

DATED / /

MIDLAND HEART LIMITED

and

[INSERT SUPPLIER NAME IN FULL]

**SCHEDULE OF AMENDMENTS TO THE
JCT MEASURED TERM CONTRACT 2016**

**Relating to
[INSERT CONTRACT TITLE]**

Signed on behalf of the Parties:

Employer

Dated

Contractor

Dated

Schedule of Amendments to the JCT Measured Term Contract 2016

Contents

¹Insert new Schedules as follows:

Schedule 1	[Schedule of Rates]/[Not used]
Schedule 2	[Specification]/[Not used]
Schedule 3	[Key Performance Indicators (KPIs)]/[Not used]
Schedule 4	[Invoicing and Payment Requirements]/[Not used]
Schedule 5	[Contractors Induction Checklist]/[Not used]
Schedule 6	[Code of Conduct]/[Not used]
Schedule 7	[TUPE]/[Not used]
Schedule 8	[Contractors Duty Form]/[Not used]
Schedule 9	[Rectification & Remedial System]/[Not used]
Schedule 10	[Property List]/[Not used]
Schedule 12	[Preamble]/[Not used]
Schedule 13	[Asbestos Management Plan Policy & Procedure]/[Not used]
Schedule 14	[No Access Procedure & Appendices]/[Not used]
Schedule 15	[No Access Checklist]/[Not used]
Schedule 16	[Contractors Technical Response]/[Not used]
Schedule 17	[Compliments, Comments & Complaints Policy]/[Not used]
Schedule 18	[Data Sharing Agreement]/[Not used]
Schedule 19	[Safeguarding Policy]/[Not used]
Schedule 20	[Parent Company Guarantee]/[Not used]"

Renumber the Supplemental Provisions Schedule as

"Schedule 21 [Supplemental Provisions]/[Not used]"

¹ **Drafting note:** review the list of Schedules that will be applicable to the Contract. For any Schedules that will not be used, mark those Schedules "Not used". For example, if Schedule 20 is not going to be used, retain the words "Schedule 20" and replace "Parent Company Guarantee" with "Not used". Do not delete or renumber any of the Schedules.

Articles

Article 8 Legal proceedings

Amend Article 8 to insert before the word "jurisdiction" in the first line the text as follows:

"exclusive"

Conditions

Section 1 Definitions and Interpretation

Definitions

<i>Word or phrase</i>	<i>Meaning</i>
<i>Amend</i> "Conditions"	<i>At the end of the definition insert:</i> "and as amended and supplemented by the Schedule of Amendments."
<i>Add</i> "Assets"	"see clause 11.5."
<i>Add</i> "Confidential Information"	"any information concerning, comprising or relating to the business affairs of the other Party, this Contract, any other contractor involved in cost sharing arrangements and all related documents and personal information or details in respect of any employee of either Party, or any tenant or any resident of the Employer or any information which is communicated by either Party to the other on the basis that it is confidential."
<i>Amend</i> "Contract Documents"	<i>At the end of the definition insert:</i> "and the Schedule of Amendments and all documents attached to it."
<i>Add</i> "Contractor Default"	"any of the circumstances set out in clause 8.4.1 or clause 8.4.2 (Default by Contractor)."
<i>Add</i> "Contractor's IT System"	"the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Contractor in connection with any Order."
<i>Add</i> "Covid-19 Related Event"	"any localised or widespread occurrence of an infectious disease caused by any pathogen, whether bacterial, viral, or any other biological or natural agent which results, directly from the strain of coronavirus known as coronavirus infectious disease 2019 (Covid-19) and/or the causative virus known as severe acute respiratory

syndrome coronavirus 2 (SARS-CoV-2), including any mutations of Covid-19 and/or SARS-CoV-2."

Add "Covid-19 Related Matter" "any of the following matters arising after the date of this Contract from a Covid-19 Related Event:

- (a) the inability of the Contractor to obtain sufficient labour or supervision required for such labour; or
- (b) unavoidable site closure, restricted access or amended working methods,

provided that the Contractor proves that the Covid-19 Related Matter could not reasonably have been foreseen by either party or, in the case of the Contractor, by any competent contractor experienced in the carrying out of works for projects of a similar size, scope, value, character and complexity to the Works, as at the date of this Contract."

Add "Data Controller" "shall have the meaning as provided in the Data Protection Legislation."

Add "Data Protection Legislation" "all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation ((EU) 2016/679) (the GDPR); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and Codes of Practice, in each case as may be amended, updated or supplemented from time to time."

Add "Data Subjects" "shall have the meaning as provided in the Data Protection Legislation."

Add "Data Subject's Rights" "any rights of individuals under the Data Protection Legislation."

Add "DBS Check" "a check with the Disclosure and Barring Service (or any successor agency) of the most extensive type available in relation to a potential Contractor's Person (having regard to the Orders they are to undertake under the Contract) whether the person about whom the check is made has any relevant criminal convictions; and/or there are other circumstances that may affect their eligibility to work with children or vulnerable adults."

Add "Deleterious"

"materials that are:

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

Add "Design Documents"

"the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Contractor."

Amend "Employer"

At the end of the definition insert: ", which expression shall include all permitted assignees or transferees under this Contract and successors in title."

Add "Employer's Group"

"any of:

- the Employer;
- all of the Employer's subsidiaries, holding companies or companies or societies of which the Employer is a subsidiary; and/or
- all subsidiaries of the Employer's holding company or of companies or societies of which the Employer is a subsidiary,

(in each case as defined in section 1159 of the Companies Act 2006 or sections 100 or 101 of the Co-operatives and Community Benefit Societies Act 2014)."

Add "Environmental Laws"

"any Statutory Requirements and any codes of practice and guidance notes issued by any government

department concerning the protection of human health or the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances."

Add "Expiry Date"

"the date on which the Contract Period is due to end (unless terminated earlier) in accordance with the Contract Particulars."

Add "Force Majeure"

"any event or occurrence which is outside of the control of the party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; exceptionally adverse weather; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- any industrial action occurring within the Contractors or sub-contractors organisation; or
- the failure by any sub-contractors to perform its obligations under any sub-contract."

Add "Hazardous Substances"

"any natural or artificial substance (in solid, liquid, gas or vapour form) capable (alone or in combination with any other substance) of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health, or damaging or being capable of damaging buildings or structures or the works comprising the Orders, including any controlled, hazardous, toxic or dangerous waste."

Add "Health and Safety Law"

"all Statutory Requirements related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents."

Add "Hot Works Permit"

"a permit provided by the Employer authorising the Contractor to carry out hot works as described in and on the terms stated in it."

Add "Key Performance Indicator"

"a measure by which the Contractor's performance of the Orders is measured as set out in Schedule 3."

Add "Malicious Software"

"any software used to disrupt computer operation, gather sensitive information or gain access to private computer systems. Malicious Software includes computer viruses (including Worms and Trojan Horses etc.), ransomware, spyware, adware, scareware and other malicious programmes."

Amend "Order"	<p>At the beginning of the definition insert: "electronic instructions given by the Employer to the Contractor and quoting the unique property reference number, Contractor's reference code and a description of the Site providing "</p> <p>Delete from the definition: "and/or the supply of labour, plant, materials and/or goods "</p> <p>Delete from the definition: "on instructions from the Contract Administrator "</p>
Add "Personal Data"	"shall have the meaning as provided in the Data Protection Legislation."
Add "Policies"	"the Employer's 'Code of Conduct' in Schedule 6, any other Employer's policy detailed in Schedule 2 (Specification) and any other policies of the Employer which the Employer may reasonably require the Contractor to abide by, including any updates and revisions."
Add "Probity Policy"	the Employer's policy for ensuring that it complies with all Statutory Requirements and good practice in relation to avoiding conflicts of interest between its board members and employees and its contractors and suppliers."
Add "Processing"	"shall have the meaning as provided in the Data Protection Legislation."
Add "Rectification Period"	"see clause 2.12.1."
Amend "Statutory Requirements"	<p>Delete the definition in its entirety and insert a new definition as follows:</p> <p>"any Acts of Parliament and any instruments, rules, orders, regulations notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them (including any which although they have not yet come into effect whether in whole or in part will or may do so as to affect the Works and/or the buildings and structures the subject of the Works once built), any retained EU legislation legally enforceable in England and Wales, and any rules, regulations, building regulations, orders, bye-laws or codes of practice of any local or other competent authority or of any statutory undertaker which has jurisdiction with regard to the Works."</p>
Add "Termination Date"	"(as applicable) the date on which all of the Works to be undertaken under the Contract Documents are completed, the end of the Contract Period or the date on which this Agreement is terminated for any other reason."

[Add "Third Party Agreements" "(as applicable) the date on which all of the Works to be undertaken under the Contract Documents are completed, the end of the Contract Period or the date on which this Agreement is terminated for any other reason."]²

Add "UK Designated Standards" "all applicable standards or guidance applicable to the Project and in force from time to time in the UK including but not limited to the Construction Products Regulations and the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/465) as may be amended, updated or supplemented from time to time."

Agreement etc. to be read as a whole

Renumber clause 1.2 to clause 1.2.1.

At the end of clause 1.2.1 insert the text as follows:

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

After clause 1.2.1 insert a new clause as follows:

"1.2 .2 This Agreement will govern all Orders carried out by the Contractor whether such Orders were or are carried out before or after the date of this Contract including any Orders carried out under a letter of intent between the parties. The Employer and the Contractor respectively acknowledge that the Contract Documents (including the documentation referred to within the Conditions) form the entire contract between the Employer and the Contractor in relation to the Orders to the exclusivity of any antecedent statement, agreement or representation."

Headings, references to persons, legislation etc.

After clause 1.3.6 insert a new clause as follows (moving the "and" from the end of clause 1.3.5 to the end of clause 1.3.6):

"1.3 .7 the terms "including and "in particular" are illustrative only and shall not limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Contract."

Contracts (Rights of Third Parties) Act 1999

² **Drafting note:** delete definition if there are no Third Party Agreements.

Delete clause 1.5 in its entirety and insert a new clause as follows:

- "1.5** .1 Any organisation within the Employer's Group on whose behalf the Employer procures any works under this Agreement may enforce this Agreement.
- .2 Subject to clause 1.5.1, nothing in this Contract confers any benefit on any person or organisation who is not a party to this Contract."
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Notices and other communications

Amend clause 1.6.1 to insert at the start of the clause the text as follows:

"Save where expressly stated otherwise within this Contract, "

Insert a new clause 1.6.3 as follows:

- "1.6** .3 Either party may notify the other in writing that they are prepared to accept emails as a valid form of notice. In order to be validly served emails must be sent to such email address as that party notifies to the other in writing. Email shall not be a valid method of service for notices relating to termination or relating to any dispute.

