DATED [●]

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| **Oxford City Council**  as Employer  **[INSERT COMPANY NAME]**  as Contractor  **TERM MINOR WORKS CONTRACT**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **RELATING TO THE [**Insert name of project]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Head of Law and Governance**  **Oxford City Council**  **Town Hall**  **St. Aldates Street**  **Oxford**  **OX1 1BX** |
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| **SECTION A**  **THE PARTICULARS** |

**This Contract is made on**

### **PARTIES**

1. **OXFORD CITY COUNCIL** of The Town Hall, St. Aldate’s Street, Oxford, OX1 1BX  (the **Employer**); and
2. [INSERT COMPANY NAME], a company incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [INSERT COMPANY ADDRESS] (the "**Contractor**").

### **BACKGROUND**

(A) The Employer requires a contractor to carry out emergency works at short notice, which will include (but not be limited to) [Insert Details] (the “**Works**”). The Employer gives no representations or warranties to the Contractor about the exact amount or value of Tasks the Employer will instruct the Contractor to do under this Contract, but the Employer confirms that, subject to the terms in Sections 4 and 6, Tasks will be placed under it throughout the Contract Period unless it is terminated. No variance in the actual value of any Tasks compared to any amount stated in the Contract Documents shall give rise to a change in any rate price or percentage adjustment. The Contractor is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Works under this Contract is different in amount, value or scope than anticipated.

(B) The Employer has appointed the Contractor to carry out the Works in accordance with this Term Works Contract (the “**Contract**”) which shall last for a minimum period of [Insert Duration] years (the “**Term**”), subject to earlier termination by either party in accordance with this Contract.

(C) NOT USED.

(D) The Employer will issue the Contractor with a call off instruction each time that it requires the Contractor to carry out Works (the “**Task**”), using the form of call off instruction at Appendix 2. The Employer is under no obligation to require any Tasks to be undertaken during the Term.

(E) NOT USED.

Each referred to as a “**Party**” and/ or “**Parties**”

**NOW IT IS AGREED** as follows:

### A1. **CONTRACT**

* + 1. This Contract comprises of:
       1. these Particulars (Section A);
       2. the General Terms and Conditions (the ***General Conditions***) (Section B); and
       3. the Special Terms and Conditions (the ***Special Conditions***) (Section C), where any such terms have been agreed,

as completed and agreed by the Parties and as varied from time to time in accordance with clause B22 (*Variations*) of the General Conditions (this ***Contract***).

* 1. **INTERPRETATION**

## This Contract shall be interpreted in accordance with Appendix 1 (*Definitions and Interpretation*), unless the context requires otherwise.

* + 1. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:
       1. Section C;
       2. Section B; and
       3. Section A.
  1. **COMMENCEMENT AND DURATION**
     1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the ***Commencement Date***).
     2. The Contractor shall, subject to having satisfied the Conditions Precedent where applicable by [insert date] provide the Services from [insert date] (the ***Works Commencement Date***).
     3. This Contract shall expire automatically on [insert date] (the ‘**Expiry Date’**), unless it is extended or terminated earlier in accordance with the provisions of this Contract
  2. **REPRESENTATIVES**
     1. The person set out below is authorised from the Commencement Date to act on behalf of the Employer on all matters relating to this Contract (the ***Employer Representative***).

Name: [insert info]

Title: [insert info]

Contact Details: [insert info]

* + 1. The person set out below is authorised from the Commencement Date to act on behalf of the Contractor on all matters relating to this Contract (the ***Contractor Representative***).

Name: [insert info]

Title: [insert info]

Contact Details: [insert info]

* + 1. The Contractor may replace the Contractor Representative and the Employer may replace the Employer Representative at any time by giving written notice to the other Party.
  1. **NOTICES**
     1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in clause A5.3.
     2. Notices:
        1. by post and correctly addressed shall be effective upon the earlier of actual receipt, or five (5) Business Days after mailing; or
        2. by hand shall be effective upon delivery.
     3. For the purposes of clause A5.2, the address for service of notices on each Party shall be as follows:
        1. For the Employer:

Address: [insert info]

For the attention of: [insert]

Tel: [insert]

b) For the Contractor:

Address: [insert ]

For the attention of: [insert]

Tel: [insert]

A5.4. Either Party may change its address for service by serving a notice in accordance with this clause A5.

**A6. ENTIRE CONTRACT**

This Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Employer and the Contractor which relates to the same or similar services to the Services and is designed to remain effective until the Services are provided under this Contract.

**A7. COUNTERPARTS**

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.**Delivered as a deed on the date of this document**

|  |  |
| --- | --- |
| Executed as a deed by  **OXFORD CITY COUNCIL**  acting by: | ) )  Director  Director/Secretary |
| Executed as a deed by [**Insert Company Name**]  acting by: | ) )  Director  Director/Secretary |

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| **SECTION B**  **GENERAL TERMS AND CONDITIONS** |

**SECTION 1 - THE CONTRACT**

**Definitions and Interpretation**

1. Terms used in this Contract shall have the meanings given to them in Appendix 1 unless otherwise defined.

**Third Party Rights**

1. Nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

**Applicable Law**

1. This Contract shall be governed by and construed in accordance with the Law of England and Wales.

**Reckoning Periods**

1. Where this Contract requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales that day shall be excluded.

**Extension of time**

1. If at any time during the course of completing an Order the Contractor shall establish that the process of the work under the Order is being affected by reason of:
2. Force Majeure;
3. Specified Perils or any other risks the Contractor is required to insure or insures against; or
4. any impediment, prevention or default, whether by act or omission, by the Employer or any Employer’s Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor’s Person.

the Employer’s Representative shall allow such extension of time as is fair and reasonable in the circumstances upon written application by the Contractor to the Employer’s Representative, provided that the Contractor shall cooperate with the Employer and Employer’s Representative with a view to mitigating any delay and minimising any extension of time claimed by the Contractor.

5.1 Any application pursuant to clause 5 shall be made immediately upon the Contractor becoming aware that such delay has or might occur, or in any event within 4 (four) weeks of the Contractor becoming so aware, and shall include any documentation the Contractor may wish to provide in support of its application and the period of extension it seeks

5.2 To the extent that any extension of time is granted a revised date for completion for the Task shall be fixed by the Employer’s Representative and notified to the Contractor. For the avoidance of doubt, there shall be no increase in the price of any Task in the event an extension of time is granted.

**SECTION 2 – Works Contractor'S GENERAL OBLIGATIONS**

**Execution of the Works**

1. The Contractor shall execute and complete each Task in strict accordance with this Contract and shall comply with any reasonable instructions issued to him by the Employer relating to the Task and comply with such rules, regulations and requirements of the Employer.

