BUILDING CONTRACT DIRECTIVE

WEST SUSSEX COUNTY COUNCIL (the "Employer")
CAPITAL & ASSET MANAGEMENT DATE: October, 2019
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BCD4 STANDARD BUILDING CONTRACT (With Quantities)
COMPLETION OF CONTRACT DOCUMENTS AND APPENDICES

GENERAL:

THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.

The form of contract to be used on the Employer’s schemes will be the Joint Contracts Tribunal Limited (JCT) Standard Building Contract With Quantities (SBC/Q) 2016 and will incorporate the latest JCT published amendments current at the date the tender documents are issued. The JCT Standard Building Contract will be amended by the ‘Employer’s Schedule of Contract Amendments (October, 2019)’. The Employer’s Schedule of Contract Amendments MUST be appended at the beginning of every JCT contract.

Within every contract the following clauses must be inserted within the preambles or preliminaries section.

i) Before commencing any works on site the contractor must familiarise himself with any guidance documents, files or procedures relating to health and safety which have been issued by and or apply specifically to the particular Employer Service or premises where the works are to carried out.

ii) The Employer reserves the right under any contract for its qualified Health and Safety staff to access the site for the purposes of monitoring and recording the contractor’s health and safety provisions and the interaction with existing occupants of the Employer’s adjacent premises.

COMPLETION OF DOCUMENTS:

Where a deletion is required, the following terms and conditions are applicable to the JCT STANDARD BUILDING CONTRACT WITH QUANTITIES 2016 (SBC/Q) and should not be used for other types of JCT Standard Building Contract. Guidance should be sought from the Employer if required.

J.C.T. STANDARD BUILDING CONTRACT WITHOUT QUANTITIES – 2016

1 Recitals 1-12

A  Activity Schedule: delete where does not form part of the contract documentation

B  Information Release Schedule: Delete where an information release schedule does not form part of the contract documentation.

C  The division of the Works into Sections: Delete Sixth Recital if the Works are not divided into Sections.

D  The Ninth to Twelfth Recitals apply only where there is a Contractor’s Designed Portion. Delete Recitals 9 to 12 if there is no Contractor’s Design Portion.

Note: where there is a CDP, the Employer requires the Contractor to accept a single point of responsibility for the design and construction of the CDP.
2 Articles 1-10

A Article 8 to apply see Contract Particulars

B Insert new Article 10:

Article 10: Amendment 1: Schedule of Employer’s Contract Amendments – incorporation

This Agreement and the Conditions shall have effect as modified by the amendments set out in the attached Amendment 1: Schedule of Employer’s Contract Amendments.”

3 Contract Particulars

A Construction Industry Scheme (CIS): The Employer at Base Date “is a contractor”. The words “is not a contractor” will be deleted.

B Supplemental provisions:

Paragraph 1 Applies
Paragraph 2 Applies
Paragraph 3 Applies
Paragraph 4 Applies
Paragraph 5 Applies
Paragraph 6 Applies. The Employer’s Nominee will be ‘Head of Development’.
Paragraph 7 applies
Paragraph 8 applies
Paragraph 9 applies only where there is a Named Specialist
Paragraph 10 applies
Paragraph 11 applies

C Arbitration: Article 8 and clauses 9.3 to 9.8 (arbitration) apply – delete the words ‘do not apply’.

D Base date: Insert a finite date. Normally ten days prior to that which the tenders are due to be returned. DO NOT insert a statement that the base date is to be fixed a number of days prior to the date set for the return of tenders.

E Date for Completion of the Works/Sections: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.

F Date of Possession of the Site/Sections: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.

G Deferment of the date of possession applies: Delete “does not apply”. Insert “six weeks”.

H Master Programme: complete as appropriate

I Contractor’s Designed Portion: limit of Contractors liability for loss of use etc. Delete the whole entry of Part 1 of the Contract Particulars relating to clause 2.19.3.

Note: where there is a CDP, clause 2.19.3 is amended and the limit of the Contractor’s liability referred to in the Contract Particulars does not apply to the amended clause (and thus, is not required in the Contract Particulars).

J Liquidated Damages: Insert a rate per week calculated in accordance with the
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K Rectification Period(s): Normally “Six months”, but “Twelve months” may be appropriate for some schemes.

L Fluctuations Options: Generally Option A applies. Delete all other Options.

M Percentage Addition: Insert “zero per cent”.

