

**DATED**

**202[ ]**

**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF HACKNEY**

**and**

**[CONTRACTOR]**

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**JCT PRE-CONSTRUCTION SERVICES  
AGREEMENT 2016**

**IN RELATION TO  
PRE-CONSTRUCTION SERVICES FOR  
THE COLVILLE ESTATE PHASE 2C**

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## AGREEMENT

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2021

## BETWEEN

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HACKNEY** of Town Hall, Mare Street, London E8 1EA (the **Employer** which expression includes its permitted successors and assigns); and
2. **[CONTRACTOR]**, (Company Registered Number [ ]) whose registered office is at [ ] (the **Contractor**)

## RECITALS

### WHEREAS

1. The Employer wishes to have the following works carried out:  
The redevelopment of the Colville Estate Phase 2C consisting of the demolition and site clearance of the existing site along with utility disconnections and diversions followed by the design and construction of two residential blocks (C2 and E) providing 93 new mixed tenure homes, a new community centre and energy centre together with extensive landscaping works and associated infrastructure (the **Project**) as described in the Particulars, that work to be carried out under a main contract (the **Main Contract**) provisional details of which are also given or referred to in the Particulars.
2. The Employer's Agent for the pre-construction phase of the Project (the **Pre-Construction Period**) is Calfordseaden LLP of Devonshire House, 60 Goswell Road, London EC1M 7AD or such other person as the Employer shall nominate and notify to the Contractor;
3. The Principal Designer for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role;
4. The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role;
5. Prior to the execution of this Agreement, the Contractor has submitted to the Employer a First Stage tender / the initial proposal document(s) identified in the Particulars on the basis of which the Employer has requested that, for the fee specified in Annex A (the **Fee**) and other payments in accordance with this Agreement, the Contractor should during the Pre-Construction Period provide the pre-construction services listed in Annex 1.
6. It is intended that work on the Construction Phase of the Project shall commence on site on:  
[insert date] (site shall be available under the PCSA) (the **Date of Possession**) with a duration initially estimated at up to [ ] weeks and that for the purposes of the Main Contract, not later than [insert date].
  - 6.1. the Contractor should submit its Second Stage Tender and, where applicable, Contractor's Proposals, and
  - 6.2. the Contract Sum should be agreed between the Parties
 in conformity with the requirements (the **Second Stage Tender Requirements**) identified in the Particulars.

Now it is hereby agreed as follows:

**CONTRACT PARTICULARS**

**Documents and Listings**

The following terms used in the Agreement refer to (or are defined by) the following documents and listings (as altered and updated from time to time in accordance with this Agreement). (Where the relevant document(s) or listing(s) form an Annex to this Agreement insert a reference to that Annex; in other cases, give the document title, reference number and date or other identifier (or, where convenient and practicable, insert details here).)

Clause	Term	Document/Listing
First Recital	Project (detailed description)	The redevelopment of the Colville Estate Phase 2C consisting of the demolition and site clearance of the existing site along with utility disconnections and diversions followed by the design and construction of two residential blocks (C2 and E) providing 93 new mixed tenure homes, a new community centre and energy centre together with extensive landscaping works and associated infrastructure
First Recital	Main Contract (type, conditions, amendments and other details of the proposed contract)	JCT Design and Build 2016 with amendments as set out in Annex 2
Fifth Recital	First stage tender / Contractor's initial proposals	As set out in Annex 12
Sixth Recital	Second Stage Tender Requirements (identify the Instructions to Tenderers and/or other relevant document(s))	As set out in Annex 18
1.1	BIM Protocol (Not applicable unless it is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated, and the identified protocol is included in the Employer's Requirements)	*applies as set out in the following document(s) included in Annex 19:  1. The Hackney Council Regeneration New Build Housing Exchange Information Requirements September 2021; 2. Exchange Information Requirements Template; and 3. COBie Template.
2.1	Cost Plan	As set out in Annex 10
2.1	Employer's Requirements	As set out in Annex 11
2.1	Programme	As set out in Annex 13
2.1	Project Team	As set out in Annex 14

2.1	Third Party Agreements	As set out in Annex 15
2.1.2	Contractor's Key Personnel	As set out in Annex 16
2.1.2	Contractor's Representative (as at the date of this Agreement)	[ ]
3.4	The Determination Period is	[ ]
7.1.1	Professional Indemnity insurance - level of cover (If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated) (If no amount is stated, insurance under clause 7.1.1 shall not be required.)	Amount of indemnity required *relates to claims or series of claims arising out of one event and is £20,000,000 .
7.1.1	Professional Indemnity insurance – cover for pollution and contamination claims (If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount)	*is required with a limit of indemnity of £20,000,000 relating to claims or series of claims arising out of one event.
7.1.2	Public Liability Insurance (If neither entry is deleted or cover level is not stated, such insurance is not required.)	is required, with a limit of indemnity of £10,000,000
	<b>Novation</b>	
9.2.1	Consultant Team members to whom clause 9.2 applies	Not applicable
9.2.2	Sub-Contractors / Suppliers to whom clause 9.2 applies	Not applicable
9.2 (hanging paragraph)	Where clause 9.2 applies, the form(s) of Novation Agreement and additional terms (if any) (Identify the form(s) and terms or the document(s) in which these are set out)	Not applicable
	<b>Suspension</b>	
10.2	Period (if other than 6 months)	6 months
10.7	Adjudication	
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)	

	(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)	*The Royal Institution of Chartered Surveyors
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IN WITNESS WHEREOF the Contractor and the Employer have executed this Deed the day and year first above written.

THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON BOROUGH )  
OF HACKNEY was hereunto affixed )  
in the presence of : )

.....  
Authorised Signatory

EXECUTED as a Deed by )  
[CONTRACTOR] LIMITED )  
acting by a director and its )  
company secretary or by two )  
directors: )

.....  
Signature of Director

.....  
Print Name

.....  
Signature of Director/Company Secretary

.....  
Print Name

## **Conditions**

THIS CONTRACT SHALL INCORPORATE ALL THE PROVISIONS OF THE **JOINT CONTRACTS TRIBUNAL PRE-CONSTRUCTION SERVICES AGREEMENT 2016** AS AMENDED BY THE FOLLOWING AMENDMENTS:

### **SECTION 1: DEFINITIONS AND INTERPRETATION**

#### **1.1 Amend Clause 1.1 as follows:**

##### **Clause 1.1**

Insert and amend the following definitions (as the case may be):

**Additional Services:** services performed by the Contractor under this Agreement, in connection with the Project or the Works that are additional to the Pre-Construction Services and which are instructed pursuant to clause 2.17 (other than by reason of default, negligence or breach of contract on the part of the Contractor);

**Additional Sum(s):** Any additional sums calculated and approved pursuant to clause 2.17 and Annex 8;

**Business Day:** any day which is not a Saturday or Sunday or public holiday in England;

**Confidential Information:** information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all Personal Data, including special categories of personal data and personal data relating to criminal convictions and offences within the meaning of the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018;

**Construction Phase:** the phase of the Project starting from the Date of Possession until the successful completion of the Project in accordance with the Main Contract;

**Contractor Related Party:** any of the Contractor's agents and contractors and its or their subcontractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Site at the express or implied invitation of the Contractor;

**Contractor's Persons:** the Contractor's Project Staff and all Contractor Related Parties

**Contract Sum:** the Contract Sum (as that term is defined in the Main Contract) to be determined in accordance with, and subject to, the provisions of this Agreement;

**Contracts Finder:** is the Government's publishing portal for public sector procurement opportunities

**Convictions:** other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions, ASBOS and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975.1023) or any replacement or amendment to that Order);

**Design Process Event:** the determination of the Contract Sum in accordance with Clause 2.1A;

**Determination Period:** the period specified in the Contract Particulars or any other period as the Employer shall notify to the Contractor as being the determination period;

**EIR 2004:** the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relative Government department in relation to such regulations;

**Employer's Agent:** means the person named in Recital 2 or such other person as may be appointed by the Employer to act, such person may also be referred to as the Employer's representative and/or contract administrator;

**Employer's Person:** all persons employed, engaged or authorised by the Employer, excluding the Contractor;

**Employer's Policies:** the policies referred to in the tender documentation;

**Environmental Laws:** all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the environment;

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

**Equivalent Hourly Wage** - shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 (the “Act”) and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act);

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to that Act;

**FOIA Code:** the Department of Constitutional Affairs Code of Practice on the Discharge of functions of Public Authorities under Part I FOIA or any replacement or revision of that Code;

**Group Company:** any subsidiary or holding company of the Contractor or another subsidiary or holding company of such company, as ‘subsidiary’ and ‘holding company’ are defined in s1159 of the Companies Act 2006;

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

**Intellectual Property Rights or IPR:** patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

**Interest Rate:** in the definition of “Interest Rate” delete “5%” and insert “3%”;

**London Living Wage or LLW:** a London weighted minimum wage which takes into account the higher living costs of London as calculated annually by the Resolution Foundation and overseen by the Living Wage Commission;

