

JCT Measured Term Contract 2016

Dated

20[]

This is the Schedule of Amendments referred to in Article 9 of the Contract dated [date] in connection with [insert project details]

**Initialed by
for and on behalf of the Employer**

**Initialed by
for and on behalf of the Contractor**

Anthony Collins Solicitors LLP
www.anthonycollins.com

Our ref: 28952.0847

Conditions

Section 1 Definitions and Interpretation

Definitions

1.1 INSERT into clause 1.1 the following additional definitions:

“Assigned Employee:	an employee or worker of the Contractor or of a Subcontractor who may be the subject of a Relevant Transfer to a Successor Contractor at any time after the Commencement Date.
Commencement Date:	the date on which the Contractor starts to deliver the Works under this Contract.
Confidential Information:	any information communicated by either Party to the other on the basis that it is confidential.
Contractor’s IT System:	the information technology system (including software, hardware and interfaces) used by the Contractor in connection with the Works.
Core Group:	the group set up as the Core Group comprising the individuals listed in clause 3.24.
Data Controller:	has the meaning given under Data Protection Law.
Data Processor:	has the meaning given under Data Protection Law.
Data Protection Law:	all Statutory Requirements relating to privacy and the processing of Personal Data and privacy, including all applicable guidance and codes of practice issued by the Information Commissioner’s Office or any replacement EU or UK data protection or related privacy laws in force in England and Wales.
Data Subject:	has the meaning given under Data Protection Law.
Data Subject Access Request:	a request by a Data Subject under Data Protection Law to access their Personal Data.
DBS Check:	a check with the Disclosure and Barring Service (or any successor agency) of the most extensive type available in relation to a person (having regard to the Works they are

to undertake under the Contract) whether the person about whom the check is made has any relevant criminal convictions; and/or there are other circumstances that may affect their eligibility to work with children or vulnerable adults.

Deleterious:

materials that are:

- generally accepted, or generally suspected, in the construction industry as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the works or any part or component of the works comprising the Order; or reducing, or possibly reducing, the normal life expectancy of the works or any part or component of the works comprising the Order;
- not in accordance with any relevant European or British Standard, relevant code of practice or good building practice; or
- not in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract.

Employee Information:

all information that the Employer requests (including information referred to in Regulation 11(2) of TUPE) regarding the Assigned Employees.

Employer Data:

all data (including Personal Data), information, records and documentation in any electronic or tangible form relating to a Property or the Works that is held on the Employer's information technology system, the Contractor's information technology system or in paper form.

Environmental Laws:

any Statutory Requirements and any codes of practice and guidance notes issued by any government department concerning the protection of human health or the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances.

Equality and Diversity Law:	any Statutory Requirements and any codes of practice and guidance notes issued by any government department preventing unlawful discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, paternity, race, religion or belief, sex or sexual orientation or part time or temporary status or any other protected status.
Equal Pay Legislation:	all Statutory Requirements preventing pay differentials directly or indirectly on the grounds of sex, gender, maternity or pregnancy except to the extent that such differentials are justified.
Expiry Date:	the date stated in the Contract Particulars as the date on which the Contract Period shall end.
Good Industry Practice:	the degree of skill, care, prudence and workmanship which would reasonably and ordinarily be expected from a skilled and experienced maintenance contractor or subcontractor carrying out the Works.
Hazardous Substances:	any natural or artificial substance (in solid, liquid, gas or vapour form) capable (alone or in combination with any other substance) of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health, or damaging or being capable of damaging buildings or structures or the works comprising the Orders, including any controlled, hazardous, toxic or dangerous waste.
Health and Safety Law:	all Statutory Requirements related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents.
Intellectual Property Rights:	all intellectual property rights including patents, inventions, trade marks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other

	similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.
KPIs:	the key performance indicators set out in the KPI Handbook for measurement of the Contractor's performance in relation to the Works.
KPI Handbook:	the document entitled KPI Handbook forming part of the Schedule of Rates.
KPI Measurement Period:	a period over which the Contractor's performance is measured in relation to a KPI as set out in the KPI Handbook.
KPI Performance Target:	the target level of performance in relation to each KPI as set out in the KPI Handbook.
Liability:	all damages, liability, losses, indebtedness, claims, actions, costs, expenses (including the cost of legal or professional services, on a solicitor/own client basis), proceedings, demands and charges whether arising under statute, contract or at common law.
Minimum Acceptable Performance Level:	the minimum acceptable performance level for each KPI as set out in the KPI Handbook.
Personal Data:	personal data, as defined under Data Protection Law, concerning either Residents or employees or workers of the Contractor or any Subcontractor and which is obtained or Processed in connection with the Works or this Contract.
Personal Data Breach:	any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law).
Previous Contractor:	those contractor(s) providing all or part of the Works before the Commencement Date.
Processing:	has the meaning given under Data Protection Law and "Process" and "Processed" shall be construed accordingly.
Property:	a property to which the Works are to be undertaken when an Order is issued for this.

Protective Measures:	<p>appropriate (having regard to nature of the Personal Data to be protected, the harm that might result from a Personal Data Breach, the state of technological development and the cost of implementation) technical and organisational measures including (where applicable):</p> <ul style="list-style-type: none"> • pseudonymising and encrypting Personal Data; • ensuring the confidentiality, integrity, availability and resilience of systems and services; • ensuring that the availability of and access to Personal Data can be restored promptly after an incident; and • regularly assessing and evaluating the effectiveness of such measures.
Relevant Transfer:	a relevant transfer for the purposes of TUPE.
Remedial Plan:	a plan provided by the Contractor under clause 3.21.
Resident:	a tenant, leaseholder or licensee of the Employer or another landlord for whom the Employer provides housing management.
Sensitive Personal Data:	is “sensitive personal data” within the meaning given under Data Protection Law or Personal Data within one of the specified categories of data as defined under Data Protection Law.
Servicing Visits:	all servicing and strategy checks set out in the Specification (including all travelling time and expenses).
Subcontractor:	any subcontractor or supplier (of any tier) to the Contractor.
Successor Contractor:	any organisation, body or contractor including the Employer, which undertakes works similar to the Works following the Termination Date.
Termination Date:	the date on which this Contract, or the obligations of either of the parties under it terminates.
Transferring Employee:	any person whose employment transfers or is deemed to have transferred to the Contractor through a Relevant Transfer on

the Commencement Date or the date of issue of the first Order under this Contract including any person who would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE.

TUPE:

the Transfer of Undertakings (Protection of Employment) Regulations.

the Works:

the works as described in paragraph 1.2 of its Contract Particulars which are to be undertaken under this Contract.”

Agreement etc to be read as a whole

1.2 INSERT at the end of clause 1.2, the following:

“In the event of discrepancy between the Contract Documents, the Contract Administrator shall issue an instruction to the Contractor as to which has priority.”

Headings, references to persons, legislation etc.

1.3 INSERT a new clause 1.3.7 as follows (moving the “and” from the end of clause 1.3.5 to the end of clause 1.3.6):

“1.3.7 the terms “including” and “in particular” are illustrative only and shall not limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Contract.”

Section 2 Carrying out the Work

Contractor's obligations

- 2.1 In line 3 DELETE "and Statutory Requirements" and REPLACE it with ", Statutory Requirements and all European and British Standards". At the end of the clause INSERT the words: "When requested to do so by the Employer, the Contractor shall provide the Employer with evidence that he has so complied with, and given all notices required by, the Statutory Requirements."