N Formula Rules (only applicable where Option C adopted):
   Generally: Not applicable.

O Non-Adjustable Element: insert 10% if adopted

P Advance Payment: Not applicable where the Employer is a Local Authority.
   Delete ‘applies’

Q Advance Payment Bond: Not applicable where the Employer is a Local Authority.
   Delete ‘is’

R Interim payments: the due dates for interim payments are at intervals not exceeding one month up to the date of Practical Completion of the Works, or the date within one month thereafter: the first due date is within one month of the Date of Possession.

S Listed items: Clauses 4.16.4 and 4.16.5. to be deleted.

T Contractor’s Retention Bond: Not applicable where the Employer is a Local Authority: Delete ‘applies’

U Retention Percentage: For schemes with an estimated contract sum of £500,000 or more insert “three per cent”. For schemes with an estimated contract sum below £500,000 insert “five per cent”.

V Contractor’s Insurance – injury to persons or property (See Directive BCD.1.)

W Insurance – Liability of Employer: Insurance may be required, delete the words “is not required”. Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event. (See Directive BCD.1.)

   A provisional sum in respect of matters referred to in clause 6.5.1 is to be inserted in the Bills of Quantities to cover the premium.(see Directive BCD1)
   The sum to be omitted in the adjustment of the final account if not expended.

X Insurance of the Works: Delete references to Options B and C for new buildings or delete references to Options A, B and C for alterations or extensions to existing building and insert new clause: “The Employer will not take out or maintain a separate Joint Names Policy for All Risks Insurance of the Works, or a Joint Names Policy to insure the existing structures and their contents owned by him for which he is responsible against loss or damage by the Specified Perils. The Employer does, however, maintain “Works in Progress” insurance cover.” (See Directive BCD1.)

Where Works are a Combination of Stand Alone New Build and to Existing Buildings/Extensions.

Where the Works are a combination of stand-alone new build and alterations or extensions to existing buildings, the Contractor must insure the stand-alone new build element under Insurance Option A and the Employer will insure the alterations or extensions to existing buildings under its Works in Progress policy.
Select Insurance Option A and add adjacent: ‘in respect of the stand-alone new build only’.

AND

Delete Insurance Options B and C and insert: ‘In respect of alterations or extensions to existing buildings only, the Employer will not take out or maintain a separate Joint Names Policy for All Risks Insurance of the Works, or a Joint Names Policy to insure the existing structures and their contents owned by him for which he is responsible against loss or damage by the Specified Perils. The Employer does, however, maintain ”Works in Progress” insurance cover.’

**Academy Schools**

Where the Works are alterations or extensions to existing buildings and a school is an academy school, The academy school will be required to procure its own Contractors All Risks Insurance of the Works to cover the Works and any subsequent damage caused by the Works/Contractor to the existing buildings. (See Directive BCD1).

The Contract Particulars should be completed as follows:

Delete insurance Options A, B & C and insert: ‘The [please insert] Academy Trust will take out and maintain insurance cover in respect of the Works and any damage caused by the Works or the Contractor to the existing buildings whilst carrying out the Works. The [please insert] Academy Trust shall, as and when reasonably required by the Employer, produce documentary evidence showing that the insurance cover has been taken out and is being maintained.’

**NOTE (Conversion During Contract Period):**

Different arrangements exist where a school converts to an academy during the contract period. The insurance liability will be split between the Works and the existing buildings. Thus, the Council’s insurers will continue to provide Contractors All Risks Insurance cover for the Works. However, upon conversion when the Council no longer insures the existing buildings, the academy will be required to request cover from their own insurer in respect of the existing buildings. (See BCD1 for further guidance).

The Contract Particulars should be completed as follows:

Delete Insurance Options A, B & C and insert the Council’s standard Works in Progress paragraph plus additional wording as follows:

‘The Employer will not take out or maintain a separate Joint Names Policy for All Risks Insurance of the Works, or a Joint Names Policy to insure the existing structures and their contents owned by him for which he is responsible against loss or damage by the Specified Perils. The Employer does, however, maintain “Works in Progress” insurance cover in respect of the Works only. The [please insert] Academy Trust will take out and maintain insurance cover in respect of any of the existing buildings. The [please insert] Academy Trust shall, as and when reasonably required by the Employer, produce documentary evidence showing that the insurance cover has been taken out and is being maintained’.

**Catholic Schools**

Where the Works are alterations or extensions to existing buildings all diocesan schools must procure their own Insurance of the Works. (See Directive BCD1).