6.1 If the carrying out of the Task, or of any obligation pursuant to clause 6, is likely to necessitate any interference with the rights of adjoining or neighbouring owners or occupiers, which for the avoidance of doubt shall include party wall matters, then the Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement shall be subject to the approval of the Contractor before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement.

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

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

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

6.5 Where the Employer for the purposes of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Employer. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Employer’s discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor’s expense. Without prejudice to any other of the rights of the Employer, the Contractor shall deliver up such materials whether further processed or not to the Employer on demand.

**Anti-Bribery and Corruption**

1. The Contractor warrants that neither it nor any of its officers, employees, agents or sub-contractors has done, or permitted to be done, or will do or permit to be done, anything which is in breach, or is likely to have been in breach, of any Anti-Corruption Laws.

**Compliance with Statutory Requirements**

8. Unless the Employer instructs the Contractor to the contrary, the Employer shall make all applications, give all notices, pay all fees required, and the Contractor shall fully comply with all relevant statutory requirements for the execution of each Task.

**Consents and Permissions**

9. Unless the Employer instructs the Contractor to the contrary, the Employer shall make all applications, give all notices, pay all fees required, in order to obtain all consents and permissions necessary for the execution of each Task.

**CDM Regulations**

10.1 The Contractor shall fully comply with the CDM Regulations applicable to each Task.

10.2 it is fully aware of its obligations arising as a result of the Statutory Requirements including but not limited to the CDM Regulations and possesses the requisite degree of competence and level of resources to meet those obligations; and that

10.3 all sub-contractors employed by the Contractor (strictly in accordance with the Contract) are fully aware of their obligations arising as a result of the Statutory Requirement including but not limited to the CDM Regulations and possess the requisite degree of competence and level of resources to meet those obligations

**SECTION 3 - DESIGN**

**Contractor’s Skill and Care in Respect of Design**

11. The Contractor shall exercise in the performance of undertaking any design under this Contract all the reasonable skill, care and diligence to be expected of a competent designer experienced in carrying out work of a similar scope, nature and size to each Task within a project of similar scope, nature and size to the Task.

**Deleterious Materials**

12.1 The Contractor warrants to the Employer that it shall not specify for use in each Task products or materials which are generally known within the construction industry to be deleterious at the time of specification in the particular circumstances in which they are used or those identified as potentially hazardous.

12.2 The Contractor shall not use or cause or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances. The Contractor shall immediately notify the Employer Representative if it becomes aware of any such use.

12.3 The Contractor shall be deemed to have satisfied itself as to the soil and rock strata comprising the site of the Works and notwithstanding any other provision of this Contract, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustments of the Contract Sum, or to any extension of time, or to any entitlement on the part of the Contractor to terminate his employment under this Contract.

12.4 Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Material or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Material or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor’s responsibility to comply with this clause 12.4 based on the Environmental Laws in effect at the time its services are rendered.

Restart Numbering Applied

**SECTION 4 - COMMENCEMENT, PROGRESS and INTERFACING WITH OTHERS**

**Commencement and Completion of each Task**

13. The Contractor shall commence the execution of each Task immediately on receipt of the Employer’s call off instruction given in the form of Appendix 2.

14. The Contractor will complete the Task within a reasonable time, proceeding regularly and diligently and taking cognisance of any specific time requirements contained within the call off instruction.

**Access**

15.1 The Employer shall give to the Contractor such access at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete each Task in accordance with this Contract.

15.2 The Contractor has had an opportunity of inspecting the physical conditions (including the sub-surface conditions) and other conditions of or affecting the site of the Works and shall be deemed to be fully acquainted with the same before the date of this Contract and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment (whether by way of an addition to the Contract Sum or otherwise). As between the Contractor and the Employer, the Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 15.2 and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.

15.3 [**Contractor to prevent nuisance and indemnify Employer**

The Contractor shall prevent any [unlawful] nuisance (including any [unlawful] noisy working operations) or other [unlawful] interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 5.2A."]

15.4 ["**Contractor to prevent trespass to neighbours**

Without prejudice to clauses 15.1and 15.2, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 13 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer and shall not be entitled to any extension of time as a result of any condition contained in that agreement."]

15.5 If the Employer wants to modify/vary the Works this is what it will do:

15.5.1 If the Employer wants any significant change in the Works, it must give to the Contractor a written variation notice, which will set out what change the Employer wants to be made. Matters that are are likely to be a significant change may include:

(a) the cessation of a part of the Works for any period;

(b) any substantial addition or amendment to the Works or Task;

15.5.2 Within fourteen (14) days of receipt of the variation notice, the Contractor must then give the Employer a written quotation of the increase or reduction in price for providing the varied Works or indicate that there would be no increase or reduction in price.

15.5.3 The Contractor must Contractor must provide to the Employer such information as the Employer may reasonably request concerning the costs of a Variation.

15.5.4 The Employer’s Representative may then either:

(a) instruct the Contractor to implement the Variation at the price in the quotation or as otherwise agreed. The Contractor will then be bound by the Variation and must implement it within such reasonable time as the Employer’s Representative instructs and the payment must be decreased or increased by the agreed price (if applicable); or

(b) decide not to proceed with the Variation.

**Contractor’s Persons**

15.6The Contractor shall ensure that all Contractor’s Persons carrying out any Tasks under the Contract shall:

.1 confine themselves to the locality of their work;

.2 cause as little interference as possible to the Employer’s tenants and/or tenant’s premises;

.3 ensure that all work is carried out with the least possible inconvenience to occupants of any Sites or neighbouring dwellings, premises and tenants; and

.4 take into account any special needs of such persons or any cultural sensitivities.

**Security**

15.7.1 The Contractor shall issue to all Contractor’s Persons, who shall at any time have access to any of the Employer’s premises, identification badges in such form as the Employer may from time to time determine.

.2 The Contractor shall:

1. be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Employer;
2. shall only permit such keys, passes and other means of access to be given to those Contractor’s Persons whose names and addresses have been given to the Employer and then only to the extent required for the purpose of carrying out the Contractor’s obligations under this Contract; and
3. ensure that the Employer’s Representative is informed immediately of the loss of any keys, passes and other means of access and shall reimburse the Employer any cost of replacement and/or any reasonable security measures implemented as a result of such loss.

**SECTION 5 - COMPLETION AND DEFECTIVE WORK**

**Completion of a Task**

16. When, in the opinion of the Contractor a Task is complete, he shall notify the Employer. Unless the Employer notifies the Contractor to the contrary, the Task will be deeded completed following seven (7) days from the Contractors notice.

