

DATE

24 April

2021

(1)

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

- and -

(2)

AW CONSTRUCTION SERVICES LIMITED

**CONTRACT FOR THE PROVISION OF
EXTERNAL PLANNED WORKS**

THIS CONTRACT is made the 24th day of April 2024

BETWEEN

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

AND

(2) **AW CONSTRUCTION SERVICES LIMITED** (company registration no. 08720363) whose registered office is at Units 20-22 Stanley Court Shearway Business Park, Shearway Road, Folkestone, Kent, England, CT19 4FJ ("**the Contractor**")

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

WHEREAS

The Employer wishes certain works to be provided, namely the provision **External Planned Works** ("the Works") and has accepted a tender from the Contractor dated 24 January 2024 for the provision of the Works

IT IS HEREBY AGREED as follows:

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

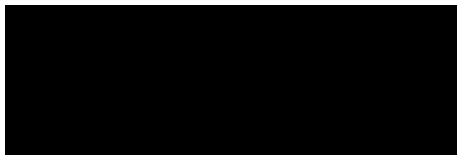
- Preliminaries
 - Asbestos Policy
 - Indicative Programme
 - Price Framework
 - Pricing Schedule of Rates
 - The Contractor's Tender Document including:
 - Form of Tender dated 24 January 2024
 - Method Statements;
 - Schedule of Rates;
 - Forms of Declaration
 - any relevant specified correspondence between the Parties.
2. In consideration of the provision of the Works by the Contractor, the Employer agrees to pay the Contractor the Contract Sum at the times and in the manner set out in this Contract. The anticipated Contract Sum shall **not** exceed **£1,200,000.00**.
- 3 In consideration of the payments to be made by the Employer to the Contractor in accordance with Clause 2 of this Contract, the Contractor agrees to deliver the Works in compliance in all respects with the provisions of this Contract.
4. The Employer hereby appoints the Contractor as Principal Contractor for the Works for the purposes of regulation 14 of the Construction (Design and Management) Regulations 2015 ("CDM").
5. Without prejudice to the Contract Documents, the Contractor agrees indemnify and hold harmless the Employer against any liability which the Employer may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Employer to the extent that the same arises by reason of any breach of this Contract or an instruction or any tortious or negligent act or omission on the Contractor's part (and/or any third

party to whom the Contractor has subcontracted the performance of the Contractor's obligations or part thereof) in the performance of the Contractor's obligations under and in connection with this Contract.

6. Nothing in the Contracts (Rights of Third Parties) Act 1999 shall entitle a person who is not a party to this Contract to enforce any term of the Contract.
7. For the avoidance of doubt the provisions of this Contract shall be construed and interpreted according to the laws of England and for the purpose of any steps to be taken by the Employer to enforce the Contractor's obligations under this Contract or any of them the Contractor hereby submits to the jurisdiction of the Courts of Law of England.

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

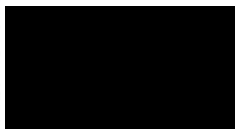

THE COMMON SEAL of
THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE
was hereunto affixed in the presence of:





Authorised Officer



EXECUTED AS A DEED by
AW CONSTRUCTION SERVICES LIMITED acting by:

| | |
|-----------------|--|
| Director | Signature  |
| | Name IN CAPITALS  |

| | |
|--|---|
| Director/ Company Secretary | Signature  |
| | Name IN CAPITALS  |

CONDITIONS OF CONTRACT

The Form of Contract in respect of **External Planned Works** shall be the **JCT Standard Form of Measured Term Contract 2016 Edition**

The Employer shall be:

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

The Contractor shall be:

AW CONSTRUCTION SERVICES LIMITED (company registration no. 08720363) whose registered office is at Units 20-22 Stanley Court Shearway Business Park, Shearway Road, Folkestone, Kent, England, CT19 4FJ

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

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

1st Recital: Properties owned and managed by the District Council of Folkestone and Hythe as listed in Appendix F (“the Contract Area”) in accordance with the details set out or referred to in the Contract Particulars

Article 3: The Contract Administrator shall be [REDACTED] of the District Council of Folkestone and Hythe, Civic Centre, Castle Hill Avenue Folkestone, Kent CT20 2QY

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

Article 4: The Principal Designer for the purposes of this Contract shall be the Contract Administrator of the District Council of Folkestone and Hythe, Civic Centre, Castle Hill Avenue Folkestone, Kent CT20 2QY

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

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

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

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

Contract Particulars


| Item | Insertion |
|---|---|
| 1.1 List of Properties in the Contract Area (first Recital) | Properties owned and managed by the Employer. |
| 1.2 Description of types of work | External Planned Works to council owned stock, consisting of work such as repointing, rendering, eaves finishes and decorating. |
| 2. Supplemental Provisions (Fifth Recital and Schedule) | |
| Collaborative working | Paragraph 1: applies |
| Health and Safety | Paragraph 2: applies |
| Cost savings and value improvements | Paragraph 3: applies |
| Sustainable development and environmental considerations | Paragraph 4: applies |
| Performance Indicators and monitoring | Paragraph 5: applies |
| Notification and negotiation of disputes | Paragraph 6: applies |
| Where Paragraph 6 applies, the respective nominees of the Parties are | Employer's nominee: [REDACTED] of the District Council of Folkestone and Hythe, Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY Contractor's nominee: [REDACTED] of Units 20-22 Stanley Court Shearway Business Park, Shearway Road, Folkestone, Kent, England, CT19 4FJ. or such replacement as each Party may notify to the other from time to time |

