Agreement for the provision of

Planned Programmed Maintenance (PPM) and Reactive Maintenance (RM) for Fire Alarm and Smoke Vent Systems

Incorporating and Amending the Terms and Conditions of the

JCT Measured Term Contract 2016 Edition

This Agreement is made the _____ 20 _____

Between **The Employer: Bristol City Council** of **City Hall, College Green, Bristol, BS3 9FS**

And **The Contractor:** _____

(Company No. _____) whose registered office is at _____
_____

RECITALS

Whereas

First Recital

the Employer wishes to have fire alarm and smoke vents systems serviced and maintained in properties owned and/or managed by Bristol City Council in the City of Bristol BS postcode region (**'the Contract Area'**) in accordance with the details set out or referred to in the Contract Particulars;

Second Recital

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

Third Recital

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

Fourth Recital

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

Fifth Recital

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

ARTICLES

Now it is hereby agreed as follows

Article 1A: Schedule of Contract Particulars and Amendments

Article 1A is inserted and shall read as follows:-

The Parties have agreed that this Agreement shall incorporate and amend the terms and conditions contained within the JCT Measured Term Contract 2016 Edition.

Article 1: Contractor's obligations

Article 1 shall read as follows:-

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

Article 2: Payment

Article 2 shall read as follows:-

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned.,

Article 3: Contract Administrator

Article 3 shall read as follows:-

For the purposes of this Contract the Contract Administrator is Ivan Parker Electrical Project Engineer of Bristol City Council (or his duly authorised representative) or, if he ceases to be the Contract Administrator, such other person as the Employer shall nominate in accordance with clause 3.10 of the Conditions.

Article 4: Principal Designer

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

Article 5: Principal Contractor

Article 5 shall read as follows:-

The Principal Contractor for the purposes of the CDM Regulations 2015 is the Contractor or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

Article 6: Adjudication

Article 6 shall read as follows:-

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

Article 7: Arbitration

Article 7 does not apply and is deleted

Article 8: Legal proceedings

Article 8 shall read as follows:-

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

Article 9: Blacklist

i. Without prejudice to any other right or remedy it may possess, the Employer may terminate the Contractor's employment under this Contract by written notice with immediate effect if on or after the commencement of the Contract Period there is any finding, by a court, tribunal or other public body exercising similar functions, against the Contractor regarding the use or compilation of a Blacklist by or on behalf of the Contractor, except in situations where the finding exclusively relates to activity that took place before the commencement of the Contract Period and the Contractor can demonstrate to the Employer's reasonable satisfaction that at and from the commencement of the Contract Period Blacklists have no longer been used or compiled by or on behalf of the Contractor.

ii. For the purposes of Article 9 "**Blacklist**" shall mean a list which:

(a) contains details of persons who: (i) are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and/or (ii) have incurred disapproval or suspicion or are to be boycotted or otherwise penalised; and

(b) is compiled with the view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or treatment of workers.

Article 10: Employer's Environmental Policy

i. The Employer wishes to demonstrate its commitment to improving the environment. The Employer has developed an environmental policy and is actively implementing its aims. The Employer will use its position as an enabler and specifying client to further this commitment through this Contract. The Contractor shall be expected to share this commitment and work towards environmental improvement wherever possible when carrying out Orders. The Contractor will be encouraged to promote any policies that it considers are consistent with the Employer's commitment to improve the environment and go beyond the specified requirements.

ii. The Contractor shall assist the Employer's implementation of the European Eco-Management and Audit Scheme (EMAS).

iii. The Contractor may be required to provide data from time to time, to enable the Employer to compile an environmental statement. The Contractor may be required to periodically provide data relating to materials/chemicals used, fuel, waste and environmental impact.

Article 11: Agency

i. Neither the Contractor nor its employees shall in any circumstances hold themselves as being the servant, or agent of the Employer, other than in circumstances expressly permitted by this Agreement and the Conditions.

ii. Neither the Contractor nor its employees shall in any circumstances hold themselves as being authorised to enter into any contract on behalf of the Employer, or in any other way to bind the Employer to the performance variation, release or discharge of any obligation.

iii. Neither the Contractor nor its employees shall in any circumstances hold themselves as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.

Article 12: Data Protection

i. In this Article 12:

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (*(EU) 2016/679*) and any other directly applicable European Union regulation relating to privacy.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

i. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Article 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

ii. The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Contractor is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Annex F sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

iii. Without prejudice to the generality of Article 12 (ii), 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 Agreement.

iv. Without prejudice to the generality of Article 12 (ii), the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:

(a) process that Personal Data only on the written instructions of the Employer unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (**Applicable Laws**). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of,

or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

- the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;
- the data subject has enforceable rights and effective legal remedies;
- 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
- the Contractor complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

(e) assist the Employer, at the Employer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Employer without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 8 and allow for audits by the Employer or the Employer’s designated auditor.

v. The Employer does not consent to the Contractor appointing any third party processor of Personal Data under this Agreement.

vi. The Council may, at any time on not less than 30 days’ notice, revise this Article 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

Article 13: Anti-bribery provisions

i. In this Article 13:

Bribery Act: means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

Contractor Party: means the Contractor's agents and contractors, including each sub-contractor;