Materials, goods and workmanship

- 2.2.1 DELETE clause 2.2.1 and INSERT new clause 2.2.1:

- "2.2.1 The Contractor must undertake each Order:
- 2.2.1. using reasonable skill, care and diligence;
 - 2.2.2 in accordance with all applicable Statutory Requirements;
 - 2.2.3 in accordance with any specific requirements in the Contract Documents;
 - 2.2.4 in accordance with Good Industry Practice;
 - 2.2.5 using materials that are not Deleterious;
 - 2.2.6 by any deadline agreed with the Employer;
 - 2.2.7 in a manner that causes the minimum inconvenience and nuisance from obstruction, dust, noise etc;
 - 2.2.8 within a culture and working environment in which health and safety is paramount to everybody involved with the Works; and
 - 2.2.9 in accordance with any reasonable instructions given by the Contract Administrator."

- 2.2.2 INSERT at the end of sub-clause 2.2.2, the following:

"No approval, express or implied, by the Contract Administrator or the Employer shall in any way diminish the Contractor's obligations under this Contract or relieve the Contractor from compliance with any of its terms, nor shall any approval of drawings constitute an instruction for, or sanction of, any Variation or Variations incorporated in it."

- 2.2.3 DELETE the existing wording in its entirety and INSERT in its place:

2.2.3 "To the extent that the Contractor is required to design works for the purposes of any Order, the Contractor shall use the reasonable skill, care and diligence of a professionally qualified and competent designer of the discipline relevant to the Order in a project of similar size and complexity to the Order."

Rights of Employer

- 2.3.5 DELETE clause 2.3.5 and INSERT new clause 2.3.5:

"2.3.5 The Contractor assigns to the Employer the benefit of any warranty or guarantee for any materials or goods supplied by the Contractor and used for the purposes of an Order and shall when requested by the

Employer enter into whatever documents are necessary to complete such assignment.”

2.3.7 INSERT a new clause 2.3.7:

“2.3.7 The Contractor acknowledges that Orders issued under this Contract relate to the satisfaction of the Employer’s legal obligations to Residents and may include the bringing back into use of Sites that are empty. If the Contractor fails to complete any Order by its date for completion (as extended under clause 2.10, where applicable) or to the standard required by this Contract:

- .1 the Contract Administrator may issue a certificate to that effect and at any time thereafter the Employer may employ and pay other persons to execute and complete the work described in such Order. Any additional costs and Liability incurred as a result may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt;
- .2 the Contractor shall indemnify the Employer against any Liability arising out of or by reason of such delay including any claim by any Resident for compensation or reduction in rent and any claim for reimbursement of additional costs incurred in making alternative arrangements to complete the Works included in that Order; and
- .3 for empty Sites, the Employer shall be entitled to recover the sum that it would have charged in rent for that Site for the period of the delay in completing the Order.”

Programme

2.7 RENUMBER clause 2.7 as clause 2.7.1. After “programme” in line 2 INSERT “and shall agree the same with the Employer”.

INSERT a new clause 2.7.2:

“2.7.2 At all times during the Contract Period the Contractor shall maintain and keep up to date a “business continuity plan” that has been approved by the Contract Administrator which sets out:

- .1 the work that the Contractor must continue within the first week following an incident that disrupts his normal operations in order to continue to provide the Works;
- .2 the employees, workers and Subcontractors that are essential to enable the Works to be continued in such circumstances;
- .3 emergency contact details for key personnel and the role that each of them is to play in such an emergency; and
- .4 any other specific information that the Employer requires from time to time.”

Fees or charges

2.9 DELETE in clause 2.9 the words:

“The Contractor shall be reimbursed for payment of such fees and charges to the extent that they are not included in the rates or prices in the Schedule of Rates.”

Extension of Time

2.10.1 INSERT at the end of clause 2.10.1 the following:

“It is a condition precedent to any extension of time under this clause 2.10.1 that the Contractor gives the notice required by this clause within 4 weeks of the date of the matter concerned.”

2.10.3 INSERT new clause 2.10.3:

“2.10.3 If at any time it appears that an Order may not be completed by its date for completion the Contractor shall co-operate with the Employer with a view to mitigating any delay and minimising any extension of time claimed by the Contractor under this clause 2.10.”

2.10.4 INSERT a new clause 2.10.4 as follows:

“2.10.4 Reasons within the control of the Contractor include:

- .1 any default of the Contractor or any Contractor’s Person;
- .2 any default of any supplier of goods or materials for the Orders;
- .3 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Orders (or failure to carry out such work); and
- .4 any failure of a Resident to provide access to a Property in order to carry out the Orders at any time where the Contract Documents make the Contractor responsible for securing such access.”

Defects

2.12 DELETE “6 months” in clause 2.12 and INSERT “12 months”. At the end of the clause INSERT:

“Such defects, shrinkages or other faults shall be dealt with as follows:

2.12.1 **Emergency Repairs:** Within 24 hours of notification of the defect, shrinkage or other fault to the Contractor. Emergency repairs include total loss of heating, water, electricity or gas supply, uncontrollable flooding, storm damage and lift failures.

2.12.2 **Urgent Repairs:** Within 7 calendar days of notification of the defect, shrinkage or other fault to the Contractor. These repairs include all repairs that are urgent but are not an emergency, including partial loss of heating, water, electricity or gas supply during summer months.

2.12.3 **Routine Repairs:** Within 28 calendar days of notification of the defect, shrinkage or other fault to the Contractor. These are all other routine repairs that are not an emergency and are not urgent.”

2.13 INSERT new heading and new clauses 2.13.1 to 2.13.4:

“Complaints and Housing Ombudsman

2.13.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

2.13.2 The Contractor shall keep a record of all complaints received and of the action taken in relation to such complaints. This record is to be made available for inspection by the Contract Administrator on reasonable notice at all times during normal working hours. The Contractor shall notify the Contract Administrator of all complaints received and of all steps taken in response to them.

2.13.3 The Contractor shall fully co-operate with any enquiry or investigation by the Housing Ombudsman or the Employer which in any way concerns, affects or relates to the Contract. This includes providing access to:

- .1 the originals or copies of documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation;
- .2 premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor carrying out Orders under the Contract; and
- .3 the Contractor’s employees carrying out Orders under the Contract (including management or supervisory staff) or who may be the subject of, or be named in any enquiry or investigation by the Housing Ombudsman (including providing suitable facilities for interviewing the employees).

2.13.4 The Contractor shall reimburse to the Employer the cost of any compensation paid or the value of any other benefit given by the Employer to any person following a report or investigation by the Housing Ombudsman which clearly identifies the Contractor or any Subcontractor as being wholly or partly responsible for any maladministration or other failure and recommends compensation to be paid.”

2.14 INSERT new heading and new clauses 2.14.1 to 2.14.3:

“Audit & Inspections

2.14.1 The Contractor shall provide all facilities and allow the Employer, the Employer’s auditors, the Homes and Communities Agency, other Statutory Undertakers or regulatory bodies and any inspector appointed by any of them full access to conduct any audit investigation

of the Contract. This shall include throughout the Contract Period and the 6 years following the Termination Date access to:

- .1 all documents in the possession, custody or control of the Contractor created or used in carrying out Orders under the Contract;
- .2 all technology, resources, systems and procedures used or to be used in carrying out Orders under the Contract; and
- .3 the Contractor's employees, Subcontractors, Subcontractors' employees and other persons who are carrying out Orders under the Contract.

