

**AMENDMENTS FOR USE WITH  
JCT MINOR WORKS BUILDING CONTRACT 2016**



*SHARPE PRITCHARD*

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## Conditions

THIS CONTRACT SHALL INCORPORATE ALL THE PROVISIONS OF THE JOINT CONTRACTS MINOR WORKS BUILDING CONTRACT 2016 AS AMENDED BY THE FOLLOWING AMENDMENTS:

### SECTION 1: DEFINITIONS AND INTERPRETATION

#### 1.1 Amend clause 1.1 as follows:

**In** the definition of “Conditions”, **insert** the following after the words “sections 1 to 7”: “as amended by the schedule of amendments attached to the Agreement”

**Insert** new definition of “Confidential Information” as follows: “information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.”

**Insert** new definition of “Contractor” as follows: “the person named as Contractor in the **Agreement**.”

**Insert** new definition of “Employer” as follows: “the person named as Employer in the **Agreement** and its successors in title and assigns”

**Insert** new definition of “Employer’s Policies”: “the policies referred to in the tender documentation [and set out in Schedule [ ] hereto].”

**Insert** new definition of “EIR” as follows: “the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relative Government department in relation to such regulations.”

**Insert** new definition of “Equalities Legislation” as follows: “all Legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or any preceding, successor or amending Legislation concerning the same.”

**Insert** new definition of “FOIA” as follows: “the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to that Act.”

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**Insert** new definition of “FOIA Code” as follows: “the Department of Constitutional Affairs Code of Practice on the Discharge of functions of Public Authorities under Part I FOIA or any replacement or revision of that Code.”

**Insert** new definition of “Group Company” as follows: “any subsidiary or holding company of the Contractor or another subsidiary or holding company of such company, as ‘subsidiary’ and ‘holding company’ are defined in s1159 of the Companies Act 2006.”

**Insert** new definition of “Information” as follows: “information as defined in Section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the Contractor, or any sub-contractor, of the Works.”

**In** the definition of “Interest Rate”, **replace** “5%” with “2%”

**Insert** new definition of “Practical Completion” as follows: “in all respects the Contractor has completed all its obligations in relation to the Works and the design including (without limitation):

- a) the Works have been completed in accordance with the Contract and are free from apparent defects subject only to minor defects which do not affect or impair the use, enjoyment, occupation and fitting out of the Works by the Employer. Such minor items shall be deemed for the purposes of clause 2.10 to be defects appearing within the Rectification Period; and
- b) all records and documents in relation to the Works have been provided.”

**Insert** new definition of “Request for Information (or “Request”) as follows: “a request for Information within the meaning given in Section 1 of the FOIA or any request for Information under the EIR.”

**Insert** new definition of “Subordinate Legislation” as follows: “the meaning given in Section 84 of the FOIA.”

**Insert** new definition of “Working Day” as follows: “the meaning given in Section 10 of the FOIA.”

## **SECTION 2: CARRYING OUT THE WORKS**

**Insert** new clauses 2.1A as follows:

- “2.1A.1 The Contractor acknowledges that, in order to be compliant with the FOIA and the EIR, the Employer may be obliged, on request, to provide or consider the provisions of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 2.1A, the Contractor shall assist and co-operate with the Employer (at the Contractor's