Contractor Personnel: means all employees, agents, consultants and contractors of the Contractor or of any sub-contractor; and

Prohibited Act: means the following constitute Prohibited Acts:

to directly or indirectly offer, promise or give any person working for or engaged by the a financial or other advantage to:

- induce that person to perform improperly a relevant function or activity; or
- reward that person for improper performance of a relevant function or activity; or
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

committing any offence:

- under the Bribery Act;
- under legislation creating offences concerning fraudulent acts;
- at common law concerning fraudulent acts relating to this contract or any other contract with the Employer; or
- defrauding, attempting to defraud or conspiring to defraud the Employer.

ii. The Contractor:

(a) will not, and will procure that the Contractor Party and the Contractor Personnel will not, in connection with this Contract commit a Prohibited Act;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Employer, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Employer before execution of this Agreement.

iii. The Contractor shall, if requested, provide the Employer with any reasonable assistance, at the Employer's reasonable cost, to enable the Employer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

iv. If any breach of Article 13(ii) is suspected or known, the Contractor must notify the Employer immediately. If the Contractor notifies the Employer that it suspects or knows that there may be a breach of Article 13(ii), the Contractor must respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit

books, records and any other relevant documentation. This obligation shall continue for 12 years following the expiry or termination of this Agreement.

v. The Employer may terminate the Contractor's employment under this Contract by written notice with immediate effect if the Contractor is in breach of its obligations under this Article 13.

Article 14: Freedom of Information

ii. The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor cooperates with and assists the Employer so as to enable the Employer to comply with its information disclosure obligations.

iii. In this Article:

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;

"**FOIA**" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"**Information**" has the meaning given under section 84 of the Freedom of Information Act 2000; and

"**Request for Information**" means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

iv. The Contractor:

(a) transfers to the Employer all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;

(b) provides the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five working days (or such other period as the Employer may specify) of the Employer's request;

(c) provides all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

(d) procures that its sub-contractors do likewise.

v. The Employer is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

vi. The Contractor does not respond directly to a Request for Information unless authorised to do so by the Employer.

vii. The Contractor acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Contractor or despite the Contractor having expressed negative views when consulted.

viii. The Contractor ensures that all Information is retained for disclosure throughout the period for retention and permits the Employer to inspect such records as and when reasonably requested from time to time.

Article 15: Audit

i. The Contractor will keep and maintain until six (6) years after the date of this Agreement, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including:

(a) the goods, works and services provided under it;

(b) all expenditure reimbursed by the Employer; and

(c) all payments made by the Employer.

ii. The Contractor will on request afford the Employer or the Employer's representatives access to such records as may be required in connection with this Agreement.

Article 16: Equal Opportunities

i. The Contractor hereby agrees to comply with the Equalities Act 2010 and shall not practice any form of discrimination on the grounds of colour, race, ethnic or national origins.

ii. The Contractor shall demonstrate to the Employer that it has a policy to comply with its statutory obligations under all legislation relating to discrimination and equalities and, accordingly, will not treat any individual or group of people less favourably than others because of their age, any disability, gender (including transgender issues), sexual orientation, race, (including nationality, cultural or ethnic background) religion or belief in relation to decisions to recruit, train or promote its employees.

iii. If there should be any findings of unlawful discrimination made against the Contractor by any court or industrial tribunal, or an adverse finding in any formal investigation by any Equalities Commission, the Contractor shall take appropriate steps to prevent repetition of the unlawful discrimination. The Contractor shall also notify the Employer immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under any equalities legislation and keep the Employer informed of the details of any such investigation or proceedings as they develop.

iv. The Contractor shall on request provide the Employer with details of any steps taken under Article 16(iii).

v. The Contractor shall observe as far as possible any relevant code of practice issued by any Equalities Commission from time to time and provide the Employer with such information as it may reasonably require to assess the Contractor's compliance with such Code.

vi. The Employer as a local authority is under the following additional duties in carrying out its functions. When carrying out Orders and other activities under this Contract the Contractor shall co-operate with the Employer in any way the Employer may require to enable the Employer to fulfil its duties under any relevant legislation.

vii. The Contractor shall provide to the Employer, on request, statistics relating to the composition of its workforce.

viii. The Contractor shall ensure that any sub-contractor it appoints complies with Article 16.

Article 17: Undertakings

The commitments made by the Contractor in its tender for the Contract that are recorded in Annex A are binding contractual undertakings.

Article 18: Whistleblowing

i. For the avoidance of doubt in this Article 18 "**malpractice**" includes, but is not limited to, any

- fraud,
- financial irregularity,
- corruption,
- criminal offence,
- failure to comply with any legal or regulatory duty,
- endangering the health or safety of an individual,
- endangering the environment,
- serious misconduct, or
- serious financial maladministration.

ii. The Contractor shall notify the Employer immediately of any act or omission made by the Employer's employees, members, agents or sub-consultants that the Contractor is aware is either fraudulent, dishonest, ultra vires, an abuse of process, maladministration, negligent or otherwise contrary to the principles of good governance.

iii. The Contractor shall comply with Public Interest Disclosure Act 1998 and shall put in place (and update from time to time) a whistleblowing procedure for its personnel. Such procedure will encourage the Contractor's personnel to report to the Contractor incidents of malpractice with the Contractor's, or the Employer's, organisations. The procedure shall be similar in all material respects to the Employer's whistleblowing procedure.

iv. The Contractor shall notify the Employer in writing if any of its personnel invoke the whistleblowing procedure. The Contractor shall set out details of the alleged malpractice in such notification. Without prejudice to any other rights the Employer has under this contract, the Contractor shall comply with the Employer's reasonable instructions regarding the alleged malpractice, where such malpractice affects the Employer.