| Item | Insertion |
|---|---|
| 3 Contract Period | 24 months (with capacity for the Employer to extend further by a period of 12 months) |
| commencing on | 06 May 2024 |
| 4 Arbitration | Article 7 and clauses 9.3 to 9.8 apply. |
| 5 BIM Protocol (where applicable)* State title, edition, date or other identifiers of relevant documents (Clause 1.1) | <hr/> |
| 6 Minimum Value of any one Order | £25.00 (twenty-five pounds) |
| Maximum Value of any one Order | no maximum specified |
| 7 Approximate anticipated Value of work to be carried out under this Contract | £400,000.00 (four hundred thousand pounds) per annum for the Contract Period . |
| 8 Priority coding for Orders (Clause 2.6) | <i>Priority coding to be completed as Employer requires on a case by case basis</i> |
| 9 Construction Industry Scheme (CIS) (Clause 4.2) | The Employer at the commencement of the Contract Period is a 'contractor' for the purposes of the CIS |
| 10 Progress Payments (Clauses 4.3, 4.4 and 4.5)) <i>Estimated value of an Order above which progress payments can be applied (If none is stated, it is £2,500)</i> | see Schedule of Amendments |
| Valuation Dates <i>(if no date is stated, the Valuation Date is the last day of each month)</i> | The Valuation Date in each month is the 28th day of the month |

| Item | Insertion |
|--|---|
| 11 Responsibility for measurement and valuation (Clause 5.2) <i>(Unless one of the 3 options opposite is selected, the Contract Administrator shall measure and value all Orders)</i> | The Contractor shall measure and value all Orders |
| 12.1 Schedule of Rates (Clauses 5.3, 5.6.1 and 5.6.2) | |
| The Schedule of Rates is | As per Appendix H of the tender pack |
| subject to adjustments of the rates listed in that Schedule by the | Contractor's tender return and their adjusted rates and subsequent additional agreed rates between the Contractor and the Contract Administrator throughout the course of the Contract. |
| 12.2 Where the Schedule of Rates is the National Schedule of Rates the version(s) identified opposite are to apply | National Schedule of Rates (M3 Planned Maintenance V8) |
| 12.3 Rates – Fluctuations Clause 5.6.1 <i>(Unless "applies" is deleted, the clause shall be deemed to apply)</i> | applies |
| 12.4 Basis and dates of revision (Not applicable where National Schedule of Rates applies) | |
| Where clause 5.6.1 applies, the basis on which the Schedule of Rates is to be revised under clause 5.6.1.2 <i>(If no basis is identified the rates remain fixed for all Orders)</i> | see Schedule of Amendments Clause 5.6 |
| Where clause 5.6.1 applies, the dates as at which the Schedule of Rates is to be revised are: <i>(If no other date(s) are specified here or in the document setting out the</i> | |

| Item | Insertion |
|--|--|
| <i>basis for revision, the date shall be 1 August in each year)</i> | |
| 13.1 Daywork Valuation – percentage additions (Clauses 5.4, 5.6.3 and 5.6.4) | |
| Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows: | |
| Overheads and profit on Materials | 0% as Schedule of Rates to be fully inclusive |
| Overheads and profit on Plant, Services and Consumable Stores | 0% as Schedule of Rates to be fully inclusive |
| Overheads and profit on Sub-Contractors | As per Appendix H of the tender pack (to be populated by the Contractor) |
| 13.2 Revision of Schedule of Hourly Charges (Clause 5.6.3) <i>(unless “applies” is deleted, the clause shall be deemed to apply)</i> | applies |
| Where clause 5.6.3 applies, the annual revision date (if other than 1 August) is: | 1 st of April of each year commencing 2025 |
| Where clause 5.6.3 applies, the basis of revision of hourly charges (if not set out in the Schedule of Hourly Charges) | In line with the CPI price index as per 12.4 above |
| 14 Overtime Work (Clause 5.7) The percentage addition in respect of overheads and profit on non-productive overtime rates is <i>(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)</i> | 0% |
| *(Normal working hours are between 8am and 6pm Monday to Saturday (excluding Public | |

| Item | Insertion |
|---|---|
| <p>Holidays). No weekend working will be permitted without the written authorisation of the Contract Administrator. All overtime costs shall be the responsibility of the Contractor including evening and Saturday morning appointments unless specifically ordered in writing by the Contract Administrator. All work carried out under 'Emergency' priority code will be paid for using normal working hours rates regardless of when the work is undertaken).</p> | |
| <p>15 Insurance (Clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11)</p> | |
| <p>15.1 Contractor's Public Liability insurance; injury to persons or property – the required level of cover is not less than</p> | <p>Public Liability: £5,000,000.00 for any one occurrence or series of occurrences arising out of one event Employer's Liability: <i>minimum of £5,000,000.00</i> Professional Indemnity: £2,000,000.00</p> |
| <p>15.2 Percentage to cover professional fees</p> | <p>15%</p> |
| <p>15.3 Insurance of existing structures – clause 6.7A.1 <i>(Unless otherwise stated, clause 6.7A.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s)) (</i></p> | <p>applies</p> |
| <p>15.4 Insurance of work or supply comprised in Orders – clause 6.7B <i>(If neither entry is deleted, the clause does not apply)</i></p> | <p>applies</p> |
| <p>15.5 Where clause 6.7B applies and cover is to be provided under the Contractor's annual policy, the</p> | <p>_____</p> |