Applicable law

Delete clause 1.7 and insert:

- "1.7** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales."

Section 2 Carrying out Work

Contractor obligations

Renumber clause 2.1 to clause 2.1.1.

Clause 2.1.1

Amend clause 2.1.1 to insert at the end of the clause the text as follows:

"When requested to do so by the Employer the Contractor shall provide the Employer with evidence that he has complied with and given all notices required by the Statutory Requirements."

After clause 2.1.1 insert new clauses as follows:

- "2.1**
- .2 The Contractor shall at all times use all reasonable endeavours to prevent any public or private nuisance (including any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material 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, or in the course of, or caused by, the carrying out of the Orders, or of any obligation pursuant to clause 2.12.
 - .3 The Employer may issue to the Contractor such instructions as the Employer considers necessary if any injunction is granted or Court order is made in consequence of any such nuisance or interference described in clause 2.1.2, but no such instruction shall be construed as a Variation.
 - .4 At no cost to the Employer, the Contractor shall defend or, at the Employer's option, assist the Employer in defending any actions or proceedings which may arise as a result of any breach by the Contractor of its obligations under this clause 2.1.
 - .5 Without prejudice to the Contractor's obligations under clause 2.1.2, the Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Orders, or of any obligation pursuant to clause 2.12.
 - .6 If the carrying out of the Orders, or of any obligation pursuant to clause 2.12, is likely to necessitate any interference with the rights of adjoining or neighbouring owners or occupiers, which for the avoidance of doubt shall include party wall matters, then the Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement shall be subject to the approval of the Contractor before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement."

Materials, goods and workmanship

Amend clause 2.2.1 to replace "Schedule of Rates" in the third line the text as follows:

"Schedule 2 (Specification)".

Amend clause 2.2.2 to insert at the end of the clause the text as follows:

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

Delete clause 2.2.3 in its entirety and insert a new clause as follows

"2.2 .3 To the extent that the Contractor is required to select materials to be used in the Order or to design works for the purposes of the Order, the Contractor shall use the reasonable skill, care and diligence of a professionally qualified and competent designer of the discipline relevant to the Order in a project of similar size and complexity to the Order. The Contractor shall not use any Deleterious products or materials in any Order."

Amend clause 2.2.4 to insert at the end of the clause the text as follows:

"In any event the Contractor shall ensure that all Contractor's Persons working on the delivery of the Orders shall be sufficiently skilled and qualified to complete the Orders in a competent, safe and professional manner."

After clause 2.2.4 insert new clause 2.2.5 as follows:

"2.2 .5 The Contractor assigns to the Employer the benefit of any warranty or guarantee for any materials or goods supplied by the Contractor and used for the purposes of an Order and shall when requested by the Employer enter in whatever documents are necessary to complete such assignment."

Rights of Employer

Amend clause 2.3.1.1 to insert after "similar work" in the first line the text as follows:

"or work removed from this Contract pursuant to clause 2.3.1.3"

Amend clause 2.3.1.2 to delete "." at the end of the clause and insert the text as follows:

","

Insert new clause 2.3.1.3:

"to increase or decrease the scope of this Contract including (without limitation) the Contract Area at any time upon prior notification to the Contractor."

Delete clause 2.3.5 in its entirety

Delete clause 2.3.6 in its entirety and insert a new clause as follows:

- "2.3** .6 Any materials and goods supplied by the Employer for any Order shall be at the sole discretion of the Employer. Where the Contractor has expressed, in writing to the Employer, concerns as to the quality and/or suitability and/or legislative or regulatory compliance of any materials or goods supplied by the Employer, the Contractor, in its compliance with this clause 2.3.6, shall not be liable for any loss, damage or court action resulting from failure of such materials or goods."

After clause 2.3.6 insert new clauses as follows:

- "2.3** .7 The Contractor shall use all reasonable endeavours not to interfere with, or impede the progress of, any work being carried out by the Employer and/or any person, constructor, contractor, supplier, service provider or agent authorised or licensed by the Employer to undertake work and/or services at the Sites or any of the Employer's other properties, and shall observe all reasonable requirements of the same in relation to the carrying out of such work.
- .8 Pursuant to clause 2.3.7, the Employer shall discuss any access requirements and the extent and location of such works with the Contractor and the Contractor shall advise the Employer of the information it shall require in order to carry out of the Orders.
- .9 The Contractor undertakes and agrees to co-operate fully with the Employer and/or any person, constructor, contractor, supplier, service provider or agent authorised or licensed by the Employer and, if directed by the Employer, with any other service provider, with regard to the programming of access for such work as is referred to in clause 2.3.7, the co-ordination of the same with regard to the carrying out of the Orders and the shared use (if necessary) of facilities.
- .10 If the Employer exercises its rights under clause 2.3.1.3 the Contractor shall have no claim against the Employer (whether under contract, statute, tort or otherwise) in respect of any consequential or indirect loss or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity except by way of agreed adjustments to the Schedule of Rates in accordance with these Conditions and the Contractor acknowledges that the Employer shall be at liberty to award any Works omitted from this Agreement under clause 2.3.1.3 to a third party (or alternatively undertake the relevant Works itself)."

Value of work to be carried out under this Contract

Delete clause 2.5 in its entirety and insert new clause as follows:

- "2.5** The Employer gives no representations or warranties to the Contractor about the exact amount or value of Orders the Employer will instruct the Contractor to do under this Contract, but the Employer confirms that, subject to clause 15.11.9 Orders will be placed under it throughout the Contract Period unless it is terminated. No variance in the actual value of any Orders compared to any amount stated in the

Contract Documents shall give rise to a change in any rate price or percentage adjustment. The Contractor is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Works under this Contract is different in amount, value or scope than anticipated."

Orders – completion

Delete clause 2.6 in its entirety and insert a new clause as follows:

"2.6 Unless covered by a priority coding referred to in the Contract Particulars (item 8) and/or the Specification (Schedule 2), each Order shall state a commencement date and a reasonable date for its completion. Subject to clause 2.10, the Contractor shall ensure that all of the work covered by and included in the Order shall be completed in full by the date for its completion specified in the Order."

Amend clause 2.7 to insert before "." at the end of the clause the text as follows:

" or relieve the Contractor from any of the obligations contained in the Contract Documents"

Extension of time

Delete clause 2.10 in its entirety and insert a new clause as follows:

"2.10 .1 If at any time during the course of completing an Order the Contractor shall establish that the process of the work under the Order is being affected by reason of:

- .1 Force Majeure;
- .2 Specified Perils or any other risks the Contractor is required to insure or insures against;
- .3 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person;
- .4 a Covid-19 Related Matter, provided that the Contractor demonstrates to the Employer that the Contractor has complied with clauses 2.20 and 2.21 of this Contract and provided further that the Contractor's sole and exclusive remedy for any delay to the progress of the Works arising directly or indirectly out of a Covid-19 Related Event or any additional costs or expenses arising directly or indirectly out of a Covid-19 Related Event shall be the right to apply for an extension of time pursuant to this clause 2.10 and the Contractor waives any rights it may have under any other clause to make a claim relating indirectly or directly to a Covid-19 Related Matter or a Covid-19 Related Event and, for the avoidance of doubt, the Employer shall have no liability for any additional costs or expenses attributable to a Covid-19 Related Event

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 Contract Administrator, provided that the Contractor shall cooperate with the Employer and Contract Administrator with a view to mitigating any delay and minimising any extension of time claimed by the Contractor.

- .2 Any application pursuant to clause 2.10.1 shall be made immediately upon the Contractor becoming aware that such delay has or might occur, or in any event within 4 (four) weeks of the Contractor becoming so aware, and shall include any documentation the Contractor may wish to provide in support of its application and the period of extension it seeks.
- .3 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. For the avoidance of doubt, there shall be no increase in the price of any Order in the event an extension of time is granted.
- .4 If the Contractor fails to complete any Order within any extension of time granted pursuant to clause 2.10.3 in respect of that Order then the Contract Administrator may issue a certificate to that effect and at any time thereafter may employ and pay other persons to execute and complete the work described in such Order and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt."

Order Completion Date

After clause 2.11.2 insert new clauses as follows:

- "2.11** .3 If the Contract Administrator is required to attend any Site for the purposes of assessing whether or not an Order has been completed in any further attendance by the Contract Administrator shall be borne by the Contractor.
- .4 Notwithstanding anything expressed or implied elsewhere in this Contract, the Contract Administrator shall not be obliged to confirm the Order Completion Date in accordance with this clause 2.11 and completion of the Order shall not for any purpose of this Contract have occurred:
- 2.11.4.1 unless and until the Contractor shall first supply to the Employer all documentation required by the Contract Documents and/or the Order;
 - 2.11.4.2 unless and until the Contractor shall first follow the procedure for handover of the completed Order set out in the Contract Documents and/or the Order; and
 - 2.11.4.3 at any time excluded under the terms set out in the Contract Documents and/or the Order."

Defects

Delete clause 2.12 in its entirety and insert new clauses as follows:

- "2.12** .1 If any defects, shrinkages or faults appear, or incomplete items of work become apparent, within 12 months of the Order Completion Date, the Employer will notify the Contractor in writing that such defects, faults, shrinkages or incomplete items of work are required to be made good or completed. Where clause 2.12.3 does not apply, the Contractor must rectify such defects, shrinkages, faults or incomplete items of work by the reasonable date set by the Contract Administrator (the Rectification Period).
- .2 All defects, shrinkages, faults or incomplete items of work shall be made good or completed by the Contractor at no cost to the Employer.
- .3 Defects will be categorised and dealt with as follows:
- .1 "Emergency" requiring attendance by the Contractor within 5 hours of being instructed by the Employer;
- .2 "Urgent" requiring attendance by the Contractor within 24 hours of being instructed by the Employer; or
- .3 "Routine" requiring attendance by the Contractor within 5 Business Days of being instructed by the Employer.
- .4 If the Contractor fails to make good any defects, shrinkages or faults, or fails to complete any incomplete items of work in accordance with clauses 2.12.1 or 2.12.3, then the Employer may:
- .1 itself rectify the defect, shrinkage or fault or complete the incomplete item of work; or
- .2 employ a third party to rectify the defect, shrinkage or fault or complete the incomplete item of work; and
- .3 recover from the Contractor the reasonable costs incurred from undertaking this requirement itself, or through the employment of a third party, and any other appropriate sum due to the Employer for the Contractor's failure to comply with the Employer's reasonable instructions. The Employer may deduct these costs and sums from any sum due to the Contractor under this Contract (provided a notice of deduction has been given under clause 4.6.5) or recover these costs from the Contractor as a debt."

After clause 2.12 insert new clauses as follows:

"Policies

- 2.13** The Contractor shall perform the Contractor's obligations under this Contract in such manner and at such times that no act, omission or default of the Contractor shall breach the Policies or shall cause the Employer to be in breach of the Policies.

