

DATE

11 May

2023

(1)

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

- and -

(2)

M & J GROUP (CONSTRUCTION & ROOFING) LIMITED

CONTRACT FOR THE PROVISION OF
PITCHED AND FLAT ROOFING WORKS
AND ASSOCIATED WORKS

THIS CONTRACT is made the 11 day of May 2023

BETWEEN

(1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of the Civic centre, Castle Hill Avenue, Folkestone CT20 2QY ("**the Employer**") AND

(2) **M & J GROUP (CONSTRUCTION & ROOFING) LIMITED** (company registration no. 01371473) whose registered office is at Hammond Rd, Elm Farm Industrial Estate, Bedford MK41 0UD ("**the Contractor**")

(hereinafter collectively called "**the Parties**" and independently called "**the Party**")

WHEREAS

The Employer wishes certain works to be provided, namely the **replacement of Pitched & Flat roof coverings and associated works to the Employer's social housing properties** ("the Works") and has accepted a tender from the Contractor dated 12 December 2022 for the provision of the Works

IT IS HEREBY AGREED as follows:

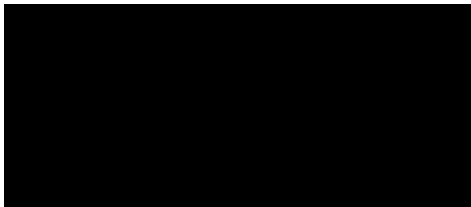
1. This Contract incorporates the following Contract Documents and constitutes the entire agreement between the Parties relating to the Works:
 - the Employer's Schedule of Amendments to the JCT Measured Term Contract 2016 Edition ("Schedule of Amendments"), which shall prevail over any of the other documents listed below in the event of conflict between those documents and the Employer's Schedule of Amendments;
 - JCT Measured Term Contract 2016;
 - Form of Tender and Contract Specification including:
 - KPIs
 - Preliminaries
 - Design, Health and Safety Plan

- Asset List,
 - The Contractor's Tender Document including:
 - Form of Tender dated 12 December 2022;
 - Response Document;
 - Pricing Schedule;
 - Forms of Declaration
 - any relevant specified correspondence between the Parties.
2. In consideration of the provision of the Works by the Contractor, the Employer agrees to pay the Contractor the Contract Sum at the times and in the manner set out in this Contract.
 3. In consideration of the payments to be made by the Employer to the Contractor in accordance with Clause 2 of this Contract, the Contractor agrees to deliver the Works in compliance in all respects with the provisions of this Contract.
 4. The Employer hereby appoints the Contractor as Principal Contractor for the Works for the purposes of regulation 14 of the Construction (Design and Management) Regulations 2015 ("CDM").
 5. Without prejudice to the Contract Documents, the Contractor agrees indemnify and hold harmless the Employer against any liability which the Employer may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Employer to the extent that the same arises by reason of any breach of this Contract or an instruction or any tortious or negligent act or omission on the Contractor's part (and/or any third party to whom the Contractor has subcontracted the performance of the Contractor's obligations or part thereof) in the performance of the Contractor's obligations under and in connection with this Contract.
 6. Nothing in the Contracts (Rights of Third Parties) Act 1999 shall entitle a person who is not a party to this Contract to enforce any term of the Contract.

7. For the avoidance of doubt the provisions of this Contract shall be construed and interpreted according to the laws of England and for the purpose of any steps to be taken by the Employer to enforce the Contractor's obligations under this Contract or any of them the Contractor hereby submits to the jurisdiction of the Courts of Law of England.

IN WITNESS whereof the Parties have executed this Contract as a deed the day and year above written

**THE COMMON SEAL of
THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE**
was hereunto affixed in the presence of:



9840



**EXECUTED AS A DEED by
M & J GROUP (CONSTRUCTION & ROOFING) LIMITED acting by:**

Director	[Redacted Signature Area]	
Director/ Company Secretary		

CONDITIONS OF CONTRACT

The Form of Contract in respect of replacement of Pitched & Flat roof coverings and associated works shall be the **JCT Standard Form of Measured Term Contract 2016 Edition**

The Employer shall be:

THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

The Contractor shall be:

M & J GROUP (CONSTRUCTION & ROOFING) LIMITED (company registration no. 01371473 whose registered office is at Hammond Rd, Elm Farm Industrial Estate, Bedford MK41 0UD

The Contractor shall enter into the Contract with the Employer executed as a Deed

The Recitals, Articles and Contract Particulars shall be construed in accordance with the following:

1st Recital: Properties as listed in Appendix E (Asset list) (“the Contract Area”) in accordance with the details set out or referred to in the Contract Particulars

Article 3: The Contract Administrator shall be [REDACTED], Assets & Major Works Senior Specialist of Folkestone & Hythe District Council, Civic Centre, Castle Hill Avenue, Folkestone, Kent. CT20 2QY

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

Article 4: The Principal Designer for the purposes of this Contract shall be [REDACTED], Assets & Major Works Senior Specialist of Folkestone & Hythe District Council

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

Article 5: The Principal Contractor for the purposes of the CDM Regulations shall be the Contractor

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

Article 9: Modifications. The Articles of Agreement and the Conditions shall have effect as modified by the Employer's Schedule of Amendments attached hereto

Contract Particulars

Item	Insertion
1.1 List of Properties in the Contract Area (first Recital)	Properties owned and managed by the Employer
1.2 Description of types of work	To undertake the replacement of Pitched & Flat roof coverings and associated works including scaffolding, asbestos surveys and removal and external repairs. To be carried out on an annual planned basis to domestic properties, sheltered schemes and blocks of flats as identified by the Employer
2. Supplemental Provisions (Fifth Recital and Schedule)	
Collaborative working	Paragraph 1: applies
Health and Safety	Paragraph 2: applies
Cost savings and value improvements	Paragraph 3: applies
Sustainable development and environmental considerations	Paragraph 4: applies
Performance Indicators and monitoring	Paragraph 5: applies
Notification and negotiation of disputes	Paragraph 6: applies
Where Paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee: [REDACTED], Major Works Surveyor, Folkestone & Hythe District Council Contractor's nominee: [REDACTED]