| Item | Insertion |
|---|--|
| annual renewal date is (as supplied by the Contractor) | does not apply |
| 15.6 Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required)</i> | <hr/> |
| 16 Break Provisions – Employer or Contractor (Clause 7.1) | 13 weeks |
| 17 Settlement of Disputes (Clauses 9.2, 9.3 and 9.4.1) | Nominator of Adjudicator: The Royal Institution of Chartered Surveyors/ |
| Adjudication | |
| Arbitration Appointer of Arbitrator | President or a Vice-President of The Royal Institution of Chartered Surveyors/ |
| 18 Contractor's Representative shall be <i>(or such other person appointed by the Contractor in accordance with new clause 3.3.3)</i> |  |

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

Definitions

Clause 1.1:

“Adjustment Percentage” – *depending on Contract Particulars*

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

“JCT Standard Form of Measured Term Contract 2016;

- Tender Specification
- KPI Framework
- Pre-Construction Information Plan
- Preliminaries
- Asbestos Policy
- Indicative Programme
- Price Framework
- Pricing Schedule of Rates

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

The Contractor’s Tender Document including:

- Form of Tender dated 24 January 2024;
- ITT Response Document
- Pricing Schedule

and any relevant specified correspondence between the parties”

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

Insert the following new Definitions:

“**DPA**” means the Data Protection Act 2018 as amended from time to time;

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

“Data Protection Officer has the meaning given in the GDPR;”

“Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;”

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

“GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679) ”

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

“LED means the Law Enforcement Directive (Directive (EU) 2016/680)”

“Personal Data Breach has the meaning given in the GDPR; ”

“Processor Personnel all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;”

“Proprietary Material - all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Contractor in connection with this Contract and/or any Order”

Contractor’s Obligations

“Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it;”

“Sub-processor” any third party appointed to process Personal Data on behalf of the Supplier related to this agreement;

Contractor's Obligations

Clause 2.1 – the following new clauses shall be inserted:

- “2.1A The Contractor shall fully carry out the works using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent contractor (and to the extent that the Order includes any design to be carried out by the Contractor using all the reasonable skill, care, expedition and efficiency to be expected of a properly qualified and competent architect or other appropriate designer) who is experienced in carrying out work (and preparing designs) of a similar scope, nature and complexity and size to the Order.
- 2.1B The Contractor shall work in a proper and workmanlike manner and fully in accordance with the Contract Administrator's instructions, any instructions of the Employer, the Contract Documents and other Statutory Requirements and shall give all notices required by the Statutory Requirements.
- 2.1C To the extent that the Order contains any design, the Contractor shall be responsible for carrying out and completing the entire design for the Order.
- 2.1D The Contractor shall take due account of the terms of any agreements between the Employer and third parties as are from time to time disclosed to him and shall perform his obligations under this Contract in such a manner as not to constitute, cause or contribute to any breach by the Employer of his obligations under such agreements and shall indemnify the Employer in respect of any loss and/or damage which he incurs as a result of any breach by the Contractor of this clause where such loss and/or damage arises under such agreements.
- 2.1E The Contractor shall not use, generate, dispose of or transport to the Site any Hazardous Substances otherwise than in accordance with Environmental Laws.”

Materials, Goods and Workmanship

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

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

contained in the publication "Good Practice in the Selection of Construction Materials" 1997) Over Arup & Partners."

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

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

Rights of Employer

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

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

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

Value of work to be carried out under this Contract

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

"The Employer is not obliged to provide the Contractor with any Orders nor does the Employer give any warranty or undertaking as to the actual amount of work that will be ordered and no variance in the actual value of work ordered shall give rise to a change in any rate, price or percentage adjustment. For the avoidance of doubt, the Employer shall not be liable for any loss of profits, loss of contracts or other costs, expenses or losses suffered or incurred by the Contractor as a result of the Contractor not being awarded any Orders under this Contract."

Programme

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

"The Contractor Administrator shall have 7 days from receipt of the programme to approve or register its disapproval, in writing, of the programme. If the Contract Administrator fails to respond within the 7 days, then it shall be deemed to have approved. Provided the Contract Administrator has approved or deemed to have approved the programme, the Contractor shall procure that all of the works carried out in accordance with or under any Order(s) is carried out strictly in accordance with the programme. If the Contract Administrator has stated to the Contractor that it does not

approve of the programme then the Contractor shall resubmit a revised programme to the Contract Administrator for approval and this process shall be repeated until the Contract Administrator has given its written approval to the programme, whereupon the Contractor shall carry out the works within the order strictly in accordance with such approved programme.”