Hot Works Permit

- 2.14** .1 The Contractor shall obtain and maintain all necessary Hot Works Permits required for the carrying out of Orders instructed under this Contract and shall perform all such Orders in accordance with the Hot Works Permits.
- .2 The Contractor shall notify the Employer promptly and in any event within 2 Business Days of the issue of an Order where a Hot Works Permit is needed to carry out the works under that Order
- .3 Prior to commencing any Order under this Contract the Contractor shall produce for inspection adequate documentary evidence that it has all of the necessary Hot Work Permits required for the carrying out of all Orders.
- .4 The Contractor shall immediately inform the Employer if any Hot Works Permit is breached in any way and provide the Employer with details of the breach and how it will be remedied

Environmental Laws

- 2.15** .1 The Contractor shall comply with all Environmental Laws in carrying out Orders.
- .2 The Contractor shall not transport to, use, generate, dispose of, or install any Hazardous Substance at any Site except in accordance with all Environmental Laws applicable at the time of performing the Orders. The Contractor shall not cause or permit any release of Hazardous Substances into the environment except in accordance with Environmental Laws applicable at the time of performing the Order.

Parent company guarantee

- 2.16** Where requested, the Contractor shall provide a Parent Company Guarantee in the format specified in Schedule 20 to this Contract.

Copyright licence

- 2.17** .1 The copyright in the Design Documents shall remain vested in the Contractor, and the Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the Design Documents and the designs contained within them for any purpose related to the Employer's interest in the Site and/or the works described in the Order or part thereof. Such licence shall enable the Employer to copy and use the Design Documents for the extension of the works described in the Order but such use shall not include a licence to reproduce the designs contained in them for any extension of the works described in the Order. The Employer hereby agrees that the Contractor shall not be liable for any use by the Employer or its licensees of the Design Documents for any purpose other than that for which they were prepared.

- .2 The licence granted in favour of the Employer in sub-clause 2.17.1 shall be capable of sub-licence and the Contractor shall, forthwith upon the request of the Employer at any time, deliver a single copy of the Design Documents to the Employer."

[Third Party Agreements]

- 2.18** .1 To the extent that the Contractor has been provided with copies of Third Party Agreements prior to the date of this Agreement, the Contractor shall be deemed to have full knowledge of such agreements and shall perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements.
- .2 Upon being supplied with copies of, or relevant extracts from any further Third Party Agreements, the Contractor shall, with effect from the date on which it was provided with such copies or extracts perform its obligations under this Agreement in such a manner so as not to constitute, cause or contribute to the Employer's breach of such agreements it being acknowledged that such compliance may be treated as a Variation pursuant to clause 5.1.³

Brexit

- 2.19** For the purposes of clause 2.10, the parties acknowledge and agree that the United Kingdom leaving the European Union at any point after the date of this Contract (including all associated consequences affecting the performance of the Works such as increased labour or material costs or the availability thereof) shall be a foreseeable event that the Contractor has fully allowed for within the Schedule of Rates and its programme for the Works.

Covid-19

- 2.20** The Contractor shall comply, and shall ensure compliance by the Contractor's employees, agents, sub-consultants, sub-contractors and suppliers, with:
- .1 the Construction Leadership Council's publication "Construction Sector - Site Operating Procedures: Protecting Your Workforce During Coronavirus (Covid-19)" version 6 dated 20 October 2020 (the SOP);
- .2 UK Government guidance on working safely during coronavirus (Covid-19) - Construction and other outdoor work;
- .3 any updates, amendments, supplementary guidance and recommendations relating to the above; and
- .4 any other public health measures, legislation or related guidance,

³ **Drafting note:** delete clause if there are no Third Party Agreements and renumber 2.19 to 2.21.

in so far as is relevant to the Works or the Site, as published from time to time. Compliance with this clause 2.20 shall not entitle the Contractor to an adjustment of the Contract Sum or an extension of time

2.21 The Contractor shall ensure that at all times in relation to the Works:

- .1 the necessary risk assessments as required by the SOP have been produced and shared with the workforce;
- .2 the poster required to be displayed at the Site as required by the SOP is being displayed; and
- .3 the Contractor has in place appropriate procedures regarding all site inductions, health and safety briefings, tool box talks and similar practices required by the SOP or any other public health measures,

and shall provide evidence whenever reasonably requested by the Employer of the Contractor's compliance with this clause 2.21. Compliance with this clause 2.21 shall not entitle the Contractor to an adjustment of the Contract Sum or an extension of time."

Section 3 Control of Work

Assignment

Delete clause 3.1 in its entirety and insert new clauses as follows:

- "3.1**
- .1 The Employer shall be entitled to assign all rights and benefits under this Contract, or any interest herein, or novate this Contract to such other organisation as the Employer requires, without the consent of the Contractor. The Contractor hereby consents to the assignment or novation of this Contract by the Employer and agrees to enter into such documentation as may be required to effect such assignment or novation.
 - .2 Other than as permitted by law, the Contractor shall not be entitled to assign any rights and benefits under this Contract or interest herein, or novate this Contract, without the prior written consent of the Employer.
 - .3 The Contractor undertakes with the Employer not to contend that any person to whom this Contract may be assigned will be precluded from recovering under this Contract any loss resulting from any breach of this Contract either by reason that the person is an assignee and not the original party to this Contract or by reason that the Employer named in this Contract or any intermediate owner of the Employer's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works."
-

Sub-contracting

Delete clause 3.2 in its entirety and insert new clauses as follows:

- "3.2**
- .1 The Contractor shall not without the Contract Administrator's written consent sub-contract any Order or part of an Order.
 - .2 In the event that the Employer consents to any work under this Contract being carried out by a sub-contractor, the Contractor shall ensure that all work carried out by that sub-contractor is carried out in accordance with the terms of this Contract, the CDM Regulations and all relevant health and safety requirements.
 - .3 Any application by the Contractor to sub-contract the work must indicate the identity of the sub-contractor, the extent of the work that is to be sub-contracted, and the terms of the sub-contract.
 - .4 The Contractor shall indemnify the Employer against all costs, losses and expenses that arise from the Contractor not complying with this clause.
 - .5 The Contractor must include the following terms in all sub-contracts and supply contracts relating to this Contract that:

- .1 the sub-contract or supply contract must terminate automatically on the termination of this Contract unless the Employer notifies the Contractor that the Employer wishes to take over that sub-contract in accordance with clauses 7.1.3, 8.13.6 and 8.14.4;
 - .2 if the Employer requires, the sub-contractor will novate the sub-contract to the Employer and will enter into a deed of novation to that effect;
 - .3 the sub-contractor or supplier may not further sub-contract without the prior written consent of the Employer;
 - .4 the Contractor will pay all undisputed sums due from the Contractor to the sub-contractor or supplier within no more than 30 days from the receipt of a valid invoice under the sub-contract and the sub-contractors shall be required to include provisions having the same effect as in this clause in all sub-contracts (at any stage of remoteness from the Employer in the supply chain) relating to this Contract;
 - .5 the sub-contractor must either provide product warranties to the Employer or permit the Contractor to assign to the Employer any product warranties the sub-contractor has provided to them; and
 - .6 the sub-contractor or supplier will comply with all the terms and conditions of this Contract.
- .6 Sub-contracting shall not relieve the Contractor of any of the Contractor's obligations or duties under this Contract and the Contractor shall be responsible for the acts and omissions of any sub-contractor as though they are the Contractor's own.
- .7 The Contractor shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the Contractor shall:
- .1 implement due diligence procedures for its sub-contractors;
 - .2 require all sub-contractors to warrant that, neither the sub-contractor nor any of the sub-contractor's officers or employees:
 - .1 have been convicted of any offence involving slavery or human trafficking; or
 - .2 have, to the best of the sub-contractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
 - .3 include provisions in all sub-contracts:

- .1 enabling the Employer to undertake spot checks and audits whether any offence under the Modern Slavery Act 2015 is being or has been committed;
 - .2 requiring the sub-contractor to produce an annual statement about modern slavery, where section 54 of the Modern Slavery Act 2015 applies to the sub-contractor;
 - .3 requiring the sub-contractor to take such remedial actions as the Employer requires, to address any areas of concern in relation to offences under the Modern Slavery Act 2015 either due to its own activities or those of its supply chain;
 - .4 enabling the Employer to enforce the obligations this clause 3.2.7.3 requires to be included in sub-contracts directly against the sub-contractor under the Contracts (Rights of Third Parties) Act 1999; and
 - .5 requiring the sub-contractor to include provisions having the same effect as in this clause 3.2.7 in all sub-contracts (at any stage of remoteness from the Employer in the supply chain) relating to this Agreement.
- .8 Within 5 Business Days of the Commencement Date the Contractor shall notify to the Employer in writing the names, contact details and (if known) details of legal representatives of each of its proposed sub-contractors. The Contractor shall notify the Employer within 5 (five) Working Days of:
- .1 any change to that information; and
 - .2 the name, contact details and (if known) details of legal representatives of any new sub-contractors."

Access to the Site

[Amend clause 3.4.2 to insert after "instructions" in the second line the text as follows:

"provided under clause 3.4.1".

Further amend clause 3.4.2 to delete all text after "Administrator" in the fourth line.

Delete clause 3.4.3 in its entirety.]

Delete clause 3.4 in its entirety and insert new clause as follows.

- "3.4.1 Access to each Site shall be arranged by the Contractor in accordance with the instructions of the Contract Administrator and in accordance with the requirements set out in the Contract Documents. Where the Site is occupied the Contractor shall also be responsible for ensuring that the occupier

removes such fixtures, fittings or other items as are necessary to carry out the Order.

- 3.4.2 The Contractor shall notify the Employer in writing each time tenant or other occupier of a Site refuses Works under this Contract in line with the No Access Policy in Schedule XX. If the Contractor is unable to gain access to the Site and/or is unable to reasonably carry out the Order because the tenant or other occupier will not co-operate with the Contractor, the Contractor shall follow the procedure set out in the Contract Documents and provide evidence to the Contract Administrator of the Contractor's efforts to gain access or to work with the tenant or occupier. The Contract Administrator shall issue such reasonable instructions as he deems necessary in this event and the Contractor shall comply with such instructions at the Contractor's own cost."