**Main Contract:** the contract, in the form set out in Annex 2, proposed to be entered into by the Employer and the Contractor for the construction of the Project;

**Pre-Construction Documents:** any drawings, plans, designs, diagrams, specifications, technical data models, bills of quantities, reports, calculations or other documents or recorded information whatsoever prepared by or on behalf of the Contractor for use by and the benefit of the Employer and its assigns and partners, in connection with this Agreement;

**Pre-Construction Period:** the pre-construction phase of the Project being the period from when the Contractor commences the Pre-Construction Services in accordance with this Agreement until the works under the Main Contract commence;

**Pre-Construction Services:** the work and obligations under this Agreement to be performed by the Contractor during the Pre-Construction Period and more specifically the services listed in Annex 1;

**Pricing Document:** the priced bill of quantities and other pricing information included in the First Stage tender setting out, amongst other things, the Contractor’s proposed fee for the determination of the Contract Sum in accordance with this Agreement;

**Programme:** the Contractor’s detailed programme (which shall be in accordance with the requirements of clause 2.1B and on software approved by the Employer) submitted prior to acceptance of its Tender and agreed at that time by the Employer, and which is set out at Annex 13, as may be amended from time to time;

**QS:** the Quantity Surveyor who is the person employed by the Employer to act in that capacity (being, at the date of this Agreement, Calfordseaden LLP of St John’s House 1A Knoll Rise, Orpington, Kent



BR6 0JX) or such other person as may be appointed in that capacity for the time being by or on behalf of the Employer;

**Relevant Staff:** shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year;

**Request for Information or Request:** a Request for Information within the meaning given in Section 1 of the FOIA or any request for Information under the EIR 2004;

**Second Stage:** the second stage of the tendering process being followed by the Employer, being the activities of the Contractor under the terms of this Agreement;

**SME:** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**Site:** means the site at which the Project is to be carried out;

**Tender:** the tender submitted by the Contractor on 19<sup>th</sup> February 2020 containing its First Stage pricing proposals for appointment under this Agreement;

**Third Party Agreement(s):** the agreement or agreements (as applicable) listed in Annex 15 to the extent copies have been provided to the Contractor prior to the date of this Agreement.

**VCSE:** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

**Working Day:** the meaning given in Section 10 of the FOIA;”

## Clause 1.5

**Insert** at end of clause 1.5 before ".": "and the courts of England shall have exclusive jurisdiction over the Contract."

## Clause 1.6

**Insert** new clause 1.6:

- 1.6.1 The Parties shall use reasonable endeavours to notify the other party as soon as they are aware of any matter adversely affecting the Contract or either party's performance of it. Such notice shall be in writing and include proposals for avoiding or mitigating such matter.
- 1.6.2 The Parties shall take all reasonably practicable steps to minimise any adverse effects or to maximise any positive effects of any matter notified under clause 1.6.1.

## SECTION 2: CONTRACTOR'S GENERAL OBLIGATIONS

### Clause 2.1

In line 2 after "Requirements," **insert** "the First Stage Tender,".

**Insert** new sub-clause 2.1.4:

- 2.1.4 "comply with the Employer's Policies".

### Clause 2.1A

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

- "2.1A Design Process and Contract Sum
- 2.1A.1 The Contractor shall proceed with the Pre-Construction Services so that the Design Process Event shall be achieved in accordance with the Programme. Except as required under this Agreement, unless and until the Employer executes the Main Contract and notifies the Contractor that he may take possession of the Site or those parts of the Site defined in the Main Contract,

the Contractor shall not undertake any other work or execute any part of the Project unless instructed otherwise.

- 2.1A.2 As soon as reasonably practicable, and not later than 10 Business Days before the time shown in the Programme for the certification of the Design Process Event, the Contractor shall submit to the QS a written fully itemised lump sum quotation of the proposed Contract Sum for the Main Contract, based on the costing proposals contained within the Pricing Document. The Contractor shall include with his quotation such information as will enable the QS to evaluate the quotation and shall also promptly submit to the QS any information he reasonably requires in explanation and support of the quotation.
- 2.1A.3 The Contract Sum shall be determined:
- .1 by acceptance by the Employer of a lump sum quotation of the proposed Contract Sum prepared by the Contractor and submitted to the QS in accordance with Clause 2.1A.2 and accepted by the Employer under Clause 2.1A.4, or such other lump sum as may be agreed by clarification of such a quotation; or
  - .2 by the QS in accordance with Clause 2.1A.6.
- 2.1A.4 The Employer shall notify the Contractor, as soon as reasonably practicable after the receipt of any such lump sum quotation, whether or not it is accepted or, if it is not acceptable, whether he is prepared to agree any other lump sum. If accepted, the aggregate amount specified in the quotation, or otherwise agreed between the Employer and the Contractor, shall be the Contract Sum.
- 2.1A.5 Without prejudice to Clause 3.5.2, in the event that:-
- .1 the Contractor fails to provide a lump sum quotation in accordance with Clause 2.1A.2; or
  - .2 the Employer and the Contractor fail to agree the Contract Sum by clarification of the Contractor's quotation;
- the Employer shall instruct the QS to determine the Contract Sum.
- 2.1A.6 Where the QS is required to determine the Contract Sum under Clause 2.1A.5 he shall do so:-
- .1 by measurement and valuation at the rates and prices in the Pricing Document; or
  - .2 if it is not possible to value as set out in Clause 2.1A.6.1 then by measurement and valuation at rates and prices deduced or extrapolated from the rates and prices in the Pricing Document in accordance with the Second Stage Tendering Requirements; or
  - .3 if it is not possible to value as set out in Clause 2.1A.6.2, then by measurement and valuation as fair rates and prices, having regard to current market prices.
- 2.1A.7 The QS shall as soon as reasonably practicable notify the Contractor of his determination of the Contract Sum. Such determination shall, subject to Clause 2.1A.8, be subject to dispute resolution under Clause 10.7.
- 2.1A.8 If the Contractor disagrees with the whole or part of the QS's determination of the Contract Sum, he shall, within 14 days of the QS's notification under Clause 2.1A.7, give his reasons for disagreement and his own valuation in accordance with the Second Stage Tendering Requirements. In any other case, and in all other respects, he shall be treated as having accepted the notification under Clause 2.1A.7, and the QS's determination of the Contract.
- 2.1A.9 Any percentage or lump sum adjustments made in the pricing of the Pricing Document shall be deemed to be applicable to the determination of the Contract Sum.
- 2.1A.10 The Employer shall certify the date when the Design Process Event is achieved.
- 2.1A.11 On receipt of a notification from the Employer pursuant to clause 3.5.3.2, the Contractor shall within ten (10) days (or such other period as agreed between the Parties):
- 2.1A.11.1 produce all of the documentation required for the Main Contract (including without limitation all technical information, plans, drawings, specifications and programme information);
  - 2.1A.11.2 validly execute the Main Contract, and where appropriate procure the execution of,

the Main Contract and return the executed Main Contract to the Employer (without amendment other than the correction of errors in a manner agreed between the parties);

2.1A.11.3 commence the Works in accordance with the Main Contract; and

2.1A.11.4 comply in all respects with the Main Contract.

2.1A.13 A notification issued pursuant to clause 3.5.3.2 shall not relieve the Contractor of any liability under this Agreement for any defect in any of the Contractor's Information, or for any inconsistency or lack of co-ordination between the Contractor's Information and any information provided to or received from the Contractor in relation to the provision of the Pre-Construction Services."

## Clause 2.1B

**Insert** new Clause 2.1B as follows:

"2.1B Programme

2.1B.1 The Contractor warrants to the Employer that the Programme shows the Design Process Event and the time for its certification."

2.1B.2 The Programme shall:

2.1B.2.1 include, without limitation, the time periods required for Pre-Construction Services (including site investigations, design and procurement) and the latest dates by which drawings, specifications and other details to be prepared or provided by or for the Contractor are to be submitted to the Employer;

2.1B.2.2 include key dates and milestones;

2.1B.2.3 include all logic links and dependencies between all activities with any applicable leads and lags;

2.1B.2.4 be prepared using critical path techniques acceptable to the Employer;

2.1B.2.5 ensure that no single activity on the Programme exceeds 28 days in duration;

2.1B.2.6 identify the critical path or paths; and

2.1B.2.7 identify the earliest and latest start and finish dates for each activity.

2.1B.3 The Contractor shall reissue the Programme monthly updated to reflect actual progress achieved at that date. The Contractor shall at all times keep the Programme up to date and shall promptly notify the Employer if the Contractor becomes aware that for any reason there has been or shall be a departure from the Programme.

2.1B.4 The Contractor shall provide the Employer with copies of any amendments or revisions including any ancillary programmes which may be required.

2.1B.5 The Contractor shall keep and shall make available to the Employer upon demand a complete record of all amendments or revisions to the Programme.