Divergence from Statutory Requirements

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

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

Extension of Time

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

“If, at any time during the course of completing an Order, the Contractor shall establish that the progress of the works under the Order shall have been effected by reason of:

- (i) force majeure; or
- (ii) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from them, riot or civil commotion or any other risks insured against,

the Contract Administrator shall allow such extension of time as is fair and reasonable in the circumstances upon written application by the Contractor to the Employer and Contract Administrator provided always that such application is made immediately that the Contractor is aware that such delay has or might occur (which written application shall include any documentation the Contractor may wish to provide in support of or justifying its application and the Contractor's assessment of the extension of time it seeks). To the extent that any extension of time is granted, a revised date for completion for the Order shall be fixed by the Contract Administrator and notified to the Contractor.”

Defects

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

Additional Clause 2.12.2:

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

Assignment

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

Clause 3.1 shall be deleted and replaced with the following new clause 3.1:

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

Sub-Contracting

Delete Clause 3.2 and replace with the following clauses:

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

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

Contractor’s Representative

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

“3.3.1 The Contractor shall appoint a competent Contractor’s Representative for the proper administration of this Contract.

3.3.2 The Contractor’s Representative shall have suitable and sufficient qualifications and experience to carry out this function and shall be the representative empowered to act on behalf of the Contractor for all purposes connected with the Contract.

3.3.3 The Contractor’s Representative shall be the person named in the Contract Particulars or such other person nominated in writing by the Contractor from

time to time to act in the name of the Contractor for the purposes of the Contract.

3.3.4 From time to time the Contractor may appoint one or more representatives to act for the Contractor generally or for specified purposes or periods. Immediately any such appointment is made or terminated, the Contractor shall give written notice thereof to the Employer and until such notice is received the Contractor shall be under no obligation to comply with any instruction issued by such representative.

3.3.5 Any Order, notice, information, instruction or other communication given to the Contractor's Representative shall be deemed to have been given to the Contractor.

Additional Clause 3.4.4:

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

Cancellation of an Order

Additional Clause 3.6.3:

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

Exclusion from Site

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

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

Additional Employer's Rights and Remedies

Additional Clause 3.11:

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

Progress Payment

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

“Monthly Payment

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

Payment Application

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

Valuation – day work

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

Derived Rates

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

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

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

Rates – Fluctuations

Clause 5.6 shall be deleted and replaced by the following new clause 5.6:

"5.6.1 The rates tendered shall be varied if agreed in writing and signed by both the Employer and the Contractor. Such variations shall be limited by Consumer Price Index (“CPI”) fluctuations (see www.statistics.gov.uk) with a base date of 1st April each year and annually thereafter for the duration of the Contract Period.

5.6.2 The first applicable adjustment for rates will be effective from 1st April 2025 with adjustments limited by the average of the published CPI figures between the previous January to December which shall calculate as follows:

Average of the CPI index rates between January and December less the CPI index as at the December prior to the above January rate.

Example of first anniversary:

| | |
|---|--------|
| average of CPI indexes Jan 2021 to Dec 2021 | 111.56 |
| minus CPI Index of Dec 2020 | 109.2 |
| CPI uplift April 2022 | +2.36% |

If the tender figure was £100 this would equate to a new rate from 1 April of £102.36.

Example of second anniversary:

| | |
|---|--------|
| average of CPI indexes Jan 2022 to Dec 2022 | 121.66 |
| minus CPI Index of Dec 2021 | 115.10 |
| CPI uplift April 2023 | +6.56% |

If the tender figure was £100 this would equate to a new cost from 1 April of £109.07 (Year 2 rate of £102.36 x 106.56%).”

Overtime

Additional Clause 5.7.4:

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

Liability of the Contractor – personal injury or death

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

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

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

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

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

Contractor's Insurance and his Liability

Additional clause: 6.4.3

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

Related Definitions

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

Additional clause 6.15

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

Collateral Warranties and Copyright

Insert new clause 7A as follows:

"Copyright Contractor Warranties in favour of others

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

Sub-contractor Warranties

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

Copyright Licence

7A3 The copyright in the Proprietary Material shall remain vested in the Contractor, but the Contractor grants to the Employer an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Proprietary Material for any purpose connected with this Contract and/or any Order, including (without limitation) the execution, completion, maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of any works carried out under this Contract and/or any Order."

Default by Contractor

Additional Clause 8.4.1.3:

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

Insert new clauses 8.4.2.1 and 8.4.2.2 as follows:

- "8.4.2.1 Where the Contractor receives notice under clause 8.4.1 that it has failed to perform the works in accordance with the Contract Documents, the Employer may, without prejudice to any other remedy it may have:
- (i) request from the Contractor that, at the Contractor's own expense and as specified by the Employer, it reschedules and carries out the works in a manner satisfactory to the Employer, which may include rectifying completed works or repeating the provision of any of the works within such period as the Employer may specify by such written notice; and/or
 - (ii) withhold or reduce payments to the Contractor, as the Employer shall reasonably deem appropriate in each particular case; and/or
 - (iii) request that the Contractor pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between the specified date for completion and the actual date of completion; and/or

(iv) employ a third party to carry out and complete the works.