The Contract Particulars should be completed as follows:
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Delete Insurance Options A, B & C and insert: 'The [insert correct legal entity of school] will take out and maintain insurance cover in respect of the Works and any damage caused by the Works or the Contractor to the existing buildings whilst carrying out the Works. The [insert correct legal entity of school] shall, as and when reasonably required by the Employer, produce documentary evidence showing that the insurance cover has been taken out and is being maintained.

Y Percentage to cover professional fees: Insert “16%” where clause Option A applies.

Z Annual Renewal date of insurance as supplied by the Contractor: Insert “to be supplied by the Contractor prior to the execution of the contract”.

AA Pool Re cover: Pool Re cover is required.

BB Professional Indemnity Insurance: Delete the whole entry of the JCT Contract Particulars relating to clause 6.15

Note: the Schedule of Amendments amends JCT clause 6.15 and does not rely on the JCT Contract Particulars to record the necessary professional indemnity insurance details.

CC Joint Fire Code: All contracts with a value in excess of £2,500,000 the Joint Fire Code is to apply, with the additional requirement set out in the Code for a "large project" being applicable at the value threshold level of £20,000,000 and over.

Contracts above the £2,500,000 value require notification to the insurers; in order that a programme of surveys can be arranged by them during the period of the contract to assess the level of compliance

For contracts below the £2,500,000 value level it is not a requirement that the Code is to apply in its entirety. Nevertheless the Consultant is to be aware of the good practice set out in the Code and include those parts of the Code that may have particular relevance to the works as a specified requirement within the contract documents.

DD Joint Fire Code: The cost of compliance with amendments/ revisions shall be borne by the Employer. Delete 'the Contractor'

EE Assignment by Employer of rights under Clause 7.2: Delete the whole entry of Part 1 of the Contract Particulars relating to clause 7.2

Note: It is preferable for the Employer to be able to assign the benefit of the contract. JCT Clause 7.1 of the Conditions has been deleted in the Employer’s Schedule of Contract Amendments and new clauses are inserted (7.1.1 – 7.1.4). In addition, the Employer’s Schedule of Contract Amendments deletes JCT clause 7.2 from the Contract Particulars because it relates and refers to JCT clause 7.2 of the Conditions which has now been deleted (as it conflicts with new clauses 7.1.1 – 7.1.4).

FF Period of Suspension: Insert “2 months”

GG Period of Suspension: Insert “2 months”

HH Adjudication – Nominator of Adjudicator – President or Vice President: Royal Institute of British Architects”. Delete: Others as listed.

II Arbitration – Appointer of Arbitrator - President or Vice President: Chartered Institute of Arbitrators. Delete: Others as listed.
Note: These amendments are in respect of the Standard Building Contract With Quantities ONLY. Different amendments would be required for the Without Quantities and With Approximate Quantities versions to have the same effect.

Notes for completing the Employer’s Schedule of Contract Amendments:

- Clauses highlighted yellow should be tailored to reflect project specific requirements (insert/delete information as appropriate)
- Delete all notes and square brackets in final version.

This Contract shall incorporate all the provisions of the JCT Standard Building Contract With Quantities 2016 except that the Recitals, Articles, Contract Particulars and Conditions shall be amended by this Schedule of Employer’s Contract Amendments (October, 2019) and shall be construed as varied accordingly.

The definitions in the JCT Standard Building Contract With Quantities 2016 edition have the same meaning in this Employer’s Schedule of Contract Amendments, unless the meaning given in the JCT Standard Building Contract With Quantities 2016 edition is different to, or conflicts with, the meaning given in this Employer’s Schedule of Contract Amendments, in which case this Employer’s Schedule of Contract Amendments shall prevail.

Without prejudice to the above, in case of any difference, discrepancy or conflict between this Employer’s Schedule of Contract Amendments and the JCT Standard Building Contract With Quantities 2016 edition, this Employer’s Schedule of Contract Amendments shall prevail.

Note: in addition to strengthening the Employer’s position generally, the amendments make provision, where there is a CDP, to create a single point of responsibility for design and construction.

REcitals

Twelfth Recital

Only where there is a Contractor’s Designed Portion (and the Employer wishes to create a single point of responsibility), delete the existing twelfth recital and replace with:

"The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for any design contained in them."

Note: in order to create a single point of responsibility for design and construction.