2.14.2 The Contractor shall give the Contract Administrator or any member of the Employer's internal audit team or external auditors on reasonable notice and during normal working hours permission to copy and remove any copies of:

- .1 any books, records and information in the possession or under the control of the Contractor or any Subcontractor relating to this Contract; and
- .2 any such data and any such information stored on the Contractor's or a Subcontractor's computer system.

2.14.3 The Contractor will not and will procure that his Subcontractors do not destroy any such books, records or information referred to in clause 2.14.2 without the approval of the Contract Administrator."

2.15 INSERT new heading and new clauses 2.15.1 and 2.15.2:

"Modern Slavery

2.15 The Contractor warrants that neither the Contractor nor any of its officers or employees:

2.15.1 have been convicted of any offence involving slavery or human trafficking; and

2.15.2 have, to the best of the Contractor's knowledge, been 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 or human trafficking."

2.16 INSERT new heading and new clause 2.16:

"Safety and Security

2.16 The Contractor shall throughout the progress of each Order:

2.16.1 take full responsibility for the safety of all persons in occupation of any Site or who are entitled to be upon the Site;

2.16.2 keep the Site and the Works comprised in the Order in an orderly state in order to avoid danger or nuisance to such persons;

- 2.16.3. take all reasonably practicable precautions to prevent any nuisance (including noxious fumes, noisy working operations or the deposit of any materials or debris) or other interference with the rights of any Resident or occupier of any Property and/or any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker;
- .1 in connection with the Works comprised in the Order provide and maintain at the Contractor's own cost all guards, fencing and warning signs when and where necessary or as required by the Employer or by any competent Statutory Undertaker for the protection of the Works comprised in the Order or for the safety and convenience of any Resident or member of the public;
 - .2 ensure that there is no trespass by the Contractor or any Contractor's Persons on or over any adjoining or neighbouring property;
 - .3 comply with any health and safety policies, procedures and requirements set out in the Contract Documents; and
 - .4 inform the Employer within 24 hours of any incidents, dangerous situations or any issues relating to health and safety which occur in relation to works undertaken under this Contract, including any occurrences which are reportable to the Health and Safety Executive."

2.17 INSERT new heading and new clause 2.17 as follows:

"Assistance with Resident consultation

2.17 The Contractor shall provide such information, cooperation and assistance in connection with the Works and the price of the Works as the Employer requests to comply with its obligations to consult tenant associations and Residents who pay variable service charges. Such assistance shall be provided as the Employer requires and in sufficient time to enable the Employer to comply with those obligations."

Section 3 Control of Work

Subcontracting

3.2.1 RENUMBER clause 3.2 as clause 3.2.1.

DELETE the second sentence reading "Such consent shall not be unreasonably delayed or withheld and shall apply to all Orders except to the extent otherwise stated in that consent."

INSERT at the end of that clause "The Contractor shall not allow a Subcontractor to Process any Personal Data of which the Employer is Data Controller without the prior written consent of the Employer to that Subcontractor doing so. Where the Contractor wishes a Subcontractor to be able to do so the Contractor shall provide the Employer with such evidence as the Employer requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Contractor's obligations under this Contract and under Data Protection Law in relation to that Personal Data."

3.2.2 INSERT the following as new sub-clause 3.2.2:

"3.2.2 Where the Employer allows a Subcontractor to Process Personal Data in accordance with clause 3.2.1, the Contractor shall include provisions substantially the same as those in clause 3.16 in the subcontract with that Subcontractor and shall provide in the subcontract that the Employer may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999."

3.2.3 INSERT the following as new sub-clause 3.2.3:

"3.2.3 The Contractor shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the Contractor shall:

- .1 implement due diligence procedures for its Subcontractors;
- .2 require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor's officers or employees:
 - .1 have been convicted of any offence involving slavery or human trafficking; or
 - .2 have, to the best of the Subcontractor's knowledge, been 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 or human trafficking; and
 - .3 require all Subcontractors to include provisions having the same effect as in this clause 3.2.3 in all subcontracts (at any stage of remoteness from the Employer in the supply chain) relating to the Contract."

3.2.4 INSERT the following as new sub-clause 3.2.4:

“3.2.4 Subcontracting shall not relieve the Contractor of any of the Contractor’s obligations or duties under this Contract and the Contractor shall be responsible for the acts and omissions of any Subcontractor as though they are the Contractor’s own.”

3.2.5 INSERT the following as new sub-clause 3.2.5:

“3.2.5 The Contractor shall include in each Subcontract provisions requiring:

- .1 the Contractor to consider and verify invoices in a timely fashion;
- .2 the Contractor to pay their Subcontractor within 30 days of the invoice being regarded as “valid and undisputed” (and for this purpose where there is an unreasonable delay in the Contractor considering and verifying the invoice it shall be deemed to be regarded as “valid and undisputed” after a reasonable time has passed); and
- .3 the Subcontractor to include provisions having the same effect in all of their Subcontracts in relation to the Works and to require their Subcontractors and suppliers (of any tier) also to do so.”

Access to the Site

3.4 DELETE existing wording in its entirety and INSERT:

“3.4.1 Access to each Property shall be arranged by the Contractor in accordance with the instructions of the Contract Administrator and in accordance with the requirements set out in the Contract Documents. Where the Property is occupied the Contractor shall also be responsible for ensuring that the occupier removes such fixtures, fittings or other items as are necessary to carry out the Order.

3.4.2 The Contractor shall notify the Employer in writing each time a Resident refuses Works under this Contract. If the Contractor is unable to gain access to the Property and/or is unable to reasonably carry out the Order because the Resident will not co-operate with the Contractor, the Contractor shall follow the procedure set out in the Contract Documents and provide evidence to the Contract Administrator of the Contractor’s efforts to gain access or to work with the occupier. The Contract Administrator shall issue such reasonable instructions as he deems necessary in this event and the Contractor shall comply with such reasonable instructions at his own cost.”

CDM Regulations

3.9 RENUMBER clause 3.9 as 3.9.1 and INSERT new clauses 3.9.2 to 3.9.8 as follows:

“3.9.2 Where the Articles state that the Contractor is the Principal Contractor for the purposes of this Contract, the Contractor warrants that it has the skills, knowledge, experience and organisational capability to act as a Principal Contractor (and, where appointed as such, a Principal

Designer) under the CDM Regulations for the Works in a manner that secures the health and safety of any person affected by those Works.

3.9.3 Both Parties will seek to maintain a culture and working environment in which health and safety is paramount to everybody involved with the Works.

3.9.4 Before commencing the Works, the Contractor shall:

- .1 notify the Employer of the name of the person responsible for health and safety in relation to the Works; and
- .2 provide a copy of the Contractor's health and safety policy to the Employer.

3.9.5 In carrying out the Works the Contractor shall:

- .1 comply with all Health and Safety Law;
- .2 comply with his own health and safety policy; and
- .3 adopt safe methods of work to protect the health, safety and welfare of his employees, workers and Subcontractors, employees and workers.

3.9.6 The Contract Administrator may suspend the Works without any liability to the Contractor if the Contractor:

- .1 is not complying with Health and Safety Law;
- .2 has failed to notify the Employer of the name of the person responsible for health and safety; or
- .3 has failed to provide a copy of the Contractor's health and safety policy to the Employer.

3.9.7 The Contractor shall inform the Employer as soon as he becomes aware of any actual pending or likely prosecution or notice from the Health and Safety Executive or from any local authority in relation to any breach of Health and Safety Law.