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- expense) to facilitate the Employer's compliance with the FOIA and/or EIR in that regard.
- 2.1A.2 The Contractor shall:
- (i) transfer any Request for Information that it or its sub-contractors receive, to the Employer as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and
  - (ii) provide the Employer with a copy of all Information in its or its sub-contractors possession or power that the Employer reasonably considers is relevant to the Request in the form that the Employer requires as soon as practicable and in any event within 5 Working Days of the Employer requesting that Information and any follow up Information required by the Employer thereafter within 2 Working Days of the Employer's follow up request.
- 2.1A.3 The Contractor acknowledges that the Employer may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:
- (i) in certain circumstances without consulting the Contractor, or
  - (ii) following consultation with the Contractor and having taken the Contractor's views into account;
- provided always that where clause 2.1A.3 applies, the Employer shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.
- 2.1A.4 Subject to the Employer complying with its obligations under this clause 2.1A, the Employer shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor or any sub-contractor arising from the disclosure of any Information whether or not such Information is Confidential Information falling within the scope of the FOIA or EIR.
- 2.1A.5 The Contractor shall indemnify the Employer against all claims, demands, actions, costs proceedings and liabilities that the Employer incurs due to the Contractor's or any sub-contractor's breach of this clause 2.1A.
- 2.1A.6 The Contractor shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 2.1A such that the Employer has the same rights against a sub-contractor as it does against the Contractor under this clause 2.1A.
- 2.1A.7 The Contractor shall comply with the Employer's Policies."
- 2.1.4 **Insert** new clause 2.1.4 as follows:
- "The Contractor warrants that it has used and shall continue to use the standard of skill, care and diligence required of a contractor carrying out similar works to the
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- Works to see that there are not used or specified in the Works any materials which by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations contained in the publication "Good Practice in Selection of Construction Materials 2011" (British Council for Offices)."
- 2.5.1 **Insert** in line 1 after the word "Requirements" the words: "which could not reasonably have been foreseen by the Contractor at the date of tender".
- 2.7 **Insert** at the end of the clause the words: "The Contractor shall not be entitled to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or any agent, employee or other person engaged by the Contractor."
- 2.11A **Insert** new clause 2.11A as follows:
- "2.11A In cases of urgency the Employer may require any matter to be notified under clause 2.11 to be made good within such period of time as specified within the Employer's Requirements, where not specified in the Employer's Requirements the Employer shall specify the period of time as the circumstances require."
- 2.13 **Insert** new clause as follows:
- "2.13.1 Copyright in the Contractor's Design Documents shall remain vested in the Contractor. The Contractor hereby grants to the Employer an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs contained in them for any purpose whatsoever relating to the Works. The Employer shall be entitled to grant sub-licences in relation to the Contractor's Design Documents.
- 2.13.2 To the extent that the copyright in any of the Contractor's Design Documents is not vested in the Contractor, it shall procure in favour of the Employer a licence in terms equivalent to clause 2.13.1 from the owner of such copyright.
- 2.13.3 The Contractor warrants that the Contractor's Design Documents are the Contractor's original work and the use and reproduction of the Contractor's Design Documents will not infringe the rights of any third party. The Contractor will indemnify the Employer for any losses that the Employer may suffer as a result of the Contractor breach of its obligations under this clause."
- 2.14 **Insert** new clause as follows:
- "The Contractor shall, within 14 days of the Employer's request, procure a product guarantee in favour of the Employer on terms acceptable to the Employer from the parties responsible for each of the following works [roofing, flooring, windows etc]."
- 2.15 **Insert** new clause as follows:
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“The Employer may by notice to the Contractor require that the Contractor within 21 days from receipt of the Employer’s notice procure a collateral warranty from any of the Contractor’s sub-contractors in favour of such parties as the Employer may specify, such warranty to be in the form set out in Schedule D.”

### **SECTION 3: CONTROL OF THE WORKS**

3.1 **Delete** and insert new clause as follows:

“The Employer may without the consent of the Contractor, assign, charge or transfer the benefit of all or any of his rights arising under or out of this Contract. The Contractor shall not, without the prior written consent of the Employer, assign, charge or transfer the benefit of all or any of his rights under this Contract to any person”.

3.3.1 **Insert** at the end of the clause, insert the following sentence:

“Forthwith upon the Employer’s request, the Contractor shall deliver to the Employer a certified copy of the relevant sub-contract executed by the subcontractor.”

3.3A.1 **Insert** new clause 3.3A.1 as follows:

“The Contractor shall ensure that all sub-contracts contain a provision requiring

.1 the Contractor to pay any sums which are due from it to a sub-contractor within 30 days from the date of a valid and undisputed invoice;

.2 the Contractor to consider and verify any invoices for payment submitted by a sub-contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and

.3 the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 3.3A.1.”

3.3A.2 **Insert** new clause 3.4A.2 as follows:

“Clause 3.3A.1 is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause.”

### **SECTION 4: PAYMENT**

4.3 **Delete** “14 days” and substitute “30 days” in the final sentence.

4.5.4 **Delete** “5 days” and replace with “the day” in line 1.

4.8.3 **Delete** “14 days” and substitute “30 days”.