**Making Good Defects, Snagging list and defects, shrinkages or other faults remaining at practical completion**

17.1 In the event that the Employer considers there to be the presence of defects in any work undertaken by the Contractor, he shall notify the Contractor within twelve (12) months following completion of the Task, who shall forthwith remedy the defects without charge.

17.2.1 If any defects, shrinkages or faults appear, or incomplete items of work become apparent, within twelve (12) months of the Task completion date, the Employer will notify the Contractor in writing that such defects, faults, shrinkages or incomplete items of work are required to be made good or completed. Where clause 17.2.3 does not apply, the Contractor must rectify such defects, shrinkages, faults or incomplete items of work by the reasonable date set by the Employer’s Representative (“the **Rectification Period**”).

.2 All defects, shrinkages, faults or incomplete items of work shall be made good or completed by the Contractor at no cost to the Employer.

.3 Defects will be categorised and dealt with as follows:

.1 “Emergency” requiring attendance by the Contractor within four (4) hours of being instructed by the Employer;

.2 “Urgent” requiring attendance by the Contractor within twenty-four (24) hours of being instructed by the Employer; or

.3 “Routine” requiring attendance by the Contactor within five (5) Business Days of being instructed by the Employer.

.4 If the Contractor fails to make good any defects, shrinkages or faults, or fails to complete any incomplete items of work in accordance with clauses 17.2.1 or 17.23, then the Employer may:

.1 itself rectify the defect, shrinkage or fault or complete the incomplete item of work; or

.2 employ a third party to rectify the defect, shrinkage or fault or complete the incomplete item of work; and

.3 recover from the Contractor the reasonable costs incurred from undertaking this requirement itself, or through the employment of a third party, and any other appropriate sum due to the Employer for the Contractor’s failure to comply with the Employer’s reasonable instructions. The Employer may deduct these costs and sums from any sum due to the Contractor under this Contract (provided a notice of deduction has been given under clause 22) or recover these costs from the Contractor as a debt.

**SECTION 6 - PAYMENT**

**Currency**

18. The Works shall be valued as provided for in the Contract, and all payments under this Contract shall be made in pounds sterling.

**Interim Payments**

19. On the first business day of each month the Contractor shall present to the Employer a VAT invoice for each Task completed in the previous month:

1. Within twenty-eight (28)days of the delivery of such invoice the Employer’s Representative shall certify to the Contractor such sum as **he** considers is properly or such other rate as is stated in the Contractand up to **any** limit set out in the Contract. Until practical completion of the whole of the Works the Employer’s Representative shall not be required to certify any payment less than any sum that may be stated in the Contract as the minimum amount of interim certificate. The Engineer may by any certificate delete correct or modify any sum previously certified by him. The Contractor shall submit an invoice dated no earlier than the end of the month in which the monthly statement was submitted and which agrees in all respects with the Employer’s Representative certificate**.**
2. Every certificate issued by the Employer’s Representative pursuant to this clause 19, shall be sent to the Employer and on the Employer’s behalf to the Contractor. By this certificate the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated.
3. Where a payment under this clause 19, is to differ from that certified, or the Employer is to withhold payment after the final date for payment of the sum due under the Contract the Employer shall notify the Contractor in writing not less than two (2) days before the final date for payment specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it.
4. The final certificate shall, save in the case of fraud, or dishonesty relating to or affecting any matter dealt with in the certificate, will be conclusive evidence as to the sum due to the Contractor under or arising out of the Contract (subject only to Clause 19(e)), unless either party has within twenty-eight (28) days after the issue of the final certificate given notice under clause 31.1 or clause 33**.**
5. **Value Added Tax**:

(i) The Contractor shall be deemed not to have allowed in his tender for the tax payable by him as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Employer which are to be made under the Contract.

(ii) All certificates issued by the Employer’s Representative under this clause 19, shall be net of Value Added Tax.

(iii) In addition to the payments due under such certificates the Employer shall separately identify and pay to the Contractor any Value Added Tax properly chargeable by HMRC on the supply to the Employer of any Works, goods and/or services by the Contractor under the Contract.

1. Without affecting the Contractor’s other rights and remedies, if the Employer fails to pay the Contractor the sum payable in accordance with clause 20 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the failure continues for seven (7) days after the Contractor has given notice to the Employer, with a copy to the Employer’s Representative, of his intention to suspend performance of any or all of his obligations under this Contract and the grounds on which it is intended to suspend performance, the Contractor may suspend performance of any or all of those obligations until payment is made in full.
2. Where the Contractor exercises his rights of suspension under clause 19, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.
3. Applications in respect of any such costs and expenses shall be made to the Employer’s Representative and the Contractor shall with his application submit such details of costs and expenses as are reasonably necessary to enable his entitlement to be ascertained. When ascertained or agreed, the amount shall be included in the next interim certificate. The Contractor shall, on request, submit such further details as are reasonably requested by the Employer’s Representative.”

20. Each invoice for a completed Task shall set out the total sum due to the Contractor calculated in accordance with Appendix 3 of the Contract, and with such further supporting documents as may be reasonably necessary.

21. Each invoice becomes due for payment on the date issued, and will be paid within 30 days of becoming due (the “**Final Date for Payment**”)

**Pay Less Notice**

22. If the Employer intends to pay less than any sum stated as due within an invoice presented by the Contractor, he shall issue a written notice (a **"Pay Less Notice"**) specifying the sum that the Employer considers to be due on the date the Pay Less Notice is served; and the basis upon which that sum is calculated.

23. Any Pay Less Notice shall be given not later than five (5) working days before the final date for payment.

**Suspension**

24. Where any sum (or any part of any sum) properly due to the Contractor under this Contract is not paid in full by the Final Date for Payment, and no Pay Less Notice has been issued, the Contractor shall be entitled (without prejudice to any other right or remedy) to suspend performance of all or any of his obligations under this Contract by giving not less than five working days' notice to the Employer stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Employer makes payment in full of the sum due. Where the Contractor exercises his right of suspension he shall be entitled to a fair and reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.

**Interest**

25.1 In the event of failure by the Employer’s Representative to certify or the Employer to make payment in accordance with the Contract or any finding of an arbitrator to such effect the Employer shall pay to the Contractor interest at the rate of [**three (3) %]** per annum over base rate from time to time of Barclays Bank plc shall accrue on the unpaid amount from the date that that payment becomes due until the date of payment compounded monthly.