Item	Insertion
	or such replacement as each Party may notify to the other from time to time
3 Contract Period commencing on	24 months (to 21 May 2025 and with the provision to extend by additional two periods of 12 months). 22 May 2023
4 Arbitration	Article 7 and clauses 9.3 to 9.8 apply.
5 BIM Protocol (where applicable)* State title, edition, date or other identifiers of relevant documents (Clause 1.1)	_____
6 Minimum Value of any one Order Maximum Value of any one Order	£25.00 (twenty five pounds) £7,000.00 (Seven thousand pounds)
7 Approximate anticipated Value of work to be carried out under this Contract Liquidated Damages	£800,000 (<i>Eight hundred thousand pounds</i>) per annum - at the rate of £100.00 per missed Key Performance Indicator (KPI) target, as set out in Appendix B
8 Priority coding for Orders (Clause 2.6)	Priority coding <i>to be completed as Employer requires on a case by case basis</i>
9 Construction Industry Scheme (CIS) (Clause 4.2)	The Employer at the commencement of the Contract Period is a 'contractor' for the purposes of the CIS
10 Progress Payments (Clauses 4.3, 4.4 and 4.5))	Not applicable, see Schedule of Amendments

Item	Insertion
<i>Estimated value of an Order above which progress payments can be applied (If none is stated, it is £2,500)</i>	The Valuation Date in each month is the last day of the month
Valuation Dates <i>(if no date is stated, the Valuation Date is the last day of each month)</i>	
11 Responsibility for measurement and valuation (Clause 5.2) <i>(Unless one of the 3 options opposite is selected, the Contract Administrator shall measure and value all Orders)</i>	The Contractor shall measure and value all Orders
12.1 Schedule of Rates (Clauses 5.3, 5.6.1 and 5.6.2)	
The Schedule of Rates is	The Schedule of Rates included with the Contractors tender return
subject to adjustments of the rates listed in that Schedule by the	By agreement of the Contract Administrator in writing
of the Adjustment Percentage which is	_____ %
12.2 Where the Schedule of Rates is the National Schedule of Rates the version(s) identified opposite are to apply	Not Applicable
12.3 Rates – Fluctuations Clause 5.6.1 <i>(Unless “applies” is deleted, the clause shall be deemed to apply)</i>	Does not apply
12.4 Basis and dates of revision	

Item	Insertion
(Not applicable where National Schedule of Rates applies)	
<p>Where clause 5.6.1 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6.1.2 <i>(If no basis is identified the rates remain fixed for all Orders)</i></p>	<p>is as follows: Rates to remain fixed</p>
<p>Where clause 5.6.1 applies, the dates as at which the Schedule of Rates is to be revised are: <i>(If no other date(s) are specified here or in the document setting out the basis for revision, the date shall be 1 August in each year)</i></p>	Does Not Apply
<p>13.1 Daywork Valuation – percentage additions (Clauses 5.4, 5.6.3 and 5.6.4)</p>	Does not apply
<p>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:</p>	
Overheads and profit on Materials	_____ %
Overheads and profit on Plant, Services and Consumable Stores	_____ %
Overheads and profit on Sub-Contractors	_____ %
<p>13.2 Revision of Schedule of Hourly Charges (Clause 5.6.3) <i>(unless “applies” is deleted, the clause shall be deemed to apply)</i></p>	does not apply
<p>Where clause 5.6.3 applies, the annual revision date (if other than 1 August) is:</p>	

Item**Insertion**

Where clause 5.6.3 applies, the basis of revision of hourly charges (if not set out in the Schedule of Hourly Charges)

- 14 Overtime Work (Clause 5.7)
The percentage addition in respect of overheads and profit on non-productive overtime rates is _____%
(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)

(Normal working hours are between 8am and 5.30pm Monday to Friday (excluding Public Holidays). No weekend working will be permitted without the written authorisation of the Contract Administrator. All overtime costs shall be the responsibility of the Contractor including evening and Saturday morning appointments unless specifically ordered in writing by the Contract Administrator. All work carried out under 'Emergency' priority code will be paid for using normal working hours rates regardless of when the work is undertaken).

- 15 Insurance (Clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11)

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

Public Liability: minimum of £5,000,000 (*five million pounds*) for any one occurrence or series of occurrences arising out of one event

Employer's Liability: minimum of £5,000,000 (*five million pounds*) for any one occurrence or series of occurrences arising out of one event

Professional Indemnity: minimum of £2,000,000 (*two million*)

Item	Insertion
	<i>pounds</i>) for any one occurrence or series of occurrences arising out of one event
15.2 Percentage to cover professional fees	15%
15.3 Insurance of existing structures – clause 6.7A.1 <i>(Unless otherwise stated, clause 6.7A.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s)) (</i>	applies is replaced by the provisions of the following document(s) <u>‘the ‘Clause 6.7A.1 Replacement Schedule’</u> <hr/>
15.4 Insurance of work or supply comprised in Orders – clause 6.7B <i>(If neither entry is deleted, the clause does not apply)</i>	applies
15.5 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)	<hr/>
15.6 Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required)</i>	are set out in the following document(s) <hr/>
16 Break Provisions – Employer or Contractor (Clause 7.1)	13 weeks
17 Settlement of Disputes (Clauses 9.2, 9.3 and 9.4.1)	
Adjudication	Nominator of Adjudicator: The Royal Institution of Chartered Surveyors

Arbitration
Appointer of Arbitrator

President or a Vice-President of
The Royal Institution of
Chartered Surveyors

- 18 Contractor's Representative shall
be *(or such other person appointed
by the Contractor in accordance with
new clause 3.3.3)*



Schedule of Amendments to the JCT Measured Term Contract 2016 Edition (Article 9)

Definitions

Clause 1.1:

“Adjustment Percentage” – delete definition

“Contract Documents” - delete the definition and replace with the following words:

“JCT Standard Form of Measured Term Contract 2016;

Specifications

KPIs

Preliminaries

Design, Health and Safety Plan

Asset List,

The Employer's Schedule of Amendments to the JCT Measured Term Contract 2016 Edition contained in this Article 9;

The Contractor's Tender Document including:

- Form of Tender dated 12 December 2022;
- Response Document;
- Pricing Schedule;

and any relevant specified correspondence between the parties”

“Employer” – at the end of the definition, insert the words “and it's permitted assignees under this Contract”

Insert the following new Definitions:

“**Controller**” is as defined within the Data Protection Legislation

“Data Protection Impact Assessment” is as defined within the Data Protection Legislation

“Data Protection Legislation - means (i) the Data Protection Act 1998 (“DPA 1998”), (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), Law Enforcement Directive (Directive (EU) 2016/680) (“LED”), (iii) the Data Protection Act 2018 (“DPA 2018”) to the extent that it relates to processing of personal data and privacy and (iv) all applicable Legislation about the processing of personal data and privacy;”

“Data Subject” is as defined within the Data Protection Legislation, more specifically being the Data Protection Act 2018

“Domestic Law” the law of the United Kingdom or a part of the United Kingdom.