2.1B.6 Provision of the Programme prior to acceptance of the Contractor's Tender and acceptance by the Employer thereof shall be a condition precedent to the Employer's liability to make any payments under this Agreement to the Contractor.

2.1B.7 If the Contractor fails to re-issue the Programme in accordance with clause 2.12.3 then the Employer may instruct a third party to update the Programme as envisaged by clause 2.12.3.

2.1B.8 The Employer shall be entitled to withhold or deduct from any amount due to the Contractor in accordance with clause 6.1 an amount equal to the costs incurred by the Employer in procuring the updating of the Programme by a third party under clause 2.12.7.

## Clause 2.1C

**Insert** new clause 2.1C as follows:

“2.1C The Contractor shall, in addition to complying with the Statutory Requirements pursuant to clause 2.1, deliver the Services in compliance with the Building Safety Bill (as amended, modified or thereafter enacted).”

#### **Clause 2.1.4**

**Insert** new clause 2.1.4 as follows:

“2.1.4 The Contractor warrants and undertakes that it shall carry out and fulfil, in all respects, the duties of Principal Contractor under the CDM Regulations.”

**Insert** new clause 2.3.5:

“2.3.5 The Contractor shall provide to the Employer a copy of all Contractor’s Information produced pursuant to this Agreement both electronically and in hard copy on completion of each output and/or on the required date as set out in the Programme.”

#### **Clause 2.6**

In line 2 after ‘consent’ **insert** “...in writing”.

#### **Clause 2.6A**

**Insert** new clause 2.6A:

2.6A “No sub-contracting is permitted without the Contractor ensuring that:

- 2.6A.1 the sub-contract contains such terms and conditions as are necessary for the Employer to be entitled to a copyright licence in terms the same as those of Clause 8.1A;
- 2.6A.2 the sub-contract contains such terms and conditions as are necessary to impose the same obligations on the sub-contractors in relation to Confidential Information as those obligations which apply to the Contractor under this Agreement;
- 2.6A.3 in the event that clause 2.15 applies to this Agreement, the sub-contract contains such terms and conditions as are necessary to impose the same obligations on the sub-contractors in relation to payment of the London Living Wage to Relevant Staff as those obligations which apply to the Contractor under this Agreement;
- 2.6A.4 a copy of the relevant sub-contract is provided to the Employer;
- 2.6A.5 its sub-contractor does not further sub-contract any element of the Works sub-contracted to it more than once; and
- 2.6A.6 the sub-contractors with design responsibility are obliged to grant warranties in the same terms as those set out and on the same conditions as those set out in clause 2.6C subject to any revised wording being agreed by the Employer.

#### **Clause 2.6B**

**Insert** new clause 2.6B:

“2.6B Notwithstanding any sub-contracting by the Contractor, the Contractor shall remain liable to the Employer to perform the Pre-Construction Services and to comply with the Contractor’s obligations under this Agreement. The Contractor shall be responsible for checking all work carried out by any sub-contractor to ensure that it complies with the overall design intent and for the co-ordination and integration of any design work into the design of the Project.”

#### **Clause 2.6C**

**Insert** new clause 2.6C:

2.6C The Contractor shall ensure that any sub-contractor, design consultant or site investigation consultant appointed during the Pre-Construction Period in relation to any element of the design

of the Works shall, as a condition precedent to their appointment under this agreement, provide a warranty, in the form appended to this agreement at Annex 4 (Design Sub-consultant/Sub-contractor Warranty), in favour of the parties advised by the Employer or identified in the Main Contract.”

#### **Clause 2.6D**

**Insert** new clause 2.6D:

“2.6D Dealings with appointments

In relation to the appointments of any sub-contractors pursuant to Clause 2.6 the Contractor shall:

- 2.6D.1 properly enforce the obligations of such contractors under their appointments and shall not determine or vary the terms of any such appointments or release such contractors from their obligations under their respective appointments without the prior consent of the Employer;
- 2.6D.2 (without limitation to clause 2.6D.1) procure that such contractors comply with their obligations in relation to the provision of collateral warranties under the terms of their appointments;
- 2.6D.3 duly perform and observe all the obligations and duties on the part of the Contractor under the appointments of any sub-contractors;
- 2.6D.4 ensure that the sub-contractors are fully and properly instructed in connection with the Pre-Construction Services;
- 2.6D.5 diligently take all steps necessary effectually to procure due performance and observance of the obligations and duties of the sub-contractors;
- 2.6D.6 not waive, release, vary or estop itself from enforcing or seeking redress for any such obligation or duty without the written consent of the Employer;
- 2.6D.7 not do or omit to do any act or thing which would entitle any of the sub-contractors to treat as terminated by breach their appointment in connection with the Pre-Construction Services.”

#### **Clause 2.7.2**

In lines 1 and 2 **delete** “, unless the Parties otherwise agree in writing,”.

In line 3 **delete** “Parties execute and deliver” and inset “Employer executes and delivers”.

#### **Clause 2.8**

**Delete** clause 2.8 and **replace** with:

- “2.8 .1 Where the Pre-Construction Services include design work, the Contractor shall be liable for that design work irrespective of whether the Employer enters into the Main Contract with the Contractor.
- .2 Where the Pre-Construction Services include design work and the Employer enters into the Main Contract with the Employer, upon entry into the Main Contract the Contractor’s obligations and liability in respect of that design work shall be the same as if it formed part of the design work undertaken by him under the Main Contract and shall be subject to any relevant exclusions or limitations of liability contained in that contract”.

#### **Clause 2.9**

**Insert** new clause 2.9:

“The Contractor shall not (and shall procure that any of its Sub-Contractors shall not) disclose to any person or publish or make any statement concerning this Agreement or the Project or any matters arising from or relating to the Agreement or the Project directly or indirectly without the prior written authority of the Employer (except as may be required by law or in order to properly perform its obligations under this Agreement (or in the case of its Sub-Contractors as may be required in order to properly perform their obligations under their contracts/terms of engagement in relation to the Project)).”

#### **Clause 2.10**

**Insert** new clause 2.10:

"In the event that the Contractor is provided with copies of any Third Party Agreements during the Pre-Construction Period, it shall, so far as practicable, discharge its duties and obligations under this Agreement so as not by any action, inaction or omission to cause or contribute towards a breach of the duties and obligations of the Employer under such Third Party Agreements."

**Insert** new clause 2.11 as follows:

**Clause 2.11**

**Insert** new clause 2.11 as follows:

"2.11 The Contractor shall if required to do so attend all meetings convened by the Employer subject to reasonable notice being given, in relation to the provision of the Pre-Construction Services.

**Clause 2.12**

**Insert** new clause 2.12:

"In the event that the Contractor is provided with copies of any Third Party Agreements during the Pre-Construction Period, it shall, so far as practicable, discharge its duties and obligations under this Agreement so as not by any action, inaction or omission to cause or contribute towards a breach of the duties and obligations of the Employer under such Third Party Agreements."

**Clause 2.13**

**Insert** new clause 2.13

"2.13 Equalities Monitoring

2.13.1 In view of the duties placed on the Employer under the Equalities Legislation, the Contractor shall at the Employer's request:

- .1 monitor the representation among its staff of persons of different racial groups;
- .2 monitor the constitution of its workforce by gender;
- .3 monitor the representation among its staff of persons who regard themselves as disabled.

2.13.2 The obligation set out in clause 2.13.1 shall, at the Employer's request, be carried out in compliance with the Employer's own procedures for monitoring representation among its own employees, or in accordance with such classifications or monitoring tools as the Employer requires.

2.13.3 The obligation set out in clause 2.13.1 shall, at the Employer's request, include an obligation for the Contractor to require its Sub-Contractors to carry out this same monitoring requirement in relation to its own workforce.

2.13.4 The Contractor shall supply the information collated under clause 2.13.1 (and clause 2.13.3 if applicable) to the Employer at the frequency and in the form it requires.

2.13.5 Where applicable, the Contractor shall submit a report to the Employer demonstrating its compliance with this clause and shall provide such additional information as the Employer may reasonably require for the purpose of assessing the Contractor's compliance with this clause.

2.13.6 The Contractor shall comply with all Equalities Legislation."

**Clause 2.14**

**Insert** new clause 2.14:

"2.14 Audit

2.14.1 The Contractor shall keep and maintain until six years after the end of the Pre-Construction Period, full and accurate records of this Agreement including all payments made by the Employer. The Contractor shall on request afford the Employer or the Employer's representatives such access to those records as may be required by the Employer in connection with this Agreement.