25.2 The provisions of clause 25.1, shall provide a substantial contractual remedy for late payment of a debt under the Contract, and are fair and reasonable, for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998, because:-

25.2.1 the interest rate is greater than the interest rate available to the Contractor in respect of cash on deposit which is immediately available; and

25.2.2 the other provisions of the Contract reflect, and take into account, the overall relationship between the parties, and so it would be inappropriate for a higher interest rate to apply.

25.3 The provisions of clause 25.1 are in lieu of statutory interest, which shall not accrue accordingly.

25.4 The Employer may set off against the Contract price any sums owned to it by the Contractor, in connection with the Contract or any other agreement entered into by the Parties.

**Section 7 - INSURANCE And INDEMNITY**

**Insurance by the Contractor**

26.1 The Contractor will take out and maintain **Public and Employer’s Liability** Insurance for a level of indemnity of not less than **ten million pounds (£10,000,000.00)** for each and every claim, and **Professional Indemnity Insurance** with a level of indemnity of not less than **two million pounds (£2,000,000.00)** in the annual aggregate (“the **Required Insurance**”).

26.2 **Obligation to insure**

The Contractor shall maintain the Required Insurance for such amount and on such basis stated in clause 26.1 (if stated) for a period beginning on the date of this Contract and expiring after the period of years stated in the Contract Particulars, provided that such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that Required Insurance:

1. with reputable insurers lawfully carrying on insurance business in the UK or EU;
2. on customary and usual terms and conditions prevailing for the time being in the insurance market; and
3. on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930."

**26.3 Commercially reasonable rates**

Any increased or additional premium required by insurers for the insurance referred to in clause 26.1 and 26.2 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.

**26.4 Evidence of insurance**

Whenever the Employer reasonable requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 26.3 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:

* 1. the Contractor's then current product liability insurance; and
  2. that the premiums for that insurance have been paid in full at the date of that letter."

**26.5** The Contractor shall take every practicable precaution not to damage or injure any property or persons. The Contractor shall satisfy all claims founded on any such damage or injury which arise out of or in consequence of any operations under the Contract whether such claims are made by the Employer or a third party against the Contractor or against the Employer, and the Contractor shall indemnify the Employer against all actions, demands, damages, costs, charges and expenses (including legal fees) arising in connection therewith, provided, however, that nothing in this condition shall render the Contractor liable for any injury or damage resulting from any negligent act or omission of the Employer, his servants or agents, or any other contractor employed by the Employer.

**SECTION 8 - ASSIGNMENT AND SUB-LETTING**

**Assignment by Works Term Contractor**

27.1 The Employer may assign or otherwise transfer the benefit of this Contract to any person taking an interest in the Works or the completed Works. In this Contract the term "**Employer**" shall be construed accordingly.

27.2 Subject to the other provisions of this Clause 27, any change in the legal status of the Employer, such that it ceases to be a contracting authority shall not affect the validity of this Contract. In such circumstances, this Contract shall subject to the written consent of the Contractor, bind and inure to the benefit of any successor body to the Employer.

27.3 The Employer shall notify the Contractor of any assignment within [fourteen (14)] days. If the Employer fails to do this, the assignment shall still be valid.

27.4 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 27.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

27.5 This Contract is personal to the Contractor. The Contractor shall not assign, novate or otherwise dispose of this Contract or any part of it (pursuant to corporate restructuring, business sale or otherwise) without the prior consent in writing of the Employer’s Representative, subject to such other conditions as he shall think fit.

**Sub-Letting**

28.1 Save where the Contractor has specifically identified its sub-contractors in its tender/quotation documentation, and the same were specifically identified in their response to the Employer’s advertisement for the Works, the Contractor shall obtain Employer’s prior written consent before using sub-contractors for the provision of the Works.

28.2 Where the Contractor has specifically identified its sub-contractors in its tender/quotation documentation, and the same were specifically identified in their response to the Employer’s advertisement for the Works, and the Contractor wholly or substantially subcontracts the Works, to their identified sub-contractor then the provisions in this Contract relating to sub-contractors shall apply to the next tier of sub-contractors.

**SECTION 9 - TERMINATION**

**Termination by the Employer**

29. If the Contractor commits any of the following defaults the Employer may at any time by notice terminate the Contractor’s employment under this Contract:

.1 The Contractor purports to assign, novate or appoint an agent to deliver this Contract without the prior written consent of the Employer;

.2 The Contractor fails to comply with its obligations under this Contract for a period of more than ten (10) Business Days because of any action taken by any Statutory Authority in relation to the Contract due to any breach or suspected breach of any Statutory Requirements by the Contractor or a sub-contractor;

.3 [The Contractor fails to provide a parent company guarantee within the period specified in this Contract (if applicable);

.4 The Contractor commits a breach of this Contract and the Contractor has committed the same, or a similar, breach two (2) or more times in the three (3) months preceding this breach;

.5 The Contractor breaches any Health and Safety Law or Environmental Laws in connection with this Contract (other than a minor breach which does not give rise to any risk of prosecution and which is remedied immediately after the Contractor or sub-contractor becomes aware of it);

.6 The Contractor undergoes a change of control (as defined in section 1124 Corporation Tax Act 2010 which the Employer has not approved in wiring in advance of such change of control occurring; or

29.2 If the Contractor:

.1 fails to comply with an instruction of the Employer’s Representative within the period for doing so as set out in clause 17.2;

.2 fails to remedy any other breach of this Contract which, in the reasonable opinion of the Employer, is sufficiently serious to entitle the Employer to terminate this Contract if it is not remedied; or

.3 breaches any Statutory Requirements in connection with this Contract;

the Employer’s Representative may give to the Contractor a notice specifying the material breach or breaches (a ‘specified’ material breach or breaches).

29.3 If the Contractor continues a specified material breach for, or fails to rectify a specified material breach within, ten (10) Business Days from receipt of a notice under clause 29.2.2, the Employer may give to the Contractor a further notice demanding that the material breach ceases and/or is rectified within five (5) Business Days, and warning the Contractor of the Employer’s intention to terminate this Contract should the Contractor fail to comply.

.4 If the Contractor fails to comply with any notice under clause 29.2.3 the Employer may by a further notice terminate the Contractor’s employment immediately under this Contract.

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**Termination by the Contractor**

30.1 If the Employer does not pay to the Contractor the amount properly due and payable on any invoice issued under this Contract by the final date for payment (subject to any deductions or sets-off which the Employer may be entitled to make) then the Contractor may serve notice on the Employer specifying the event and requiring its remedy and if the Employer fails to remedy the same on or before the expiry of 28 working days from service of such notice, the Contractor may by further notice forthwith terminate his employment.