“Environmental Laws - any law statute, statutory instrument or legislation of the European Union having effect in the United Kingdom, or circulars, guidance notes and the like issued by the United Kingdom Government or relevant regulatory agencies relating to the protection or pollution of the environment (within the meaning of the Environmental Protection Act 1990)”

“Force Majeure” – means:

- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom; and/or
- b) nuclear, chemical or biological contamination of the Provider’s property arising from any of the events at (a) above; and/or
- c) riot, flood or earthquake; and/or
- d) disease, epidemic or pandemic, including Covid-19 (Coronavirus), and/or the taking of any measures to prevent, delay, reduce or otherwise mitigate its spread and/or its effects; and/or
- e) any circumstances beyond the reasonable control of either of the Parties.

“Information Commissioner” is as defined within the Data Protection Legislation

“Key Performance Indicators” or **“KPIs”** – the Key Performance Indicators in Appendix B

“Personal Data” is as defined within the Data Protection Legislation

“Processor” is as defined within the Data Protection Legislation

“Hazardous Substances - any substances which are capable of carrying harm to man or any living organisms supported by the environment (within the meaning of the Environmental Protection Act 1990)”

“Proprietary Material - all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs,

ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in connection with this Contract and/or any Order”

“**TUPE Directive**” - means Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

“**TUPE Regulations**” - means Transfer of Undertakings (Protection of Employment) Regulations 2006

“**Working Day**” - any day other than Saturday, Sunday and any bank or public holiday and Working Days shall be construed accordingly

Reckoning Periods of Days

Clause 1.4 - Delete all wording and insert as heading “**Reckoning Periods**”. Add as wording “Where under this contract an act is required to be done within a specified period of calendar days/hours after or from a specified date/time, the period shall begin immediately after that date/time.”

Working Day

Add new clause 1.8 as follows:

Where this contract refers to any period of time stated as “day” or “days”, this shall be amended to read “Working Day” or “Working Days” as appropriate.

Contractor’s Obligations

Clause 2.1 – the following new clauses shall be inserted:

“2.1A The Contractor shall fully carry out the works using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent contractor (and to the extent that the Order includes any design to be carried out by the Contractor using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent architect or other appropriate designer) who is experienced in carrying out work (and preparing designs) of a similar scope, nature and complexity and size to the Order.

2.1B The Contractor shall work in a proper and workmanlike manner and fully in accordance with the Contract Administrator's instructions, any instructions of the Employer, the Contract Documents and other Statutory Requirements and shall give all notices required by the Statutory Requirements.

2.1C To the extent that the Order contains any design, the Contractor shall be responsible for carrying out and completing the entire design for the Order.

- 2.1D The Contractor shall 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.
- 2.1E The Contractor shall not use, generate, dispose of or transport to the Site any Hazardous Substances otherwise than in accordance with Environmental Laws.”

Materials, Goods and Workmanship

Clause 2.2.1 shall be deleted and replaced by the following new clause 2.2.1:

“The Contractor in carrying out each Order shall not specify or use materials which are generally known at the time of use to be deleterious to health and safety or to durability in the particular circumstances in which they are used and the Contractor shall use materials, goods and workmanship of the quality and standards specified in the Order, or if not so specified, of the quality and standard to be expected of a contractor experienced in works of a like nature to the works set out in the Order. The Contractor warrants to the Employer that he has not specified and will not specify for use nor use in carrying out each Order any substance and/or material which is not in conformity with any relevant British or European Standards or Codes of Practice or which are generally known to the UK construction industry to be deleterious to health and safety or the durability of the Works in the particular circumstances in which it is used or which is not used in accordance with the guidance contained in the publication "Good Practice in the Selection of Construction Materials" 1997) Over Arup & Partners.”

Clause 2.2.2 shall be deleted and replaced by the following new clause 2.2.2:

“Where and to the extent that the approval of the quality of materials or goods or of the standards of workmanship is a matter for the opinion of the Contract Administrator, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are not described in the Order nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the relevant work. For the avoidance of doubt the standards of workmanship required pursuant to this clause shall be no less than those set out in British Standard 8000 or any other standard that may be applicable.”

Rights of Employer

Clause 2.3.5 - the following words shall be deleted “and the Contractor shall be entitled to a handling charge of 5% on that value. The Adjustment Percentage shall not be applied to that charge”.

Clause 2.3.6 shall be deleted and replaced with the following new clause 2.3.6:

“Any materials and/or goods supplied by the Employer for any Order shall be at the sole discretion of the Employer”

Value of work to be carried out under this Contract

Clause 2.5 shall be deleted and replaced with the following new clause 2.5:

“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 under this Contract.”

Programme

Clause 2.7 shall be amended by deleting the words “Nothing in the programme or in any amendment or revision of it shall impose any obligations beyond those imposed by the Contract Documents” and replacing this with the following words:

“The Contractor Administrator shall have 7 days from receipt of the programme to approve or register its disapproval, in writing, of the programme. If the Contract Administrator fails to respond within the 7 days then it shall be deemed to have approved. Provided the Contract Administrator has approved or deemed to have approved the programme, the Contractor shall procure that all of the works carried out in accordance with or under any Order(s) is carried out strictly in accordance with the programme. If the Contract Administrator has stated to the Contractor that it does not approve of the programme then the Contractor shall resubmit a revised programme to the Contract Administrator for approval and this process shall be repeated until the Contract Administrator has given its written approval to the programme, whereupon the Contractor shall carry out the works within the order strictly in accordance with such approved programme.”

Divergence from Statutory Requirements

Clause 2.8.2 shall be deleted and replaced with the following new clause 2.8.2:

“Provided the Contractor has provided the written notice specified in clause 2.8.1 then it shall not be liable under this Contract if the work carried out under an Order, does not comply with the Statutory Requirements, but only to the extent that the non-compliance results from the divergence between the Statutory Requirements and either an Order or a Variation that the Contractor has previously advised the Employer of in accordance with clause 2.8.1.”

Extension of Time

Clause 2.10.1 shall be deleted and replaced with the following new clause 2.10.1:

"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 effected by reason of:

- (i) force majeure; or
- (ii) 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,

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 that 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."

Insert new clause 2.10.4 as follows:

"If the Contractor fails to complete any Order by the Order Date for Completion stated therein or within any extended time fixed under this clause 2.10 in respect of that Order or otherwise fails to complete any Order in accordance with this Contract then the Contract Administrator may issue a certificate to that effect and at any time thereafter may employ and pay other persons to execute and complete the work described in such Order. Without prejudice to any rights and remedies the Employer may have under statute, in tort, for breach of contract or otherwise, all costs incurred thereby (including but not limited to administration costs, legal costs associated with any adjudication, mediation or court award, compensation the Employer is required to pay under the Right to Repair regulations, its tenant agreements and resident compensation policies) 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."