Article 19: Safeguarding

i. The Contractor will demonstrate to the Employer that, in respect of safeguarding vulnerable residents, it has in place safeguarding policies and procedures. The Contractor will comply in all respects with its safeguarding policies and procedures.

ii. The Contractor will put in place, and comply with, robust procedures for responding to suspicion or evidence of abuse. The Contractor will notify the Employer immediately in writing as soon as it becomes aware of any suspicions or concerns.

iii. The Contractor will promptly follow up allegations, suspicions and incidents of abuse.

iv. The Contractor will issue to Contractor's Persons a valid identity card. Such identity cards will be in a form acceptable to the Employer and:

(a) bear a recent photograph of the relevant Contractor's Person,

(b) bear the Person's signature,

(c) state the expiry date,

(d) state the Person's job title,

(e) state the name, address and telephone number of the Contractor,

(f) be countersigned by a director (or equivalent) of the Contractor, and

(g) be sealed in a plastic holder.

v. Where sub-contractors are employed by the Contractor for the carrying out of Orders the identity card will clearly show the identity of the sub-contractor.

vi. Whilst attending a Site, Contractor's Persons will carry and display a valid identity card at all times. Contractor's Persons will show their identity card to the resident(s) on arrival at a Site.

vii. Under no circumstances will Contractor's Persons enter a Site to carry out an Order, if the Site (for which the Order has been issued) is occupied by an unaccompanied child (or children) under the age of sixteen (16).

viii. Details of whether a vulnerable resident resides a Site will be included in, or provided at the time of placing, an Order.

ix. In consultation with the Contract Administrator, the Contractor will implement special working arrangements, as may be appropriate and necessary, for carrying out Orders at Sites occupied by vulnerable residents.

Article 20: Parent Company Guarantee

i. If requested by the Employer, contemporaneous with the execution of this Agreement, the Contractor shall deliver to the Employer a parent company guarantee executed and delivered by the Contractor's ultimate holding company in the form set out in Annex D hereto or other in another form agreed by Employer.

Article 21: Compliance with Anti-Slavery and Human Trafficking Laws and Policies

In performing its obligations under the agreement, the Contractor shall:

1. 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

2. have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and

3. 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

4. require that any subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statures, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

Article 22: TUPE provisions

In this Article:

"Data Protection Legislation" shall have the same meaning as set out in this Agreement at Article 12: Data Protection;

"Employee Liability Information" means the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

i. the identity and age of the employee;

ii. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

iii. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;

iv. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Contractor arising out of the employee's employment with the transferor;

v. information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE;

"Employment Liabilities" mean all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;

"Relevant Employees" mean those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Employer or a Replacement Supplier by virtue of the application of TUPE;

"Relevant Transfer" means a relevant transfer of the Services in accordance with Regulation 3 of TUPE;

"Replacement Services" means any services that are fundamentally the same as any of the Services and which the Employer receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Employer internally or by any Replacement Supplier;

"Replacement Supplier" means any third party supplier of Replacement Services appointed by the Employer from time to time;

"Service Transfer Date" means the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-Contractor to the Employer or any Replacement Supplier;

"Services" means the all the activities carried out by the Contractor or Sub-Contractor for the Employer in fulfilment of the Orders placed by the Employer.

"Staffing Information" means in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Employer may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;

"Sub-Contractor" means the contractors or suppliers engaged by the Contractor to provide goods, services or works to, for or on behalf of the Contractor for the purposes of providing the Services to the Employer;

"Supplier's Final Staff List" means the list of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

"Supplier's Provisional Staff List" means the list prepared and updated by the Contractor of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*), as amended.

1. TUPE: Employment exit provisions

i. This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Employer or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

ii. The Contractor shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Employer and at such times as required by TUPE, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Employer, including information as to the application of TUPE to the employees. The Contractor shall notify the Employer of any material changes to this information as and when they occur.

iii. At least twenty eight (28) days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-Contractor shall prepare and provide to the Employer and/or, at the direction of the Employer, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.

iv. The Employer shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as the Services (or any part of the Services).

v. The Contractor warrants to the Employer and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.

vi. The Contractor shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

vii. The Employer regards compliance with this Article 18 as fundamental to the Agreement. In particular, failure to comply with paragraph ii and paragraph iii of this Article 18 in respect of the provision of accurate information about the Relevant Employees shall entitle the Employer to suspend payment of sums due to the Contractor until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph vii shall not exceed an amount equivalent to the sums that would be payable in the three month period following the Contractor's failure to comply with paragraph ii or paragraph iii of this Article 18, as the case may be.

viii. Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Employer's prior written consent, unless such changes are required by law. The Contractor shall and shall procure that any Sub-contractor shall supply to the Employer full particulars of such proposed changes and the Employer shall be afforded reasonable time to consider them.