2.14.2 The Contractor shall fully co-operate with such reasonable enquiry or investigation (whether routine or specific) requests made by the Employer's auditors (whether internal or external) which in any way concerns, affects or relates to the Pre-Construction Services performed by the



Contractor under this Agreement, or any sums claimed or charged in relation to this Agreement. Such co-operation shall include (but not be limited to) the following:

- .1 providing access to or copies of such files, documents, letters, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation;
  - .2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor in the performance of this Agreement;
  - .3 providing access to the Contractor's staff (of whatever seniority) involved in the performance of this Agreement (including management or supervision) or who may be the subject of, or be named in, any enquiry or investigation by the auditors (including providing suitable facilities for interviewing such staff);
  - .4 maintaining the confidentiality of the enquiry or investigation when requested by the auditors to do so.
- 2.14.3 The Contractor shall ensure that the terms of any sub-contract include identical provisions to this clause and shall indemnify the Employer against any losses it suffers in consequence of a failure to ensure the inclusion of such identical terms.
- 2.14.4 Where the results of such enquiry or investigation identify loss incurred by the Employer in consequence of any breach of contract by the Contractor or any Sub-Contractor, the Employer shall be entitled to deduct from any sums held by the Employer (and which would otherwise be payable to the Contractor) both the value of such loss etc. attributable to the Contractor and the costs of the audit investigation.
- 2.14.5 Where the Employer does not hold any such sums from which deductions may be made, such sums may be recovered from the Contractor as a civil debt."

#### **Clause 2.15**

**Insert** new clause 2.15 as follows:

"2.15 Nothing in this Agreement shall prevent or restrict the Employer from contracting with any other contractor at any time in relation to the Project".

#### **Clause 2.16**

**Insert** new clause 2.16 as follows:

##### **"2.16 Conduct of Staff and Security Arrangements**

Whilst engaged at the Site the Contractor shall and shall procure that its staff and the staff of any Sub-Contractor of any tier shall comply with any of the Employer's policies in place from time to time (the **Employer's Policies**) relating to the conduct of staff and security arrangements. The Employer (acting reasonably) may:

- 2.16.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor of any tier involved in the provision of the Pre-Construction Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Employer shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- 2.16.2 where the Employer has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Pre-Construction Services is undesirable, require the exclusion of the relevant employee from the relevant location(s)."

**Clause 2.17**Not used.

#### **Clause 2.18**

**Insert** new clause 2.18 as follows:

##### **"2.18 Refusal of Admission**

- 2.18.1 The Employer reserves the right to refuse to admit to the Site any person employed or engaged by the Contractor or any Sub-Contractor of any tier, whose admission would, in the opinion of the Employer, present a risk to themselves, or an Employer's Person, or property, and shall not be obliged to give any reasons for such refusal.
- 2.18.2 The decision of the Employer as to whether any person is to be refused admission to the Site pursuant to clause 2.18.1 shall be final and conclusive.
- 2.18.3 The Contractor shall comply with and/or procure compliance with any notice issued by the Employer from time to time requiring the removal from the Site of any person employed thereon who in the opinion of the Employer acting reasonably is not acceptable on the grounds of risk to themselves or any pupil, or any Employer's Person or property and that such persons shall not be employed again in connection with the Pre-Construction Services without the written consent of the Employer."

#### **Clause 2.19**

**Insert** new clause 2.19 as follows:

##### **"2.19 London Living Wage**

- 2.19.1 The Contractor shall:
  - 2.19.1.1 ensure that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
  - 2.19.1.2 ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
  - 2.19.1.3 provide to the Employer such information concerning the London Living Wage and the performance of its obligations under this clause 2.19 as the Employer may reasonably require and within the deadlines it reasonably imposes;
  - 2.19.1.4 co-operate and provide all reasonable assistance to the Employer in monitoring the effects of the London Living Wage including without limitation assisting the Employer in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.
- 2.19.2 For the avoidance of doubt, any breach by the Contractor of this clause 2.19 will be a breach of a material obligation in relation to which the Employer is entitled to rely upon its termination rights under clause 10 of this Agreement."

#### **Clause 2.20**

**Insert** new clause 2.20:

##### **"2.20 Dealings with appointments**

- In relation to the appointments of any Sub-Contractors pursuant to Clause 2.6 the Contractor shall:
  - 2.20.1 properly enforce the obligations of such contractors under their appointments and shall not determine or vary the terms of any such appointments or release such contractors from their obligations under their respective appointments without the prior consent of the Employer;
  - 2.20.2 (without limitation to clause 2.20.1) procure that such contractors comply with their obligations in relation to the provision of collateral warranties under the terms of their appointments;
  - 2.20.3 duly perform and observe all the obligations and duties on the part of the Contractor under the appointments of any Sub-Contractors;
  - 2.20.4 ensure that the Sub-Contractors are fully and properly instructed in connection with the Pre-Construction Services;
  - 2.20.5 diligently take all steps necessary effectually to procure due performance and observance of the obligations and duties of the Sub-Contractors;
  - 2.20.6 not waive, release, vary or estop itself from enforcing or seeking redress for any such obligation or duty without the written consent of the Employer;



2.20.7 not to do or omit to do any act or thing which would entitle any of the Sub-Contractors to treat as terminated by breach their appointment in connection with the Pre-Construction Services."

**Clause 2.21**

**Insert** new clause 2.21:

"2.21 The Contractor shall comply with the Employer's Policies."

**Insert** new clause 2.22:

"2.22 Supply Chain Visibility

"2.22.1 The Contractor shall:

subject to clause 2.22.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Pre-Construction Period;

2.22.1.1 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

2.22.1.2 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;

2.22.1.3 provide reports on the information at clause 2.22.1.2 to an Employer in the format and frequency as reasonably specified by the Employer; and

2.22.1.4 promote Contracts Finder to its sub-contractors and encourage those organisations to register on Contracts Finder.

2.22.2 Each advert referred to at clause 2.22.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

2.22.3 The obligation at Clause 2.22.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

2.22.4 Notwithstanding clause 2.22.1, the Employer may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

2.22.5 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information ("MI") Reports to the Employer which incorporate the data described in the MI Reporting template which is:

2.22.5.1 the total contract revenue received directly on a specific contract;

2.22.5.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and

2.22.5.3 the total value of sub-contracted revenues to SMEs and VCSEs.

2.22.6 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Employer from time to time. The Contractor shall use the initial MI Reporting Template which is set out in the Annex<sup>1</sup> to this Schedule and which may be changed from time to time (including the data required and/or format) by the Employer by issuing a replacement version. The Employer shall give at least thirty (30) days notice in writing of any such change and shall specify the date from which it must be used.

2.22.7 The Contractor further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Employer.

**Insert** new clause 2.23 as follows:

2.23 "Data Protection

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- 2.23 “The Contractor shall and shall ensure that all Contractor’s Persons and sub-contractors shall at all times comply with the provisions of Annex 18.”

### **SECTION 3: EMPLOYER’S GENERAL OBLIGATIONS**

#### **Clause 3.4**

Insert new Clause 3.4 as follows:

##### **“3.4 Payment**

In consideration for the Contractor providing the Pre-Construction Services and otherwise performing its obligations under this Agreement, the Employer shall pay the Contractor the Fee and any Additional Sums properly payable in accordance with clause 2.17 and payable pursuant to Section 6.

#### **Clause 3.5**

Insert new Clause 3.5 as follows:

##### **“3.5 Requirement to enter into Main Contract**

- 3.5.1 Subject to Clauses 3.5.2 and 3.5.3, at any time within the Determination Period, the Employer may by notice in writing require the Contractor to execute the Main Contract in the manner prescribed by clause 2.1A.11 and to take all such other steps as may reasonably be required by the Employer to ensure the timely commencement of the Project and performance of the Contractor’s other obligations under the Main Contract, and the Contractor shall comply with such requirement.
- 3.5.2 For the avoidance of doubt, the Employer shall have the absolute discretion as to whether or not to proceed to enter into, or to require the Contractor to enter into, the Main Contract.
- 3.5.3 The Employer shall either:-
- 3.5.3.1 notify the Contractor in writing that the Employer has decided not to appoint the Contractor under the Main Contract; or
- 3.5.3.2 notify the Contractor in writing that he is required to execute the Main Contract in accordance with clause 3.5.1.
- 3.5.4 Any written notification to the Contractor under Clause 3.5.3.2 shall:-
- 3.5.4.1 include notification to the Contractor of the date by which the Contractor shall execute the Main Contract and the date proposed by the Employer as the Date of Possession under the Main Contract when executed (and any such deadline for execution and any such proposed Date for Possession shall be not more than four weeks after the end of the Determination Period); and
- 3.5.4.2 constitute acceptance by the Employer of any then existing or future determinations of the Contract Sum by the QS in accordance with Clause 2.1A.
- 3.5.5 The parties acknowledge and agree that unless the Employer has issued a notice in accordance with clause 3.5.3.2 the Employer shall be under no obligation to the Contractor other than as set out in this Agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project or the Works) and the Contractor shall have no claim against the Employer for:
- 3.5.5.1 loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
- 3.5.5.2 any indirect or consequential loss.”

#### **Clause 3.6**

Insert new Clause 3.6 as follows:

- “3.6 If and when the Main Contract is executed, its terms and conditions shall supersede those contained in this Agreement and shall govern retrospectively the work carried out by the

Contractor under this Agreement.”