Order Completion Date

Insert new clause 2.11.3:

"If the Contract Administrator is required to attend any Property for the purposes of assessing whether or not an Order has been completed in accordance with this Contract on more than two occasions, then the cost to the Employer of any further attendance by the Contract Administrator shall be borne by the Contractor."

Defects

Clause 2.12 shall be renumbered 2.12.1 and amended by deleting the words “6 months” and substituting with “12 months” and adding the words “and shall commence rectification within 5 days of notification” at the end of the Clause:

Additional Clause 2.12.2:

“In the case of default, the Employer may provide labour and/or materials or enter into a contract to make good such defects and all costs and expenses consequent thereon shall be borne by the Contractor and shall be recoverable from the Contractor by the Employer either by offsetting against monies due on any contract with the Employer or by directly invoicing the Contractor.”

Assignment

The clause heading shall be amended from “Assignment” to “Assignment and Novation”

Clause 3.1 shall be deleted and replaced by the following new clauses:

“3.1.1 The Employer may assign or otherwise transfer this Contract or the benefit hereof at any time without the consent of the Contractor. The Contractor hereby consents to the novation of this Contract by the Employer and agrees to enter into such documents as are required to effect such novation. The Contractor shall not assign, novate or otherwise transfer this Contract without the prior written consent of the Employer.

3.1.2 The Contractor undertakes with the Employer not to contend that any person to whom this Contract may be assigned will be precluded from recovering under this Contract any loss resulting from any breach of this Contract either by reason that the person is an assignee and not the original party to this Contract or by reason that the Employer named in this Contract or any intermediate owner of the Employer's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.”

Sub-Contracting

Delete Clause 3.2 and replaced by the following new clauses:

“3.2.1 The Contractor shall not sub-contract any works under the Contract without the previous written consent of the Contract Administrator. Such consent shall not be unreasonably withheld or delayed and shall apply to all works except to the extent otherwise stated in that consent.

3.2.2 In the event of the Employer agreeing to any assignment under clause 3.1 or sub-contracting under clause 3.2.1, such consent shall not relieve the Contractor from any liability or obligation under this Contract and the Contractor shall be responsible for the acts, defaults and negligence of any assignee or sub-contractor, his or its agents, servants or employees.”

Contractor's Representative

Clause 3.3 shall be deleted in its entirety and replaced by the following new clause 3.3:

- “3.3.1 The Contractor shall appoint a competent Contractor's Representative for the proper administration of this Contract.
- 3.3.2 The Contractor's Representative shall have suitable and sufficient qualifications and experience to carry out this function and shall be the representative empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- 3.3.3 The Contractor's Representative shall be the person named in the Contract Particulars or such other person nominated in writing by the Contractor from time to time to act in the name of the Contractor for the purposes of the Contract.
- 3.3.4 From time to time the Contractor may appoint one or more representatives to act for the Contractor generally or for specified purposes or periods. Immediately any such appointment is made or terminated, the Contractor shall give written notice thereof to the Employer and until such notice is received the Contractor shall be under no obligation to comply with any instruction issued by such representative.
- 3.3.5 Any Order, notice, information, instruction or other communication given to the Contractor's Representative shall be deemed to have been given to the Contractor.

Additional Clause 3.4.4:

“The Contract Administrator or their representative shall have at all times access to the Site or other places off-site where materials or equipment are being stored or prepared for the works.”

Cancellation of an Order

Additional Clause 3.6.3:

“The provisions of clauses 3.6.2.1 and 3.6.2.2 do not apply where scheduled works or an Order for works is cancelled before any physical works have commenced.”

Exclusion from Site

Clause 3.7 shall be amended by inserting the following sentence at the end of the clause:

“The Contractor shall then ensure that such person is immediately excluded from the Site.”

Additional Employer's Rights and Remedies

Additional Clause 3.11:

"Where the Contractor's performance significantly and consistently fails to meet the required targets or Key Performance Indicators (KPI's) and the Contractor has not proposed acceptable remedial measures in respect of such failings within 28 days of being requested by the Contract Administrator in writing to do so, or the Contractor indicates that their current workload will not enable them to complete within targets, the Employer may award work to other contractors. Where works are awarded to other contractors, it will be measured and valued using fair and reasonable tendered rates. Should this incur additional costs to the Employer, the Employer reserves the right to charge the Contractor the extra-over cost plus 10% administration costs."

Progress Payment

Clause 4.3 shall be deleted and replaced with the following new clause:

"Monthly Payment

Payments shall be made on a per calendar month basis and shall include all Orders completed in the previous calendar month that have been agreed as completed by the Contract Administrator and shall form part of the Contractor's monthly payment application in accordance with clause 4.5.1."

Payment Application

Clause 4.5.1 shall be amended by inserting the words "Subject to clause 4.3" at the beginning of the clause.

Payments – final date and amount

Clause 4.6.1 to be removed entirely.

Clause 4.6.2 to be deleted and the following clause shall be inserted:

"Subject to any notice given by the Employer under clause 4.6.5, the Employer shall pay the sum stated as due in the relevant certificate following receipt of the Contractor's VAT invoice, within 14 days of receipt of the certificate, in the sum described on the certificate.

Any such invoices submitted will be subject to approval by the Contract Administrator prior to these being passed for payment by the Employer.

The Employer shall pay any such properly due invoice within 30 days of receipt of the invoice."

Damages

Add the following as an additional Clause 4.8 Damages

“Damages will be imposed by the Employer for defaults in performance of the Contractor in accordance with the requirements and standards of the “Right to Repair Regulations”, the Employer’s compensation policy and as below.

Damages may be rendered in one of the following two methods:

- 1) When damages occur the Contract Administrator shall submit a damages account to the Contractor on a monthly basis and the Contractor Administrator will show this amount as a credit on the next available monthly valuation; or
- 2) The Contract Administrator may also instruct the Contractor to pay direct to the Tenant an amount appropriate for the breach of contract affecting the service to that tenant.