ix. In the six (6) months prior to termination of this Agreement, the Contractor shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Employer's prior written consent.

x. The Contractor shall indemnify and keep indemnified in full the Employer and each and every Replacement Supplier against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or
(b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

xi. The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

xii. The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph ii to paragraph xi of this Article 18, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Contractor or the Employer in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

xiii. Despite paragraph xii of this Article 18, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

CONTRACT PARTICULARS
Delete the Contract Particulars and insert the following:-

Clause etc	Subject	
1	Properties and description of the types of work	Servicing and maintenance of fire alarm and smoke vents systems, including but not limited to: • Contractor will be expected to fully liaise with the Citizen Customer Points or formerly known as Customer Service Points (C.S.P) for Housing Delivery with regard to information regarding the fire alarm and smoke vent installations in a particular area and fully inform the office concerned if an installation is likely to be out of service for more than a four hour period. This will include for the engineer to contact the relevant C.S.P. Office for Housing Delivery properties, advising them of the reason for the shutdown and the expected re-instatement time/date, this is an addition to advising the CR. The CR considers full liaison and communication between any interested parties and the Contractor to be a vital and essential role in the provision of these services. • The Contractor shall provide a planned preventative maintenance and safety check service in accordance with manufacturers' recommendations, Health and Safety, British Standards 5839, and all good working practices. • The Contractor will be requested to provide and undertake a full and comprehensive 24-hour breakdown and repair service. • The Contractor may be requested to extend the Contract and to include service to other properties, or equipment for which the Council is responsible, or other Housing Associations on a pro-rate cost basis. • The Contractor shall provide equipment and maintain sufficient telephone service by land line to be answered in person at depot(s) and office(s) location and shall provide one telephone number for receiving all calls and that shall not be a satellite connected phone.

		• The Contractor shall arrange for the receipt of telephone calls and immediate action at all times in conjunction with the Emergency Call Out Repair Service. • Repair or replace equipment covered by this maintenance contract, alarm panels, detectors, call points, door magnets, door closures, smoke vent panels, detectors, call points, actuators, etc.
1.1	List of properties in the Contract Area in respect of which Orders may be issued	Properties owned and/or managed by Bristol in the City of Bristol BS postcode region
1.2	Description of the types of work for which Orders may be issued	Orders may be issued requiring the Contractor to attend properties in the Contract Area for the purpose of installing Planned Programmed Maintenance (PPM) and Reactive Maintenance (RM) for Fire Alarm and Smoke Vent Systems: • The Contractor shall provide a planned preventative maintenance and safety check service in accordance with manufacturers' recommendations, Health and Safety, British Standards 5839, and all good working practices. • Repair or replace equipment covered by this maintenance contract, alarm panels, detectors, call points, door magnets, door closures, smoke vent panels, detectors, call points, actuators, etc.
2	Supplemental Provisions (Fifth Recital and Schedule)	
	Collaborative working	Supplemental Provision 1 applies
	Health and Safety	Supplemental Provision 2 applies
	Cost savings and value improvements	Supplemental Provision 3 applies
	Sustainable development and environmental considerations	Supplemental Provision 4 applies
	Performance Indicators and monitoring	Supplemental Provision 5 applies as amended
	Notification and negotiation of	Supplemental Provision 6 applies

	disputes	
	The respective nominees of the Parties are	Level One – for routine contract management issues: • the Employer's nominee is Ivan Parker (Electrical Project Engineer) • the Contractor's nominees are ……. Level Two – for significant operational issues and strategic contract management issues: • the Employer's nominee is Dean Kuras Electrical Project Engineer. • the Contractor's nominees are ……. Level Three – for major operational or major contract management issues: • the Employer's nominee is Craig Cook, Mechanical, Electrical and Heating Manager the Contractor's nominees are ……. or such replacement as each Party may notify to the other from time to time
3	Contract Period (Article 1 and Clause 7.1)	Subject to clause 7.1, the Contract Period will be three (3) years [*to be advised but expected to be 1st June 2020]*. On or before the expiry of the Contract Period the Employer may opt to extend the Contract Period by an additional 1 years subject always to • the approval of Bristol City Council's Craig Cook Mechanical, Electrical and Heating Manager. • the satisfactory performance of the Contractor in the Employer's opinion. The option to extend the Contract Period by an additional 1 year shall apply providing always that the total duration of the Contract Period including extensions is no greater than 5 years.
4	Arbitration (Article 7)	Article 7 and Clauses 9.3 to 9.8 (Arbitration) do not apply
5	BIM Protocol (Clause 1.1)	There is no BIM Protocol
6	Orders – minimum and maximum	**Minimum value** of any one Order to be issued per