Variations

Amend clause 3.5.2 to insert at the end of the clause the text as follows:

"or instruct the Contractor to undertake, at its own cost and by such reasonable date as determined and instructed by the Contract Administrator, such remedial work as may be required to correct any alteration in, addition to or omission from the work so that the work complies with the requirements of the original Order. Any work carried out and/or materials supplied which are in addition to an Order, and which have not been authorised by the Contract Administrator, shall be at the Contractor's own cost. If the Contractor fails to remedy any alteration in, addition to, or omission from, the work to the Contract Administrator's satisfaction, or by the date stipulated under this clause 3.5.2, the Employer may:

- .1 itself remedy the work; or
- .2 employ a third party to remedy the work; and
- .3 recover from the Contractor the reasonable costs incurred from undertaking this requirement itself, or through the employment of a third party, and any other appropriate sum due to the Employer for the Contractor's failure to comply with the Employer's reasonable instructions. The Employer may deduct these costs and sums from any sum due to the Contractor under this Contract (provided a notice of deduction has been given under clause 4.6.5) or recover these costs from the Contractor as a debt."

Cancellation of an Order

Delete clause 3.6.2.2 in its entirety and insert a new clause as follows:

- "**3.6.2** .2 Save as provided under clause 3.6.2.1, cancellation of an Order shall not give rise to any entitlement claim by the Contractor for abortive costs or any claim

for loss of profit or other consequential loss of any kind or for any other amount under this Contract."

After clause 3.10 insert new clauses as follows:

"Delegated authority

- 3.11** .1 The Contract Administrator may delegate some or all of the Contract Administrator's duties to one or more of the Employer's Persons, for the purposes of this clause 3.11 designated an "Authorised Officer".
- .2 The Contract Administrator must give notice of any delegation under clause 3.10.1 to the Contractor. This notification must state:
- .1 the identity of the Authorised Officer(s);
 - .2 contact details for the Authorised Officer(s); and
 - .3 the duties delegated.
- .3 The Contractor need not recognise any Authorised Officer until notified in writing of a delegation to that Authorised Officer under clause 3.11.2.

Publicity

- 3.12** .1 The Contractor must not, and must ensure that its sub-contractors do not, give any information about the work carried out under this Contract for publication in the press or on radio, television, via the internet, or for any other media without the prior written consent of the Employer.
- .2 The Contractor must not, and must ensure that its sub-contractors do not, take photographs of any of the Sites or of any works carried out at them without the prior consent of the Employer, other than as required as part of the delivery of this Contract.

Contractor's liability

- 3.13** No admission, consent, comment, sanction, acknowledgement, confirmation or advice made or given by or on behalf of the Contract Administrator shall operate to exclude or limit the Contractor's liability for any breach of his obligations under this Contract."
-

Section 4 Payment

Progress payments

Delete clause 4.3 in its entirety.

Final payment where Contract Administrator measures and values Orders

Delete clause 4.4 in its entirety.

Final payment where Contractor measures and values Orders

Amend clause 4.5.1 as follows –

"accompanied by such further information as may be specified in the Contract Documents including Schedule 4."

Amend clause 4.5.2 to delete the words "7 days after the next monthly Valuation Date following receipt by the Contract Administrator of the Contractor's application. Not later than 5 days after the due date the Contract Administrator shall issue a certificate stating the sum" and replace with the text "30 days from the date specified on the Invoice. Not later than 7 days after the application date the Contract Administrator shall issue written confirmation stating the sum".

Amend clause 4.5.4.3 to delete the words "a certificate" and replace with the text "written confirmation"

Amend clause 4.5.5 to delete the words "a certificate" and replace with the text "written confirmation"

Payments – final date and amount

Amend clause 4.6.1 to delete "clauses 4.3 to 4.5" and replace with "clause 4.5"

Amend clause 4.6.2 to delete "relevant certificate" and replace the text with "Invoice (which must be a VAT invoice, where VAT is payable)"

Amend clause 4.6.3 to delete "a certificate" and replace with the text "written confirmation" and delete "4.3.3, 4.4.2"

Delete clause 4.6.4 in its entirety.

Amend clause 4.6.5 to delete the words "certificate or application" and replace them with the text "Invoice".

Amend clause 4.6.9 to delete the word "certificates" and replace it with the text "Invoice".

Further amend clause 4.6.9 to insert after "zero" as follows:

"or negative".

After clause 4.6.9 insert new clauses as follows:

- "4.6** .10 All invoices issued under this clause 4 must set out:
- .1 the Order to which the invoice relates;
 - .2 the address at which the work was undertaken;
 - .3 a brief but sufficiently detailed description of the work undertaken;
 - .4 the exact date upon which the work commenced;
 - .5 the exact date upon which the work was completed; and
- the Employer reserves the right to reject in its entirety any invoice which does not comply with this clause 4.6.10."
- .11 Subject to clause 4.6.5 (where applicable), the Employer may deduct any amount owed by the Contractor to the Employer (including to recover any overpayment made to the Contractor in respect of any Order) from a payment made at any time under this Contract.
-

Contractor's right of suspension

Amend clause 4.7.1 to insert before the words "his obligations" the text as follows:

"all or any of"

After clause 4.7.3 insert new clause as follows:

- "4.8** Neither the issue by the Contract Administrator of any certificate nor the payment of any amount by the Employer to the Contractor pursuant thereto shall constitute or imply or be evidence of the Employer's approval or acceptance of any work, materials or equipment or shall relieve the Contractor of any of its obligations under this Contract."

Section 5 Measurement and Valuation

Measurement and Valuation – responsibility

Delete clause 5.2 in its entirety and include new clauses as follows:

- "5.2** .1 [Save where work under any Order relates to Service and Repair which is subject to the price per property detailed in Schedule 1 (but excluding any Variations which are valued in accordance with the Schedule of Rates detailed in Schedule 1),] [A/a]ll Work carried out pursuant to an Order shall be valued in accordance with the Schedule of Rates detailed in Schedule 1.
- .2 All valuations of Orders shall be undertaken by the Party designated in the Contract Particulars (item 11).
- .3 Work under any Order shall commence only after prior and express authorisation by the Employer. Any work carried out under an Order, and which requires valuation under this clause 5.2 and Schedule 4, shall be at the Contractor's own cost where this express authorisation has not been provided by the Employer."
-

Valuation – measurement

Amend clause 5.3.1 to delete the references to clauses 5.4.1 and 5.5.

Further amend clause 5.3.1 to delete the text ", insofar as such rates or prices apply, subject to adjustment by the Adjustment Percentage".

Delete clause 5.3.2 in its entirety.

Valuation – daywork

Delete clause 5.4 in its entirety.

Derived Rates

Delete clause 5.5 in its entirety.

Rates – Fluctuations

Delete clauses 5.6.3, 5.6.4 and 5.6.5 in their entirety.

Overtime work

Delete clause 5.7 in its entirety.

Interruption of work – unproductive costs

Delete clause 5.8 in its entirety.

Section 6 Injury, Damage and Insurance

Contractor's liability – personal injury or death

Amend clause 6.1 to insert after "Order" in the third line the text as follows:

"including the performance of the Contractor's obligations under clause 2.12 or out of the presence on Site of any person or persons for any other reason, any fraud or for fraudulent misrepresentation and any other liability which cannot be excluded by law,".

Contractor's liability – loss, injury or damage to property

Amend clause 6.2 to insert after "clause 6.3" in the first line the text as follows:

"and clause 6.3X".

Further amend clause 6.2 to insert after "Order" in the fourth line the text as follows:

", or of any obligation pursuant to clause 2.12,".

Further amend clause 6.2 to insert before "omission" in the fifth line the text as follows:

"breach of this Contract".

After clause 6.3 insert new clauses as follows:

"Limitation of liability"

- 6.3X** .1 Subject to Clause 6.1, the Contractor's total liability for loss or damage shall not exceed:
- .1 the minimum level of insurance where that liability is required by this Contract to be insured; or
 - .2 £[26,000,000] in respect of all other liabilities (including any excesses, deductibles and amounts above the level of any insurance cover.
-

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

Delete clause 6.7A in its entirety.

Joint Names Insurance of work or supply comprised in Orders by the Contractor

Amend the heading of clause 6.7B to delete "Joint Names".

Amend clause 6.7B to delete “Joint Names Policy for All Risks Insurance” in line 2 and replace with the text as follows:

“policy for All Risks Insurance in the Contractor’s sole name”.

After clause 6.14 insert a new clause 6.15 as follows:

- "6.15** .1 The Contractor shall effect and maintain professional indemnity insurance in the sum of [] pounds (£ []) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [in the aggregate for each year of insurance] [provided that such limit of indemnity may be [in the aggregate for each year of insurance] [[] pounds (£ [])] in respect of claims for pollution and contamination] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Works and for a period expiring no earlier than 12 years from the Order Completion Date provided that such insurance remains available to organisations of equivalent size and type to the Contractor's business at commercially reasonable rates and on commercially reasonable terms.
- .2 The Contractor undertakes to provide to the Employer on demand from time to time such evidence as the Employer may reasonably require to satisfy himself that the insurance required by clause 6.15.1 is being maintained.
- .3 The Contractor shall inform the Employer if the insurance required by clause 6.15.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Employer the best means of protecting the Contractor's and the Employer's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- .4 The Contractor shall not compromise, settle or waive any insurance claim it may have relating to any liability under this Contract without the Employer's prior consent provided that nothing in this clause shall prevent the Contractor's insurers from taking over (in the Contractor's name) the defence of any claim made by the Employer under this Contract (in that capacity) from conducting and settling it as they see fit.
- .5 The above obligations shall continue notwithstanding termination of this Contract or determination of the Contractor's employment under this Contract in either case for any reason whatsoever."
-

Section 7 Break Provision – Rights of each Party

Break notice

Delete clause 7.1 in its entirety and insert new clauses as follows:

- "7.1**
- .1 The Employer shall have the right to terminate this Contract before the end of the Contract Period by giving the Contractor not less than 6 months written notice to that effect (Termination Notice) expiring at any time not less than 2 years after the date of commencement of the Contract Period.
 - .2 The Contractor shall have the right to terminate this Contract before the end of the Contract Period by giving the Employer not less than 12 months written notice to that effect (Termination Notice) expiring at any time not less than 2 years after the date of commencement of the Contract Period.
 - .3 For the avoidance of doubt, in the event that the Contract is terminated by either Party under this clause 7.1 the Employer shall not be liable for any loss of profit, loss of contracts or other costs or losses suffered or incurred by the Contractor as a result of this Contract coming to an end.
 - .4 If this Contract is terminated by either Party exercising the break provision under clause 7.1, the Employer may require the Contractor to novate any sub-contract and/or supply contracts to the Employer by serving notice to that effect on the Contractor at least 15 Business Days before the date of termination."
-

Section 8 Termination for Default etc.

Meaning of insolvency

Amend clause 8.1.4.1 by deleting the words "he enters into an arrangement, compromise or composition in satisfaction of his debts" and replace with the text:

"he commences negotiations with all or any class of his creditors with a view to rescheduling any of his debts, or makes a proposal for or enters into any compromise or arrangements with any of his creditors"

Amend clause 8.1.4.2 by deleting "." at the end of the clause and replace with:

"; or"

Insert a new clause 8.1.4.3:

"he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986."