Damages will be levied according to compensation levels of the “Right to Repair Regulations”, or as follows:

1. Failure to keep an appointment with the Contract Administrator or a tenant.
2. Visit carried out by the Contract Administrator as a consequence of a substantiated tenants complaint.
3. For each substantiated complaint regarding standard of workmanship or conduct of the Contractor.
4. Identification of substandard work by the Contract Administrator per occurrence.
- 5a. Failure to complete any work within the prescribed time scales (cost per day) excluding void works.
- 5b. Failure to complete work within prescribed timescales: weekly rental for each full and part week.
6. Application of an administration fee by the Contract Administrator if any additional works request is found to be unsubstantiated.
7. Compensation to tenants other than that listed in 1 to 6 above will be in accordance with the employer’s Compensation Policy as prevailing at the time of the complaint.

The above amounts to be paid out will be discussed during the mobilisation meetings”

Valuation – day work

Clause 5.4.2 shall be amended by inserting the words “and any other evidence required by the Employer.” at the end of the clause:

Derived Rates

Clause 5.5 shall be deleted and replaced by the following new clause 5.5:

“5.5.1 Where the rates or prices in the Schedule of Rates do not apply or where there is no applicable all-in labour rate in the Schedule of Hourly Rates, as the case may be, the value shall be decided by the Contract Administrator and shall be based upon such rates or prices as may fairly be deducted therefrom, rates and prices deduced from the Schedule of Rates being subject to adjustment by the Adjustment Percentage.

5.5.2 If it is not practicable or would not be fair and reasonable to apply the rates or prices in the Schedule of Rates or Schedule of Hourly Charges or to deduce rates or prices therefrom, the value shall be ascertained on a fair and reasonable basis by the Contract Administrator after consultation with the Contractor.”

Rates – Fluctuations

Clause 5.6 shall be deleted

Overtime

Additional Clause 5.7.4:

“Where the Contractor wishes to work outside normal working hours, he must first obtain the permission of the Contract Administrator and the person in charge of the premises. In these circumstances no additional or enhanced payments will be made.”

Liability of the Contractor – personal injury or death

Clause 6.1 shall be amended by inserting the words “or of any obligation pursuant to clause 2.12,” in the third line after the word “Order” and before the word “except”.

Liability of the Contractor – injury or damage to property: nuisance

Clause 6.2 shall be amended by inserting the words “or of any obligation pursuant to clause 2.12” in the fourth line after the word “Order” and before the word “and”.

The following words shall be inserted at the end of clause 6.2:

“The Contractor shall at all times reasonably prevent any public or private nuisance (including without limitation any such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of an Order or of any obligation pursuant to clause 2.12 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceedings which may arise as a result of any breach by the Contractor of its obligations under this Contract.”

Contractor’s Insurance and his Liability

*Additional clause: 6.4.3

“Without limiting his other obligations under the Contract or otherwise at law, the Contractor shall maintain professional indemnity insurance of not less than £2,000,000 (two million pounds) in respect of each and every claim.”

Related Definitions

Under clause 6.6, the definition of “Joint Names Policy” shall be amended by inserting the words “and any funder or other third party as the Employer may require” after the word “Contractor” and before the word “as”.

Additional clause 6.15

“The Contractor shall ensure so far as is reasonably practicable the health, safety and welfare at work of his employees and shall conduct his undertakings in such a way as to ensure that persons other than his employees who may be affected by his operations are not exposed to risks to their health or safety and shall in all respects perform all his duties under the Health and Safety at Work etc. Act 1974 and all Health and Safety Regulations made thereunder.”

Collateral Warranties and Copyright

Insert new clause 7A as follows:

“Copyright Contractor Warranties in favour of others

7A1 If required by the Employer, the Contractor shall execute and deliver to the Employer deeds of collateral warranty in favour of any purchaser and/or any funder in the form agreed by the Employer and in each case such deed to be procured and provided to the Employer within 14 days of the Employer's written request to do so. If the Contractor fails to deliver any deed of warranty validly requested under this clause 7A.1 within 14 days of the Employer's request, the Employer may withhold any payment or further payment (as the case may be) which would otherwise be due to the Contractor under this Contract until such deed of warranty is delivered.”

Sub-contractor Warranties

7A2 If required by the Employer, the Contractor shall procure that all sub-consultants and sub-contractors appointed to carry out any work shall provide to the Employer a deed of collateral warranty in favour of the Employer and/or any purchaser and/or any funder in a form agreed by the Employer with such amendments as are required to account for the warrantor being either a sub-contractor or sub-consultant, and in each case such deed to be procured and provided within 14 days of the appointment of the sub-consultant or sub-contractor or of the Employer's written request as relevant together with a certified copy of the relevant completed appointment document.

Copyright Licence

7A3 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."

Default by Contractor

Additional Clause 8.4.1.3:

"fails to comply with any of his obligations including all of the Contractor's obligations contained within the Council's Tender Documents and/or the Contractor's priced Schedule of Rates in respect of this Contract."

Insert new clauses 8.4.2.1 and 8.4.2.2 as follows:

"8.4.2.1 Where the Contractor receives notice under clause 8.4.1 that it has failed to perform the works in accordance with the Contract Documents, the Employer may, without prejudice to any other remedy it may have:

- (i) request from the Contractor that, at the Contractor's own expense and as specified by the Employer, it reschedules and carries out the works in a manner satisfactory to the Employer, which may include rectifying completed works or repeating the provision of any of the works within such period as the Employer may specify by such written notice; and/or
- (ii) withhold or reduce payments to the Contractor, as the Employer shall reasonably deem appropriate in each particular case; and/or
- (iii) request that the Contractor pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between the specified date for completion and the actual date of completion; and/or
- (iv) employ a third party to carry out and complete the works.

8.4.2.2 Any expenses incurred which are in addition to the cost of the relevant part of the works arising as consequence of suspension of the works or procuring a third party to carry out the works, shall be recovered in full from the Contractor, including any administrative costs reasonably incurred by the Employer."

Renumber existing clauses 8.4.2 and 8.4.3 as 8.4.3 and 8.4.4 respectively.

Prevention of Bribery and Corruption

Insert new Section 10 to the JCT Conditions of Contract as follows:

"10.1 The Contractor warrants and undertakes to the Employer that:

- 10.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
 - 10.1.2 it will procure that any person who performs or has performed services for or in its behalf ("Associated Person") in connection with this Contract complies with this clause and subject to the JCT Form of Contract to be used;
 - 10.1.3 it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this clause and subject to the JCT Form of Contract to be used;
 - 10.1.4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
 - 10.1.5 from time to time at the reasonable request of the Employer it will confirm in writing that it has complied with its undertakings under clauses 10.1.1 to 10.1.4 and will provide any information reasonably requested by the Employer in support of such compliance;
 - 10.1.6 it shall notify the Employer as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- 10.2 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972 section 117(2) in relation to this or any other contract with the Employer, the Employer has the right to;
- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making other arrangements for the provision of the works and any additional expenditure incurred by the Employer throughout the remainder of the Contract.
 - b) recover in full from the Contractor any other loss sustained by the Employer in consequence of any breach of this clause, whether or not the Contract has been terminated."