	value (Clause 2.4)	property for: • £30 (thirty pounders) per property. **Maximum value** of any one Order to be issued per property for: • £10,000 (then thousand pound) per property.
7	Orders – value of work to be carried out (Clause 2.5)	The approximate anticipated value of work to be carried out annually including extension period shall be £95,000 (ninety thousand pounds)
8	Orders – priority coding (Clause 2.6)	**Priority A - Emergency response within 4 hours**. Contractor will be expected to fully liaise with the Citizen Customer Points or formerly known as Customer Service Points (C.S.P) for Housing Delivery with regard to information regarding the fire alarm and smoke vent installations in a particular area and fully inform the office concerned if an installation is likely to be out of service for more than a four hour period. This will include for the engineer to contact the relevant C.S.P. Office for Housing Delivery properties, advising them of the reason for the shutdown and the expected re-instatement time/date, this is an addition to advising the CR. The CR considers full liaison and communication between any interested parties and the Contractor to be a vital and essential role in the provision of these services.
9	Construction Industry Scheme (CIS) (Clause 4.2)	The Employer at the commencement of the Contract Period is a 'contractor' for the purposes of the CIS.
10	Payments (Clauses 4.3, 4.4 and 4.5)	No progress payments.
11	Responsibility for measurement and valuation (Clause 5.2)	The Employer shall measure and value all Orders.
12	Schedule of Rates (Clauses 5.3,	

	5.6.1 and 5.6.2)	
12.1	The Schedule of Rates	The Schedule of Rates is: Bristol City Council's schedule of rates, which is set out in Annex B. The rates in the Schedule of Rates are subject to adjustment by the [addition/deduction] of the Adjustment Percentage, which is [per cent (%)].
12.3	Rates – Fluctuations	Clause 5.6.1 does not apply.
12.4	Basis and dates of revision	Clause 5.6.1 does not apply.
13	Daywork (Clauses 5.4, 5.6.3 and 5.6.4)	Does not apply
13.1	Valuations – percentage additions	Does not apply
13.2	Revision of Schedule of Hourly Charges	Clause 5.6.3 does not apply.
14	Overtime work (Clause 5.7)	Clause 5.7 is deleted.
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	£5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of one event
15.2	Percentage to cover professional fees	Fifteen per cent (15%)
15.3	Insurance of existing structures – clause 6.7A.1	Clause 6.7A.1 is deleted
15.4	Insurance of work or supply comprised in Orders – clause 6.7B	Clause 6.7B 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)	[ ]
15.6	Terrorism Cover – details of the cover required	Not required Clause 6.11, Terrorism Cover, policy extensions and premiums, does not apply Clause 6.12. Terrorism Cover – non-availability – Employer's options, does not apply
16	Break Provisions – Employer or Contractor (Clause 7.1)	The period of notice is 13 weeks.

17	Settlement of Disputes (Clauses 9.2, 9.3 and 9.4.1)	
	Adjudication	The Adjudicator is to be nominated by the Technology and Construction Solicitors' Association (TeSCA)
	Arbitration	Arbitration Clauses 9.2 – 9.8 do not apply.

SCHEDULE OF AMENDMENTS TO THE CONDITIONS AND SCHEDULES OF THE JCT MEASURED TERM CONTRACT 2016

CONDITIONS

Sections

	Contractor's obligations
2.1	Re-number clause 2.1 to read "2.1.1". Insert new clause 2.1.2 2.1.2 The Contractor shall carry out any services described in an Order using reasonable skill, care and diligence. Such services may include the selection of specifications for the kinds and standards of materials, goods and workmanship to be used in the carrying out of an Order.
	Materials, goods and workmanship
2.2.4	In the final paragraph of clause 2.2.4 after the words "and for the purposes of this Contract" delete the remainder of the paragraph and substitute: "shall ensure all Contractor's Persons are registered cardholders for their trade or discipline under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognized qualification scheme."
	Consents and accreditations
2.13	Insert new clause 2.13 2.13.1 The Contractor shall obtain all licences, consents and authorities necessary for the carrying out of each Order. 2.13.2 The Contractor shall maintain Safe Contractor accreditation for the duration of the Contract Period. 2.13.3 The Contractor shall inform the Employer as soon as reasonably practicable if its Safe Contractor accreditation is not renewed, or the accrediting body withdraws, limits or restricts such accreditation. 2.13.4 For the purposes of this Contract the Contractor shall ensure Contractor's Persons hold the following accreditations where such accreditations are relevant to the Contractor's Persons' trade or discipline: • CSCS card (construction skill certification scheme) or an equivalent recognized qualification scheme,

	• Associations BAFE • NSI Security Gold. • NICEIC • ISO 9001 accreditation
	Publicity
2.14	Insert new clause 2.14 2.14.1 The Contractor shall not do anything, or permit anything to be done, which could damage the reputation of the Employer, or bring the Employer into disrepute. 2.14.2 The Contractor shall submit to the Contract Administrator for approval any documentation or notices that the Contractor intends to issue or use in connection with carrying out any Order. 2.14.3 The Contractor shall submit to the Contract Administrator for approval before publication proofs of any information, promotional literature, press release or other material to be published using any format on any type of media. Such obligation to submit proofs shall not apply to disclosures or announcements required by law, providing always that in such circumstances the Contractor shall use all reasonable endeavours to consult the Contract Administrator regarding the wording of such disclosure or announcement. 2.14.4 Any logo adopted by the Contractor shall not be displayed on uniforms worn by, or vehicles driven by, his employees, agents or sub-contractors whilst they carry out Orders under this contract unless and until the Contractor has obtained the prior written approval of the Contract Administrator to the displaying of such logo. 2.14.5 The Contractor shall ensure that any sub-contractor it appoints complies with this clause 2.14.
	Complaints
	Insert new clause 2.16 2.16 The Contractor shall maintain a policy and handling procedure for complaints received from residents in occupation of a Site. At monthly intervals throughout the Contract Period the Contractor shall provide the Employer with details of the nature and number of complaints handled.
	Sub-contracting
3.2	At the end of clause 3.2 insert new sub-clauses 3.2.1, 3.2.2 and 3.2.3: 3.2.1 The Contractor's employees, agents and sub-contractors shall carry and display a valid identity card (issued by the Contractor in accordance with Article 19: safeguarding). Such identity card shall confirm the identities of the individual and their employer. 3.2.2 The final date for payment of an interim payment under a sub-contract shall be no later than 28 days from its due date, and the final date for payment of the final payment under a sub-contract shall be no later than 28 days from its due date. 3.2.3 As and when reasonably requested to do so by the Employer, the Contractor shall produce for inspection documentary evidence that its sub-contractors are