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

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

Prevention of Bribery and Corruption

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

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

10.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;

10.1.2 it will procure that any person who performs or has performed services for or in its behalf (“Associated Person”) in connection with this Contract complies with this clause and subject to the JCT Form of Contract to be used;

10.1.3 it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this clause and subject to the JCT Form of Contract to be used;

10.1.4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;

10.1.5 from time to time at the reasonable request of the Employer it will confirm in writing that it has complied with its undertakings under clauses 10.1.1 to 10.1.4 and will provide any information reasonably requested by the Employer in support of such compliance;

10.1.6 it shall notify the Employer as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

10.2 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972

section 117(2) in relation to this or any other contract with the Employer, the Employer has the right to;

- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making other arrangements for the provision of the works and any additional expenditure incurred by the Employer throughout the remainder of the Contract.
- b) recover in full from the Contractor any other loss sustained by the Employer in consequence of any breach of this clause, whether or not the Contract has been terminated.”

Freedom of Information

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

- “11.1 The Employer is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("the Acts"). As part of the Employer's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a request. The Employer has absolute discretion to apply or not to apply any exemptions under the Acts.
- 11.2 The Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to enable the Employer to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Employer.
- 11.3 The Contractor acknowledges that the Employer is committed to the Government's transparency agenda requiring the Employer to publish on line items of spend over £500 (five hundred pounds) including actual payments made to the Contractor, the Contractor's tender and the terms of this Contract (excluding commercially sensitive information).
- 11.4 The Contractor acknowledges that the Employer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) be obliged under the FOIA or the Environmental Information Regulations to disclose information;
- a) without consulting with the Contractor, or
 - b) following consultation with the Contractor and having taken its views into account.”

Data Protection

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

- "12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is a Controller and the Supplier is the Processor unless otherwise specified in Schedule Processing Personal Data). The only processing that the Processor is authorised to do is listed in Schedule Processing Personal Data and may not be otherwise be determined by the Processor.
- 12.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 12.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule Processing Personal Data, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule Processing Personal Data);

- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

12.5 Subject to Clause 12.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 12.6 The Processor's obligation to notify under Clause 12.5 shall include the provision of further information to the Controller in phases, as details become available.
- 12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 12.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12.11 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 12.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office."

Equal Opportunities, Unlawful Discrimination and Human Rights

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

- "13.1 The Contractor shall comply with all applicable equalities, inclusion, and diversity legislation, which shall include any law, statute, bye-law, regulation, order, regulatory policy, guidance or code of practice, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body ("the Equalities Provisions") now in force or which may be in force in the future and with the Employer's equality and diversity policies as may be amended from time to time, copies of which will be provided by the Employer to the Contractor at the Contractor's written request.
- 13.2 For the avoidance of doubt, the term "Contractor" in this clause 13 shall include the Contractor's employees, agents, representatives and sub-contractors employed in the execution of the Contract.

- 13.3 The Contractor will provide to the Employer such information as the Employer may reasonably request in respect of the impact of equality issues on the operation of the Contract.
- 13.4 If a complaint is made about the acts or omissions of the Contractor in relation to the Equality Provisions, the Contractor may be the subject of an investigation by the Employer. During the course of such an investigation the Contractor shall make all documents the Employer considers to be relevant to the investigation available and co-operate with the investigation. If any breach of the Employer's duties under the Equalities Provisions is found to have occurred due to the acts or omissions of the Contractor, the Contractor shall indemnify the Employer in respect of any loss, damage and/or compensation, fines and costs (including but not limited to legal costs and expenses) which may be suffered by or imposed on the Employer by any court, tribunal or ombudsman.
- 13.5 If requested to do so by the Employer the Contractor shall co-operate with the Employer at the Contractor's expense in connection with any legal proceedings, ombudsman enquiries, arbitration or Court proceedings in which the Employer may become involved arising from any breach of the Employer's duties under the Equalities Provisions due to the alleged acts or omissions of the Contractor.
- 13.6 The Contractor shall carry out the works in a manner which is consistent with the Human Rights Act 1998 as though (for the avoidance of doubt) it is bound by the Act and in such a way that the Employer shall not be liable to any person for a breach of its duties under the said Act and shall indemnify the Employer against any direct or indirect costs expenses damages compensation liabilities or other claims incurred or suffered by the Employer arising from or in relation to a breach or alleged breach of the said Act.
- 13.7 Failure by the Contractor to comply with the provisions of this clause 13 may lead to the termination of this Contract."

Contractor's Persons

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

- "14.1 The Contractor shall comply with all relevant legislation relating to the Contractor's Persons however employed including (but not limited to) the compliance in law of the ability of the Contractor's Persons to work in the United Kingdom.
- 14.2 The Contractor shall employ sufficient persons to ensure that the works are carried out in accordance with the Contract. The Contractor's Persons engaged in and about the provision of the works shall be properly and sufficiently qualified, competent, skilled and experienced and the Contractor shall ensure that such Persons are properly and continuously trained, sufficiently instructed and adequately supervised with regard to the provision of the works generally and in particular:
- (i) the task or tasks such Persons have to perform;

- (ii) all relevant rules, procedures and statutory requirements concerning health and safety, including the Employer's health and safety policy;
- (iii) all other statutory requirements in connection with the Contract

and the Contractor shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause 14.