#### **SECTION 4: REPRESENTATIVES AND CONTRACTOR’S KEY PERSONNEL**

##### **Clause 4.2.1**

In line 2 after ‘prior’ **insert** “written”.

In line 3 after “appointee.” **Insert** “Any replacement for the Contractor’s Representative or any of the Key Personnel must have equivalent experience, skills and qualifications”.

#### **SECTION 5: ADDITIONAL SERVICES, FEE ADJUSTMENT ETC.**

**Delete** “,Fee Adjustment etc.” in the title to this section.

**Delete** Clauses 5.1 to 5.4 inclusive and **replace** with the following:

- “5.1 At the Employer’s absolute discretion it may instruct the Contractor to perform Additional Services.
- 5.2 Any instruction to perform Additional Services (an **Instruction**) shall be in writing clearly specifying that it is an Instruction to carry out Additional Services and be given to the Contractor by the Employer, the Employer’s Agent, or any other person the Employer notifies the Contractor as being authorised to give such Instructions.
- 5.3 Any Instruction may incur an additional amount payable (an **Additional Sum**) under this Agreement to the Contractor. The Employer or the Employer’s Agent, prior to the giving of the Instruction, shall reasonably consider whether the Instruction should incur an Additional Sum due to the Contractor.
- 5.4 If the Employer or Employer’s Agent reasonably considers under clause 5.3 that an Additional Sum is payable in respect of an Instruction, it shall state this in the Instruction and include the total Additional Sum it reasonably considers due in respect of the Instruction (the **Estimated Additional Sum**). The Estimated Additional Sum shall be calculated in accordance with the Schedule of Preliminaries Drawdown provided set out in Annex A (Fee, Rates, Additional Payments and Reimbursable Expenses) of this Agreement. Notwithstanding the Estimated Additional Sum set out in the Instruction, the amount payable as the Additional Sum shall be payable in accordance with section 6.”

#### **SECTION 6: PAYMENT**

##### **Clause 6.1.3**

**Delete** Clause 6.1.3 and **replace** with “any Additional Sums payable pursuant to Section 5 or Clause 2.17,”

##### **Clause 6.1A**

**Insert** new Clause 6.1A as follows:

- “6.1A Except where expressly stated to the contrary in this agreement, the Fee shall be inclusive payment for the Pre-Construction Services and all other matters relating to this agreement (including all costs, disbursements, expenses and overheads of every kind incurred by the Contractor in connection therewith). For the avoidance of doubt, the Fee shall be deemed to have been calculated on a fixed price basis and shall not be subject to fluctuations, adjustments or additions.”

**Insert** new Clause 6.1B as follows:

- “6.1B For the avoidance of doubt, when the Main Contract has been executed and completed the Employer shall make no further payments under this Agreement and all payments made under this Agreement (including the Fee) shall be included within and treated as paid on account of the Contract Sum under the Main Contract.”

##### **Clause 6.2**

In line 5 **delete** "Additional Payment" and **replace** it with "Additional Sum".

In line 6 after "calculated" and before "." **insert** "including the basis on which any application for an Additional Sum has been calculated to depart from the Estimated Additional Sum set out in the Instruction".

#### **Clause 6.3.2**

**Delete** "14" and **replace** with "28".

#### **Clause 6.6.1**

In line 3 after 'given' **insert** "written".

In line 4 after 'performance of' **insert** "any or all of".

In line 7 after 'notify' **insert** "in writing".

#### **Clause 6.6.3**

In line 2 **delete** "or on request" and at the end of the sub-clause **insert** the following sentence:

"The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

**Insert** new clause 6.7 as follows:

"6.7 The Employer shall have the right to set off in relation to any liability of the Contractor to the Employer from any amount payable by the Employer to the Contractor, and to otherwise recover any liability of the Contractor to the Employer arising in respect of the Pre-Construction Services".

### **SECTION 7: INSURANCE**

#### **New Clause 7.1A**

**Insert** new clause 7.1A, after clause 7.1:

"7.1A Commercially reasonable rates

Any increased or additional premium required by insurers for the insurance referred to in Clause 7.1 because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates."

**Insert** new clause 7.1B as follows:

"7.1B The Contractor shall not do anything which might render any of the insurance policies referred to in this clause 7 void or voidable, and shall carry out his obligations under this Agreement, and shall use all reasonable endeavours to ensure that his servants or agents shall carry out their respective obligations, in a manner that fully complies with all requirements terms conditions stipulations and provisos of such insurances. The Contractor's obligation to maintain such insurances shall in no way negate or limit any or all of its obligations or duties hereunder nor its liability in respect of any breach or non-performance of the same."

**Insert** new clause 7.1C as follows:

"7.1C The Contractor shall be responsible for and shall release and indemnify the Employer on demand from and against all liability which may arise out of, or in consequence of the performance or non-performance by the Contractor of its obligations under this Agreement or its negligence or a breach of its obligations under this Agreement for:

7.1C.1 Death or personal injury;

7.1C.2 Loss of or damage to any property (whether tangible or intangible), including property belonging to the Employer; and

7.1C.3 Actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis).

**SECTION 8: USE OF CONTRACTOR'S INFORMATION, CONFIDENTIALITY ETC.**

**Clause 8.1**

**Delete** clause 8.1 in its entirety and mark "Not Used".

**Insert** new clause 8.1A as follows:

"8.1A.1 All Intellectual Property Rights in the Pre-construction Documents and any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- .1 provided to the Contractor by or on behalf of the Employer shall remain the property of the Employer; and/or
- .2 prepared by or on behalf of the Contractor for use, or intended use in relation to the Pre-Construction Services, the Project or under the Main Contract shall vest in the Employer and the Contractor shall not, and shall procure that the Contractor's Persons and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior consent of the Employer, use or disclose any such IPR, or any Confidential Information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

8.1A.2 For the purposes of Clause 8.1A.1.2, where the Pre-Construction Documents contain embedded IPR that are deemed to be owned by the Contractor or its servants, agents, suppliers and sub-contractors, the Contractor hereby grants to the Employer, or shall procure the direct grant to the Employer of a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use (which shall include the right to load, store, copy, publish, modify, adapt, exploit, enhance, compile, distribute and translate) the Contractor or third party IPR embedded in the Pre-Construction Documents, along with any operating instructions and other documents and tools necessary for the Employer's free and unrestricted use of the Pre-Construction Documents.

8.1A.3 The Employer shall be entitled to sub-license the rights granted to it pursuant to Clause 8.1A.2 provided that:

- .1 the sub-licence is on terms no broader than those granted to the Employer; and
- .2 the sub-licence authorises the third party to use the rights licensed in Clause 8.1A.2 and to sub-licence such rights only for purposes relating to the Pre-Construction Services, or for any purpose relating to the exercise of the Employer's business or function, or where this is necessary for the use or to obtain the benefit of the Pre-Construction Documents; and
- .3 no warranty is given by the Contractor as to the suitability of the Pre-Construction Documents for any purpose which is not connected to the Pre-Construction Services.

8.1A.4 The Employer shall be entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 8.1A.2, to any body which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.

8.1A.5 It is a condition of the Agreement that the provision of Pre-Construction Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the completion of the Pre-Construction Services, on written demand indemnify and keep indemnified the Employer against all actions, proceedings, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Employer may suffer or incur as a result of or in connection with any breach of this clause 8.1A, except where any such claim relates to:

- .1 designs provided by the Employer;
- .2 the use of data supplied by the Employer which is not required to be verified by the Contractor under any provision of the Agreement.

8.1A.6 At the termination or expiry of the Agreement the Contractor shall at the request of the Employer immediately return to the Employer all materials, work or records held, including any back up media relating to this Agreement.

8.1A.7 The Employer recognises that during the performance of this Agreement, the Contractor may conceive or develop intellectual ideas, designs and know-how which the Contractor shall be free to use in the furtherance of his normal business, and nothing in this Agreement shall prevent the Contractor from performing similar tasks for another customer provided that all work for that other customer is done *ab initio*.

#### USE OF EMPLOYER IPR

8.1A.8 The Employer's Requirements and other documents provided to the Contractor by the Employer may contain model products, drawings and templates in which IPR owned by the Employer and third parties subsist.

8.1A.9 The Contractor shall not, and shall procure that all Contractor's Persons, its servants, agents, suppliers and sub-contractors shall not copy, publish, modify, adapt, exploit, enhance, compile, distribute and generally use the models drawings and templates referred to in Clause 8.1A.8 for the Contractor's own purposes (whether commercial or otherwise) without the prior written consent of the Employer or the owner of the IPR. Such consent may be subject to the payment of royalties to the owner of the IPR.

8.1A.10 The provisions of Clause 8.1A shall apply during the term of the Agreement and indefinitely after its expiry or termination."

#### Clause 8.2

In line 5 after "Employer's" **insert** "written".

#### Clause 8.3

**Renumber** clause 8.3 as clause 8.3.1.

**Delete** "Freedom of Information Act 2000 ('FOIA') and **replace** with "FOIA".

In line 5 after "is exempt from disclosure" **insert** "(including any information that the Contractor designates as commercially sensitive information)".