	receiving payment by the final dates for payment pursuant to sub-clause 3.2.2.
	Access to the Site
3.4	Delete clause 3.4.2 and substitute: "3.4.2 If the Contractor is unable to gain access to the Site in accordance with the Contract Administrator's instructions or, having been granted access to an occupied Site, cannot reasonably carry out the Order by reason of the Contract Administrator's or occupier's non-compliance with clause 3.4.1, he shall not be entitled to payment for the time necessarily spent unproductively by the Contractor in consequence." Insert new sub-clause 3.4.4 "3.4.4 The Contractor acknowledges that it has no right to occupy the Site. The Contractor shall ensure that the Site shall only be accessed and used by its employees, agents and sub-contractors for the purpose of carrying out an Order."
	Exclusion from the Site
3.7	At the end of clause 3.7 insert: The Contractor shall submit to the Contract Administrator for approval the names of, and relevant experience details for, all personnel that the Contractor appoints to carry out Orders. Such approval shall not be unreasonably withheld or delayed.
	Site inspections
3.11	Insert new heading "**Site Inspections**" and new clause 3.11 "3.11 The Contract Administrator, or such other person as the Employer shall appoint from time to time, may inspect the Site and carry out searches and security checks without prior notice. The Contractor shall require the Contractor's Persons to cooperate with the Contract Administrator and permit such checks and searches to be carried out."
	Progress payments
4.3.4	Insert new sub-clause 4.3.4 "4.3.4 Pursuant to Supplemental Provision 5 and the performance breaches point system set out in the Schedule of Rates, the Employer has the right to deduct a sum from payment of the amount due to the Contractor in respect of a completed Order. The amount that the Employer is entitled to deduct shall be determined in accordance with the performance breaches points system. For the avoidance of doubt, the Employer may make such deduction from the payment of an amount due to the Contractor in respect of any completed Order.
	Final payment where the Contractor measures and values Orders
4.5.3	In the first line of sub-clause 4.5.3 delete "56 days" and substitute "30 days".
	Payments – final date and amount
4.6.1	In sub-clause 4.6.1 delete "14 days" and substitute "28 days".

4.8	Insert new heading "**Invoices**" and new clause 4.8: "4.8 The Contractor shall implement an electronic system for submitting invoices to the Employer, and receiving payments from the Employer by BACS.
	Overtime work
5.7	Delete clause 5.7.
	Contractor's insurance of his liability
6.4.1.1	Delete sub-clause 6.4.1.1 and substitute: In respect of claims for personal injury or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall be in a sum of not less than ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of one event; and
	Joint Names Insurance or work or supply comprised in Order and existing structures by the Employer
6.7A	Clause 6.7A is deleted.
	Notification by Contractor of occupation and use
6.9	Delete clause 6.9 and substitute: Where clause 6.7B applies, the Contractor shall before commencing to carry out the first Order under this Contract notify the insurer of the Joint Names Policy to which clause 6.7B refers that third party residential owners and occupiers may have occupation and use of any property in respect of which Orders may be issued, and shall obtain the agreement of the insurer that any exclusion in the policy relating to such occupation and use shall not apply.
	Default by Contractor
8.4.4	Insert new sub-clause 8.4.4 "8.4.4 If the Contractor persistently fails to achieve the targets stated the breach point system , such persistent failure will be deemed to be a material breach, and the Employer may, by notice to the Contractor, terminate the Contractor's employment under this Contract."
8.4.5	Insert new sub- clause 8.4.5 "8.4.5.1 If there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010 the Employer shall be entitled to terminate the Contractor's employment under this Contract. 8.4.5.2 Notwithstanding the Employer's right to terminate this Contract under 8.4.5.1 if there is a change of control, the Employer at its sole discretion may agree to such a change of control subject to the delivery of a Parent Company Guarantee from the ultimate parent company of the replacement company in a form acceptable to the Employer. 8.4.5.3 The Contractor shall give written notice to the Employer of such a change of control."