3.9.8 The Contractor shall provide such information and documents as the Contract Administrator may require to evidence the Contractor's compliance with his own health and safety policy and Health and Safety Law."

3.11 INSERT new heading and new clauses 3.11.1 to 3.11.8:

"Employee details and DBS Checks

3.11.1 The Contractor shall:

- .1 to the extent that the Contractor is lawfully able to do so:
 - .1 before any employee, worker, Subcontractor or Subcontractor's employee or worker carries out any Orders under this Contract either itself carry out or (as applicable) require the relevant Subcontractor to carry out a DBS Check of the most extensive kind available under

- the law (if any) given the nature of the Orders such person is or shall be carrying out under the Contract;
- .2 immediately advise the Contract Administrator of any relevant convictions or concerns in relation to the employee, worker, Subcontractor or Subcontractor's employee or worker relating to working with children or vulnerable adults that are disclosed by the DBS Check; and
 - .3 ensure that (to the extent possible under the law) those DBS Checks are regularly updated either through the Disclosure and Barring Service update service or through carrying out further DBS Checks at least once every 3 (three) years;
- .2 within 14 days of a request from the Contract Administrator made at any time, provide to the Contract Administrator details of people employed by the Contractor in connection with the Contract including:
- .1 the names and addresses of all such people;
 - .2 the capacities in which each of them is employed;
 - .3 confirmation whether a DBS Check has been undertaken in relation to each of them, together with the details of the results of any such DBS Check; and
 - .4 such other information as is required by the Contract Administrator;
- .3 inform the Contract Administrator of any relevant criminal convictions of an employee, worker, Subcontractor or Subcontractor's employee or worker who is undertaking Orders under this Contract of which the Contractor becomes aware;
- .4 if the Contract Administrator so requests, at the Contractor's own risk and cost, remove from the Contract any employee, worker, Subcontractor or Subcontractor's employee or worker, who:
- .1 has a criminal conviction (including any relevant conviction that would otherwise be spent, where the nature of the Orders reasonably indicates that the employee, worker, Subcontractor or Subcontractor's employee or worker is exempt from the restriction on disclosing spent convictions);
 - .2 is subject to concerns in relation to working with children or vulnerable adults that are disclosed by a DBS Check;
 - .3 has failed to comply with any code of conduct maintained by the Employer in relation to the Contract; or

- .4 in the opinion of the Employer is not acceptable on the grounds of security, conduct, performance or other reasons.
- 3.11.2 The Contractor shall ensure that an adequate number of suitably skilled, experienced, qualified and competent workers are provided to complete all Orders safely and expediently.
- 3.11.3 The Contractor warrants that it:
 - .1 if undertaking Works involving asbestos which are required to be undertaken by a licensed contractor, is itself so licensed or will employ an appropriately licensed Subcontractor for the Works;
 - .2 if undertaking gas Works, either is Gas Safe registered and will use only employees that are Gas Safe registered or will use a Subcontractor that is Gas Safe registered; and
 - .3 if undertaking electrical Works, is a member of the NIC EIC or ECA or will use a Subcontractor that is a member of the NIC EIC or ECA.
- 3.11.4 The Contractor shall at his own cost ensure that all its employees and workers and all Subcontractors' employees and workers comply with the Employer's reasonable requirements for identification, dress code, safety (including personal protective equipment), conduct and security whilst they attend each Site.
- 3.11.5 If the Contract Administrator requires identity cards to be issued and displayed, the Contractor shall produce and deliver to the Contract Administrator a complete list of the names of those people for whom identity cards are required to authorise attendance at the Site. The Contract Administrator shall issue appropriate passes to the Contractor unless the Employer (in its absolute discretion) refuses such authorisation for an employee or worker identified on the list of names. The Contractor shall ensure that each pass is returned to the Contract Administrator when the employee or worker no longer requires access to the Site or after the Contract Administrator has given notice under clause 3.11.1.4 that the employee or worker is not to be admitted to the Site.
- 3.11.6 The Contractor shall maintain current, accurate and adequate records of all employees, workers or other persons who are or are to be employed in connection with the Orders or the Contractor's obligations under this Contract including:
 - .1 attendance records;
 - .2 records of work done;
 - .3 records of health and safety incidents;

- .4 records of grievances raised by such employees, workers and other persons;
- .5 other complaints made by or about employees, workers or other persons engaged in connection with the carrying out of the Contractor's obligations under this Contract;
- .6 records of all internal investigations; and
- .7 disciplinary proceedings and disciplinary sanctions, differentiating between those engaged as operatives and those exercising supervision.

3.11.7 These records maintained under clause 3.11 shall be open for inspection by the Employer at all reasonable times and a copy of these records shall be provided to the Employer if so required by the Contract Administrator.

3.11.8 The Contractor shall seek all necessary consents under Data Protection Law to make the disclosures required by this clause 3.11.”

3.12 INSERT new heading and new clauses 3.12.1 to 3.12.3:

“Equality and Diversity

3.12.1 The Contractor shall comply with Equality and Diversity Law as though the Contractor were providing services and exercising public functions under Equality and Diversity Law. In particular:

- .1 the Contractor shall, as far as possible, comply with all applicable guidance issued by the Equalities and Human Rights Commission and its predecessors;
- .2 the Contractor shall adopt policies to comply with its obligations under Equality and Diversity Law and shall set out those policies:
 - .1 in instructions to those concerned with recruitment, training and promotion;
 - .2 in documents available to employees, workers, Subcontractors and their employees and workers, recognised trade unions or other representative groups; and
 - .3 in recruitment advertisements or other literature;
- .3 the Contractor shall, on request, provide the Employer with examples of the instructions and other documents, recruitment advertisements or other literature referred to in clause 3.12.1.2;
- .4 if a finding of unlawful discrimination is made against the Contractor or a Subcontractor concerning the Works by any court or employment tribunal, or an adverse finding is made in any formal investigation under any body responsible for enforcing Equality and Diversity Law the Contractor shall:

- .1 take appropriate steps to prevent repetition of the unlawful discrimination; and
- .2 on request, provide the Employer with details of any steps taken under Clause 3.12.1.4.1.

3.12.2 Where the Contractor's or any Subcontractor's employers or workers are required to carry out Works alongside the Employer's employees or workers, the Contractor shall use all reasonable endeavours to ensure those staff comply with the Employer's equality and diversity policy.

3.12.3 The Employer may from time to time require the Contractor to monitor its workforce according to such categories as the Contract Administrator specifies by instruction to the Contractor."

3.13 INSERT new heading and new clauses 3.13.1 to 3.13.8:

"TUPE

3.13.1 Where TUPE applies on the commencement of this Contract or on the issue of any Order under it, the Commencement Date shall be the date of the Relevant Transfer.

3.13.2 The Contractor shall indemnify the Employer, and at the Employer's request, each Previous Contractor against all Liability (arising before or after the Commencement Date):

- .1 to any Transferring Employee as a result of any act, fault or omission of the Contractor and/or any Subcontractor after the Commencement Date or the date of the issue of the first Order under this Contract (as applicable);
- .2 to a Transferring Employee, trade union or staff association or employee representative arising from any failure by the Contractor and/or any Subcontractor to comply with any legal obligation under any of Regulations 13, 14 or 15 of TUPE;
- .3 arising from any claim that the change of identity of employer occurring under TUPE to the Contractor or the relevant Subcontractor is significant and detrimental to any Transferring Employee as a result of the change in employer;
- .4 arising from the Contractor's or a Subcontractor's proposed or actual change to a Transferring Employee's working conditions, terms or conditions or any measures proposed by the Contractor or the relevant Subcontractor which are to the material detriment of any Transferring Employee on or before the Commencement Date as a result of any such proposed changes or measures; or
- .5 arising out of any negligent or other misrepresentation or misstatement, made by the Contractor or any Subcontractor to the Transferring Employees or their representatives.