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## SECTION 5: INJURY, DAMAGE AND INSURANCE

- 5.1 **Insert** after “Works” the words: “or in the performance of the Contractor’s other obligations under Clause 2.10,”
- 5.2 **Insert** after the use of the word “Works” throughout clause 5.2: “or in the performance of the Contractor’s other obligations under Clause 2.10,”
- 5.1A **Insert** new clause 5.3A as follows:
- “The Contractor warrants that it has in effect and shall maintain for a period of 12 years from the date of practical completion of the Works professional indemnity insurance with a limit of indemnity of not less than £[ ] in respect of each and every claim, provided always that such insurance is available at reasonable commercial rates.”

## SECTION 6: TERMINATION

- 6.4.3 **Insert** new clause 6.4.3 as follows:
- “In the event that any of the grounds listed in Regulation 73(1) (a) and (c) of the Public Contracts Regulations 2015 apply to this Contract, or in the event that the ground in Regulation 73(1) (b) of the Public Contracts Regulations 2015 applies to the Contractor, the Employer may terminate this Contract by giving the Contractor seven (7) days’ prior written notice of such termination.”
- 6.5.1 **Insert** the words “or Group Company” after the word “Contractor” in line 1.
- 6.6A **Insert** new clause 6.6A as follows:
- “The Employer shall be entitled by notice to the Contractor to terminate the Contractor’s employment under this or any other contract with the Employer if the Contractor is in breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (the “Blacklists Regulations”).”
- 6.7 In line 1 after the “6.6”, **insert** the word “or 6.6A”.
- 6.7.3 **Insert** at the end of the clause the following words:
- “provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this clause 6.7.3, the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract”.
- 6.8.3 **Delete** “7 days” and “7 day” and **replace** with “30 days” and “30 day”.
- 6.9A **Insert** new clause as follows: “The Employer may terminate this Contract by giving the Contractor 7 days’ written notice of such termination.”
- 6.11 **Insert** after “6.10” the words “or 6.9A”.

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6.11.5 **Insert** new clause 6.11.5 as follows:

“Upon determination of this Contract or the Contractor’s employment under it, and notwithstanding that the validity thereof may be disputed by the Contractor, the Contractor shall vacate the site and shall immediately deliver to the Employer the Works in a secure and safe condition.”

## **SECTION 7: SETTLEMENT OF DISPUTES**

7.2A **Insert** new clause 7.2A as follows:

“The Adjudicator shall have the power to determine more than one dispute under this Contract at the same time and/or adjudicate at the same time on related disputes under this Contract and any other contract with any person relating to the development comprising the Works, and if requested to do so by either party, shall determine any matter raised by such party in the nature of set-off, abatement or counter-claim at the same time as he determines any other matter referred to him.”

7.3 **Delete** this clause and insert “Arbitration shall not apply”.

## **SECTIONS 8 TO 16: SPECIAL CONDITIONS**

INSERT SECTIONS 8 TO 16

### **“SECTION 8: EQUAL OPPORTUNITIES**

- 8.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (“the Act”) in relation to any of the protected characteristics set out in the Act in connection with its employment practices. The Contractor shall adopt policies in relation to its statutory obligations in respect of these matters and shall supply copies to the Employer on request.
- 8.2 The Contractor shall take all reasonable steps to secure the observance of clause 8.1 by all the Contractor’s Persons.
- 8.3 The Contractor shall at the request of the Employer monitor the representation among the Contractor’s Persons of persons having one of the different protected characteristics set out in the Act, having regard to the Employer’s own procedures for monitoring representation among its own employees. This shall be at no additional cost to the Employer.
- 8.4 Where the Works are still being performed by the Contractor at the end of the financial year during which the Date of Possession falls and annually thereafter, shall at the request of the Employer submit an annual report to the Employer demonstrating its compliance with this clause 8 and shall provide such additional information as the Employer may reasonably require for the purpose of assessing the Contractor’s compliance with this clause 8. This shall be at no additional cost to the Employer.