	Termination by Employer – valuation, certificate and payment
8.10	Delete the first line of clause 8.10 and substitute: "If the Contractor's employment is terminated under Clause 8.4, 8.5, 8.6, Article 9 or Article 13:"
Schedules	
Fifth Recital	**Supplemental Provisions**
	Health and safety
Para 2	At the end of paragraph 2 insert new sub-clause: .3 The Contractor undertakes to ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive asbestos awareness training (as part of the health and safety induction training referred to in paragraph 2.2.2) to satisfy the requirements of regulation 10 of the Control of Asbestos Regulations 2012 and the related approved code of practice (L143 managing and working with asbestos).
	Performance Indicators and monitoring
Para 5	Delete paragraph 5 of the Supplemental Provisions and substitute: 5.1 The Employer shall regularly monitor and review the Contractor's performance by reference to the performance indicators and targets stated in the Schedule of Rates. 5.2 The initial performance review by the Employer shall take place no later than one month after the start of the Contract Period. Subsequent performance reviews shall take place at intervals of one month. 5.3 On a monthly basis the Contractor shall provide information to the Employer on an open book basis, as the Employer may reasonably require, that demonstrates progress against the performance indicators and targets stated in the Schedule of Rates. 5.4 If the Contractor fails to achieve the targets stated in the Schedule of Rates, the Employer may give the Contractor a notice specifying any performance failures. Within ten (10) Business Days of the date of issue of such notice, the Contractor shall submit proposals to the Employer for rectification of the performance failures, which shall include details of how the Contractor proposes to avoid the re-occurrence of such performance failures. 5.5 The Contract Administrator (Ivan Parker)(Projects Manager) (and any other person or representative involved in the delivery and management of the works and who has appointed by the Employer to attend) and the Contractor's [*insert name of the Contractor's Representatives*] shall attend meetings on a monthly basis to review the Contractor's performance and, if necessary, to consider the proposals for rectification of the performance failures, and agree a remedial plan

	with timescales for the plan to be implemented. 5.6 The Contractor shall implement all remedial plans without delay. 5.7 If a notice is issued pursuant to paragraph 5.4, the Employer shall review the Contractor's performance on a monthly basis from the date of the relevant notice until such performance improves to a level considered in the Employer's opinion to be satisfactory. 5.8 Pursuant to clause 4.3.4 the Employer may deduct sums from payment of amounts due to the Contractor, and the sums deducted shall be determined in accordance with the performance breaches point system set out in the Schedule of Rates. 5.9 Pursuant to clause 8.4.4 the Employer may, by notice to the Contractor, terminate the Contractor's employment under this Contract if the Contractor persistently fails to achieve the targets stated in the Schedule of Rates.

Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

Execution under hand

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

Execution as a Deed

If this Agreement is to be executed as a deed, each party should use the relevant from marked 'execution as a Deed' in accordance with the noted provided.

Other forms of Attestation

Execution under hand

As witness

Signed by or on behalf of
The Employer _____

In the presence of: _____
witness' signature

_____
witness' signature

_____
witness signature

_____

Signed for and on behalf of
the Contractor _____

in the presence of: _____
witness' signature

_____
witness' name

_____
witness' address

_____

Notes on Execution as a Deed

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

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

   (A) through signature by a Director and the Company Secretary or by two Directors:

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

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

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

3. Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two D or of the Director and Company Secretary. Who are to sign.

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

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

6 Where the Employer and Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness.

Executed as a Deed by the Employer

Namely 1 _____

(A) acting by a Director and the Company Secretary/two Directors **of the company**

_____ and _____
(Print name of signatory)

_____ _____
Signature Director Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate**

In the presence of

_____
Signature Company Secretary/Director

[Common seal of company]

_____
Signature Company Secretary/Director

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

_____
Signature Director

In the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

_____
Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

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

Executed as a Deed by the Contractor

namely [1] _____

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

_____ and _____

(Print name of signatory) (Print name of signatory)

_____ _____

Signature Director Signature Company Secretary/Director

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

in the presence

_____

Signature Director

_____

Signature *Company Secretary/Director*

[Common seal of company]

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

_____

Signature Director

In the presence of

Witness's *signature* _____ (*Print name*) _____

Witness' *address* _____

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

In the presence of

Witness's *signature* _____ (Print name) _____

Witness' *address* _____

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

Annex A – Undertakings
(Article 17)
[to be annexed when known]

Annex B – Schedule of Rates
[to be annexed when known]

Breach Point System

[insert if using]

Annex C – Contractor's Safety Policy

[*see fourth recital - safety policy to be annexed when received*]

Annex D
Form of Parent Company Guarantee (Article 20)

Form of Parent Company Guarantee from Contractor's Parent Company

Planned Programmed Maintenance (PPM) and Reactive Maintenance (RM) for Fire Alarm and Smoke Vent Systems

DATED

PARENT COMPANY GUARANTEE

relating to the

between

[……..]

and

THE CITY COUNCIL OF BRISTOL

Contents

Clause

1. Interpretation
2. Guarantee and indemnity
3. Amendments to the Contract
4. Employer does not have to pursue Contractor
5. Insolvency of Contractor
6. Priority of claims against the Contractor
7. Limit of liability
8. Assignment
9. Notices
10. Third party rights
11. Governing law and jurisdiction

THIS DEED is dated

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Guarantor)**

(2) **THE CITY COUNCIL OF BRISTOL** whose principal place of business is at City Hall, College Green, Bristol BS1 5TR (**Employer)**

BACKGROUND

(A) By an agreement in writing (**Contract**) dated [ ] and made between the Employer and [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Contractor**), the Contractor agreed to for the provision of Planned Programme Maintenance (PPM) and Reactive Maintenance (RM) for Fire Alarms and Smoke Vents in properties owned and/or managed by Bristol City Council in the Bristol postcode region.