Freedom of Information

Insert new Section 11 to the JCT Conditions of Contract as follows:

- “11.1 The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (the “**2000 Act**”) and Environmental Information Regulations and agrees to use all reasonable endeavours to assist the Employer (at the Contractor’s expense) to comply with its obligations imposed under those provisions.
- 11.2 The Contractor shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor’s code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 11.3 Subject to Clause 11.6, the Contractor shall and shall procure that its sub-contractors shall:
- 11.3.1 transfer any Request for Information (as defined in the 2000 Act) received by the Contractor or its sub-contractors to the Employer promptly and, in any event, within two Working Days of its receipt;
 - 11.3.2 provide the Employer with a copy of all Information belonging to the Employer in its possession or power, which has been requested in the Request for Information in the form that the Employer requires within 5 Working Days of the Employer’s request for such Information (or such other period as the Employer may reasonably specify), including such information as the Employer may require in order to comply with the Employer’s Publication Scheme (<https://www.folkestone-hythe.gov.uk/your-council/council-information/publication-scheme>);
 - 11.3.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act;
 - 11.3.4 not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Employer.
- 11.4 Subject to Clause 11.6, the Employer shall be responsible for determining, in its absolute discretion, whether:
- 11.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
 - 11.4.2 any Information is to be disclosed in response to a Request for Information.
- 11.5 The Contractor acknowledges that the Employer may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 11.5.1 without consulting the Contractor; or

- 11.5.2 following consultation with the Contractor and having taken its views into account.
- 11.6 Where the 2000 Act applies to the Contractor (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Contractor shall:
- 11.6.1 comply with the 2000 Act and any associated Statutory Requirements and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and
- 11.6.2 where the Contractor receives a Request for Information from a third Party under the 2000 Act which relates to the Employer and / or this Contract:
- 11.6.2.1 inform the Employer about the Request for Information and the nature of the Information being sought as soon as reasonably possible;
- 11.6.2.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request for Information;
- 11.6.2.3 consult with the Employer prior to the disclosure of any such Information; and
- 11.6.2.4 keep the Employer informed about the Contractor's progress in dealing with any Request for Information and where requested by the Employer, provide the Employer with copies of any correspondence and documents relating to the Request for Information.
- 11.7 The Contractor shall indemnify the Employer against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Employer as a result of any breach of this Clause 11 by the Contractor, the Contractor's personnel, sub-contractors or agents.
- 11.8 The Contractor acknowledges that the definition of Confidential Information is indicative only and that the Employer may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act."

Data Processing

Insert new Section 12 to the JCT Conditions of Contract as follows:

- "12.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

- 12.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. Schedule Appendix H sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 12.3 Without prejudice to the generality of Clause 12.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.
- 12.4 Without prejudice to the generality of Clause 12.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
- (a) process that Personal Data only on the documented written instructions of the Employer which are set out in Schedule [], unless the Contractor is required by Domestic Law to otherwise process that Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
 - (i) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;

- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- (d) notify the Employer immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Employer without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- (g) at the written direction of the Employer, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and allow for audits by the Employer or the Employer's designated auditor and immediately inform the Customer if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.

12.5 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:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Works;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.6 The Contractor shall indemnify the Employer against any losses, damages, cost or expenses incurred by the Employer arising from, or in connection with, any breach of the Contractor's obligations under this Clause 12.
- 12.7 Where the Contractor intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Contract, it shall:
 - (a) notify the Employer in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent from the Employer to the processing;
 - (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 12.
- 12.8 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination."

Equal Opportunities, Unlawful Discrimination and Human Rights

Insert new Section 13 to the JCT Conditions of Contract as follows:

- "13.1 In the performance of the Works the Contractor shall comply and shall ensure that its employees, agents and sub-contractors comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Statutory Requirements including the Equality Act 2010, as well as statutory and other official guidance and codes of practice.
- 13.2 The Contractor acknowledges that the Employer has a general duty under the Equality Act 2010 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity carrying out their functions.
- 13.3 The Contractor shall be considered to have the same obligations as the Employer under the Act when providing the Works under this Contract. The Contractor shall comply with the general duty under the Act as set out in Clause 13.2 above and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Contractor shall be considered to be in breach of this Clause in the event of any non-compliance with the Act and any Codes of Practice.
- 13.4 The Contractor shall adopt the Employer's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Contractor) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of

performing the Works, discriminate on the grounds of race directly, indirectly or by victimisation.

- 13.5 The Contractor shall indemnify the Employer in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Employer for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Clause by the Contractor.
- 13.6 The Contractor shall inform the Contract Administrator as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Contractor under the Equality legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Contract Administrator with such further information and documentation as may be required in relation thereto.”

Contractor’s Persons

Insert new Section 14 to the JCT Conditions of Contract as follows:

- “14.1 The Contractor shall comply with all relevant legislation relating to the Contractor’s Persons however employed including (but not limited to) the compliance in law of the ability of the Contractor’s Persons to work in the United Kingdom.
- 14.2 The Contractor shall employ sufficient persons to ensure that the works are carried out in accordance with the Contract. The Contractor's Persons engaged in and about the provision of the works shall be properly and sufficiently qualified, competent, skilled and experienced and the Contractor shall ensure that such Persons are properly and continuously trained, sufficiently instructed and adequately supervised with regard to the provision of the works generally and in particular:
- (i) the task or tasks such Persons have to perform;
 - (ii) all relevant rules, procedures and statutory requirements concerning health and safety, including the Employer's health and safety policy;
 - (iii) all other statutory requirements in connection with the Contract
- and the Contractor shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Clause 14.
- 14.3 The Employer shall be entitled to require the Contractor to remove from the performance and carrying out of the Works any of the Contractor's Persons whose behaviour is in the opinion of the Employer negligent, (should it become aware) disruptive, disturbing or likely to cause offence to the Employer or its employees and where the Employer has received a valid complaint.