30.2. Upon any termination of the Contractor’s employment or if the Contract is terminated or discharged and notwithstanding that the validity of termination or discharge is disputed by the Contractor, the Contractor shall vacate the site having carried out all necessary measures to ensure the Works and the site are left in a condition whereby:

1. they present no hazard to any personnel and the general public;
2. they are complaint with all Health and Safety legislation; and
3. they are suitably secured to prevent unauthorised access, and the removal of any unfixed materials and any plant.

The Contractor shall promptly deliver to the Employer possession of the site and of the Works.

30A **Obligations to co-operate on handover**

30A.1 On expiry or termination of this Contract howsoever arising, the Contractor must:

.1 co-operate fully with the Employer and/or any sub-contractor (as notified by the Employer to the Contractor) in relation to the legal and operational handover of responsibilities from the Contractor to the Employer; and

.2 use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation and service agreements relating to the work that are in force on the Date of Expiry or end of the Contract Period howsoever arising are assigned to the Employer, or otherwise as the Employer’s Representative may instruct.

30A.2 Within five (5) Business Days of expiry or termination of this Contract howsoever arising, the Contractor must return to the Employer all keys, passes, door entry codes, other information relating to the work and any other materials or information reasonably requested by the Employer’s Representative.

30A.3 The Contractor must deliver to the Employer, or other entity as directed by the Contract Administrator, all materials and equipment paid for by the Employer within five (5) Business Days of:

.1 where the reason for termination or expiry is any reason other than Employer default, the date of termination or expiry.

30A.4 Except where this Contract is terminated for Contractor default, and subject always to the Contractor obtaining permission to do so from any individual occupying a Site, the Contractor must within five (5) Business Days after the Date of Expiry or termination:

.1 remove any materials or equipment which either it or a sub-contractor owns or has hired and which are not to be transferred to the Employer on the Date of Expiry or termination; and

.2 unless directed otherwise by the Contract Administrator, remove all rubbish, debris and site waste from the Site(s).

30A.5 If the Contractor fails to remove all rubbish, debris and site waste from the Sites within five (5) Business Days of the Date of Expiry or termination howsoever arising the Employer may;

.1 itself remove the rubbish, debris and site waste from the properties; or

.2 employ a third party to remove the rubbish, debris and site waste from the Site(s),

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

30A.6 Following the later of:

.1 the Rectification Period; or

.2 final payment becoming due on or after completion of the final Task under this Contract;

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

(a) the documents or data are required to be kept by Law; and

(b) any documents or data in which the Contractor has the intellectual property rights (copyright licence and/or proprietary material).

30A.7 At all times during the Contract Period the Contractor shall maintain and keep up to date a “handover plan” that has been approved by the Employer’s Representative which sets out how the Contractor will complete Tasks issued up to the Termination Date.

**SECTION 10 – Tiered DISPUTE RESOLUTION**

**Negotiation**.

31.1 If at any time:

(a) the Contractor is dissatisfied with any act or instruction of the **Employer’s Representative** or any other person responsible to the Employer; or

(b) the Employer or the Contractor is dissatisfied with any decision opinion instruction direction certificate or valuation of the Employer, or with any other matter arising under or in connection with the Contract or the carrying out of the Works, the matter of dissatisfaction **may** be referred to the Employer Representative’s head of service or director, who shall notify his written decision to the Employer’s Representative and the Contractor within one month of the reference to him.

31.2 if any dispute or difference arises under this Contract, directors or other senior representatives of the parties with authority to settle the dispute shall, within ten (10) days of a notice (served in accordance with the contract) from one Party to the other, meet in a good faith effort to resolve the dispute or difference;

31.3 neither Party may commence any proceedings (which for the avoidance of doubt shall not include adjudication) in relation to any dispute or difference arising under this Contract until it has attempted to settle the dispute or difference by mediation under clause 32 and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

**Mediation**

32. if the dispute or difference is not resolved at the meeting referred to in clause 9.1.1, the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure or such other mediation procedure as shall be agreed between the parties. To initiate a mediation, a party shall give a notice (ADR notice), to the other party, requesting a mediation. The parties shall agree the identity of the mediator or, if not agreed between the parties within ten (10) Business Days of the ADR notice, the party who served the ADR notice shall apply to a mediator nominating body to nominate the mediator, attaching a copy of the ADR notice to its application and copying its application to the other party.

**Adjudication**

33. Any dispute or difference arising under or in connection with this Contract may be referred to adjudication at any time in accordance with the following provisions:

33.1 The Scheme for Construction Contracts SI No 1998 649 (as amended from time to time) (the “**Scheme**”) shall apply.

33.1 The Adjudicator shall be a person appointed by the Royal Institution of Chartered Surveyors. The Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication, or the Parties.

33.3 The Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts. The Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 days of making his decision.

33.4 The Adjudicator shall not be liable for anything done or omitted or in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employer or agent of the Adjudicator is similarly protected.

33.5 notwithstanding the fact that the Adjudicator may have acted or may be acting as adjudicator in relation to a dispute or difference that raises issues which are substantially the same as, or connected with issues raised in any dispute or difference referred to the Adjudicator under this Contract, neither the Employer nor the Contractor shall object to the Adjudicator adjudicating on the dispute or difference referred to him under this Contract.

**Litigation**

34. The parties agree to submit to the exclusive jurisdiction of the English Courts, except for the purposes of enforcement proceedings in respect of any judgment or award of the English Courts in another jurisdiction.

35. **Waiver**

35.1 No waiver by a Party of any breach of this Contract shall operate as a waiver of any subsequent or continuing breach. No waiver shall be effective unless it is communicated in writing.

35.2 No failure or delay by any Party in exercising any right, power or privilege under this Contract shall impair such right, power or privilege or be construed as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise thereof or the exercise of any other right, power or privilege.

35.3 The rights and remedies of the Parties herein are cumulative and non exclusive of any rights and/or remedies provided by Law.

**Appendix 1 - Definitions**

**Definitions**

**“Anti-Corruption Laws”**meanstogether:

the Bribery Act 2010; and

any anti-corruption or anti-bribery laws and regulations now or from time to time in force in any jurisdiction which may apply to the parties, or to the terms or implementation of this Contract.

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2015.

**"Construction Act"** in this Contract means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

“**Contract Period**” means the period of [insert period] from and including the Commencement Date and this period can be extended for a total of [insert period] at the Employer’s sole discretion.

“**Contractor’s Persons**” means the Contractor’s employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer’s Representative, the quantity surveyor, the Employer, the Employer’s Persons and any Statutory Undertaker.