- 14.3 The Employer shall be entitled to require the Contractor to remove from the performance and carrying out of the works any of the Contractor's Persons whose behaviour is in the opinion of the Employer negligent, (should it become aware) disruptive, disturbing or likely to cause offence to the Employer or its employees and where the Employer has received a valid complaint.
- 14.4 The Employer shall in no circumstances be liable either to the Contractor or to any Persons (including its sub-contractors) removed pursuant to clause 14.3 in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Employer in respect of any claim or proceedings made or brought against the Employer by such Contractor's Persons."

Safeguarding

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

- "15.1 The Contractor shall make arrangements during the provision of any works under this Contract to ensure that the Contractor and the Contractor's Persons comply, in all respects, with all relevant legislation and Employer policy in relation to the safeguarding of children and vulnerable adults, which may include enhanced disclosure checking of the Contractor's Persons, undertaken through the Disclosure and Barring Service ("DBS") and a check against the adults barred list or the children's barred list as appropriate
- 15.2 The Contractor shall monitor the level and validity of the checks for each of the Contractor's Persons.
- 15.3 The Contractor warrants that at all times for the purposes of this Contract, it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time."

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

16. The Contractor irrevocably undertakes to indemnify the Employer against any costs, expenses, damages, liabilities, losses, claims and/or proceedings which the Employer may incur in respect of death or personal injury to any person whomsoever and damage to property arising as a consequence of the performance of the Works. The Parties agree that the contraction of any industrial disease as a result of exposure to dangerous materials during the

course of the work within this Contract will be deemed to be covered by this condition.

Additional Employer's Requirements

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

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

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

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

17.3 The Contractor shall keep and maintain until 6 years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the agreement including:

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

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

17.4 The Contractor shall co-operate fully with any enquiry or investigation made by the Employer's internal or external auditors, or any other quality or performance inspectors, that in any way concerns this Contract or any sums claimed or charged in relation to this Contract. The Employer may use information given by the Contractor in connection with this Contract to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds. The Contractor shall take all necessary action to prevent money laundering. Where the Employer deems that the Contractor has been involved in money laundering it will take whatever measures appropriate to prevent this and report such action to the relevant authorities. The discovery of fraud and/or money laundering shall be grounds for termination of the Contractor's employment.

17.5 The Contractor shall comply with any Employer policies affecting the Contract and shall if requested provide the Employer with any relevant information required in connection with any legal inquiry, arbitration or court proceedings in which the Employer may become involved or any relevant disciplinary hearing internal to the Employer and shall give evidence in such inquiries or

proceedings or hearings arising out of the Contract. The Contractor shall cooperate fully with the Commissioner for Local Administration in England (the Local Government Ombudsman) in any investigation by him of any complaint relating to the Contract and in enquiries by any of the Employer's Committees. From time to time, the Employer may require the Contractor to provide reports to, or be involved in discussions with, elected members. The Contractor shall comply with the Employer's reasonable requirements and shall not be entitled to any additional payment in respect thereof save to the extent such costs are incurred as a result of a default on the part of the Employer.

- 17.6 The Contractor shall, upon becoming aware of anything in connection with the Contract that is likely to give rise to legal inquiry or litigation, forthwith notify the Contract Administrator, giving such details as are available.
- 17.7 The Contractor shall deal with any complaints about its performance of the Contract, received from whatever source, in a prompt, courteous and efficient manner. The Contractor shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints. The Contractor shall inform the Contract Administrator in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected by the Contract Administrator (or any other person nominated by him) at all reasonable times on reasonable notice.
- 17.8 The Contractor shall not speak to the press or broadcasting media about any matters connected with the Contract without the prior written consent of the Contract Administrator. If the Contractor intends to advertise its provision of the works to the Employer, it shall obtain approval of the Employer before doing so as to the content of such advertisement.
- 17.9 The Contractor should note that it is of the utmost importance that their employees and sub contract employees carry with them at all times their company's identification card to produce when challenged by the Employer's staff or council residents.
- 17.10 Where under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum item due or which at any time thereafter may become due to the Contractor under the Contract or under any other similar construction contract with the Employer.
- 17.11 The Contractor shall be deemed to have obtained information on all matters affecting the execution of the works. No claim arising from errors or omissions will be considered.
- 17.12 The Contractor shall comply with all Standing Orders of the Employer in so far as they are applicable to the execution of the Works. It is the responsibility of the Contractor to determine the nature and extent of such Standing Orders for lack of knowledge will not constitute grounds for non-compliance. A copy will be available for inspection on request.

17.13 The Contractor shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the Employer against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this clause.

Bonds and Guarantees

Insert new Section 18 to the JCT Conditions of Contract as follows:

“18.1 At the exclusive discretion of the Employer, when the Contractor is a subsidiary of another company it shall procure that its ultimate holding company (or, at the Employer’s complete discretion, such other company within the Contractor’s group as the Employer shall require) shall provide a parent company guarantee in favour of the Employer in respect of the Contractor’s obligations under the Contract executed as a deed in the form set out in Appendix J. The guarantee must be in place before the Contract commences.