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- 8.5 Where it appears to the Contractor in relation to particular work of the Contractor's persons, either that the Contractor's Persons includes no members having one of the different protected characteristics set out in the Act or that members having one of the different protected characteristics set out in the Act are under-represented amongst Contractor's Persons doing that work compared to their representation in the Contractor's Persons as a whole or in the population from which Contractor's Persons are normally recruited, the Contractor will undertake the following actions as may be appropriate and reasonably practicable:
- (a) the placing and use of job advertisements to reach members having one of the different protected characteristics set out in the Act and to encourage their applications;
  - (b) the use of employment agencies and careers offices in areas where members having one of the different protected characteristics set out in the Act live and work;
  - (c) the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members having one of the different protected characteristics set out in the Act; and
  - (d) provision of appropriate training and the encouragement of members of Contractor's Persons from such groups having one of the different protected characteristics set out in the Act to apply for promotion or transfer to do work in which such groups are under-represented.
- 8.6 Where in connection with this Contract the Contractor, its agents or sub-contractors, or the Contractor's Persons are required to carry out work on the Employer's premises or alongside the Employer's employees on any other premises, the Contractor shall comply with the Employer's own employment policy and codes of practice relating to racial discrimination and equal opportunities, copies of which are available from the Employer on request.
- 8.7 The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.
- 8.8 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Contract being in contravention of the Act, the Contractor shall, free of charge:
- 8.8.1 provide any information requested in the timescale allotted;
  - 8.8.2 attend any meetings as required and permit Contractor's Persons to attend;
  - 8.8.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
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- 8.8.4 allow itself any Contractor's Persons to appear as witness in any ensuing proceedings; and
- 8.8.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 8.9 Where any investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub- contractors, or the Contractor's Persons, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Employer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Employer may have been ordered or required to pay to a third party.
- 8.10 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this clause 8.

## **SECTION 9: HEALTH AND SAFETY**

- 9.1 The Contractor shall provide its general statement of safety policy (having regard to the Employer's General Health and Safety Policy), which shall be submitted to the Employer with the Contractor's tender. The Contractor shall prior to the Date of Possession inform the Employer of the name of the person to be responsible for health and safety matters. Whilst on premises owned or occupied by the Employer, the Contractor shall ensure that its employees comply with the Employer's General Health and Safety Policy and with the lawful requirements of the Employer's Health and Safety Officer.
- 9.2 Without prejudice to the Employers rights under clause 3.9 clause of the Employer's Health and Safety Officer shall be empowered to suspend the Works or any part of them in the event of non-compliance by the Contractor with this clause 9 in the performance of the Works. The Contractor shall not resume performance of the Works or such part of them until the Employer's Health and Safety Officer is satisfied that the non- compliance has been rectified. The Contractor shall not be entitled to any extension of time for performing the Works nor to claim for any direct loss and/or expense in relation to the period of suspension under this clause 9.
- 9.3 In addition to the Contractor's obligations in connection with the Health and Safety Plan for the Works etc. the Contractor shall:-
- 9.3.1 inform the Employer's Health and Safety Officer as soon as it becomes aware of any prosecution or pending or likely prosecution of the Contractor for any offence pertaining to the health and safety of its employees or of other persons or of any conviction on such prosecution, and shall provide the Employer's Health and Safety Officer with such further information and documents as the Employer's Health and Safety Officer may require; and

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- 9.3.2 permit the Employer's Health and Safety Officer for the time being or any officer nominated by him for the purpose to enter and inspect without prior notice at any reasonable time any premises, equipment or materials used, in the process of being used or proposed to be used, by the Contractor in the performance of the Works. The Contractor shall co-operate with the Employer's Health and Safety Officer and any such nominated officers, and permit them to test, take measurements, samples and photographs of any premises, equipment or materials used, in the process of being used or proposed to be used, by the Contractor and persons working in or about the performance of the Works.

#### **SECTION 10: AUDIT**

- 10.1 For the purpose of conducting any audit investigation of the Contract, the Contractor shall throughout the duration of the Works under the Contract and for a period of twelve months thereafter provide all facilities and allow full access to the Employer or its auditors to:
- 10.1.1 all offices and premises of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Works;
  - 10.1.2 all technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Works; and
  - 10.1.3 interview the Contractor's Persons and officers.
- 10.2 The Contractor shall by a term in any authorised sub-contract secure a similar right of access for the Employer and its auditors for the purpose of conducting any audit investigation of the Contract.

#### **SECTION 11: FAILURE TO PROVIDE PERFORMANCE BOND AND/OR PARENT COMPANY GUARANTEE**

NOT USED.