**Insert** new clauses 8.3.2 to 8.3.7 as follows:

"8.3.2 The Contractor acknowledges that, in order to be compliant with the FOIA and the EIR 2004, the Employer may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 8.3, the Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to facilitate the Employer's compliance with the FOIA and/or EIR 2004 in that regard.

8.3.3 The Contractor shall:

- .1 transfer any Request for Information that it or its sub-contractors receive, to the Employer as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and
- .2 provide the Employer with a copy of all Information in its or its sub-contractors possession or power that the Employer reasonably considers is relevant to the Request in the form that the Employer requires as soon as practicable and in any event within 5 Working Days of the Employer requesting that Information and any follow up Information required by the Employer thereafter within 2 Working Days of the Employer's follow up request.

8.3.4 The Contractor acknowledges that the Employer may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR 2004 to disclose Information that is or may be Confidential Information:

- .1 in certain circumstances without consulting the Contractor; or
- .2 following consultation with the Contractor and having taken the Contractor's views into account,

provided always that where clause 8.3.4 applies, the Employer shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

8.3.5 Subject to the Employer complying with its obligations under this clause 8.3, the Employer shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor or any sub-contractor arising from the disclosure of any Information whether or not such Information is Confidential Information falling within the scope of the FOIA or EIR 2004.

8.3.6 The Contractor shall indemnify the Employer against all claims, demands, actions, costs proceedings and liabilities that the Employer incurs due to the Contractor's or any sub-contractor's breach of this clause 8.3.

8.3.7 The Contractor shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 8.3 such that the Employer has the same rights against a sub-contractor as it does against the Contractor under this clause 8.3."

## **SECTION 9: ASSIGNMENT AND NOVATION**

### **Clause 9.1**

**Delete** clause and replace with:

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

### **Clause 9.3**

**Insert** new clause 9.3:

"9.3 Unless expressly stated to the contrary, nothing in this Agreement confers to anyone other than the parties to it and their respective assignees any right or benefit under the Contracts (Rights of Third Parties) Act 1999."

### **Clause 9.4**

**Insert** new clause 9.4:

"9.4 The Contractor shall not contend that any person to whom the benefit of this Agreement is assigned under this clause 9 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement."

### **Clause 9.5**

**Insert** new clause 9.5:

"9.5 No sub-contracting is permitted without the Contractor ensuring that:

9.5.1 the sub-contract contains such terms and conditions as are necessary for the Employer to be entitled to a copyright licence in terms the same as those of Clause 8; and

9.5.2 the sub-contractors with design responsibility are obliged to grant warranties in the same terms as those set out and on the same conditions as those set out in clause 9.7 subject to



any revised wording being agreed by the Employer.

#### **Clause 9.6**

Insert new clause 9.6:

“9.6 Notwithstanding any sub-contracting by the Contractor, the Contractor shall remain liable to the Employer to perform the Pre-Construction Services and to comply with the Contractor's obligations under this Agreement. The Contractor shall be responsible for checking all work carried out by any sub-contractor to ensure that it complies with the overall design intent and for the co-ordination and integration of any design work into the design of the Project.”

#### **Clause 9.7**

Insert new clause 9.7:

“9.7 The Contractor shall ensure that any sub-contractor, design consultant or site investigation consultant appointed during the Pre-Construction Period in relation to any element of the design of the Works shall, as a condition precedent to their appointment under this agreement, provide a warranty, in the form appended to this agreement at Annex 3 (Design Sub-consultant/Sub-contractor Warranty), in favour of the parties advised by the Employer or identified in the Main Contract.”

### **SECTION 10: SUSPENSION BY THE EMPLOYER, TERMINATION, ADJUDICATION AND THE PC REGULATIONS**

After “Termination in the heading of Section 10 **insert** “, Dispute Resolution,”.

#### **Clause 10.1.1**

**Replace** “Payment” with “Sum”.

#### **Clause 10.5.1**

In line 1 after ‘not less than’, **replace** “14” with “seven (7)”.

**Insert** new clauses 10.5.6-10.5.9 as follows:

“10.5.6 The Employer may terminate this Agreement if the Contractor undergoes a material detrimental change in its financial standing and/or the credit rating which, in the reasonable opinion of the Employer, adversely impacts on the ability of the Contractor to undertake the Pre-Construction Services. This may be evidenced by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up petition or the application for the appointment of a provisional liquidator.

10.5.7 The Employer may terminate this Agreement in the event that the Contractor commits an offence under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

10.5.8 The Employer may terminate this Agreement in the event that the Contractor is in breach of clause 2.19 (London Living Wage).

10.5.9 In respect of clauses 10.5.6, 10.5.7 and 10.5.8, the Employer shall serve a notice on the Contractor specifying the grounds for termination and requiring its remedy. If the Contractor fails to comply with the notice within 7 days the Employer may give notice to the Contractor terminating this Agreement with immediate effect.

#### **Clause 10.6.2.1**

**Replace** “Payments” with “Sums”.

**Delete** clause 10.2.6.3 and replace with the following:

“(where termination is not due to the Contractor's insolvency or material breach or under clause 10.5.4 (regulation 73(1)(b)), or under clauses 10.5.6, 10.5.7 or 10.5.8, any demobilisation and other costs reasonably and properly incurred by the Contractor as a result of the termination.”

#### **Clause 10.7**



**Insert** at the heading to Clause 10.7 the words “Dispute Resolution and” prior to “Adjudication”.

**Replace** the numbering of Clause 10.7 with the numbering 10.7.2.

**Insert** under the new heading to Clause 10.7 the following:

“10.7.1 If a dispute or difference arises under this Agreement which cannot be resolved by direct and good faith negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.”

10.8.1 **Insert** after “113(2)(c)(i) and (ii)” the words “including that:”.

10.8.1.1 **Insert** new clause 10.8.1.1 as follows:

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

- .1 the Contractor to pay any sums which are due from it to a sub-contractor within 30 days from the date of a valid and undisputed invoice;
- .2 the Contractor to consider and verify any invoices for payment submitted by a sub-contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- .3 the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 10.8.1.1;”

10.8.1.2 **Insert** new clause 10.8.1.2 as follows:

“Clause 10.8.1 is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause.”

**Insert** new Clause 10.9 as follows

“10.9 Deemed Determination of the Contractor’s Appointment

10.9.1 If the Employer:

10.9.1.1 notifies the Contractor at any time within the Determination Period that the Employer has decided not to appoint the Contractor under the Main Contract in accordance with Clause 3.5.3.1; or

10.9.1.2 fails to make any notification to the Contractor under Clause 3.5.3 within the Determination Period;

then this Agreement shall thereby be deemed determined.

10.9.2 In the event of this Agreement being deemed determined under Clause 10.9.1:

10.9.2.1 the Contractor shall cease forthwith to carry out any more work whatsoever in connection with this Agreement and/or the Project; and

10.9.2.2 the Contractor shall deliver up to the Employer all designs, plans, programs and other documents (collectively “**Project Documents**”) prepared under this Agreement (and/or in relation to the Project) by the Contractor or by his sub-contractors or consultants on his behalf and the Contractor shall if so required by the Employer grant to the Employer an irrevocable, royalty free licence or licences to make use of such Project Documents for the purpose of the Project; and

10.9.2.3 the Contractor shall consult with the Employer with regard to the action which the Contractor should take for the fulfilment or cancellation of orders and the Contractor shall supply to the Employer all invoices and other documents relating to orders made or intended to be made and if so required by the Employer, the Contractor shall assign to the Employer or their nominee or nominees the benefit of any or all contracts entered into with sub-contractors, consultants and suppliers; and

10.9.2.4 the Employer shall pay to the Contractor such instalments of the Fee as are due to the Contractor at the date of deemed determination together with any Additional Sums due and payable to the Contractor and such proportion of the next instalment of the Fee (if any) as is fair and reasonable having regard to the extent of the Pre-Construction Services provided by the Contractor up to that date.

- 10.9.3 Save as provided in Clause 10.9.2.4, the Employer shall owe the Contractor no further payment or compensation either in respect of any work which he has performed in relation to the Project or in respect of the termination or deemed determination of this Agreement. In particular, the Contractor shall have no claim against the Employer for breach of contract, loss of profit, loss of expectation or otherwise arising from the failure or refusal of the Employer to enter into a Main Contract.”

## 11 Additional Requirements

### 11.1 Blacklisting

**Insert** new clause 11.1:

- “11.1 The Contractor shall and shall procure that all staff and sub-contractors comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (the “**Blacklists Regulations**”) and shall ensure that it will not during the contract period be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who sought employment with the Contractor in breach of the Blacklists Regulations.”

### 11.2 Prevention of Bribery

**Insert** the following:

- 11.2.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor’s staff or subcontractors, have at any time prior to Date of Possession:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 11.2.2 The Contractor shall not during the contract period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Employer or any of the Employer’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 11.2.3 The Contractor shall during the contract period:

- (a) establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 11.2.3(a) and make such records available to the Employer on request.