Notices under section 8

Delete clause 8.2.1 in its entirety

Default by Contractor

Delete clause 8.4 in its entirety and insert a new clause as follows:

- "8.4** .1 If the Contractor commits any of the following defaults the Employer may at any time by notice terminate the Contractor's employment under this Contract:
- .1 The Contractor purports to assign, novate or appoint an agent to deliver this Contract without the prior written consent of the Employer;
 - .2 The Contractor fails to comply with its obligations under this Contract for a period of more than 10 Business Days because of any action taken by any Statutory Authority in relation to the Contract due to any breach or suspected breach of any Statutory Requirements by the Contractor or a sub-contractor;
 - .3 The Contractor fails to provide a Parent Company Guarantee within the period specified in this Contract;
 - .4 The Contractor commits a breach of this Contract and the Contractor has committed the same, or a similar, breach two or more times in the three months preceding this breach;

- .5 The Contractor breaches any Health and Safety Law or Environmental Laws in connection with this Contract (other than a minor breach which does not give rise to any risk of prosecution and which is remedied immediately after the Contractor or sub-contractor becomes aware of it);
 - .6 The Contractor has had 2 default remedial plans rejected by the Employer under clause 14.2 and provides a further draft remedial plan that is also rejected under that clause;
 - .7 The Contractor undergoes a change of control (as defined in section 1124 Corporation Tax Act 2010 which the Employer has not approved in writing in advance of such change of control occurring;
 - .8 The Contractor breaches clause 8.6;
 - .9 The Contractor, without reasonable cause fails to carry out any work pursuant to any one or more Orders before each relevant Order Date for Completion;
 - .10 The Contractor, without reasonable cause significantly suspends, disrupts or delays the carrying out of any work pursuant to any Order or Orders;
 - .11 The Contractor fails to proceed regularly and diligently with any work pursuant to any Order or Orders; or
 - .12 The Contractor, fails to carry out any work pursuant to any Order or Orders in accordance with this Contract.
- .2 If the Contractor:
- .1 fails to comply with an instruction of the Contract Administrator within the period for doing so as set out in clause 2.12;
 - .2 fails to remedy any other breach of this Contract which, in the reasonable opinion of the Employer, is sufficiently serious to entitle the Employer to terminate this Contract if it is not remedied; or
 - .3 breaches any Statutory Requirements in connection with this Contract;
- the Contract Administrator may give to the Contractor a notice specifying the material breach or breaches (a 'specified' material breach or breaches).
- .3 If the Contractor continues a specified material breach for, or fails to rectify a specified material breach within, 10 Business Days from receipt of a notice under clause 8.4.2, the Employer may give to the Contractor a further notice demanding that the material breach ceases and/or is rectified within 5 Business Days, and warning the Contractor of the Employer's intention to terminate this Contract should the Contractor fail to comply.

- .4 If the Contractor fails to comply with any notice under clause 8.4.3 the Employer may by a further notice terminate the Contractor's employment immediately under this Contract."

Insolvency of Contractor

Insert new clauses 8.5.3.4 & 8.4.3.5 (deleting "and" at the end of clause 8.5.3.2):

- "4 no further sums will become due to the Contractor under this Contract other than for Works completed before the date of the Contractor became Insolvent; and
- .5 the Employer will not be required to pay any sums due to the Contractor (whether arising before or after the Contractor became Insolvent until the Employer has quantified its losses arising from the Contractor becoming Insolvent".

Corruption and regulation 73(1)(b) of the PC Regulations

Renumber clause 8.6 to clause 8.6.1.

After clause 8.6.1 insert new clauses as follows:

- "8.6** .2 The Contractor must incorporate obligations in every sub-contract and supply contract that enable the Contractor to terminate the sub-contract or supply contract because of any corrupt gift consideration or financial or other advantage offered or paid by the sub-contractor or supplier or on its behalf in connection with this Contract.
- .3 The Contractor must not do and must procure that each sub-contractor and supplier does not do anything which would place the Employer in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or any restriction in its Probity Policy on making a payment or granting a benefit to a business trading for profit.
- .4 Within 5 Business Days of being so instructed by the Employer, the Contractor must repay to the Employer any payments made in breach of clause 8.6.3.
- .5 The Contractor must not do and must procure that each sub-contractor or supplier is not placed in a position where (in the reasonable opinion of the Employer) there is or may be an actual conflict, or a potential conflict, between the pecuniary interests of the Contractor and the obligations owed to the Employer under this Contract."

Consequences of termination under clauses 8.4 to 8.6

Amend clause 8.10.3.2 to insert after "direct loss" in the first line the text as follows:

“(including any loss of rental income, which shall be deemed to be a “direct loss”)”.

After clause 8.11 insert new clauses as follows:

“Termination by either Party – obligations of the Contractor

- 8.12** .1 Upon termination of the Contractor’s employment under this Contract, howsoever arising, the Contractor shall immediately vacate the Site and shall comply with all reasonable instructions of the Employer for the protection of any work and any goods and materials and the safe and orderly removal of all plant equipment and other items belonging to the Contractor and shall immediately deliver to the Employer possession of the Site and any work in a neat and tidy condition.
- .2 Upon termination of the Contractors employment under this Contract, and only where relevant, the provisions of clause 11.4 and Schedule 7 shall apply.

Termination for Force Majeure

- 8.13** .1 If Force Majeure results in the suspension of all, or a substantial majority of, the work for more than 20 Business Days, either Party may terminate the Contractor’s obligation to provide the Works under this Contract by giving 10 Business Days’ written notice to the other.
- .2 If this Contract is terminated for Force Majeure:
- .1 the Contractor must notify the Contract Administrator of any Order that the Contractor is not able to complete;
 - .2 the Employer must pay the Contractor for all Orders properly completed up to the Termination Date in accordance with Schedule 4;
 - .3 the Employer must pay the Contractor a fair and reasonable amount for all uncompleted Orders up to the Termination Date;
 - .4 the Employer must pay the Contractor the market value on the Termination Date of any equipment or materials owned by the Contractor which are to be transferred to the Employer on termination; and
 - .5 the Employer may require the Contractor to novate any sub-contracts and/or supply contracts to the Employer by serving notice to that effect on the Contractor:
 - (a) at the same time as the notice of termination where the notice of termination is served by the Employer; or
 - (b) within 5 Business Days of the date of service of the notice of termination where the notice of termination is served by the Contractor.

- .3 Except as provided above, neither Party is to have any claim against the other as a result of termination for Force Majeure, but this is without prejudice to any amounts due under Schedule 4 for Orders completed before the Termination Date.

Expiry of the Contract Period

- 8.14**
- .1 The Contractor must carry out and complete all Orders issued by the Contract Administrator prior to the 3 months preceding the Expiry Date, or the end of this Contract howsoever arising, and even where that Order cannot be completed before the Expiry Date or end of this Contract.
 - .2 During the 3 months preceding the Expiry Date, or the end of the Contract Period howsoever arising, the Contractor must carry out and complete all Orders issued by the Contract Administrator unless, and only, where:
 - .1 that Order cannot be reasonably completed prior to the Expiry Date;
 - 2. the Contractor has notified the Contract Administrator that 8.14.2.1 is the case; and
 - 3. the Contractor and Contract Administrator have not agreed that the Contractor should carry out and complete the Order regardless of clause 8.14.2.1.
 - .3 Where the Contractor carries out and completes Orders under 8.14.1 or 8.14.2.3 the Expiry Date shall be the date of completion of the last Order to the reasonable satisfaction of the Contract Administrator.

Obligations to co-operate on handover

- 8.15**
- .1 On expiry or termination of this Contract howsoever arising, the Contractor must:
 - .1 co-operate fully with the Employer and/or any sub-contractor (as notified by the Employer to the Contractor) in relation to the legal and operational handover of responsibilities from the Contractor to the Employer; and
 - .2 use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation and service agreements relating to the work that are in force on the Date of Expiry or end of the Contract Period howsoever arising are assigned to the Employer, or otherwise as the Contract Administrator may instruct.
 - .2 Within 5 Business Days of expiry or termination of this Contract howsoever arising, the Contractor must return to the Employer all keys, passes, door entry codes, other information relating to the work and any other materials or information reasonably requested by the Contract Administrator.

- .3 The Contractor must deliver to the Employer, or other entity as directed by the Contract Administrator, all materials and equipment paid for by the Employer within 5 Business Days of:
 - .1 where the reason for termination or expiry is any reason other than Employer Default, the date of termination or expiry; or
 - .2 where the reason for termination is for Employer Default, the date on which the Contractor receives payment for those plant and materials under clause 8.7.
- .4 Except where this Contract is terminated for Contractor Default, and subject always to the Contractor obtaining permission to do so from any individual occupying a Site, the Contractor must within 5 Business Days after the Date of Expiry or termination:
 - .1 remove any materials or equipment which either it or a sub-contractor owns or has hired and which are not to be transferred to the Employer on the Date of Expiry or termination; and
 - .2 unless directed otherwise by the Contract Administrator, remove all rubbish, debris and site waste from the Sites.
- .5 If the Contractor fails to remove all rubbish, debris and site waste from the Sites within 5 Business Days of the Date of Expiry or termination howsoever arising the Employer may;
 - .1 itself remove the rubbish, debris and site waste from the properties; or
 - .2 employ a third party to remove the rubbish, debris and site waste from the Sites,

and recover from the Contractor the reasonable costs incurred from undertaking this requirement itself or through the employment of the third party. The Employer may deduct these costs from any sum due to the Contractor under this Contract (provided a notice of deduction has been given under clause 4.6.5) or recover these costs from the Contractor as a debt.
- .6 Following the later of:
 - .1 the Rectification Period; or
 - .2 final payment becoming due on or after completion of the final Order under this Contract;

the Contractor must delete all copies of all documents and data relating to this Contract from the Contractor's IT systems and physical records save where:

 - .1 the documents or data are required to be kept under clause 8.16 (Post termination); and

- .2 any documents or data in which the Contractor has the Intellectual Property Rights under clause 11 (Copyright licence and proprietary material).
- .7 At all times during the Contract Period the Contractor shall maintain and keep up to date a "handover plan" that has been approved by the Contract Administrator which sets out how the Contractor will complete Orders issued up to the Termination Date.

Post termination or expiry

8.16 For a period of 12 years after the Termination Date the Contractor must maintain full records of:

- .1 this Contract;
 - .2 the Orders done under it;
 - .3 all payments received from the Employer;
 - .4 any expenditure of the Contractor that the Employer reimburses; and
 - .5 if applicable, all rebates received by the Employer.
-

Section 9 Settlement of Disputes

Adjudication

Amend clause 9.2 to insert at the end of the clause the text as follows:

"The Adjudicator shall be required to give written reasons for the decision."