18.2 At the exclusive discretion of the Employer, where the Contractor does not have a parent company or where the parent company is not approved by the Employer, the Contractor shall enter into a contract guarantee bond, in the form set out in Appendix K, by which they shall be jointly and severally bound to the Employer in a sum equivalent to 10% of the annual price conditioned for the due fulfilment of the terms and conditions of the Contract. The surety shall be either an insurance company or bank whose registered office is situated in England. The bondsman is to be approved by the Employer. The bond must be in place before the Contract commences.”

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

“Compliance With Anti-Slavery and Human Trafficking Laws

19.1 In performing its obligations under this Contract, the Contractor shall:

- a) 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
- b) 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
- c) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Section 19.

19.2 The Contractor represents and warrants that:

- a) neither the Contractor nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 19.4 The Contractor undertakes not to purchase any resource or raw materials or products that has been sourced from producers, farmers manufacturers using forced labour or child labour in its operations or practices.
- 19.5 The Contractor shall notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 19.6 The Contractor shall prepare and deliver to the Employer, by 1st April each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 19.7 The Contractor shall:
 - a) maintain a complete set of records to trace the supply chain of all goods and services provided to the Employer in connection with this Contract; and
 - b) permit the Employer and its third party representatives, on reasonable notice during normal business hours to have access to and take copies of the Contractor's records and any other information and to meet with the Employer's personnel to audit the Employer's compliance with its obligations this Condition;
- 19.8 The Contractor shall implement a system of training for its employees to ensure compliance with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 19.9 The Contractor shall keep records of all training offered and completed by its employees to ensure compliance with anti-slavery and human trafficking laws,

statutes, regulations and codes and shall make a copy of the record available to the Employer on request.

- 19.10 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against the Employer as a result of its failure to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 19.11 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with anti-slavery and human trafficking laws, statutes, regulations and codes.
- 19.12 The Employer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor fails to comply with anti-slavery and human trafficking laws, statutes, regulations and codes.”

Insert new Section 20 to the JCT Conditions of Contract as follows:

“Greenhouse Gases and Carbon Emissions

20.1 The following definitions apply in this clause and in Schedule 1:

“GHG Emissions” means the emissions of GHGs from all sources related to this Agreement, categorised as “Scope 1” and “Scope 2” emissions by The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 as updated from time to time;

“Greenhouse Gases (GHGs)” means the natural and anthropogenic gases which trap thermal radiation in the earth’s atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), as may be amended from time to time, which include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), and nitrogen trifluoride (NF₃), each expressed as a total in units of Carbon Dioxide Equivalent (CO₂e).

“Overall Sustainability Impact” means the Contractor’s assessment and performance of the relevant social, environmental and economic policies related to this Agreement in accordance with the Small business user guide: Guidance on how to measure and report your greenhouse gas emissions published by the Department for Environment, Food & Rural Affairs Published on February 2012 <https://www.gov.uk/government/publications/small->

business-user-guide-guidance-on-how-to-measure-and-report-your-greenhouse-gas-emissions.

“**Sustainability Report**” has the meaning given to it in clause 19.3.

20.2 In performing its obligations under this Contract, the Contractor shall, where applicable to this Contractor, to the reasonable satisfaction of the Employer:

20.2.1 in its operations, comply with all applicable environmental law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials and the provision of certificates if requested and as appropriate;

20.2.2 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Employer’s reasonable questions;

20.2.3 minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by relevant staff, emissions from Contractor offices and equipment.

20.3 On each anniversary of the Works commencement date as specified in the Contract Particulars, the Contractor shall complete and submit to the Employer a sustainability report in relation to the Works, which shall be in the form specified in Schedule 1 (the “Sustainability Report”), and include the assumptions used in the reporting and contain information on:

20.3.1 the Contractor’s GHG emissions associated with the delivery of this Contract in accordance with established best practice and internationally accepted standards¹

20.3.2 the Contractor’s water use (in metres cubed);

20.3.3 the Contractor’s energy consumption for all fossil fuels (in kilowatt-hours (kWh)) relating to assets used at Employer premises or other locations;²

¹ The Small Business User Guide published by DEFRA, 2012: [SMALL BUSINESS USER GUIDE: Guidance on how to measure and report your greenhouse gas emissions \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb133_10-ghg-small-business-guide.pdf)

² Calculating the CO2 equivalent from the *UK Government GHG Conversion Factors for Company Reporting for the relevant reporting period.* <https://www.gov.uk/government/publications/greenhouse-gas-reporting-conversion-factors-2022>

- 20.3.4 transport use (and resulting GHG emissions from transport fuel) for goods delivered to, or Contractor staff travel to, Employer premises or other Employer locations or the location where the contract is delivered;
- 20.3.5 volume of waste (in kilograms/tonne) produced at Employer premises or other locations that relate to the provision of the Works, including how the Contractor intends to process and dispose of waste; and
- 20.3.6 the Overall Sustainability Impact of the Works, including improvements identified by the Contractor, new policies or targets adopted to reduce the environmental impact of the Contractor's operations and contributions towards any Employer environmental policies or targets."