3.13.3 Within the 12 (twelve) months immediately preceding the Expiry Date and following service of a notice of termination under clause 7 or clause 8 the Contractor shall:

- .1 provide Employee Information at no cost to the Employer within a maximum of 10 (ten) Business Days of a request from the Employer;
- .2 notify the Employer in writing of any material changes to the Employee Information promptly as and when such changes arise;
- .3 ensure that neither the Contractor nor any Subcontractor without the Employer's prior written consent:
 - .1 makes any material increase or decrease in the numbers of Assigned Employees;
 - .2 increases the remuneration or otherwise changes the terms of employment or engagement of any of the Assigned Employees; or
 - .3 transfers any of the Assigned Employees to another part of their business or moves other employees from elsewhere in their business who have not previously been employed or engaged in providing the Works.

3.13.4 The Employer and Contractor intend TUPE to apply to the provision of any works equivalent to the Works after the Termination Date but the position is to be determined in accordance with the applicable law on the Termination Date.

3.13.5 Following the Termination Date the Contractor shall:

- .1 ensure that all financial obligations including wages, salaries and other benefits and all related PAYE, tax, deductions, pension contributions and National Insurance contributions in respect of the employment of the Assigned Employees are satisfied up to the Termination Date; and
- .2 remain (or ensure that Subcontractors remain) responsible for all the Contractor's or Subcontractor's employees or workers who are not Assigned Employees.

3.13.6 The Contractor shall:

- .1 impose obligations on its Subcontractors in the same terms as those applying to the Contractor under clauses 3.13.2, 3.13.3 and 3.13.5; and
- .2 ensure that the Subcontractors comply with those obligations.

3.13.7 The Contractor shall indemnify the Employer and at the Employer's request any Successor Contractor, against all Liability arising from:

- .1 the Contractor or a Subcontractor failing to provide the Employer with any Employee Information promptly;

- .2 any material inaccuracy in or omission from the Employee Information;
- .3 any claim by or on behalf of
 - .1 any of the Contractor's or Subcontractor's employees or workers who are not Assigned Employees;
 - .2 any of the Assigned Employees in respect of the period before and including the Termination Date (whether any such claim arises before, on or after the Termination Date) except to the extent that such Liability results from any failure by the Employer or any Successor Contractor to comply with Regulation 13(4) of TUPE;
 - .3 any of the Assigned Employees under Equal Pay Legislation which is referable to the period before the Termination Date (including a claim made after the Termination Date arising out of circumstances which arose before the Termination Date); or
 - .4 a failure of the Contractor to comply with clause 3.13.6.

3.13.8 The Employer may assign the benefit of any or all of the indemnities in clauses 3.13.2 and/or clause 3.13.7 to a Successor Contractor.”

3.14 INSERT new heading and new clauses 3.14.1 and 3.14.2:

“Intellectual Property Rights

3.14.1 The Contractor hereby grants, and shall procure that every relevant Subcontractor shall grant, to the Employer for all the Employer’s purposes in connection with this Contract a royalty-free, irrevocable, non-exclusive licence to copy, use and reproduce all drawings, details, plans, specifications, schedules, reports, calculations and other materials, and the designs contained in them, which have been or are produced by or on behalf of the Contractor, or its Subcontractors, in the course of performing their duties in connection with the Works.

3.14.2 The Contractor shall indemnify the Employer in respect of any Liability arising in connection with any infringement of the Intellectual Property Rights of any third party in relation to any documents and data the Contractor uses or provides to the Employer in connection with this Contract.”

3.15 INSERT new heading and new clauses 3.15.1 to 3.15.8:

“Employer Data

3.15.1 The Contractor shall act as bailee of any Employer Data and shall store it safely and separately from any data not relating to this Contract and in a manner which makes it readily identifiable as Employer Data.

- 3.15.2 The Contractor acknowledges that the Employer Data belongs solely to the Employer. The Contractor shall not delete or remove any copyright notices contained in or relating to the Employer Data.
- 3.15.3 The Contractor shall take all steps necessary to ensure that it can restore or procure the restoration of the Employer Data if it is lost or corrupted. If the Employer Data is lost or corrupted and the Employer so requests the Contractor shall restore or procure the restoration of the Employer Data to its state immediately before the corruption or loss.
- 3.15.4 Ownership of and all Intellectual Property Rights in all Employer Data including existing documents and the physical embodiments of designs relating to this contract, shall transfer from the Contractor to the Employer on the Termination Date. Following the Termination Date the Contractor shall hand over all such Employer Data to the Employer immediately upon request.
- 3.15.5 The Contractor shall ensure that the Employer is able to use any software necessary to access and use the Employer Data after the Termination Date.
- 3.15.6 The Contractor warrants that it shall not introduce any virus, Trojan horse, malware, keylogger or other harmful software into the Employer's information technology system and shall regularly check all software and transfer media used in connection with this Contract with an up-to-date virus checker.
- 3.15.7 The Contractor shall notify the Employer promptly and, in any event, within 2 Business Days if it becomes aware of any actual, potential or threatened breach of this clause 3.15.
- 3.15.8 The Contractor shall be responsible for the interface and integration of all of the Contractor's IT Systems (used in the delivery of the Works (including placing Orders and booking Servicing Visits, and undertaking maintenance and repairs)) and the Employer's housing management and compliance systems. The time, cost and risk of such interface and integration is a Contractor risk and shall be deemed to be included in the payments for the Works as set out in the Contract. Any IT failure or interruption which is not covered by the Employer shall not relieve the Contractor from the obligation to comply with this Contract."

3.16 INSERT new headings and new clauses 3.16.1 to 3.16.17 as follows:

"Information Governance

Data Protection

- 3.16.1 Each Party shall comply with Data Protection Law in connection with this Contract. In particular each Party shall Process Personal Data of which the other is Data Controller only in accordance with Data Protection Law and this Contract.

- 3.16.2 Each Party shall ensure they have all necessary and appropriate consents required for the lawful Processing of Personal Data under this Contract (including any transfer of Personal Data to the other Party). Personal Data shall be treated as Confidential Information.
- 3.16.3 Where either Party Processes Personal Data of which the other Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:
- .1 for compliance with a legal obligation to which that Party is subject;
 - .2 for performing a contract to which the Data Subject is a party;
 - .3 in order to protect the vital interests of the Data Subject;
 - .4 for the performance of a task carried out in the public interest;
 - .5 for the purposes of legitimate interests pursued by the Parties, except where the Processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the Data Subject; or
 - .6 for any other purposes for which Personal Data may lawfully be Processed under Data Protection Law.
- 3.16.4 Where either Party Processes Sensitive Personal Data of which the other Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:
- .1 for the purposes of exercising or performing any right or obligation which is conferred or imposed by Statutory Requirements on the Data Controller in connection with employment; or
 - .2 to protect the vital interests of the Data Subject or of another person where:
 - .1 the Data Subject is physically or legally incapable of giving his or her consent; or
 - .2 the Data Controller cannot reasonably be expected to obtain the Data Subject's consent; or
 - .3 for any other purposes for which Sensitive Personal Data may lawfully be Processed under Data Protection Law.
- 3.16.5 Depending on the factual situation and the Personal Data concerned the Employer and the Contractor may each act as either Data Controller or Data Processor in relation to Personal Data under this Contract. In particular:
- .1 the Employer is the Data Controller of Personal Data concerning Residents; and

.2 the Contractor is the Data Controller of Personal Data concerning employees and workers of the Contractor or any Subcontractor.