After SECTION 9 insert new sections and clauses as follows:

“Section 10 Data and Information

Confidential Information

- 10.1** During the Contract Period and after its termination howsoever arising, each of the Parties undertakes to the other to keep the Confidential Information confidential, except to the extent that:
- .1 the Confidential Information was already lawfully known, or became lawfully known, to the relevant Party independently;
 - .2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant Party;
 - .3 disclosure or use is necessary by the relevant Party in connection with entry into this Contract or for the proper and effective performance of that Party's obligations under this Contract (including disclosure by either Party to their insurers or professional advisers); or
 - .4 disclosure is required by any Statutory Requirements or to any regulatory body (including the Regulator of Social Housing).

Protection of personal data

- 10.2**
- .1 The parties will each act in the capacity of Data Controller in respect of the Personal Data Processed under this Agreement and each will Process the Personal Data as independent Data Controllers.
 - .2 The parties (including their employees, agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this clause 10.2 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.
 - .3 The parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
 - .4 Each party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this Agreement.
 - .5 Whilst each party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's Rights, the parties will co-operate with each other and provide reasonable assistance with any request,

proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this Agreement.

- .6 The provisions of clauses 10.2.1 to 10.2.6 shall apply during the continuance of the Agreement and indefinitely after its termination.
- .7 The Contractor will comply with its obligations as Data Processor under the Data Sharing Agreement attached in Schedule 18 to this Contract.

Anti-virus and protection of electronically held data

10.3 .1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Employers electronic data.

.2 The Contractor shall preserve the integrity of the Employer's electronic data and prevent the corruption or loss of such data at all times when it is under the Contractor's control or the control of any sub-contractor.

.3 The Contractor shall perform secure back-ups of all the Employers electronic data and shall ensure that it holds, at all times, up-to-date back-ups of such data. The Contractor shall ensure that such back-ups are available to the Employer, or to such other person as the Employer may direct, at all times upon request.

.4 If either Party causes, by act or omission, the other Party's electronic data to be corrupted, lost or sufficiently degraded to the extent that it is rendered unusable (a default), the party who has suffered such loss may:

.1 require the defaulting Party, at their own cost and within 5 Business Days from receipt of notice, to restore or procure the restoration of the electronic data to their reasonable requirements; or

.2 itself restore, or employ a third party to restore, the electronic data to their reasonable requirements,

and recover from the defaulting Party the reasonable costs incurred from undertaking this requirement itself or through the employment of the third party. The Employer may deduct these costs from any sum due to the Contractor under this Contract (provided a pay less notice has been given under clause 4.6.5) or recover these costs from the Contractor as a debt.

.5 If at any time a Party suspects, or has reason to suspect, that its electronic data has become corrupted, lost or damaged due to the act or omission of the other Party, the Party who has suffered, or suspects it has suffered, such loss shall notify the other immediately.

.6 The Parties shall, as an enduring obligation throughout the Contract duration, use the latest versions of all applicable anti-virus definitions and software, available from an industry accepted anti-virus software vendor, to check for, contain the spread of, and minimise the impact of Malicious Software which

may damage either Party's electronic hardware, software or data and any other risk identified by that anti-virus software vendor.

- .7 Notwithstanding clause 10.3.6, if Malicious Software or any other risk identified by the anti-virus software vendor is found, the Parties shall co-operate to reduce the effect of the Malicious Software/risk and, particularly if such Malicious Software/risk causes loss of operational efficiency or loss or corruption of the parties electronic data, assist each other to mitigate any losses and to restore each other's services to their desired operating efficiency.
- .8 Any reasonable costs arising out of the actions of the Parties taken in compliance with the provisions of clause 10.3.7 shall be borne by the defaulting Party.

Section 11 Contractor's Additional Obligations

Contractor's Persons

- 11.1** The Contractor shall ensure that all Contractor's Persons carrying out any Orders under the Contract shall:
- .1 confine themselves to the locality of their work;
 - .2 cause as little interference as possible to the Employer's tenants and/or tenant's premises;
 - .3 ensure that all work is carried out with the least possible inconvenience to occupants of any Sites or neighbouring dwellings, premises and tenants; and
 - .4 take into account any special needs of such persons or any cultural sensitivities.

Disclosure and Barring Service checks

- 11.2** .1 The Contractor shall:
- .1 to the extent that the Contractor is lawfully able to do so:
 - .1 before any Contractor's Person carries out any Order under this Contract either itself carry out or (as applicable) require the relevant sub-contractor to carry out a DBS Check of the most extensive kind (if any) available under Statutory Requirements given the nature of the Orders such person is or shall be carrying out under the Contract;
 - .2 immediately advise the Contract Administrator of any relevant convictions or concerns in relation to any Contractor's Person relating to working with children or vulnerable adults that are disclosed by the DBS Check; and
 - .3 ensure that (to the extent possible under applicable Statutory Requirements) those DBS Checks are regularly updated either through the Disclosure and Barring Service update service or through carrying out further DBS Checks at least once every 3 (three) years;
 - .2 within 10 Business Days of a request from the Contract Administrator made at any time, provide to the Contract Administrator details of Contractor's Person employed by the Contractor in connection with the Contract including:
 - .1 the names and addresses of all such people;
 - .2 the capacities in which each of them is employed;

- .3 confirmation whether a DBS Check has been undertaken in relation to each of them, together with the details of the results of any such DBS Check; and
- .4 such other information as is required by the Contract Administrator;
- .3 inform the Contract Administrator of any relevant criminal convictions of any Contractor's Person who is undertaking Orders under this Contract of which the Contractor becomes aware;
- .4 if the Contract Administrator so requests, at the Contractor's own risk and cost, remove from the Contract any Contractor's Person who:
 - .1 has a criminal conviction (including any relevant conviction that would otherwise be spent, where the nature of the Orders reasonably indicates that the Contractor's Person is exempt from the restriction on disclosing spent convictions);
 - .2 is subject to concerns in relation to working with children or vulnerable adults that are disclosed by a DBS Check;
 - .3 has failed to comply with any code of conduct maintained by the Employer in relation to the Contract; or
 - .4 in the opinion of the Employer is not acceptable on the grounds of security, conduct, performance or other reasons.
- .2 The Contractor shall ensure that an adequate number of suitably skilled, experienced, qualified and competent workers are provided to complete all Orders safely and expediently.
- .3 The Contractor shall at the Contractor's own cost ensure that all Contractor's Person comply with the Employer's reasonable requirements for identification, dress code, safety (including personal protective equipment), conduct and security whilst they attend each Site.
- .4 The Contractor shall maintain current, accurate and adequate records of all Contractor's Person who are or are to be employed in connection with the Orders or the Contractor's obligations under this Contract including:
 - .1 attendance records;
 - .2 records of work done;
 - .3 records of health and safety incidents;
 - .4 records of grievances raised by such Contractor's Persons;
 - .5 records of any complaints made by or about such Contractor's Person;
 - .6 records of all internal investigations; and

- .7 disciplinary proceedings and disciplinary sanctions, differentiating between those engaged as tradespersons and those exercising supervision.
- .5 The records maintained under this clause shall be open for inspection by the Employer at all reasonable times and a copy of these records shall be provided to the Employer if so required by the Contract Administrator.
- .6 The Contractor shall seek all necessary consents under applicable Statutory Requirements to make the disclosures required by this clause."

Security

- 11.3**
- .1 The Contractor shall issue to all Contractor's Persons, who shall at any time have access to any of the Employer's premises, identification badges in such form as the Employer may from time to time determine.
 - .2 The Contractor shall:
 - .1 be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Employer;
 - .2 shall only permit such keys, passes and other means of access to be given to those Contractor's Persons whose names and addresses have been given to the Employer and then only to the extent required for the purpose of carrying out the Contractor's obligations under this Contract; and
 - .3 ensure that the Contract Administrator is informed immediately of the loss of any keys, passes and other means of access and shall reimburse the Employer any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

Transfer of Contractor's Persons

- 11.4** If the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply, then the Contractor is required to abide by the terms detailed within Schedule 7.

Contractor's Assets

- 11.5**
- .1 The Contractor shall at all times during the Contract Period provide and maintain all such equipment, vehicles, materials and all other physical resources, for the purposes of this clause 11.5 referred to as "Assets", as may be necessary from time to time for the carrying out of the Contractor's obligations under this Contract.
 - .2 The Contractor shall be responsible for the maintenance and repair of all Assets, and shall maintain all Assets at all times in good and serviceable repair and in such condition as is required for the proper performance by the Contractor of its obligations under this Contract. The Contractor shall at all times be responsible for any necessary licensing and for the payment of all

licensing fees, taxes and insurances as may be required in connection with the possession of or use of any of the Assets.

- .3 All Assets used by the Contractor shall conform to any applicable minimum standards as set by Statutory Requirements.
 - .4 The Contractor shall only keep such Hazardous Substances or equipment as are necessary for the carrying out of the Contractor's obligations under this Contract and are approved in writing by the Contract Administrator, such approval not to be unreasonably withheld or delayed. Such Hazardous Substances or equipment shall at all times be kept under proper control and the Contractor shall ensure that all such materials or equipment and their usage, storage and transportation comply with the Employer's procedures for the premises and all applicable Statutory Requirements.
 - .5 For the avoidance of doubt, the Contractor shall be responsible for the replacement cost of any Assets, even though deployed in carrying out the Contractor's obligations under this Contract.
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Section 12 Claims

Notification by Contractor of claims

- 12.1** .1 Notwithstanding the Contractor's obligations the Contractor shall notify the Contract Administrator and, where relevant the appropriate insurance companies, immediately upon becoming aware of, or of the likelihood of, any of the following:
- .1 an accident involving a member of the public or any Contractor's Person (including an employee of any sub-contractor) on the Site;
 - .2 damage caused by the Contractor or any Contractor's Person (including an employee of any sub-contractor);
 - .3 breach of any relevant statutory provision by the Contractor or any Contractor's Person (including an employee of any sub-contractor);
 - .4 an investigation, enquiry or adverse report or comment by the Health and Safety Executive or any successor or comparable agency in relation to the Contractor;
 - .5 any legal proceedings notified to or commenced against the Contractor in relation to any event or occurrence within their work on the Contract;
 - .6 any enforcement action of whatever nature notified to, or commenced against, the Contractor; or
 - .7 any other matter which may result in any claim of whatever nature against the Employer or which might reasonably be expected to damage public confidence in the Employer or adversely affect the Employer's reputation.
- .2 If requested to do so by the Contract Administrator, the Contractor shall provide the Contract Administrator with any relevant information in connection with:
- .1 any of the matters referred to in clause 12.1;
 - .2 any legal inquiry, arbitration or court proceedings in which the Employer may become involved; or
 - .3 any relevant disciplinary hearing internal to the Employer,
- and shall give evidence in any such inquiry or proceedings or hearing.
- .3 Except for any claims made by third parties, the Employer shall, if so requested by the Contractor, provide the Contractor with any relevant information in connection with any of the matters referred to in clause 12.2 for the purposes of any legal inquiry, arbitration or court proceedings in which the Contractor may become involved.