- 11.2.4 The Contractor shall immediately notify the Employer in writing if it becomes aware of any breach of clause 11.2.1 and/or clause 11.2.2, or has reason to believe that it has or any of the Contractor’s staff or sub-contractors have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

11.2.5 If the Contractor makes a notification to the Employer pursuant to clause 11.2.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation in accordance with clause 2.14 (Audit).

11.2.6 If the Contractor is in default under clause 11.2.1 and/or clause 11.2.2, the Employer may by notice:

- (a) require the Contractor to remove from performance of the Works any Contractor's staff whose acts or omissions have caused the default; or
- (b) immediately terminate this Contract.

11.2.7 Any notice served by the Employer under clause 11.2.6 shall specify the nature of the Prohibited Act, the identity of the party who the Employer believes has committed the Prohibited Act and the action that the Employer has elected to take (including, where relevant, the date on which this Contract shall terminate).

### 11.3 The Prevent Duty

**Insert** new clause:

11.3.1 The Contractor shall (and shall procure that the Contractor's employees shall) comply with the requirements of the Counter-terrorism and Security Act 2015 (**CTSA15**) (including any guidance, amendments and all subsequent regulations made pursuant to this Act and any Employer's Policies) and will co-operate with the Employer in ensuring the Employer's compliance with its obligations under CTSA15 and in particular the Employer's obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "**Prevent duty**").

**Annex A**  
**Fee, Rates, Additional Payments and Reimbursable Expenses**

**Annex A**      **Fee, Rates, Additional Payment and Reimbursable Expenses**

*Note An Asterisk \* indicates text that is to be deleted as appropriate.*

**The Fee**

- 1      \* The Fee is the fixed sum of £[            ] being the total of the sums listed in Section 0.1 of the Schedule of Preliminaries Breakdown (set out below).

**Payment of Fee etc.**

- 2      The Fee shall become due and payable in accordance with section 6 at the following dates or stages/milestones and in the following amounts or percentages

*Application date at which due*

*Percentage of Fee or amount*

[    ] of each month

[payment based on Services provided within the valuation period and also to be determined by reference to the Schedule of Preliminaries Breakdown]

**[Drafting note:** *the specified date will need to be included in due course***].**

**Contractor's Project Staff – Applicable rates**

- 3      Such rates/sums set out the Schedule of Preliminaries Breakdown (the aforementioned shall also be utilised for any apportionment under clause 10.6.2.1) ~~The weekly all-in rate for any necessary extension of Pre-Construction Services work (and for the purposes of any apportionment under clause 10.6.2.1) is £[            ] based on the~~  
  
~~contractor's Project Staff of:~~

### Additional Services

- 4 Shall be priced in accordance with clause 5.4 and with due consideration to the Schedule of Preliminaries Breakdown. ~~The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed (or events or causes within clause 5.2) \* subject to the following:~~


### Reimbursable Expenses

- 5 Subject to their being properly and necessarily incurred for the purposes of the Project, the following expenses/disbursements of the Contractor shall be reimbursable by the Employer up to any maximum amount or rate specified below or as otherwise agreed in writing from time to time:

~~[Type]~~

~~[Maximum amount/rate]~~



Save as otherwise agreed in writing, all other expenses and disbursements shall be deemed to be included in the Fee.

### Supporting documents

- 6 Each application that includes any of the following types of charge or expenditure should be accompanied by the following documents:

*[Charge/Expenditure]*

*[Documentation]*

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**VAT**

- 7 All amounts and rates shown above are exclusive of VAT

**Schedule of Preliminaries Breakdown**

[Completed version to be included]

**Annex 1**  
**Pre-Construction Services**

This Annex 1 entirely replaces Annex B of the JCT PCSA 2016

**[Note that this is to include all documentation setting out the PCSA Services i.e. the brief (contained in the Tendering Protocol), the Contractor's first stage proposals, programme setting out key tasks etc.]**

The Contractor shall undertake all design and specification works, site investigations, other enabling works and trade package procurement as required to meet the objectives of the Tendering Protocol.

**Annex 2**  
**Main Contract**



**Annex 3**  
**Design Sub-Consultant / Sub-Contractor Warranty**

**Sub-Consultant Warranty**

**THIS AGREEMENT** is made the.....day of..... 202[ ]

**BETWEEN**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HACKNEY** of Town Hall, Mare Street, London E8 1EA ("the Employer"); and

(2) ..... (company number: ..... ) whose registered office is at ..... ("the Sub-Consultant")

**WHEREAS**

- A. The Employer has appointed ..... ("the Consultant") to carry out ..... Services to ..... ("the Services") under the terms of an agreement made between the Employer and the Consultant dated ..... 2020 ("the Services Contract").
- B. The Consultant has requested (and the Employer has approved) that it be allowed to employ the Sub-Consultant to assist in carrying out certain of the Services and/or its duties and obligations under the Services Contract, as set out in the Schedule ("the Sub- Contract Services") and has appointed the Sub-Consultant in connection therewith.
- C. The Consultant has accepted full responsibility for the Sub-Contract Services undertaken by the Sub-Consultant and for the payment of its fees.

**IT IS AGREED THAT:**

- 1. In consideration of the Employer paying the sum of one pound (£1), receipt of which the Sub-Consultant hereby acknowledges, the Sub-Consultant agrees to the provisions of this Agreement.
- 2. The Sub-Consultant warrants that it will exercise all necessary skill, care and diligence in carrying out the Sub-Contract Services and such duties and obligations as may be entrusted to it by the Consultant, and will carry out the same in a manner which will not prejudice the successful completion of the Services.
- 3. The Sub-Consultant undertakes to the Employer that it will take all necessary skill and care in:
  - (a) the design of the Services insofar as those Services have been or will be designed by the Sub-Consultant;
  - (b) the selection of materials and goods to be incorporated by the Sub-Contract Services insofar as such materials and goods have been or will be selected by the Sub-Consultant;
  - (c) the carrying out of any duties or works or in the supervision of any works or in implementing any action necessary to ensure the satisfactory completion of the Sub-Contract Services insofar as those duties, works or supervision are to be undertaken by the Sub-Consultant.
- 4. The Sub-Consultant agrees that, in the event of the Consultant's commission being determined by the Employer, the Employer may, at its sole discretion, by written notice, directly commission the Sub-Consultant to complete any services for which it was responsible under its agreement with the Consultant and, if the Employer shall serve such notice, then the Employer accepts responsibility for

the payment of any fees for Sub- Contract Services so directly commissioned and at a rate to be agreed between the parties.

5. In the event of the Employer exercising the option referred to in clause 4, then the copyright of all drawings, specifications, photographs, survey reports and other documents produced by the Sub-Consultant for the Sub-Contract Services either before or after the determination of the Consultant's commission as referred to in clause 4, shall be the property of and vest in the Employer who reserves the right to reproduce such drawings or other documents or to execute, or to have executed, works in accordance with such drawings or other documents as may be required by the Employer.
6. The Sub-Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of this Agreement and ending 12 years after the date of the completion of the Sub-Contract Services, provided that such insurance is available at commercially reasonable rates. The Sub-Consultant shall maintain that professional indemnity insurance:
  - (a) with reputable insurers lawfully carrying on insurance business;
  - (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:
    - (i) do not require the Sub-Consultant to discharge any liability before being entitled to recover from the insurers; and
    - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 6.1 Any increased or additional premium required by insurers because of the Sub-Consultant's claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.
- 6.2 The Sub-Consultant shall not, without the Employer's written consent:
  - (a) settle or compromise any claim with the insurers that relates to a claim by the Employer against the Sub-Consultant; or
  - (b) by any act or omission lose or affect the Sub-Consultant's right to make, or proceed with, that claim against the insurers.
- 6.3 The Sub-Consultant shall immediately inform the Employer if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates.
- 6.4 Whenever the Employer reasonably requests, the Sub-Consultant shall send the Employer evidence that the Sub-Consultant's professional indemnity insurance is in force.
7. If requested the Sub-Consultant will supply the Employer with such information as may be reasonable without undue delay.
8. The Sub-Consultant acknowledges that the Employer may assign the benefit of this Agreement to its successors in title to and those deriving title from the Employer without the consent of the Sub-Consultant.
9. Any notice to be given by either party to this Agreement shall be deemed to be duly given if it is delivered by hand at or sent by first class post or by facsimile or other electronic transmission to the other at the respective address chosen by such party and stated above or agreed by the parties as the address for service of all notices. Any notice delivered by first class post shall be deemed to have been received forty-eight (48) hours after having been posted and if sent by facsimile or other electronic transmission at the instant it is dispatched provided always a record of the transmission is made and a hard copy is sent to the recipient.