Insert new Schedule 1 to the JCT Conditions of Contract as follows:

SCHEDULE 1: GREENHOUSE GAS REPORTING

1. This Schedule shall be completed on each anniversary of the Works commencement date as specified in the Contract Particulars of this Contract by the Contractor and the completed schedule shall be referred to as the "Sustainability Report". The CO2 equivalent emissions associated with fossil fuels will be calculated, and the water usage, recycling rates and waste produced will be reported.
2. The Sustainability Report will demonstrate, measure and report on the carbon emissions (CO2 equivalent) associated with the delivery of the Works under this Contract.
3. The Sustainability Report will set out the Overall Sustainability Impact of the Works, including improvements identified by the Contractor, new policies or targets adopted to reduce the environmental impact of the Contractor's operations and contributions towards any Employer environmental policies or targets.
4. The calculation methodology for the Sustainability Report will follow the latest guidance from DEFRA³ and include:

Step 1.

³ Latest guidance follows the DEFRA approach and can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf

Measure the greenhouse gas emissions for the Contractor's business,

- taking into account the parts of the Contractor's business which the Contractor either owns or has control over. This means that the Contractor is only measuring emissions which relate to the Contractor's business operations. To do this, the Contractor needs to set a boundary which will ring fence the Contractor's business operations and will help identify which greenhouse gases the Contractor needs to measure; and
- apportion the emissions relating to this Contract, noting the assumptions that the Contractor has made.

Step 2.

Identify the main activities relating to this Contract, that release greenhouse gases in the Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) below.

Step 3.

The assumptions made in the calculation of the emissions associated with this Contract are to be expressly stated in Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) below.

Step 4.

Provide information on the Overall Sustainability Impact of the Works and return the completed Sustainability Report and Tables 1 (Fossil Fuel Use) and Table 2 Water & Waste) to the Employer.

Folkstone & Hythe District Council Sustainability Report: greenhouse gas emissions⁴

Name of Contract: *External Planned Works (DN686667)*

Date of Report: *[insert date of report]*

Contractor Name: *AW Construction Services Limited (company no. 08720363), Units 20-22 Stanley Court Shearway Business Park, Shearway Road, Folkestone, Kent, England, CT19 4FJ*

Table 1: Fossil Fuel Use

| Activity | Data Source | Assumptions used to apportion the consumption | CO2 equivalent in kg |
|--|---|---|------------------------|
| Electricity Use | Electricity bills in kWh apportioned to this contract | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Natural Gas use | Gas bills in kWh apportioned to this contract | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Other fossil fuels | Oil, LPG, propane delivery notes | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Fuels used in vehicles and machinery to service the contract | Mileage and fuel bills (litres) | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Assumptions | <i>[insert relevant assumptions used for calculated the figures inserted above]</i> | | |

⁴ The methodology to calculate the Sustainability Report should follow the latest guidance from DEFRA. Latest guidance follows the DEFRA approach and can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69494/pb13310-ghg-small-business-guide.pdf

Table 2: Water and Waste

| Activity | Data Source | Assumptions used to apportion the consumption | Consumption |
|--------------------------|---|---|------------------------|
| Water consumption | Water supply from bills in m3 | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Water treatment | Water treatment bills in m3 | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Waste disposal | Tonnes of waste to landfill | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Waste recycling | Tonnes of waste to recycling facility | <i>[Please be as specific as possible]</i> | <i>[insert figure]</i> |
| Assumptions | <i>[insert relevant assumptions used for calculated the figures inserted above]</i> | | |

Insert new Schedule 2 to the JCT Conditions of Contract as follows:

SCHEDULE 2: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [REDACTED], [REDACTED], Data.Protection@folkestone-hythe.gov.uk
2. The contact details of the Processor's Data Protection Officer are: [REDACTED], [REDACTED]@awltd.co.uk
3. The Processor shall comply with any further written instructions with respect to processing by the Controller
4. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1. |
| Subject matter of the processing | External planned Works to Council owned properties, which will be tendering through Procurement. The awarded contractor will be provided with tenants' names, addresses and phone numbers to enable them to contact and arrange access for works. |
| Duration of the processing | 1 st April 2024 to 31 st March 2026 with possible Contract extension to 31 st March 2028. |
| Nature and purposes of the processing | Collection, recording, organisation, structuring, storage, retrieval, consultation, erasure or destruction of data (whether or not by automated means). For communication between the Parties, investigation and resolution of queries, and such purposes which facilitate effective contract management by either or both Parties; and for the Processor to make contact with residents of the properties owned by Controller to enable access for the Works. |
| Type of Personal Data being Processed | Names, address, telephone number, email address, and other electronic means of communication. |

| | |
|---|--|
| | Potentially, the Processor may be provided with information indicating that the data subject may be potentially violent (PVP marker) and/or details of any disability or vulnerability. Where there is a need, details of next of kin and/or helper may be passed to the Processor. |
| Categories of Data Subject | <ul style="list-style-type: none"> • the Contractor's Personnel, • the Employer's staff, • tenants of properties owned by Employer; • members of the public and third parties in the case a complaint is submitted in relation to the Works. |
| International transfers and legal gateway | N/A |
| Plan for return and destruction of the data once the processing is complete | The data shall be retained by the Contractor for no more than twelve (12) months after the Termination Date of the Contract. |