Claims for damage to or loss of tenants goods and chattels etc.

- 12.2** The Contractor shall expeditiously investigate all claims for damage or loss to a tenants goods, chattels, possessions and personal property and reimburse the tenant where the circumstances would indicate that such loss or damage may reasonably have been caused by the Contractor or any Contractor's Person.
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Section 13 Relief from Obligations

Early warning

- 13.1** .1 Each Party must notify the other in writing (copied to the Contract Administrator) of any matter (including Force Majeure), which could lead to that Party being unable to comply or failing to comply with its obligations under this Contract.
- .2 Following a notification under clause 13.1.1 the Contract Administrator may require the Contractor to attend a risk reduction meeting to consider:
- .1 the likely impact of the matter that has been notified;
 - .2 the steps that should be taken (in accordance with this Contract) for managing, avoiding or reducing the effect of that matter; and
 - .3 the likely cost of those steps and who (in accordance with this Contract) should bear that cost.

Change in law - risk

- 13.2** .1 Changes to any of the Statutory Requirements are a Contractor's risk. The Contractor will not be entitled to claim for any increase to the price of any Order, extension to the response period or Completion Date, or additional payment under this Contract that results from a change in Statutory Requirements.
- .2 Where a change in Statutory Requirements was not foreseeable on the date of this Contract and has a significant impact on the rates in the Schedule of Rates at Schedule 1, the Employer and Contractor may, but are not required to, agree a change to these rates or an additional payment due to the Contractor to reflect the Contractor's additional costs due to that change in Statutory Requirements.
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Section 14 Monitoring, KPIs, Breach of Contract and Remedy

Monitoring and KPIs

- 14.1**
- .1 The Contractor's performance of its obligations under this Contract shall be monitored by the Contract Administrator against the Key Performance Indicators (Schedule 3).
 - .2 The Contractor's performance of its obligations under this Contract, including the delivery of all Orders, must consistently meet the requirements set out in the Contract Documents including:
 - .1 the Specification (Schedule 2);
 - .2 the Compliments, Comments & Complaints Policy (Schedule 17); and
 - .3 the requirements of each Order, including any Variations to such order; and
 - .3 The Contractor must facilitate access by the Employer to any Site upon which work under this Contract is undertaken or administered, subject always to the Employer complying with all of the Contractor's reasonable health and safety requirements associated with those premises.
 - .4 The Contract Administrator may monitor the Contractor in person at any time and for any Orders. This may entail a visit, without notice, by the Contract Administrator to accompany the Contractor's Persons to a Site, or meet them at a Site, to watch the work on Orders being undertaken.
 - .5 The Contract Administrator may undertake an audit of the Contractor's procedures in relation to the Contract at any time.
 - .6 If the Contract Administrator is concerned about the accuracy of any KPI monitoring data provided by the Contractor, the Contract Administrator may arrange for independent monitoring or verification of such data. If monitoring data obtained by the Contractor is found to have been inaccurate, the Employer may recover from the Contractor the costs of the independent monitoring. The Employer may deduct these costs from any sum due to the Contractor under this Contract (provided a pay less notice has been given under clause 4.6.5) or recover these costs from the Contractor as a debt.
 - .7 If there is any dispute over the data collected to monitor the Contractor's KPI performance or any discrepancy between the KPI data collected by the Employer and that collected by the Contractor, the decision of the Contract Administrator over which data is valid will be final and binding. This applies unless the Contractor formally disputes that data under the Mediation Procedure within 20 Business Days of the Contract Administrator confirming in writing to the Contractor which data is to be used.
 - .8 Should the Contractor's performance of its obligations under this Contract fail to meet any minimum standards set in relation to the Key Performance

Indicators (Schedule 3) or fail to comply with clause 14.1.2, the Employer may, by written notice, instruct the Contractor to produce a remedial plan in accordance with the requirements of clause 14.2.

Remedial plan

- 14.2**
- .1 Within 20 Business Days, or such shorter period as Contract Administrator reasonably deems necessary, of a written notice from the Employer, the Contractor must provide to the Employer a draft remedial plan in accordance with Schedule 9 (Rectification & Remedial System) to remedy the failure detailed in such notice.
 - .2 Within 10 Business Days of receiving the draft remedial plan, the Employer must by written notice to the Contractor:
 - .1 approve the draft remedial plan;
 - .2 subject to clause 14.2.4, and the Contractor making specific changes to the remedial plan to ensure it remedies properly the failure outlined in the notice provided under clause 14.2.1, approve the draft remedial plan; or
 - .3 reject the remedial plan and inform the Contractor of the reasons for doing so.
 - .3 Where the Employer approves the draft remedial plan under clause 14.2.2.1, the Contractor must implement that remedial plan within such timescales as the Employer may reasonably instruct,
 - .4 Where the Employer approves the draft remedial plan subject to amendment under clause 14.2.2, the Contractor must by written notice:
 - .1 agree to those changes and implement that remedial plan within such timescales as the Employer may reasonably instruct; or
 - .2 reject those changes and inform the Employer of the reasons for doing so.
 - .5 Where the Employer rejects the draft remedial plan under clause 14.2.2.3, or the Contractor rejects changes to the draft remedial plan under clause 14.2.4.2, the Contractor must, within 10 Business Days, provide a revised draft remedial plan and clauses 14.2.1 to this clause 14.2.5 will apply to the revised draft remedial plan.
 - .6 Where the Contractor is required to provide a revised remedial plan under clause 14.2.5, the Contractor is allowed to provide a maximum of 2 revised remedial plans before the failure identified in the Employer's notice is deemed to be a material breach of Contract subject to remedy under clause 8.4X.

Employer step-in

- 14.3**
- .1 If the Employer reasonably believes that it needs to take action in connection with any Order to discharge any Statutory Requirements, then the Employer may take action in accordance with this clause.
 - .2 If the Employer wishes to take action pursuant to clause 14.3.1, the Employer must notify the Contractor in writing of the following:
 - .1 the action it wishes to take and the Order or Site that will be affected by that action;
 - .2 the reason for such action;
 - .3 the date upon which it wishes to commence such action;
 - .4 the period of time which it reasonably believes will be necessary to undertake such action; and
 - .5 to the extent possible, the effect on the Contractor and the work during the period such action is being taken.
 - .3 Under Force Majeure, the Employer may notify the Contractor verbally of the matters referred to in clause 14.3.2 and must confirm such notification in writing as soon as reasonably possible.
 - .4 Following the service of a notice under clause 14.3.2, the Employer may take such action as has been notified and any consequential action as the Employer reasonably believes is necessary. The Contractor must give all reasonable assistance to the Employer while it is taking such action.
 - .5 If the Contractor is not in breach of its obligations under this Contract then, for so long as, and to the extent that, the Employer takes action under clause 14.3.2, and this prevents the Contractor from undertaking any Order, or part thereof, the Contractor shall:
 - .1 be relieved of its obligation to provide such Order, or part thereof, throughout the period in which the Employer is taking such action; and
 - .2 provide such assistance as the Contract Administrator directs (such assistance to be paid for in accordance with Schedule 1).
 - .6 If the Contractor is in breach of its obligations under this Contract then, for so long as, and to the extent that, the Employer takes action under clause 14.3.2, and this prevents the Contractor from undertaking any Order, or part thereof, the Contractor shall:
 - .1 be relieved of its obligation to provide such Order, or part thereof, throughout the period in which the Employer is taking such action; and
 - .2 pay to the Employer any additional costs (over and above the amount the Employer would have paid the Contractor for such Order) if any Order, or part thereof, is undertaken by the Employer or by a third party employed by the Employer, as part of the action taken by the

Employer under clause 14.3.2. The Employer may deduct these costs from any sum due to the Contractor under this Contract (provided a notice of deduction has been given under clause 4.6.5) or recover these costs from the Contractor as a debt.

Remedies cumulative

- 14.4** The rights and remedies given by this Contract are cumulative and do not exclude any other rights or remedies given under law or under this Contract.
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Section 15 General Provisions

Waiver and severability

- 15.1**
- .1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
 - .2 The single or partial exercise of any right, power or privilege under the Contract does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
 - .3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
 - .4 A waiver of any right or remedy arising from a breach or default of this Contract shall not constitute a waiver of any right or remedy arising from any other, or subsequent, breach or default.
 - .5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or making any other statement in respect of money.
 - .6 If any term of this Contract is held invalid, illegal, void or unenforceable for any reason, such provision shall be severed and the remainder of this Contract shall continue in force and effect as though the term held invalid, illegal, void or unenforceable had not been included in it.

Entire agreement

- 15.2**
- .1 Save as provided in clause 15.2.3, this Contract sets out the whole agreement between the Parties in relation to the Orders. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
 - .2 Each Party warrants that it has not entered into this Contract in reliance on any representation made by the other except to the extent that such representation is expressly included in it.
 - .3 Nothing in this clause 15.2 excludes any liability for fraudulent misrepresentation.

Extent of obligations and further assurance

- 15.3**
- .1 Nothing in this Contract requires the Employer to act in any way which is inconsistent with its obligations as a charitable registered provider of social housing.

- .2 Each Party undertakes (subject to clause 15.3.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.
- .3 Nothing in this Contract is to constitute or to be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other laws concerning partnerships or limited liability partnerships.
- .4 Neither Party must hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Contract expressly provides otherwise.

Variations of the Contract

- 15.4**
- .1 No variation of this Contract is to bind either Party and no person has authority on behalf of either Party to agree to any variations to any of the Contract Documents except where the amendment is agreed to in writing by both Parties.
 - .2 No consents to any variation to this Contract are required from any person who is not a Party to it.

Counterparts

- 15.5** This Contract may be executed in counterparts each of which is deemed to be an original and the counterparts together constitute the same agreement.

Legal costs

- 15.6** Each Party is to bear their own costs in relation to the negotiation and completion of this Contract.

Equality and diversity

- 15.8**
- .1 In all its activities carried out pursuant to this Contract, the Contractor shall comply with and shall ensure that any Contractor's Persons, agents, sub-contractors and their employees and agents comply with the Equality Act 2010 as well as statutory and other official guidance and codes of practice, including the Code of Practice for the elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment
 - .2 The Contractor agrees that it will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the Equality Act 2010 and any code of practice issued thereunder. In particular the Employer may from time to time require the Contractor to monitor its workforce according to such categories as the Employer specifies in writing to the Contractor and report the results of such monitoring to the Employer.
 - .3 The Contractor confirms that it has read, understood, and will comply, without reservation, with the requirements of Schedule 8 (Contractor's Duty Form).