**IN WITNESS** whereof this Agreement has been entered into by the parties as a Deed on the date first stated above

**THE COMMON SEAL** of the )  
**MAYOR AND BURGESSES OF** )  
**THE LONDON BOROUGH OF HACKNEY** )  
was hereunto affixed in the presence of: )

.....  
Authorised Signatory

**EXECUTED AS A DEED** )  
on behalf of ..... )  
acting by: )  
..... Director  
..... Director/Secretary

Schedule  
“the Sub-Contract Services”  
[.....]

**Sub-Contractor Warranty**

**THIS AGREEMENT** is made the.....day of..... 202[ ]

**BETWEEN**

- (1) **The Mayor and Burgesses of the London Borough of Hackney** of Town Hall, Mare Street, London E81EA ("the Employer"); and
- (2) ..... (company number .....) whose registered office is at ..... ("the Sub-Contractor")

**WHEREAS**

- A. The Employer has appointed ..... ("the Contractor") to carry out Restitution Works to ..... ("the Works") under the terms of an agreement made between the Employer and the Contractor dated ..... ("the Main Contract").
- B. The Contractor has requested (and the Employer has approved) that it be allowed to employ the Sub-Contractor to assist in carrying out certain of the Works and/or its duties and obligations under the Main Contract, as set out in the Schedule ("the Sub-Contract Works") and has appointed the Sub-Contractor in connection therewith.
- C. The Contractor has accepted full responsibility for the Sub-Contract Works undertaken by the Sub-Contractor and for the payment of its fees.

**IT IS AGREED THAT:**

1. In consideration of the Employer paying the sum of one pound (£1), receipt of which the Sub-Contractor hereby acknowledges, the Sub-Contractor agrees to the provisions of this Agreement.
2. The Sub-Contractor warrants that it will exercise all necessary skill, care and diligence in carrying out the Sub-Contract Works and such duties and obligations as may be entrusted to it by the Contractor, and will carry out the same in a manner which will not prejudice the successful completion of the Works.
3. The Sub-Contractor undertakes to the Employer that it will take all necessary skill and care in:
  - (a) the selection of materials and goods to be incorporated in the Sub-Contract Works insofar as such materials and goods have been or will be selected by the Sub-Contractor;
  - (b) the carrying out of any duties or works or in the supervision of any works or in implementing any action necessary to ensure the satisfactory completion of the Sub-Contract Works insofar as those duties, works or supervision are to be undertaken by the Sub-Contractor.
4. The Sub-Contractor agrees that, in the event of the Contractor's commission being determined by the Employer, the Employer may, at its sole discretion, by written notice, directly commission the Sub-Contractor to complete any work for which it was responsible under its agreement with the Contractor and, if the Employer shall serve such notice, then the Employer accepts responsibility for the payment of any fees for Sub-Contract Works so directly commissioned and at a rate to be agreed between the parties.
5. In the event of the Employer exercising the option referred to in clause 4, then the copyright of all drawings, specifications, photographs, survey reports and other documents produced by the Sub-Contractor for the Sub-Contract Works either before or after the determination of the Contractor's commission as referred to in clause 4, shall be the property of and vest in the Employer who reserves the right to reproduce such drawings or other documents or to execute, or

to have executed, works in accordance with such drawings or other documents as may be required by the Employer.

6. The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of this Agreement and ending 12 years after the date of making good of defects of the Works, provided that such insurance is available at commercially reasonable rates. The Sub-Contractor shall maintain that professional indemnity insurance:
  - (a) with reputable insurers lawfully carrying on insurance business;
  - (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:
    - (i) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
    - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 6.1 Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 6.2 The Sub-Contractor shall not, without the Employer's written consent:
  - (a) settle or compromise any claim with the insurers that relates to a claim by the Employer against the Sub-Contractor; or
  - (b) by any act or omission lose or affect the Sub-Contractor's right to make, or proceed with, that claim against the insurers.
- 6.3 The Sub-Contractor shall immediately inform the Employer if the Sub-Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates.
- 6.4 Whenever the Employer reasonably requests, the Sub-Contractor shall send the Employer evidence that the Sub-Contractor's professional indemnity insurance is in force.
7. If requested the Sub-Contractor will supply the Employer with such information as may be reasonable without undue delay.
8. The Sub-Contractor acknowledges that the Employer may assign the benefit of this Agreement to its successors in title to and those deriving title from the Employer without the consent of the Sub-Contractor.
9. Any notice to be given by either party to this Agreement shall be deemed to be duly given if it is delivered by hand at or sent by first class post or by facsimile or other electronic transmission to the other at the respective address chosen by such party and stated above or agreed by the parties as the address for service of all notices. Any notice delivered by first class post shall be deemed to have been received forty-eight (48) hours after having been posted and if sent by facsimile or other electronic transmission at the instant it is dispatched provided always a record of the transmission is made and a hard copy is sent to the recipient.

IN WITNESS whereof the Employer has affixed its common seal and the Sub-Contractor has executed its part as a deed the day and year first above written.

**THE COMMON SEAL** of the )  
**MAYOR AND BURGESSES OF THE** )

**LONDON BOROUGH OF HACKNEY** )  
was hereunto affixed in the )  
presence of: )

.....  
Authorised Signatory

**EXECUTED AS A DEED** )  
on behalf of ..... )  
acting by: )

.....  
Director

.....  
Director/Secretary

Schedule

“the Sub-Contract Works”

[.....]

**Annex 4**  
**Parent Company Guarantee / Performance Bond**

**NOT USED**



**Annex 5**  
**Matrix of Responsibility for Planning Matters**

**NOT USED**

**Annex 6**  
**Process for determining if “adverse weather conditions” have occurred**

In the event of a claim by the Contractor that a Relevant Event has occurred due to exceptionally adverse weather conditions as set out in clause 2.26.8, then the following shall apply:

Exceptionally adverse weather conditions require quite unusual severity: this will be established by taking the weather measurements listed below using the nearest Meteorological Office weather station to the Site.

Weather measurements

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- the number of days with minimum air temperature less than 0°C
- the number of days with gale wind\* speeds more than 39 miles per hour (Beaufort scale)
- the number of days with snow lying at 0900 hours GMT (Met Office normally records snow lying at 9 am GMT)
- wind speeds measurements applicable to roofing work as per the latest HSE guidance on roof works.

If a weather measurement at the time of alleged Relevant Event is recorded the value of which, by comparison with the weather data for the weather station in question, is shown to occur on average less frequently than once in every thirty years for that calendar month, then an exceptionally adverse weather condition has occurred.

**Annex 7**  
**NOT USED**

**Annex 8**  
**Form of Novation Agreement**  
**NOT USED**

**Annex 9  
Not Used**

**Annex 10**  
**Cost Plan**

[Relevant Cost Plan to be inserted depending on selection of Option A or B]

**Annex 11**  
**Employer's Requirements**

*Drafting note: The Employer's Requirements consist of the following:*

- *Section 2A: The General Conditions document reference L180296/C1/0317/JPH/nyl/g35, and associated Appendices*
- *Section 2B: The Technical Specifications document reference L180296/C1/0319/JPH/nyl/g35, and associated Appendices*
- *Section 2C: Hackney New Build Design Specification Version 5 to be read in conjunction with RSD Hackney New Build Spec - V6 Extract - Doors, Communication Installations etc - Rev 2 020821 (including all appendices and addendums associated there with)*
- *Section 2D: Indicative Drawings and Designer's Specifications*
- *Section 2E: Indicative Drawings Supporting Details*

**Annex 12**  
**First Stage Tender / Contractor's Initial Proposals**



**Annex 13  
Programme**

**Annex 14  
Project Team**

<b>Name</b>	<b>Function</b>
Calfordseaden LLP	Employer's Agent and Quantity Surveyor:
Calfordseaden Health and Safety Limited	Principal Designer
Refer to paragraph 1.6.1 of the General Condition to the Employer's Requirements (Section 2A document reference L180296/C1/0317/JPH/nyl/g35)	The Employer's Pre-Tender Stage Design Team

**Annex 15**  
**Third Party Agreements**

<b>Date</b>	<b>Title</b>	<b>Location</b>
[TBC]	Agreement with Thames Water for sewer diversion and Build Over Agreement	Further details regarding the sewer diversion and Build Over Agreement are contained in paragraphs 1.3.6 and 1.3.7 and Section 3 of the Employer's Requirements.
[TBC]	Crossrail 2 Basic Asset Protection Agreement	Further details regarding the BAPA are contained in paragraph 1.3.5 and Section 3 of the Employer's Requirements.
[TBC]	[Agreement with the EsCO if Option B applies]	[Further detail is provided in paragraph 1.3.9 of the Employer's Requirements.]

**Annex 16**  
**Contractor's Key Personnel**

Name	Function

**Annex 17**  
**Novation**  
**NOT USED**

**Annex 18**  
**Second Stage Tender Requirements**

Tendering Protocol

Employer's Requirements as set out in Annex 10 of this Agreement

[The Contract Sum Analysis]

[Schedule of Preliminaries Drawdown]

**Annex 19**  
**BIM Protocol**

As contained in the Main Contract (Annex 2 of this Agreement).