3.16.6 The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in the table below:

	Personal Data of which the Employer is Data Controller	Personal Data of which the Contractor or a Subcontractor is Data Controller
Data Processor:	Contractor	Employer
Categories of Data Subject:	Residents	Contractor's Persons who are individuals.
Subject matter of Processing (including types of Personal Data that may be Processed):	Personal Data concerning Residents including names, addresses and contact details, Property access requirements and special requirements or vulnerabilities.	Personal Data comprising employment and performance records of Contractor's Persons who are individuals.
Nature and purpose of Processing:	Interrogation of the Personal Data for the purpose of carrying out the Works, including arranging appointments and access, ensuring the safety of both Residents and employees and Contractor's Persons carrying out the Works, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the Works.	Disclosure of Personal Data concerning Contractor's Persons who are individuals to the Employer to identify which of those Contractor's Persons are undertaking the Works and monitor and manage their performance of the Contract.
Duration of Processing:	Prior to the issue of the final Certificate of Making Good Defects and for 20 (twenty) Business Days from the issue of the final Certificate of making Good Defects (within which it is to be	Prior to the issue of the final Certificate of Making Good Defects and for 20 (twenty) Business Days from the issue of the final Certificate of making Good Defects (within which it is to be

	Personal Data of which the Employer is Data Controller	Personal Data of which the Contractor or a Subcontractor is Data Controller
	returned or destroyed.)	returned or destroyed.)

3.16.7 Where either Party is the Data Processor of Personal Data of which the other Party is the Data Controller the Processing Party shall:

- .1 do so only on written instructions from the Data Controller (the first such instructions being those set out in this Contract) as revised by the Data Controller from time to time (where applicable) in accordance with clause 3.16.15;
- .2 promptly comply with the Data Controller's written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;
- .3 immediately inform the Data Controller if the Data Processor thinks that it has been given an instruction which does not comply with Data Protection Law;
- .4 take all reasonable steps to ensure the reliability and integrity of all persons (including employees and workers of the Contractor or any Subcontractor) whom that Party authorises to Process the Personal Data and ensure that those persons:
 - .1 have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - .2 do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with this Contract or the written instructions of the Data Controller; and
 - .3 undergo adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Data Processor's obligations under this Contract.
- .5 fully cooperate with and assist the Data Controller, by having appropriate technical and organisational measures in place, to give effect to the rights of Data Subjects and respond to requests for exercising the Data Subject's rights including Data Subject Access Requests;
- .6 Process the Personal Data in such a manner that ensures that at all times the Data Controller complies with Data Protection Law;

- .7 promptly forward any complaint, request (including a Data Subject Access Request), notice or other communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Law (including any request from the Information Commissioner), to the Data Controller and not respond to or otherwise deal with such communication except as instructed by the Data Controller or as required by Data Protection Law;
 - .8 keep records of any Processing of Personal Data it carries out on behalf of the Data Controller which are sufficient to demonstrate compliance by the Data Controller and the Data Processor with Data Protection Law;
 - .9 on request, provide the Data Controller promptly with all information that the Data Controller needs to show that both the Data Controller and Data Processor have complied with their data protection obligations under this Contract; and
 - .10 at the option of the Data Controller, either irretrievably delete or return all Personal Data of which the other Party is Data Controller by the date set out in the table in clause 3.16.6 above (unless the Data Processor is required by Statutory Requirements to retain that Personal Data).
- 3.16.8 A Party that Processes Personal Data shall maintain appropriate technical and organisational measures to protect that Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction or damage having regard to:
- .1 the state of technological development;
 - .2 the cost of implementing any measures;
 - .3 the nature, scope, context and purpose of the Processing of the Personal Data; and
 - .4 the harm that might result from any Personal Data Breach including the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons.
- 3.16.9 Security measures maintained under clause 3.16.8 shall:
- .1 to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
 - .2 ensure the ongoing confidentiality, integrity, availability and resilience of the Data Processor's technical and IT systems;
 - .3 ensure that the availability of and access to Personal Data can be restored promptly following a physical or technical incident; and
 - .4 include regular testing, assessing and evaluating of the effectiveness of the technical and organisational measures to ensure the security of Processing.

- 3.16.10 Neither Party shall transfer any Personal Data of which the other is Data Controller outside of the European Economic Area without the prior written consent of the Data Controller. Where the Data Controller consents to such a transfer, the Data Processor shall ensure there is adequate protection, as approved by the Data Controller, for such Personal Data in accordance with Data Protection Law.
- 3.16.11 A Party acting as Data Processor shall notify the Data Controller immediately if it becomes aware of any Personal Data Breach (however caused). Such notification must:
- .1 describe the nature of the breach including the categories and number of Data Subjects and records concerned;
 - .2 communicate the name and contact details of all persons from whom more information can be obtained about the breach;
 - .3 describe the likely consequences of the breach; and
 - .4 describe the measures taken by Data Processor and the measures which the Data Processor wishes the Data Controller (at the expense of the Data Processor) to take to address the breach and mitigate its possible adverse effects.
- 3.16.12 The Data Processor shall give the Data Controller immediate and full co-operation and assistance in relation to any such Personal Data Breach including:
- .1 taking all reasonable steps the Data Controller requires to assist in the containment, mitigation, remediation and investigation of such breach;
 - .2 providing assistance with notifying the Information Commissioner's Office or affected Data Subjects of any breach of Data Protection Law; and
 - .3 providing the Data Controller promptly with all relevant information in the Data Processor's possession.
- 3.16.13 A Party that Processes Personal Data as Data Processor shall provide reasonable assistance to the Data Controller where the Data Controller is required by Data Protection Law to carry out any privacy impact assessment or data protection impact assessment in relation to Processing Personal Data.
- 3.16.14 A Party that is a Data Controller may inspect and audit the other Party's facilities for Processing the Personal Data of which it is Data Controller to ensure they comply with this Contract and Data Protection Law.
- 3.16.15 A Party that is a Data Controller may revise their instructions to the Data Processor on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle either Party to any additional payment, lead

to any paid or unpaid extension of time or be treated as a variation to this Contract. The Data Controller shall use reasonable endeavours to give the Data Processor as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Personal Data Breach.

3.16.16 Nothing in this Contract requires either Party to disclose any information to the other Party or any third party if to do so would breach Data Protection Law. If any part of this clause 3.16 does not comply with Data Protection Law, the Employer may amend that part (to the minimum necessary to ensure such compliance) by giving the Contractor at least 20 (twenty) Business Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract.

3.16.17 The Employer may replace this clause with any applicable Data Controller to Data Processor standard clauses forming part of an applicable certification scheme (as defined under Data Protection Law) at any time by giving the Contractor at least 20 (twenty) Business Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract."

3.17 INSERT new heading and new clauses 3.17.1 to 3.17.6:

"Confidentiality

3.17.1 Subject to clauses 3.17.2 and 3.17.3 the Contractor shall keep confidential any Confidential Information communicated to it by the Employer.