- .4 If a finding of unlawful discrimination is made against the Contractor by any court or employment tribunal, or an adverse finding is made in any formal investigation under any body responsible for enforcing the Equality Act 2010 the Contractor must take appropriate steps to prevent repetition of the unlawful discrimination.
- .5 The Contractor shall, on request, provide the Employer with details of any steps taken under clause 15.8.4.

Ethical trading

15.9 .1 The Contractor and all Contractor's Persons must adhere to the following ethical conduct guidelines which reflect the principles set out in the Ethical Trading Initiative Base Code and International Labour Organisation (ILO) Conventions:

- .1 there shall be no use any form of forced, bonded or involuntary labour, and workers must not be obliged to lodge identity papers or pay any deposit as a condition of work;
- .2 workers must not be subject to physical or verbal abuse or threats or intimidation of any description;
- .3 workers must not be required to work extreme hours or work without adequate rest periods;
- .4 no workers under the age of 15, or the minimum legal working age in the country in question if higher than 15, shall be used. The principles of remediation of child and under age workers must be accepted and, where such labour is discovered, appropriate remediation for such workers must be implemented and effective systems to prevent the use of child labour in the future must be introduced;
- .5 factories and work sites must be safe and hygienic with an adequate number of safe and accessible fire exits from all buildings, including living accommodation, and Workers must have access to drinking water;
- .6 life or limb must not be endangered due to the use of dangerous machinery, unsafe building structure or layout, or hazardous chemicals. Where serious or fatal accidents have occurred the Contractor must demonstrate to the satisfaction of the Employer that all appropriate steps have been taken to prevent similar accidents occurring in the future;
- .7 living accommodation, where provided, must be in buildings that are separate from other areas of the workplace and have an adequate fire alarm system;

- .8 workers must be paid wages that meet the minimum requirements of the country in which they are operating from and that are sufficient to meet basic needs and to provide some discretionary income;
- .9 proper and accurate employment records must be maintained including calculation of pay and hours worked and inspection of employment records must be transparent and facilitated cooperatively;
- .10 there must be no bribery, corruption or other similar unethical practices in order to gain competitive advantage; and
- .11 no discrimination is practised, and

the Employer reserves the right to audit this at any time during the Contract Period.

- .2 In the event that the Employer considers that the Contractor is not in compliance with the ethical conduct guidelines the Contractor must take all such appropriate remedial actions as requested by the Employer to address any areas of concern.

Modern Slavery Act 2015

- 15.10** .1 The Contractor warrants that neither the Contractor nor any of its officers and employees:

- .1 have been convicted of any offence involving slavery or human trafficking;
- .2 have, to the best of the Contractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking; and
- .3 have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of the Modern Slavery Act 2015.

- .2 The Contractor undertakes to the Employer that:

- .1 it has and shall maintain and implement:
 - .1 procedures to ensure compliance with the Modern Slavery Act 2015; and
 - .2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Act 2015.
- .2 it shall include provisions similar to those contained in clauses 15.10.1 to 15.10.3 and 15.10.6 in any contract it may enter into with sub-consultants and/or sub-contractors.

- .3 The Employer may carry out spot checks and audits on the Contractor and/or the Contractor's supply chain as to whether any offence under the Modern Slavery Act 2015 is being or has been committed.
- .4 Where section 54 of the Modern Slavery Act 2015 applies to the Contractor, the Contractor must and must ensure that its sub-contractors must, produce annual statements about modern slavery which comply with section 54 of the Modern Slavery Act 2015.
- .5 The Contractor must take such remedial actions as the Employer requires to address any areas of concern in relation to offences under the Modern Slavery Act 2015 either due to its own activities or those of its supply chain.
- .6 In the event of breach of clauses 15.10.1 to 15.10.3 by the Contractor and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under clause 15.10.2.2 and/or if the Contractor, sub-consultant or sub-contractor is convicted of an offence under the Modern Slavery Act 2015 in relation to this Contract or any other Contract (whether or not the Employer is a party to that Contract), the parties agree that the Employer may at its sole discretion terminate the Contractor's employment under:
 - .1 this Contract and the provisions of clause 8.4 shall apply; and
 - .2 (if applicable) any other contract between the parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for default by the Contractor.
- .7 In the event of breach of clauses 15.10.2.2, 15.10.3, 15.10.4 and/or 15.10.8, the parties agree that the Employer may by notice in writing to the Contractor require that such breaches will be rectified within 7 days of receipt. If the Contractor fails to rectify such breaches in accordance with the notice the Employer may in its sole discretion terminate the Contractor's employment under:
 - .1 this Contract and the provisions of clause 8.4 shall apply; and
 - .2 (if applicable) any other contract between the parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for Contractor default.
- .8 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:
 - .1 any breach of clauses 15.10.1 to 15.10.4 by the Contractor or ;
 - .2 any breach of provisions equivalent to clauses 15.10.1 to 15.10.4 in any contract with a sub-consultant or sub-contractor;

- .3 any act or omission by a sub-consultant or sub-contractor which would have amounted to a breach of the relevant sub contract had the Contractor complied with its undertaking set out in clause 15.10.2.2.

CDM Regulations & health and safety

15.11 .1 The Contractor warrants that the Contractor:

- .1 has the competence, resources and capacity to comply with, and will comply with any Code of Practice approved by the Health and Safety Executive under Health and Safety Law;
 - .2 will provide all information which might reasonably affect the health and safety of all Contractor's Persons involved in carrying out any Orders to all those responsible for the design of any aspect of those Orders;
 - .3 if undertaking work involving asbestos which are required to be undertaken by a licensed contractor, is itself so licensed or will employ an appropriately licensed sub-contractor for that work;
 - .4 if undertaking gas works, either is Gas Safe registered and will use only Contractor's Persons that are Gas Safe registered or will use a sub-contractor that is Gas Safe registered;
 - .5 if undertaking electrical works, is a member of the NIC EIC or ECA or will use a sub-contractor that is a member of the NIC EIC or ECA; and
 - .6 in relation to any Orders subject to the CDM Regulations, has the skills, knowledge, experience and organisational capability to act as a contractor and (where so appointed) Principal Contractor under the CDM Regulations for those Orders in a manner that secures the health and safety of any person affected by the works comprised in those Orders.
- .2 Where the Contractor is not the Principal Contractor, the Contractor is required to adhere to the reasonable instructions of the Principal Contractor, save where those instructions conflict with the terms of this Contract or are prevented by Statutory Requirements.
 - .3 Where the Contractor is the Principal Contractor, the Contractor must, in accordance with the provisions of the CDM Regulations:
 - .1 continue to maintain the skills, knowledge, experience and organisational capability to carry out all Orders subject to the CDM Regulations;
 - .2 plan, manage, monitor and coordinate all Orders;
 - .3 take account of the health and safety risks to everyone affected by the work (including members of the public) in planning and managing the measures needed to control them;

- .4 liaise with the Employer and Principal Designer (if not the Contractor) for the duration of the work to ensure that all risks are effectively managed;
 - .5 prepare a written health and safety plan before the work begins, implement this plan and then regularly review and revise it to make sure it remains fit for purpose;
 - .6 have ongoing arrangements in place for managing health and safety throughout the work
 - .7 consult and engage with the Contractor's Persons about their health, safety and welfare;
 - .8 ensure suitable welfare facilities are provided from the start and maintained throughout the work;
 - .9 check that anyone they appoint has the skills, knowledge, experience and, where relevant, the organisational capability to carry out their work safely and without risk to health;
 - .10 ensure all Contractor's Persons, agents and sub-contractors have site-specific inductions and any further information and training they need;
 - .11 take steps to prevent unauthorised access to the Sites at which Orders are carried out; and
 - .12 liaise with the Principal Designer (if not the Contractor) to share any information relevant to the planning, management, monitoring and coordination of the work.
- .4 Where the Contractor is appointed as Principal Designer (as set out in the Contract Particulars) the Contractor warrants that it has the skills, knowledge, experience and organisational capability to act as Principal Designer in relation to all Orders subject to the CDM Regulations in a manner that secures the health and safety of any person affected by those Orders.
 - .5 If the Contractor is the Principal Designer they must, in accordance with the provisions of the CDM Regulations:
 - .1 continue to maintain skills, knowledge, experience and organisational capability to carry out this work;
 - .2 plan, manage, monitor and coordinate health and safety in the pre-construction phase, taking account of relevant information that might affect design work carried out both before and after the construction phase has started;
 - .3 help and advise the Employer in bringing together pre-construction information, and provide the information designers and contractors need to carry out their duties;

- .4 work with any other designers on the project to eliminate foreseeable health and safety risks to anyone affected by the Works and, where that is not possible, take steps to reduce or control those risks;
- .5 ensure that everyone involved in the pre-construction phase communicates and cooperates, coordinating their work wherever required; and
- .6 liaise with the Principal Contractor (if not the Contractor), keeping them informed of any risks that need to be controlled during the construction phase.”
- .6 Both Parties will seek to maintain a culture and working environment in which health and safety is paramount to everybody involved with the Works.
- .7 Before commencing the Works, the Contractor shall:
 - .1 notify the Employer of the name of the person responsible for health and safety in relation to the Works; and
 - .2 provide a copy of the Contractor’s health and safety policy to the Employer.
- .8 In carrying out all Orders the Contractor shall:
 - .1 comply with all Health and Safety Law;
 - .2 comply with the Contractor’s own health and safety policy; and
 - .3 adopt safe methods of work to protect the health, safety and welfare of all Contractor’s Persons.
- .9 The Contract Administrator may suspend any Order without any liability to the Contractor if the Contractor:
 - .1 is not complying with Health and Safety Law;
 - .2 has failed to notify the Employer of the name of the person responsible for health and safety; or
 - .3 has failed to provide a copy of the Contractor’s health and safety policy to the Employer.
- .10 The Contractor shall inform the Employer as soon as the Contractor becomes aware of any actual pending or likely prosecution or notice from the Health and Safety Executive or from any local authority in relation to any breach of Health and Safety Law.
- .11 The Contractor shall provide such information and documents as the Contract Administrator may require to evidence the Contractor’s compliance with the Contractor’s own health and safety policy and Health and Safety Law.

Schedule 20 Supplemental Provisions

Replace the heading "Schedule Supplemental Provisions" with "Schedule 20 Supplemental Provisions" and update all references to that Schedule accordingly.

Health & Safety

Amend paragraph 2.1 to insert after "Contract" in the second line the text as follows:

", including without fail all health and safety requirements of Schedule 2 (Specification), Schedule 5 (Contractor's Induction Checklist) and Schedule 6 (Code of Conduct),"

End of schedule