(B) The Guarantor (the ultimate parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties and obligations under the Contract**.**

AGREED TERMS

1. **Interpretation**

1.1 The definitions and rules of interpretation in this clause and the background apply in this deed.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

Insolvency Event: a person suffers an insolvency event if it:

a) stops or suspends payment of any of its debts, or is unable to (or admits inability to) pay its debts as they fall due; or

b) begins negotiations (because of actual or anticipated financial difficulties) with, or enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or

c) suffers any of the following events:

(i) a moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganisation (as a voluntary arrangement, scheme of arrangement or otherwise), petition for bankruptcy, composition, compromise, assignment or arrangement with any creditor; or

(ii) any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of that person or any of its assets; or

(iii) any event occurs in relation to that person that is analogous to the events listed in this definition.

If a person carries out a solvent, voluntary winding up that is solely for the purpose of reconstruction or amalgamation, that person does not suffer an Insolvency Event.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.

1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.11 A reference to **writing** or **written** does not include faxes or e-mail.

1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.

1.13 References to clauses are to the clauses of this deed.

1.14 Where the words **include(s)**, **including** or **in particular** are used in this deed, they are deemed to have the words "without limitation" following them.

2. **Guarantee and Indemnity**

2.1 The Guarantor guarantees the due and punctual performance by the Contractor of the Contractor's duties and obligations to the Employer under the Contract.

2.2 If the Contractor fails to observe or perform any of its duties or obligations to the Employer under the Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such failure or non-payment and shall, on first written demand, pay to the Employer, without any deduction or set off, the amount of that loss, debt, damage, interest, cost and expense.

2.3 If the Contractor suffers an Insolvency Event, or if the Employer terminates the Contractor's employment under Article 9, Article 13, clause 8.4, clause 8.5 or clause 8.6 of the Contract , the Guarantor shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such termination and shall, on first written demand, pay to the Employer, without any deduction or set off, the amount of that loss, debt, damage, interest, cost and expense.

3. **Amendments to the Contract**

The Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:

a) any such modification, amendment or supplement; or

b) any unenforceability, illegality or invalidity of any of the provision of the Contract that arises by reason of the Contractor's breach of the Contract, or

c) any avoidance or termination of the Contract that arises by reason of the Contractor suffering an Insolvency Event or the Contractor's breach of the Contract, or

d) any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor (the terms of this deed shall apply to the terms of any such compromise as they apply to the Contract).

4. **Employer does not have to pursue Contractor**

The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

5. **Insolvency of Contractor**

Without affecting clause 2.3, if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

6. **Priority of claims against the Contractor**

As long as any liability incurred by the Contractor to the Employer guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

7. **Limit of liability**

Notwithstanding any other provisions of this deed, the obligations and liability of the Guarantor under this deed shall be no greater than the obligations and liability of the Contractor under the Contract. The Employer may not recover any more under this deed in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter. The Guarantor shall be entitled to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability, save any counterclaim, as the Contractor would have against the Employer under the Contract. The Employer may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

8. **Assignment**

8.1 The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Contract.

8.2 The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Employer's written consent.

8.3 The Employer shall notify the Guarantor of any assignment. If the Employer fails to do this, the assignment shall still be valid.

8.4 The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.

9. **Notices**

9.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier to each party required to receive the notice or communication at its address:

(a) [GUARANTOR]: [CONTACT] [ADDRESS]; and

(b) BRISTOL CITY COUNCIL: Director of Legal Services, City Hall, College Green, Bristol BS1 5TR,

or as otherwise specified by the relevant party by notice in writing to each other party.

9.2 Any notice or other communication shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the person referred to in this clause; or

(b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

(c) if delivered by commercial courier, on the date, and at the time, that the courier's delivery receipt is signed.

9.3 A notice or other communication required to be given under this deed shall not be validly given if sent by e-mail.

9.4 This clause 9 shall not apply to the service of any proceedings or other documents in any legal action.

10. **Third party rights**

A person who is not a party to this deed shall not have any rights under or in connection with it.

11. **Governing law and jurisdiction**

11.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

11.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a DEED by the **Guarantor**

acting by [print name of first director]_____

and [print name of second director / company secretary]_____

.....

Director

.....

Director/Secretary

Executed as a DEED by **THE CITY COUNCIL OF BRISTOL**
by affixing hereto the common seal of
The City Council of Bristol in the presence of

.....
Signature of duly authorised officer

.....
Print name of officer

Annex F

Data Protection Processing, Personal Data and Data Subjects

[A*t Contract award details of the types of personal data, the categories of data subject, the scope, nature, purpose and duration of data processing will be inserted into this Annex F.*]

1. Processing by the Contractor

    (a) Subject matter

    (b) Nature and purpose of processing

    (c) Duration of the processing

2. Types of personal data

3. Categories of data subject