#### **SECTION 12: FLY TIPPING AND CLEANING VEHICLES**

- 12.1 Without prejudice to the Contractor's obligations as set out in the preliminaries, the Contractor shall ensure that no earth soil rubble rubbish or other waste matter ("Material") removed from the site of the Works by or on behalf of the Contractor is deposited dumped or fly tipped in the London Borough of Brent or any other borough except in the case of lawful disposal with the prior written consent of the Architect/Contract Administrator.
- 12.2 The Contractor shall ensure that all loads removed from the said site are disposed through authorised tips and shall make his employees, sub-contractors and others acting on his behalf fully aware that unauthorised depositing dumping or fly tipping in any form is strictly prohibited and that offenders will be prosecuted.
- 12.3 The Contractor may be required at any time to produce such evidence as the Architect/Contract Administrator may stipulate that each load of Material removed

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from the site has been disposed of at an approved tip.

- 12.4 The Contractor shall, in addition to any other records required to be maintained by the Architect/Contract Administrator, record the registration numbers and driver/ownership details of all vehicles used to remove the Material from the site of the Works, whether owned by the Contractor, any sub-contractor or other person.
- 12.5 The Contractor shall at all times when vehicles are entering or leaving the site provide suitable facilities to ensure the cleaning and trimming of such vehicles before they return to any public highway, thus minimising deposits of the Material on the public highway. In addition to cleaning and trimming vehicles entering or leaving the site the Contractor shall at its own expense be responsible for ensuring that all public highways in the vicinity of the site are regularly kept clean of any Material which is deposited on the public highway.
- 12.6 The Contractor shall comply with all instructions issued to him by the Architect/Contract Administrator with regard to the duties imposed on the Contractor by this clause 12 in the same manner as if the instructions were issued in accordance with the Conditions save that compliance with instructions issued under these clauses 8 to 16 shall not entitle the Contractor to claim entitlement to any additional payment whatsoever for compliance.
- 12.7 Any breach of this clause 12 (whether by the Contractor, his sub-contractors or any other person acting on the Contractor's behalf) shall amount to a default by the Contractor in not proceeding diligently with the Works entitling the Employer to take action in accordance with section 6 of the Contract (Termination).

### **SECTION 13: REMOVAL OF CONTRACTORS PERSON'S**

- 13.1 The Employer shall be entitled, where reasonable to protect the standards and reputation of the Employer, following consultation with the Contractor, to require the Contractor, by notice in writing giving the reason, to remove from the provision of the Works any employee of the Contractor specified in such notice including the contract manager. The Contractor shall immediately remove such employee from the provision of the Works and shall immediately provide a replacement if necessary.
- 13.2 The Employer shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Employer against any claim made by such employee.
- 13.3 If the nature of the Works requires access to premises occupied by children or vulnerable adults, the Contractor must comply with Conditions 13.4 to 13.6 below.
- 13.4 Where the Contractor is legally entitled to do so the Contractor must carry out checks with the Disclosure and Barring Service ("DBS Checks") to the highest level of disclosure allowable on all Contractor's Persons referred to in Condition 13.3

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before they commence work in such venue. Such DBS Checks must be repeated for such Contractor's Persons every 3 years and will involve obtaining such information held by the DBS concerning such Contractor's Persons as may be lawfully available.

- 13.5 Where Contractor's Persons engaged in the provision or supervision of the Works may have contact with persons under the age of 16 (or 18 if they have special needs) or vulnerable adults, where legally permissible the Contractor shall in relation to each relevant member of the Contractor's Persons take all reasonable precautions to ensure that such member of the Contractor's Persons has not been convicted of a criminal offence involving an offence against a person or an offence involving sexual behaviour and that such members of the Contractor's Persons have not been banned from working with children or vulnerable adults.
- 13.6 The Employer reserves the right to require the Contractor to provide copies of checks obtained as required by the provisions of this clause 13 as requested from time to time.
- 13.7 The Contractor shall keep the Employer indemnified against all proceedings, claims, damages, demands, fines, penalties, expenses, compensation, court or tribunal orders (including any order for reinstatement or re-engagement), awards, costs and all other liabilities whatsoever payable or incurred by the Employer which arise out of or are connected with the Contract and which in any way relate to:
- 13.7.1 the employment or engagement by the Employer or the Contractor of any individual who was an employee or appointee of the Employer employed or engaged in or in connection with providing the Works at any time prior to the Commencement Date; or
- 13.7.2 the termination of such employment or engagement by the Employer or the Contractor; except that the Contractor shall not be responsible for and this indemnity shall not apply to any payments which the Employer would be legally required to pay (but for this clause 13) to any employee or past employee who is dismissed by reason of redundancy.
- 13.8 Without prejudice to the provisions of this clause 13, the Contractor shall be entirely responsible for the employment and conditions of service of its employees including (without limitation) the payment of wages.

