework; and

.6 provide 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.

4B "4B **Retention**

.1 The Employer shall be entitled to deduct and retain retention equal to 5% of the Order value. The retention shall be deducted from the certified sum in any interim application for payment made in respect of that Order.

.2 The retention shall be re-paid in full by the Employer to the Contractor at the expiry of 12 months of the Order Completion Date. The Employer shall be entitled to retain and utilise the retention in the following circumstances:

.1 Where before the expiry of 12 months of the Order Completion Date, the Contractor is notified of a defect and has failed to remedy that defect; or

.2 Where before the expiry of 12 months of the Order Completion Date, 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.

Delete Clause 4.3 and substitute:

"Payments

4.3 Payments under the Contract will be made on the following terms:

---

[5] Remove brackets and footnote where Retention applies, otherwise delete where retention does not apply.

.1 No later than 7 days after the end of each month and no earlier than the first day of the month ("Application Window"), the Contractor shall provide the Employer with an application for payment in respect of all Works completed in the previous month. The application for payment shall contain a detailed breakdown of the sums due.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. The application for payment must only seek payment in respect of completed Works. By submitting an application for payment, the Contractor is representing that all Works set out within the application for payment has been completed in accordance with the Contract. If the monthly application for payment is not provided within the Application Window, it shall be considered null and void and the Contractor shall be entitled to re-submit the application for payment within the following Application Window.[6]

.2 Provided each application for payment (or part thereof) is supported by the information required by clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract Administrator, and is in respect of completed Works only, the due date for payment shall be 14 days from the date of receipt of the application for payment.

.3 The Contract Administrator shall be entitled to reject any application for payment or any part thereof where in his opinion:

a) it is not supported by the information required and set out within clause 4A, the Price Framework, the Specification or any specific requirement of the Contract or the Contract Administrator; or

c) the application for payment contains any Order (or any Work completed pursuant to an Order) that is incomplete, contains defective Works or otherwise breaches any requirement of this Contract; or

d) the application is inaccurate in one or other respect either in terms of value or Order information.

.4 In the event the Contract Administrator rejects an application for payment in accordance with clause 4.3.3 or any part thereof the Contractor will not be entitled to payment for any rejected sums within the application for payment until such time as those rejected sums have been included within a further application for payment that has been submitted in accordance with clause 4A, the Price Framework, the Specification and any specific requirement of the Contract or the Contract

[6] If an application for payment is issued outside of this window, you must still issue a payment notice with a £NIL valuation citing a failure to provide the application for payment on time in accordance with clause 4.3.1.

[7] Where any part of an application for payment or the entire application for payment is rejected, a payment notice must still be issued pursuant to clause 4.3.5, which must set out the sum considered payable on the date of the notice and set out the reasons for why parts (or all) of the application for payment have been rejected.[8] Professional Indemnity Insurance is required where the Contractor has design responsibility. Products Liability insurance provides cover against personal injury or damage to persons or property arising from goods or products supplied as part of the works. Where these types of insurance are required, the levels of insurance should be included.

Administrator. The re-submitted application for payment shall be issued no earlier than the intervals set out at clause 4.3.1.[7]

.5 Where an application for payment is not rejected in its entirety, then no later than five days after the due date for payment the Contract Administrator shall provide the Contractor with a payment notice setting out the sum that the Employer considers to be or to have been due at the due date for payment and the basis on which that sum is calculated. A payment notice shall be issued by the Contract Administrator even where the sum due to the Contractor in respect of any application for payment is zero.

.6 The final date for payment shall be 21 days from the due date for payment, subject to the Employer receiving an invoice in respect of each application for payment from the Contractor no later five days following receipt of the Employer's payment notice pursuant to clause 4.3.5. Where the Contractor fails to provide its invoice within the timeframes set out herein, the final date for payment shall be extended by the number of days the Contractor is in delay in providing an invoice.

.7 The Contract Administrator or Employer may issue a pay less notice no later than 2 calendar 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.

.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 have no liability to make any payment to the Contractor for 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 Works completed more than three months prior to the date of the application for payment then those 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 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 Works pursuant to clause 4.3.5 or otherwise issue a pay less notice pursuant to clause 4.3.7.

.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 4.3.5 or 4.3.7)

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[7] Where any part of an application for payment or the entire application for payment is rejected, a payment notice must still be issued pursuant to clause 4.3.5, which must set out the sum considered payable on the date of the notice and set out the reasons for why parts (or all) of the application for payment have been rejected.[8] Professional Indemnity Insurance is required where the Contractor has design responsibility. Products Liability insurance provides cover against personal injury or damage to persons or property arising from goods or products supplied as part of the works. Where these types of insurance are required, the levels of insurance should be included.

until evidence is provided by the Contractor to the satisfaction of the Employer (acting reasonably).

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 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 to 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)"

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.

Delete clause 5.6.

Delete clause 5.7.

Delete clause 5.8.

SECTION 6 – INJURY, DAMAGE AND INSURANCE

Insert a new clause 6.15 and 6.16 as follows:[8]

"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 £ 5,000,000.00 in respect of each and every claim, provided that such insurance continues to be available in the European Union 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 £ 2,000,000.00 in respect of each and every claim, provided that such insurance continues to be available in the European Union market on reasonable terms and at commercially reasonable premium rates to contractors of similar standing to the Contractor."

SECTION 7 – BREAK PROVISION

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, 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 taking such action. The Employer has the right to bring the Contract to an end or reduce the Contract Period by giving not less than 4 weeks months' notice to the Contractor. The Contractor has the right to bring the Contract to an end or reduce the Contract Period by giving not less than 12 weeks notice to the Client.

SECTION 8 – TERMINATION

SECTION 9 – SETTLEMENT OF DISPUTES

Clause 9 – Insert new clause 9.9:

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[8] Professional Indemnity Insurance is required where the Contractor has design responsibility. Products Liability insurance provides cover against personal injury or damage to persons or property arising from goods or products supplied as part of the works. Where these types of insurance are required, the levels of insurance should be included.

"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 [9]

Not Used

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).

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[9] Reference to sub-contractor warranties to be retained. To consider on a case by case basis if Contractor warranties will be required in favour of a third party.

.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.

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 the 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 EU 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 (whether in accordance with GDPR Article 46 or LED Article 37) 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 (e-mail: [ ]) 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 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 Articles 28(6), 28(7), and 28(8) of the GDPR 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; and

.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.

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

Not Used

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 may agree (acting reasonably) 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

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.

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 whatsoever and howsoever arising 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 the acts defaults or omissions 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 waiting 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. In the event of a conflict between any responses submitted by the Contractor as part of the tender process for this Contract and these Conditions or the Specification or the Price Framework, the Conditions and then the Specification and then the Price Framework shall prevail in that order.

.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 (as set out in the Specification), 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 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 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 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 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 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 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 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 sub-contractors and suppliers as appropriate), 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 or other persons associated with it have been convicted of any offence involving slavery and human trafficking; and

.2 none of its officers, employees 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 –SPECIFICATION

[Insert from Invitation to Tender]

SCHEDULE 2 – SCHEDULE OF RATES AND PRICE FRAMEWORK

[Insert from Invitation to Tender]