“**Employer’s Persons**” means all persons employed or engaged or authorised by the Employer, excluding the Contractor, Contractor’s Representative, the quantity surveyor, the Employer’s Representative, and Statutory Undertaker.

“**Task(s)”:** means instructions given by the Employer to the Contractor and quoting the [unique reference number], and/or the Contractor’s reference code and a description of the site of the proposed Works.

“**Statutory Undertaker**” means any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

“**Variation**” means a modification/variation to all or any part of the Works defined by reference to and/or approved or determined in accordance with clause 15.5.

“**Variation Notice**” means a notice served by the Employer pursuant to clause 15.5.

The following amendments will be made: - Definitions and Interpretation

**Add** these definitions:

Bribery Act:

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

[“Commercially Sensitive Information**”**

means the information listed in Annex [X] (if any) comprising the information of a commercially sensitive nature relating to the Contractor , its intellectual property rights or its business or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss.]

# “Confidential Information”

means Information, data and material of any nature which either Party may receive or obtain in connection with the Contract and:

(1) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the GDPR); or

1. the disclosure of which would or would be likely to prejudice the commercial interests of either Party or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
2. the disclosure of which by the Employer would constitute a breach of confidence actionable by the Contractor or a third Party;
3. any other information clearly designated as being confidential (whether or not it is marked as "confidential", or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

**Contract**:

means the contract signed by and entered into between the Employer and the Contractor;

**Contract Documents**

means each of the documents the Particulars, Annex A, Annex B and Annex C of the Contract];

**Data Controller:**

shall have the same meaning as set out in the Data Protection Legislation;

**Data Processor**:

shall have the same meaning as set out in the Data Protection Legislation;

Data Protection Legislation:

means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

**Data Subject:**

means any information relating to an identified or identifiable natural person (‘Data Subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, and/or any information relating to an has the meaning given to that term in the Data Protection Legislation in force from time to times;

**Deleterious Materials**:

means materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to health and safety of any person; or posing a threat to the structural stability performance or physical integrity of the Works or any normal life expectancy of the Works or any part or component or the Works; or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterous Materials includes, but is not limited to, the following:

1. High alumina cement concrete;
2. Cement containing added calcium chloride as a setting agent;
3. Crocidolite;
4. Asbestos products;
5. Woodwool slabs in permanent shuttering form;
6. Polyisocynurate or polyurethane foam;
7. Calcium chloride in blockwood or brickwork;
8. Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction;
9. Cement made with aggregate containing silica;
10. Calcium silicate bricks and titles;
11. Lead or any product containing lead for use in drinking water systems;
12. Urea formaldehyde foam; and/or
13. Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and /or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented.”

“**Environment Laws**:

means any law, statute, statutory instrument or legislation of the European Union having effect within the United Kingdom concerning the protection of the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances”.

“**Equality Legislation”**:

means the Equality Act 2010 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws.

“Environmental Information Regulations”

means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“FOIA”

means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“**GDPR**”

means (a) the General Data Protection Regulation (Regulation (EU) 2016/679) which came into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);

“**Hazardous Substances**:

means any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste.”

**Law**: Means Any:

1. Act of Parliament;
2. regulations, statutory instruments and all subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
3. any exercise of the Royal Prerogative; and
4. any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in force in England.

“**Material**:

means all designs, drawings, models, plans, specifications, design details, photographs, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).”

“**Permitted Uses**:

means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Works (and the completed Works).”

**Standard of Care**:

means all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works.

**Appendix 2 – Call Off Instruction**

**TO BE PRINTED ON EMPLOYER’S HEADED PAPER**

**Date:** [Insert Date]

**Dear Sirs**

**Re: Tasks to be carried out under the Terms Services Contract between us dated [Insert Date]**

**Please carry out the following Task:** [Insert Details]

**Time Constraints:** [Insert Details]

**Other Relevant Information:** [Insert Details]

**Signed by Clients Authorised Signatory**

**Appendix 3 – Rates and Prices**

**[Insert Details]**

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| **SECTION C**  **SPECIAL TERMS AND CONDITIONS** |

**Special Conditions 2021**

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| --- | --- | --- | --- |
| **Cessation Plan** | means a plan agreed between the Parties or determined by the Employer pursuant to Special Condition clause 5.:  (a) to give effect to a Declaration of Ineffectiveness; or  (b) to give effect to a Public Contracts Regulations Termination Event; | | |
| **Declaration of Ineffectiveness** | a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 45J the Utilities Contracts Regulations 2006; | | |
| **Force Majeure** | has the meaning set out in clause 4 below; | | |
| **Oxford Living Wage** | means the basic hourly wage of **£10.31** (before tax, other deductions and any increase for overtime) as may be updated from time to time by the Oxford City Employer, or any successor body carrying out the relevant calculation. | | |
| **Public Contracts Regulations Termination Event** | if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred; | | |
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1. OXFORD Living Wage
2. It is a condition of this Agreement that for the duration of the Agreement and any extensions thereof the Provider:

1.1         pays all Contractor Persons who are employed by the Contractor to perform the Services not less than the Oxford Living Wage (unless otherwise directed by the Employer) as set annually by the Oxford City Employer (OCC);

1.2         agrees to increase the amount which it pays to Contractor Persons by the same amount as any increase to the Oxford Living Wage within twelve (12) months of the date on which any increase in the Oxford Living Wage is announced by the OCC (unless otherwise directed by the Employer); and

1.3         co-operate and provide all reasonable assistance to the Employer in monitoring the effect of the Oxford Living Wage on the quality of the Works provided under this Agreement.

**2.**       If the Contractor sub-contracts all or part of the provision of the Services to a sub-contractor, the Contractor shall procure that the terms contained in Clause 1.1 to 1.3 shall apply to all Contractor Persons who are employed by the sub-contractor to perform the Services (or part of them) provided the employment is based within the geographical limits of OCC.

**Modern Slavery Act 2015 (MSA)**

**3.**  The Contractor shall ensure that all work carried out by its Contractor Persons or sub-contractor’s Contractor Persons is voluntary and workers shall have the freedom to terminate their employment at any time without penalty, given notice of reasonable length.

3.1 The Contractor shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour.

3.2 The Contractor shall ensure that its Contractor Persons and sub-contractor Contractor Persons shall not be charged any fees or costs for recruitment, directly or indirectly, in whole or in part, including costs associated with travel, processing official documents and work visas in both home and host countries.

3.3 The Contractor shall not confiscate or withhold Contractor Persons identity documents or other valuable items, including work permits and travel documentation as a means to force Contractor Persons employment or to restrict their freedom of movement.