#### **SECTION 14: BRITISH STANDARDS**

- 14.1 The Contractor shall where there exists an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute, ensure that all goods and materials used or supplied and all workmanship shall as a minimum requirement comply with that Standard or an equivalent European standard (whichever is the higher) unless any higher standard has already been specified by the Employer under the Contract.

#### **SECTION 15: LOCAL GOVERNMENT OMBUDSMAN**

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- 15.1 The Contractor shall fully co-operate with any enquiry or investigation made by the Government Ombudsman (the "Ombudsman") which in any way concerns, affects or relates to the works performed by the Contractor under the Contract.
- 15.2 Such co-operation shall include (but not be limited to) the following:
- 15.2.1 providing access to or copies of such files, documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the subject or works under investigation;
  - 15.2.2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor in the performance of the Contract; and
  - 15.2.3 providing access to the Contractor's Persons (of whatever seniority) involved in the performance of the Contract (including management or supervision) or who may be the subject of, or be named in, any enquiry or investigation by the Ombudsman (including providing suitable facilities for interviewing such staff).
- 15.3 The Contractor shall ensure that the terms of any sub-contract include identical provisions to this clause 15 and shall indemnify the Employer against any losses etc. it suffers in consequence of a failure to ensure the inclusion of such identical terms.
- 15.4 Where the Ombudsman in their report,
- 15.4.1 clearly identifies the Contractor as being wholly or partly responsible for any maladministration or other failure, or
  - 15.4.2 clearly identifies any sub-contractor(s) of the Contractor as being wholly or partly responsible for any maladministration or other failure where such sub-contractor(s) do not have clauses identical to the provisions of this Condition then any compensation paid or the value of any other benefit given by the Employer to any person arising from such report may be deducted from such sums as would be otherwise payable to the Contractor except that where the Contractor (whether in its own right or vicariously on behalf of any sub-contractor) is partly responsible, a suitable proportion of any compensation or the value of any other benefit may be deducted by the Employer.
- 15.5 Where the Employer does not hold any such sums from which the compensation paid or the value of any other benefit given may be deducted, such sums may be recovered from the Contractor as a civil debt, or from any sum held by the Employer in relation to any other contract between the Employer and Contractor.
- 15.6 For the purposes of this clause 15 "compensation paid" means such sum as is recommended/required by the Ombudsman to be paid (as a result of the maladministration or other failure) or such other lesser sum as the Employer actually pays following the Ombudsman's report. Reference to "compensation" shall be construed accordingly and shall not require a decision, judgment or order
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to have been made by any Court, Tribunal or other appropriate body before such sum paid can be recovered from the Contractor in accordance with this clause 15.

- 15.7 For the purposes of this clause 15 “the value of any other benefit” shall be such monetary value (if any) as in the opinion of the Employer's relevant officer may equate to or equal that other benefit given by the Employer, providing such a benefit is capable of having a monetary value ascribed to it.
- 15.8 Where the Contractor disputes the value ascribed by the Employer to the other benefit given, the task of assessing such value shall be given to an appropriate independent professional body. That body shall be selected by the Employer having regard to the nature of the benefit given by the Employer.

#### **SECTION 16: EMPLOYMENT RELATIONS ACT 1999 (BLACKLISTS) REGULATIONS 2010**

- 16.1 The Contractor shall comply with Employment Relations Act 1999 (Blacklists) Regulations 2010 (the “Blacklists Regulations”). Where following award of contract a Contractor is found to have breached the Blacklists Regulations, this is a fundamental breach of contract entitling the Employer to terminate the contract and seek damages from the Contractor.”

**DELETE SCHEDULES 1 AND 2.**