- 14.4 The Employer shall in no circumstances be liable either to the Contractor or to any Persons (including its sub-contractors) removed pursuant to clause 14.3 in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Employer in respect of any claim or proceedings made or brought against the Employer by such Contractor's Persons.
- 14.5 The Contractor shall engage sufficient suitably qualified personnel to ensure that the Works are provided in all respects to the Specification throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.
- 14.6 The Contractor shall perform the Works in accordance with the arrangements relating to personnel stated in the Specification.
- 14.7 The Contractor shall notify the Contract Administrator of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of Clause 14.6 above.
- 14.8 The Contractor shall be responsible for ensuring that personnel engages in and about the provision of the Works only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.
- 14.9 The Contractor shall, for the purposes of enabling the Employer and the Contract Administrator to satisfy themselves as to the Contractor's compliance with this Clause 14 maintain at all times accurate and up-to-date records of all personnel who are and who are likely to have any connection with the performance of the Works including attendance records and shall afford the Employer and the Contract Administrator full access to these records upon reasonable notice in writing by the Contract Administrator.
- 14.10 The Contract Administrator shall, on giving notice together with reasons to the Contract Manager or the relevant assistant Contract Manager, have the power to require the Contractor, (but not unreasonably or vexatiously), to remove from the provision of the Works any individual member of the Contractor's personnel or of its sub-contractors including the Contract Manager or an assistant Contract Manager.
- 14.11 The Employer shall under no circumstances be liable either to the Contractor or to its personnel for any cost, expense, liability, loss or damage occasioned by removal under Clause 14 and subject as aforesaid the Contractor shall fully indemnify the Employer in respect of any claim made by the personnel.
- 14.12 For the avoidance of doubt, the Contractor shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the commencement of the Contract

Period and fully indemnifies the Employer against any liability arising as a consequence thereof.

- 14.13 The Contractor will provide details of employee disciplinary and grievance procedures and other policies, which the Employer may request from time to time.
- 14.14 With regard to the Contractor's personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents the Contractor undertakes as follows:
 - 14.14.1 to ensure that all of the Contractor's personnel are Police checked in accordance with Statutory Requirements (including but not limited to the Care Standards Act 2000) by ensuring all personnel have current Disclosure and Barring Service ("**DBS**") checks in accordance with the Safeguarding Vulnerable Groups Act 2006, Part 5 of the Protection of Freedom Act 2012 and/or Protection of Vulnerable Adults Scheme and that checks are carried out in accordance with Statutory Requirements and the Secretary of State Code of Practice under section 122 of the Police Act 1997 and any amendment thereof;
 - 14.14.2 to ensure all personnel (as required) have a current enhanced DBS Certificate of Disclosure including a check against the children's barred list, as appropriate if the Service falls within one of the prescribed purposes under Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 and the Rehabilitation of Offenders Act Exceptions Order 1975;
 - 14.14.3 DBS checks carried out for the Contractor will be accompanied by written confirmation from the DBS that the Contractor is registered for the purposes of initiating DBS checks or has used an umbrella body which is registered to undertake DBS checks;
 - 14.14.4 to comply with all the requirements operated by the DBS and ensure that all of the Contractor's personnel with unsupervised access to children and/or vulnerable adults are registered and checked as required;
 - 14.14.5 to ensure that all of the Contractor's personnel who have lived or worked abroad for more than three (3) months in the last five (5) years obtain a Certificate of Good Conduct acceptable to the Employer, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults;
 - 14.14.6 to undertake that the Contractor complies with the Employer's Recruitment and Selection and Safer Recruitment policies which are available on the Employer's website as updated from time to time; and

- 14.14.7 to undertake that the Contractor keeps clear records of every member of the Contractor's personnel, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face to face meetings, records of checked references and identity in accordance with the Employer's Recruitment and Section and Safer Recruitment policies.
- 14.15 In relation to previous and spent convictions if the Contractor's personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in Section 3 and Schedule 1 and 2 of the Rehabilitation of Offenders Act 1974 Exception (Amendment) Order 1975 or the Offender Rehabilitation Act 2014, the Contractor undertakes it will ensure that all the Contractor's personnel shall provide information in accordance with the said Acts and Order in relation to convictions which would otherwise be spent under the provisions of the said Acts.
- 14.16 The Contractor warrants that at all times for the purpose of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 14.17 The Contractor shall immediately notify the Contract Manager of any information that is reasonably requests to enable it to be satisfied that the obligations of Clause 14 have been met.
- 14.18 The Contractor shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Users.
- 14.19 The Employer (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.
- 14.20 The Contractor acknowledges that the Employer is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Employer holds relevant information.
- 14.21 The Contractor shall indemnify the Employer against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Employer as a result of any breach of this Clause 14 by the Contractor and the Contractor's personnel.
- 14.22 Throughout the Contract Period the Contractor undertakes it will:
- 14.22.1 comply with relevant Safeguarding Adults Board (SAB) and Safeguarding Children's Board (SCB) and Safeguarding Children's Board Multi Agency Procedures or equivalent from time to time in place;

- 14.22.2 have in place its own safeguarding procedures acceptable to the Employer which will be made available to the Employer and Service Users on demand;
 - 14.22.3 ensure the Contractor's personnel are trained and work in accordance with the Contractor's safeguarding procedures at all times including, where required, attendance at SAB and SCB training sessions; and
 - 14.22.4 ensure that all the Contractor's staff that will be responsible for children on a one to one basis are trained in a method of restraint approved by the Employer and receive up-to-date training every three years.
 - 14.22.5 The Contractor shall adhere to and comply with any guidelines and/or codes of practice issued by the Employer (including but not limited to the Employer's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 14.23 The Contractor shall take all reasonable steps to ensure that all persons involved in providing the Service on behalf of the Contractor understand and follow relevant Safeguarding Children Board's guidance and protocols for safeguarding children and young people.
- 14.24 All persons involved in providing the Service on behalf of the Contractor shall co-operate fully with any investigation by the Employer or with any person authorised by the Employer to conduct an investigation into any allegations of abuse against the Contractor's staff.
- 14.25 All allegations, suspicions and incidents of abuse by the Contractor's staff must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency services contacted. Details of concerns and actions taken must be recorded and reported to the Employer, and if appropriate, the Police and any regulatory body.
- 14.26 The Contractor shall ensure that there are robust procedures for responding to and reporting such concerns and that all staff receive appropriate awareness training regarding Safeguarding Children which comply the Employer's Safeguarding Children and Child Protection Policy. The Contractor shall also ensure that they follow the Employer's Whistle Blowing Policy to protect staffs who wish to raise such concerns.
- 14.27 The Employer reserves the right to require the Contractor at no cost to the Employer to remove from performing the Works any Contractor personnel allocated to the performance of the Works by the Contractor who in the reasonable opinion of the Employer is detrimental to the provision of the Works."