3.17.2 Clause 3.17.1 does not prevent the disclosure of any Confidential Information which:

- .1 is public knowledge or becomes public knowledge (otherwise than by breach of this clause 3.17);
- .2 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- .3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- .4 is independently developed without access to information that is confidential; or
- .5 must be disclosed pursuant to any court order or statutory other legal obligation placed upon the Party making the disclosure.

3.17.3 Clause 3.17.1 does not prevent any disclosure of Confidential Information where a duty of confidentiality is placed on the recipient of that Confidential information and the disclosure is:

- .1 to the Contractor's employees, Subcontractors, or those employees, workers where the disclosure is reasonably required by the Contractor in order to perform its obligations under this Contract;

.2 for the purpose of the examination, certification and/or audit of either Party's accounts; or

.3 in the event of a dispute between the Parties.

3.17.4 The Contractor shall take all reasonable precautions to ensure that all Confidential Information obtained from the Employer under or in connection with this Contract is:

.1 securely stored and safeguarded from misuse;

.2 provided or returned to the Employer on request and that the Employer is given immediate access to it;

.3 not used or disclosed other than in connection with this Contract;

.4 given only to such employees, workers, Subcontractors and their employees and workers in connection with this Contract as necessary for the performance of this Contract; and

.5 treated as confidential and not disclosed or used by any employees, workers, Subcontractors, or their employees and workers (as applicable) other than for the purposes of and as permitted under this Contract.

3.17.5 Nothing in this Clause 3.17 prevents either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

3.17.6 The Contractor shall 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. The Contractor must include and enforce a provision in all subcontracts requiring that its Subcontractors do not do so either."

3.18 INSERT new heading and new clauses 3.18.1 and 3.18.2:

"Damage to Property

3.18.1 The Contractor shall promptly investigate all claims for damage or loss to a Resident's property and reimburse the Resident where such loss or damage is caused by the Contractor, any Subcontractor, or any of the Contractor's or Subcontractor's workers or employees.

3.18.2 The Contractor shall provide compensation to a Resident that is equal to or better than that provided by the Employer for loss or damage to that Resident's property, for a missed appointment and/or for any other breaches of this Contract in respect of which any policy of the Employer in relation to Residents (communicated to the Contractor) indicates that Residents shall be compensated."

3.19 INSERT new heading and new clauses 3.19.1 and 3.19.2:

"Environmental Laws

- 3.19.1 The Contractor shall comply with all Environmental Laws in carrying out the Orders.
- 3.19.2 The Contractor shall not transport to, use, generate, dispose of, or install any Hazardous Substance at any Property except in accordance with Environmental Laws applicable at the time of performing the Orders. The Contractor shall not cause any release of Hazardous Substances into the environment except in accordance with Environmental Laws applicable at the time of performing the Orders.”

3.20 INSERT new heading and new clause 3.20.1 to 3.20.4:

“Monitoring and KPIs

- 3.20.1 The Contractor’s delivery of work under this Contract will be monitored by the Employer through KPIs.
- 3.20.2 If the Contract Administrator is concerned about the accuracy of any KPI monitoring data the Contract Administrator may arrange for independent monitoring or verification of such data. If monitoring data obtained by the Contractor is found to have been inaccurate the Employer may recover from the Contractor the costs of the independent monitoring.
- 3.20.3 The Employer may at any time monitor or direct the Contractor to monitor the Contractor’s performance in relation to any KPI over such period of no less than 1 (one) month as the Employer determines.
- 3.20.4 If there is any dispute over the data collected to monitor the Contractor’s KPI performance or any discrepancy between the KPI data collected by the Employer and that collected by the Contractor the decision of the Contract Administrator over which data is valid will be final and binding. This applies unless the Contractor formally disputes that data under clause 9 of this Contract within 1 (one) month of the Contract Administrator confirming in writing to the Contractor which data is to be used.”

3.21 INSERT new heading and new clause 3.21.1 to 3.21.7:

“Remedial Plan

- 3.21.1 The Employer may by written notice require the Contractor to produce a Remedial Plan if the Contractor:
 - .1 fails to achieve any KPI Performance Target for any KPI for 2 (two) consecutive KPI Measurement Periods; or
 - .2 fails to achieve the KPI Performance Targets for 2 (two) or more KPIs during any KPI Measurement Period.
- 3.21.2 A Remedial Plan must demonstrate to the satisfaction of the Employer how the Contractor will achieve performance above KPI

Performance Targets for the KPIs where performance was below the KPI Performance Target.

- 3.21.3 The Contractor must provide a draft of the Remedial Plan within 10 (ten) Business Days' of the Employer's written notice under clause 3.21.1 unless the Employer considers that the nature of the breach means that a draft Remedial Plan should be provided within a shorter period and states that period in the notice.
- 3.21.4 Within 10 (ten) Business Days of receipt of the draft Remedial Plan under clause 3.21.3 the Employer must by written notice to the Contractor:
 - .1 approve the draft Remedial Plan;
 - .2 approve the draft Remedial Plan subject to the Contractor making specific changes to it that are set out in the notice; or
 - .3 reject the draft Remedial Plan and inform the Contractor of the Employer's reason for doing so.
- 3.21.5 Where the Employer approves a draft Remedial Plan under clause 3.21.4, the Contractor must implement that Remedial Plan.
- 3.21.6 Where the Employer approves a draft Remedial Plan under clause 3.21.4 subject to amendments being made by the Contractor, the Contractor must indicate by written notice to the Employer within 5 (five) Business Days whether those amendments are acceptable. Where the Contractor's notice indicates that the amendments are:
 - .1 acceptable, the Contractor must implement the Remedial Plan within the timescales set out in that Remedial Plan;
 - .2 not acceptable, clause 3.21.7 will apply.
- 3.21.7 Where the Employer rejects the draft Remedial Plan:
 - .1 the Contractor must provide the revised Remedial Plan within 5 (five) Business Days of the date of rejection or such shorter period stated in the notice of rejection within which the Employer considers that it should be provided having regard to the nature of the breach; and
 - .2 clause 3.21.2 to this clause will apply to the revised Remedial Plan and any further revisions to it."

3.22 INSERT new heading and new clause 3.22:

"Minimum Acceptable Performance Level

- 3.22.1 Where the Contractor's performance of this Contract is worse than the Minimum Acceptable Performance Level for any one or more KPIs, the Employer may serve a written notice ("**the Minimum Acceptable Performance Level Notice**") on the Contractor which:

- .1 sets out each KPI and KPI Measurement Period in relation to which performance is worse than the Minimum Acceptable Performance Level;
- .2 requires the Contractor to improve performance in relation to each of those KPI so that the KPI performance data for the end of the KPI Measurement Period that first occurs after the date 1 (one) month from the date of service of the notice shows that performance in relation to each of those KPIs has been improved so that it is better than the Minimum Acceptable Performance Level;
- .3 requires the Contractor to maintain performance for each of those KPIs above the Minimum Acceptable Performance Level for the next 2(two) KPI Measurement Periods after that.

3.22.2 Where the Employer serves notice under clause 3.22.1 and the Contractor fails to comply with its requirements, the Employer shall be entitled to terminate the Contract immediately by written notice.”

3.23 INSERT new heading and new clause 3.23:

“Early Warning Notice

3.23.1 As soon as either Party becomes aware of any matter which has led to or could lead to either Party being unable to comply with its obligations under this Contract (including a breach of this Contract by the other Party), the Party becoming aware must notify the other Party and Contract Administrator in writing (an **“Early Warning Notice”**) giving details of the matter and its likely impact on the performance of either Party under this Contract.