3.4 The Contractor warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world and that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

3.5 The Contractor shall:

3.5.1 make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.

3.5.2 have and maintain throughout the term of the Agreement its own policies and procedures to ensure its compliance with the MSA and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions where applicable;

3.5.3 implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;

3.5.4 not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;

3.6.5 not use the threat of physical abuse, sexual violence, harassment and intimidation against an employee’s or sub-contractor’s family members, or close associates.

3.7.6 not use or allow child or slave labour to be used by its sub-contractors.

## FORCE MAJEURE

4.1 "**Force Majeure**" means the occurrence of an event or circumstance (a "**Force Majeure Event**") that prevents a party from performing one or more of its contractual obligations under the contract, if and [only] to the extent that the party affected by the impediment (the "**Affected Party**") proves:

1. that such impediment is beyond its reasonable control;
2. that such impediment could not reasonably have been foreseen at the time of the conclusion of the contract; and

that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party [acting in a commercially reasonable manner].

* 1. In the absence of proof to the contrary, the following events affecting a Party to the Agreement shall be presumed to fulfil conditions (a) and (b) under clause 4.1 of this Agreement, and the Affected Party only needs to prove that condition (c) of clause 4.1 is satisfied.
  2. For the purposes of clause 4.1 and 4.2 above a Force Majeure Event shall be one of more of the following:

1. war (whether declared or not), hostilities, invasion, acts of foreign enemies, extensive military mobilisation;
2. civil war, riot, rebellion and revolution, military or usurped power, insurrection, acts of terrorism, sabotage or piracy;
3. currency and trade restriction, blockade, embargo, sanction;
4. act of [government] authority whether lawful or unlawful, compliance with any Law or governmental order, expropriation, seizure of works, requisition, or nationalisation;
5. plague, epidemic, pandemic, natural disaster, extreme natural event, extreme weather event, nuclear, chemical or biological contamination;
6. explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
7. [general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises].
   1. Provided it has complied with clause 4.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
   2. The Affected Party shall:
      1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than [five (5)] Working Days from its start, notify the other Party [in writing] of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement. Where the Contractor is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure event in accordance with accepted industry practice; and
      2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
   3. The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable Contractor should have foreseen and provided for the cause in question.
   4. The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
   5. The Employer may, during the continuance of any Force Majeure event, terminate this agreement by written notice to the Contractor if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.

For the avoidance of doubt, a Force Majeure Event shall not include any labour dispute between the Service Provider and its employees or failure to provide the Services by any of its agents, contractors or sub-contractors.

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|  | **[“5. Data Protection** |
|  | 8.1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Appendix 1 by the Employer and may not be determined by the Contractor. |
|  | 8.1.2 The Contractor shall notify the Employer immediately if it considers that any of the Employer's instructions infringe the Data Protection Legislation.  8.1.3 The Contractor shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing.  Such assistance may, at the discretion of the Employer, include:   1. a systematic description of the envisaged processing operations and the purpose of the processing; 2. an assessment of the necessity and proportionality of the processing operations in relation to the Services; 3. an assessment of the risks to the rights and freedoms of Data Subjects; and 4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.] |
|  | **8.2 Equalities and Promoting Equality**  The Contractor shall: |
|  | 5.1.1 not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment;  5.1.2 The Contractor shall take all reasonable steps to secure the observance of clause 5.1.1 by all the Contractor’s Persons employed in performance of this Contract;  5.1.3 The Contractor shall notify the Employer immediately in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under Equality Legislation or any other law, enactment, order or regulation;.  5.1.4 Compliance with clause 5.1.2 and 5.1.3 above is a condition of the Contract. In the event that the Contractor breaches any provision of this clause 5.1 in a material respect, the Employer shall have the right to terminate the Contract. |
|  | 5.1.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor’s performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Contractor shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Contractor’s Persons to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Contractor and any of the Contractor’s Persons to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation. |
|  | 5.1.6 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors, or the Contractor’s Persons, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Employer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Employer may have been ordered or required to pay to a third party. |
|  | 5.1.7 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those impose on it pursuant to this Clause 5.1. |
|  | **5.2 Human Rights Act** |
|  | 5.2.1 The Contractor shall comply with the provisions of and adopt a purposive approach to the Contract in accordance with the Human Rights Act 1998 (“the **HR Act**”) and will indemnify the Employer against all actions or demands which may be brought against the Employer for breach of statutory duty under the HR Act or any statutory modification or re-enactment thereof which arises from breach of the HR Act by all servants employees or agents of the Contractor and all Sub-Contractors employed in the execution of the Contract |
|  | **5.3 Crime & Disorder Act** |
|  | 5.3.1 The Contractor shall comply on the Employers behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and will indemnify the Employer against all actions, costs, expenses, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises upon acts or omissions by the Contractor, its servants and agents under the Contract. |
|  | **5.4 Freedom of Information**  5.4.1 The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”), the Environmental Information Regulations and the National Audit Act 1983 and further acknowledges the statutory obligations on and commitment of the Employer to open government and public access to information and, accordingly, shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosure and audit obligations.  5.4.2 The Contractor shall and shall procure that its sub-contractors shall:  (a) transfer to the Employer all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;  (b) provide the Employer with a copy of all information in its possession or power in the form that the Employer requires within five (5) working days (or such other period as the Employer may reasonably specify) of the Employer’s request; and  (c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations or the National Audit Act 1983.  5.4.3 The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Regulations or National Audit Act 1983.  5.4.4 In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer.  5.4.5 The Contractor acknowledges that notwithstanding the provisions of this clause 8.5 the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the **Code**”) and any directions of the Information Commissioner, be obliged under the FOIA, or the Environmental Regulations, or the National Audit Act 1983 to disclose information concerning the Contractor or the Works:  (a) in certain circumstances without consulting the Contractor; or  (b) following consultation with the Contractor and having taken their views into account;  Provided always that the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that , to draw the disclosure to the Contractor’s attention after any such disclosure.  5.4.6 The Contractor shall ensure that all information is retained for disclosure and shall permit the Employer to inspect such records as may be reasonably requested from time to time.  5.4.7 In the event that the Contractor incurs or would incur costs in actively locating, retrieving and extracting information in assisting the Employer to respond to a request for information, the Contractor must inform the Employer of such likely costs and the Employer will inform the Contractor in writing whether or not it still requires the Contractor to assist with complying with the request. If the Employer informs the Contractor to proceed with the request, the Employer will reimburse the Contractor for such reasonable and necessary costs as the Contractor incurs but only to the extent that the Employer itself is entitled to reimbursement of such cost in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.  5.4.8 The Contractor acknowledges that identification of any matter to the Employer by the Contractor as commercially sensitive information is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause.  5.4.9 The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as the Employer is by Law able to exclude as being confidential, commercial sensitive, or otherwise not in the public interest to disclose), to the general public such assistance and cooperate with the Employer to enable such publication, including, if the Employer so requires, assisting the Employer at no additional cost to the Employer in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.”  **5.5 Prevention of Corruption** |
|  | 5.5.1 The Contractor shall not and shall procure that the Contractor's Persons shall not (whether knowingly or unknowingly):     * + 1. offer or give, or agree to give to any person employed by or on behalf of the Employer or any other public body, any gift or consideration of any kind as an inducement or reward for doing or having done, or not doing, any act in relation to the obtaining or execution of the Contract (or any other contract to which the Employer is a party) or for showing, or not showing favour or disfavour to any person in relation to the Contract (or any other contract to which the Employer is a party); or     2. commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or     3. enter into a contract with the Employer in connection with which commission has been paid or agreed to be paid by it or on its behalf unless, before the contract is entered into, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof are disclosed in writing to the Employer; or     4. commit any fraud in connection with the Contract or any other contract to which the Employer is party whether alone or in conjunction with members of the Employer and/or the Contractors Persons.   5.5.2 Notwithstanding anything to the contrary contained in the Contract, if the Contractor is in breach of this clause 5.5, then the Employer may terminate the Contract by giving notice to the Contractor such notice having immediate effect and the Employer shall be entitled on demand to receive from the Contractor the amount of any loss resulting from such termination and to recover on demand from the Contractor the amount of the value of any relevant gift consideration or commission. |
|  | **5.6 Recovery of Monies** |
|  | Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Employer. |
|  | **5.7 Final or any other Certificate** |
|  | The final certificate or any other certificate issued by the Employer’s Representative is not intended to and shall not operate as conclusive evidence that any of the work or materials or goods or workmanship conforms to description or is in accordance with the Contract. |