Indemnity

Insert new Section 15 to the JCT Conditions of Contract as follows:

“15.1 The Contractor irrevocably undertakes to indemnify the Employer against any costs, expenses, damages, liabilities, losses, claims and/or proceedings which the Employer may incur in respect of death or personal injury to any person whomsoever and damage to property arising as a consequence of the performance of the Works. The Parties agree that the contraction of any industrial disease as a result of exposure to dangerous materials during the course of the work within this Contract will be deemed to be covered by this condition.”

Additional Employer’s Requirements

Insert new Section 16 to the JCT Conditions of Contract as follows:

“16.1 In the event of any inconsistencies or any ambiguity between the Articles of Agreement, Conditions and this Schedule of Amendments, the Parties agree that the Schedule of Amendments shall take precedence over the Articles of Agreement and Conditions whilst the Articles of Agreement shall take precedent over the Conditions.

16.2 The Contractor shall ensure that it has policies or codes of conduct in relation to:

- equality and diversity policies
- sustainability
- information security rules
- whistleblowing and/or confidential reporting policies.

16.3 The Contractor shall keep and maintain until 12 years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the agreement including:

- (a) the works provided under it;
- (b) all expenditure reimbursed by the Employer;
- (c) all payments made by the Employer.

The Contractor shall on request afford the Employer or the Employer’s representatives with such access to those records as may be required in connection with this Contract.

16.4 The Contractor shall co-operate fully with any enquiry or investigation made by the Employer’s internal or external auditors, or any other quality or performance inspectors, that in any way concerns this Contract or any sums claimed or charged in relation to this Contract. The Employer may use information given by the Contractor in connection with this Contract to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds. The Contractor shall take all necessary action to prevent money laundering. Where the Employer deems that the Contractor has been involved in money laundering it will take

whatever measures appropriate to prevent this and report such action to the relevant authorities. The discovery of fraud and/or money laundering shall be grounds for termination of the Contractor's employment.

- 16.5 The Contractor shall comply with any Employer policies affecting the Contract and shall if requested provide the Employer with any relevant information required in connection with 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 such inquiries or proceedings or hearings arising out of the Contract. The Contractor shall cooperate fully with the Commissioner for Local Administration in England (the Local Government Ombudsman) in any investigation by him of any complaint relating to the Contract and in enquiries by any of the Employer's Committees. From time to time, the Employer may require the Contractor to provide reports to, or be involved in discussions with, elected members. The Contractor shall comply with the Employer's reasonable requirements and shall not be entitled to any additional payment in respect thereof save to the extent such costs are incurred as a result of a default on the part of the Employer.
- 16.6 The Contractor shall, upon becoming aware of anything in connection with the Contract that is likely to give rise to legal inquiry or litigation, forthwith notify the Contract Administrator, giving such details as are available.
- 16.7 The Contractor shall deal with any complaints about its performance of the Contract, received from whatever source, in a prompt, courteous and efficient manner. The Contractor shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints. The Contractor shall inform the Contract Administrator in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected by the Contract Administrator (or any other person nominated by him) at all reasonable times on reasonable notice.
- 16.8 The Contractor shall not speak to the press or broadcasting media about any matters connected with the Contract without the prior written consent of the Contract Administrator. If the Contractor intends to advertise its provision of the works to the Employer, it shall obtain approval of the Employer before doing so as to the content of such advertisement.
- 16.9 The Contractor should note that it is of the utmost importance that their employees and sub contract employees carry with them at all times their company's identification card to produce when challenged by the Employer's staff or council residents.
- 16.10 Where under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum item due or which at any time thereafter may become due to the Contractor under the Contract or under any other similar construction contract with the Employer.

- 16.11 The Contractor shall be deemed to have obtained information on all matters affecting the execution of the works. No claim arising from errors or omissions will be considered.
- 16.12 The Contractor shall comply with all Standing Orders of the Employer in so far as they are applicable to the execution of the Works. It is the responsibility of the Contractor to determine the nature and extent of such Standing Orders for lack of knowledge will not constitute grounds for non-compliance. A copy will be available for inspection on request.
- 16.13 The Contractor shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause.

Bonds and Guarantees

Insert new Section 17 to the JCT Conditions of Contract as follows:

- “17.1 At the exclusive discretion of the Employer, when the Contractor is a subsidiary of another company it shall procure that its ultimate holding company (or, at the Employer’s complete discretion, such other company within the Contractor’s group as the Employer shall require) shall provide a parent company guarantee in favour of the Employer in respect of the Contractor’s obligations under the Contract executed as a deed in the form set out in Appendix I1. The guarantee must be in place before the Contract commences.
- 17.2 At the exclusive discretion of the Employer, where the Contractor does not have a parent company or where the parent company is not approved by the Employer, the Contractor shall enter into a contract guarantee bond, in the form set out in Appendix I2, by which they shall be jointly and severally bound to the Employer in a sum equivalent to 10% of the annual price conditioned for the due fulfilment of the terms and conditions of the Contract. The surety shall be either an insurance company or bank whose registered office is situated in England. The bondsman is to be approved by the Employer. The bond must be in place before the Contract commences.

Compliance with Anti-Slavery and Human Trafficking Laws

Insert new Section 19 to the JCT Conditions of Contract as follows:

- “18.1 In performing its obligations under this Contract, the Contractor shall:
- (i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

- (j) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (k) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 19.

18.2 The Contractor represents and warrants that:

- (l) neither the Contractor nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) 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 of or in connection with slavery and human trafficking.

18.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

18.4 The Contractor undertakes not to purchase any RESOURCE OR RAW MATERIALS OR livestock OR products from COUNTRY that has been sourced from producers OR farmers OR manufacturers using forced labour or child labour in its operations OR farming practices.

18.5 The Contractor shall notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

18.6 The Contractor shall as part of its annual performance review with the Employer prepare and deliver to the Employer an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

18.7 The Contractor shall:

- (m) maintain a complete set of records to trace the supply chain of all goods and services provided to the Employer in connection with this Contract; and
- (n) permit the Employer and its third party representatives, on reasonable notice during normal business hours to have access to and take copies of the Contractor's records and any other information and to meet with

the Employer's personnel to audit the Employer's compliance with its obligations this clause; and

- (o) implement annual audits of its compliance, either directly or through a third party auditor. The first set of audits shall be completed by the anniversary of the contract.
- 18.8 The Contractor shall implement a system of training for its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 18.9 The Contractor shall keep records of all training offered and completed by its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations and codes and shall make a copy of the record available to the Employer on request.
- 18.10 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against the Employer as a result of its failure to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 18.11 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 18.12 The Employer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor fails to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.”