3.23.2 Following an Early Warning Notice under clause 3.23.1 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 for managing, avoiding or reducing the effect of it; and
- .3 the likely cost of these steps and who should bear that cost.”

3.24 INSERT new heading and new clause 3.24:

“Core Group

3.24.1 The Employer and the Contractor shall establish a Core Group to manage the Operational aspects of delivering the Works under this Contract, which shall comprise the Contract Administrator the Contractor’s Contract Manager and the following individuals:

Employer	Contractor
[Insert]	[Insert]

[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]
[Insert]	[Insert]

- 3.24.2 Either Party may change any of its representatives at any time by giving written notice to the other Party.
- 3.24.3 Each Party shall ensure that all Core Group members attend meetings as requested.
- 3.24.4 The Core Group shall meet monthly, the dates for such meetings to be agreed during the mobilisation period.”

Section 4 Payment

VAT

- 4.1 INSERT at the end of clause 4.1 “subject to the Contractor first providing the Employer with the corresponding VAT invoice”.

Progress payments

- 4.3.1 DELETE “work carried out or supplies made” in lines 2 and 3 of the final paragraph of clause 4.3.1 and INSERT in its place: “Works completed”.

INSERT at the end of clause 4.3.1 the following:

“The Contractor shall submit applications for payment within 10 Business Days after the end of each Valuation Date in relation to all Orders completed in that month. If the Contractor fails to include the amount due for an Order in an application for payment submitted within 2 calendar months of the last day of the month in which the Order Completion Date for that Order occurred, the amount due under this Contract in respect of that Order shall be zero.”

- 4.3.2 DELETE “7” and INSERT in its place “21”.

INSERT new heading and new clause 4.8.

“Set-off”

- 4.8.1 Where an over payment is made by the Employer to the Contractor with respect to any progress payment under clause 4.3, the Employer shall be entitled in any further progress payments under this Contract to deduct any such over payment from the amount due to the Contractor, regardless of whether or not the progress payment from which the over payment is deducted relates to a different Order.
- 4.8.2 The Contract Administrator when issuing a certificate under clause 4.3.3 and the Employer when issuing a pay less notice under clause 4.6.5 is entitled to take into account any over payment in accordance with clause 4.8.1.
- 4.8.3 Where any deduction made from the amount due to the Contractor in any subsequent progress payment is not sufficient to cover any over payment(s) made by the Employer, the Employer will be entitled to recover any such amount not deducted from the Contractor as a debt.”

Section 5 Measurement and Valuation

Variation – daywork

5.4 DELETE the whole of clause 5.4

Derived rates

5.5 DELETE the whole of clause 5.5

Overtime work

5.7 DELETE the whole of clause 5.7

Interruption of work – unproductive costs

5.8 DELETE the whole of clause 5.8

Section 6 Injury, Damage and Insurance

Liability of the Contractor – Loss, injury or damage to property

6.2 INSERT after the words “damage whatsoever” in line 2 the words “and however arising”.

INSERT after the words “real or personal” in line 3 the words “(including any expense, liability, loss or claim arising from obstruction, trespass, nuisance or interference with any rights of way, light, air or water)”.

INSERT the following as a new sentence at the end of clause 6.2: “The Contractor’s indemnity in this clause 6.2 shall apply also in respect of any failure of the Employer to comply with Data Protection Law resulting from a breach of this Contract by the Contractor and shall continue following the end of the Contract Period.”

Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer

6.7A DELETE in clause 6.7A.1 the words “unless otherwise” and INSERT in their place “if”.

DELETE clause 6.7A.2.

6.15 INSERT new heading and new clause 6.15 as follows:

“Insurance Claims

6.15.1 The Contractor shall be responsible for and shall indemnify the Employer in respect of any deductibles or excesses payable under insurances maintained by the Employer in respect of claims for which the Contractor is responsible.

6.15.2 The Contractor shall provide such assistance as the Employer may reasonably request in order to manage insurance claims and shall permit the Employer direct access to such records and systems that the Employer may require in order to obtain information relevant to any such claim including detailed job sheets.

6.15.3 If the Contractor fails to take out and maintain any of the insurances required by this Contract, the Employer may (to the extent that the Employer is able to do so) insure that risk and recover the cost of doing so from the Contractor.”

Section 7 Break Provision – Rights of each Party

7.1 In clause 7.1, DELETE “Each Party” and INSERT “The Employer”. DELETE “the other party” and INSERT “the Contractor”. After “to that effect” in line 2 INSERT “and the Contractor shall have the right to reduce the duration of the Contract Period by giving the Employer not less than 26 weeks’ notice to that effect”

RENUMBER clause 7.1 as clause 7.1.1 and INSERT new clause 7.1.2:

“7.1.2 Each Party shall have the right to reduce the duration of the Contract Period by giving the other Party not less than 20 Business Days’ notice to that effect if any of the circumstances in regulation 73(1)(a) or (c) of the Public Contracts Regulations 2015 apply to the Contract.”

Section 8 Termination

Corruption

8.6 AMEND the heading above clause 8.6 to **Corruption, Regulation 73(1)(b) of the PC Regulations, Probity and Conflicts of Interest**, RENUMBER clause 8.6 as clause 8.6.1 and INSERT new clauses 8.6.2 to 8.6.5:

“8.6.2 The Contractor shall not do anything which would place the Employer in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or the Employer’s Probity Policy or Code of Conduct, copies of which shall be supplied to the Contractor.

8.6.3 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Subcontractor nor any person employed by the Contractor or any Subcontractor or acting on the Contractor’s or Subcontractor’s behalf is placed in a position where (in the reasonable opinion of the Employer) there is or may be an actual conflict, or a potential conflict, between the pecuniary interests of the Contractor and the obligations owed to the Employer under this Contact.

8.6.4 The Contractor shall promptly notify and provide full particulars to the Employer if any breach referred to in clause 8.6.2 and/or any conflict referred to in clause 8.6.3 above arises or is reasonably foreseeable to arise.

8.6.5 The Employer shall be entitled by notice to terminate the Contractor’s employment under this or any other contract with the Employer with immediate effect by notice where:

- .1 the Contractor is in breach of clause 8.6.2; or
- .2 in the reasonable opinion of the Employer there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any other person referred to in clause 8.6.3 and the duties owed to the Employer under this Contract.”

8.12 INSERT new heading and new clauses 8.12.1 and 8.12.2:

“Handover on termination

8.12.1 On termination of this Contract whether under Section 7 or under this Section 8 the Contractor shall:

- .1 co-operate fully with the Employer and/or any Successor Contractor (as notified by the Employer to the Contractor) in relation to the legal and operational handover of responsibility for the Works and works similar to the Works to the Successor Contractor; and
- .2 unless Data Protection Law requires otherwise, either (at the Employer’s option):

- .1 transfer all Personal Data concerning Residents held by it in relation to this Contract to the Employer in a format agreed by the Employer; or
- .2 destroy all such Personal Data in a secure manner prescribed by the Employer.

8.12.2 At all times during the Contract Period the Contractor shall maintain and keep up to date a “handover plan” that has been approved by the Contract Administrator which sets out:

- .1 how the Contractor will complete Orders issued up to the Termination Date;
- .2 the arrangements for the return of the Employer Data;
- .3 the arrangements for the transfer of and deletion from the Contractor’s information technology systems of any Personal Data relating to this Contract; and
- .4 such other information as the Contractor or the Employer considers appropriate in relation to the handover of the responsibility for the Works and works similar to the Works to the Successor Contractor.”