**5.8 Declaration of Ineffectiveness and Exit**

5.8.1 In the event that a court makes a Declaration of Ineffectiveness, the Employer shall as soon as reasonably practicable notify the Contractor and in any event within a period of five (5) Working Days notify the Contractor of any such action. The Parties agree that the provisions of this clause 5.8 shall apply as from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, from the Employer and it shall:

5.8.1 (a) confirm whether the Contractor is to be relieved of any obligations contained within this Contract; and

5.8.1 (b) may pursuant to the provisions of Clause 5.8.1 terminate the Contract forthwith upon notice.

5.8.1 (c) If a determination or order is made on an application for a declaration of ineffectiveness (within the meaning of the Public Contract Regulations 2015), the parties agree that the contents of this clause shall, to the maximum extent permitted by law, apply to any declaration or determination pursuant to:

5.8.1 (i) Regulation 101(3) relating to the implications and any consequential matters arising from the determination; or

5.8.1 (ii) Regulations 101(4) relating to the shortening of this Contract; and

5.8.1 (iii) the parties further agree that notwithstanding the cancellation of the Contract pursuant to Regulation 101(3) or a shortening of the Contract pursuant to Regulation 101(4) of the Public Contract Regulations 2015 the following provisions will survive termination of this Contract as specified therein.

5.9 Termination of the Contract on a declaration of ineffectiveness

5.9.1 A declaration of ineffectiveness pursuant to Regulation 98(2)(a) shall not prejudice or affect any right, liability or remedy which has occurred or shall accrue to either Party prior to or after such declaration.Where this Contract is declared ineffective pursuant to Regulation 98 of the PCR 2015 the parties agree that unless specific issues are addressed pursuant to Regulations 101(3) the provisions contained in Clause 5.9.2 shall apply.

5.9.2 As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or in the absence of such agreement, the Employer shall reasonably determine an appropriate Cessation Plan with the object of achieving:

5.9.2.1 an orderly and efficient cessation of the Works or (at the Employer’s request) a transition of the Works to the Employer or such other entity as the Employer may specify; and

5.9.2.2 minimal disruption or inconvenience to the Employer in accordance with the provisions of this clause 5.9 and to give effect to the terms of the Declaration of Ineffectiveness.

5.9.3 Upon agreement or determination by the Employer, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

5.9.4 The Employer shall pay the Contractor’s reasonable costs in assisting the Employer in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise reasonably determined by the Employer. provided that the Employer shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract.

5.9.5 Without prejudice to the Employer’s rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directives 2014/25, in the event of a Public Contracts Regulations Termination Event, the Employer shall promptly notify the Contractor and the parties agree that the provisions of this clause 5.9 shall apply as from the date of receipt by the Contractor of the notification of the Public Contracts Regulations Termination Event.

5.9.6 The Public Contracts Regulations Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either party prior to or after such Public Contracts Regulations Event.

5.9.7 As from the date of receipt by the Contractor of the notification of the Public Contracts Regulations Termination Event, the Parties (acting reasonably and in good faith) shall agree or in the absence of such agreement, the Council shall reasonably determine an appropriate Cessation Plan with the object of achieving:

5.9.7.1 an orderly and efficient cessation of the Works or (at the Employer’s request) a transition of the Works to the Council or such other entity as the Council may specify; and

5.9.7.2 minimal disruption or inconvenience to the Council or to the Service users,

in accordance with the provisions of this clause 5.9 and to give effect to the terms of the Public Contracts Regulations Termination Event.

5.9.8 Upon agreement, or determination by the Council, of the Cessation Plan the parties will comply with their respective obligations under the Cessation Plan.

5.9.9 The Council shall pay the Contractor’s reasonable costs in assisting the Council in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise reasonably determined by the Council. provided that the Council shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this clause 5.9.

Appendix [1]: Schedule of Processing, Personal Data and Data Subjects

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

1.1       The contact details of the Authority’s Data Protection Officer are: **Insert** Contact details]

1.2       The contact details of the Contractor’s Data Protection Officer are: **[Insert** Contact details].

1.3       The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.4       Any such further instructions shall be incorporated into this Appendix.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the  processing | Personal Information |
| Duration of the  processing | Duration of contract |
| Nature and purposes of  the processing | *Sharing Data with successful candidate in order for lifts to be installed* |
| Type of Personal Data | Names, addresses, telephone number |
| Categories of Data  Subject | Council Tenants, Community Associations |
| Plan for return and  destruction of the data  once the processing is  complete UNLESS  requirement under union  or member state law to  preserve that type of  data | Deleted on completion of the contract*.* |

ANNEX

[*to be inserted*]