Articles

Article 10 Employer’s Schedule of Contract Amendments - Incorporation

Insert new Article 10:

"This Agreement and the Conditions shall have effect as modified by the amendments set out in the attached Employer’s Schedule of Contract Amendments."
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CONTRACT PARTICULARS

CLAUSE 2.19.3

Delete the whole entry of the JCT Contract Particulars relating to clause 2.19.3.

Note: the Schedule of Amendments deletes clause 2.19.3 of the JCT Conditions and replaces it with a clause that has a different effect from the original JCT clause, consequently, clause 2.19.3 of the Contract particulars is not required.

CLAUSE 6.15

Delete the whole entry of the JCT Contract Particulars relating to clause 6.15.

Note: the Schedule of Amendments amends JCT clause 6.15 and does not rely on the JCT Contract Particulars to record the necessary professional indemnity insurance provisions.

CLAUSE 7.2

Delete the whole entry of the JCT Contract Particulars relating to clause 7.2.

Note: the Schedule of amendments deletes JCT clause 7.2. It uses different clauses (7.1) to address assignment.

CONDITIONS

SECTION 1 DEFINITIONS AND INTERPRETATION

CLAUSE 1.1

Add these definitions:


"Data Protection Impact Assessment: an assessment carried out pursuant to Article 35 of the General Data Protection Regulation."

"Data Protection Legislation: the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner."

"Data Security Breach: any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data."
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"Deleterious Materials: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of 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; or having been supplied or placed on the market in breach of the Construction Products Regulations”

Note: ensure that Contract Documents are consistent with the Standard Building Contract and these amendments e.g. some draft Contract Documents may introduce conflicting requirements on the Contractor relating to Deleterious Materials.

"Employer Data:
a) the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:
   i. supplied or communicated to the Contractor by or on behalf of the Council;
   ii. inputted into the Council IT systems or the Service Providers IT system by the Council or the Council’s Representatives; or
   iii. which the Service Provider is required to access, generate, process, store or transmit pursuant to this Contract, whether on the Council IT systems or the Service Providers IT system; or
b) any Personal Data for which the Council is the Data Controller"

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

"Hazardous Substances: 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.”

"Standard of Care: 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.”

Note: if the Contractor will carry out a CDP, the definition of Standard of Care amendment defines the Standard of Care so that the Contractor’s design duties can refer back to a single Standard of Care, even if those design duties appear in different clauses or sub-clauses. If the Contractor will perform a CDP, the Standard of Care to be exercised by the Contractor is a key part of the amendments to SBC/XQ 2016. If there is no CDP, the Standard of Care is still applicable, but it is acknowledged that the Contractor may not have designed any of the Works.

SECTION 2 CARRYING OUT THE WORKS

Clause 2.1A

CL 2.1A
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"Insert new sub-clause 2.1A:

"The Employer requires that the Contractor complies with West Sussex County Council Building Contract Directives (BCD) (copies of BCDs included in these Employers Requirements) and the following publications:

b) WSCC Construction Guides for Building Construction, Mechanical Engineering and Electrical Engineering.
c) 'A Data Protection Code of Practice for Surveillance Cameras and Personal Information' as amended from time to time issued by Information Commissioners Office.
d) WSCC General Policy Brief for Education Buildings"

CLAUSE 2.1B

Insert new sub-clause 2.1B:

"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 adjustment of the Contract Sum, or to any extension of time (whether under Clause 2.28 or otherwise) or to any entitlement on the part of the Contractor to terminate his employment under this Contract."

NEW CLAUSE 2.1C PREVENT DUTY

Add a new sub-clause 2.1C:

"2.1C.1 The Contractor shall adequately support the Employer, as a specified authority under section 26 of the Counter-Terrorism and Security Act 2015 (as amended by the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015), in connection with the Employer’s duty to have due regard to the need to prevent people from being drawn into terrorism.

2.1C.2 The adequate provisions procured by the Contractor in order to support the Employer as set out above will need to be considered by the Employer and Contractor on the basis of each individual contract."

Note: drafting required under the Council’s Standing Orders and in compliance with statutory requirements.

[NEW CLAUSE 2.1D PLANNING PERMISSION

2.1D.1 Unless otherwise agreed between the Parties, it is the responsibility of the [Employer or the Employer’s representative] OR [the Contractor] to apply for planning permission in respect of the Works under the Town and Country Planning Act 1990 or other applicable legislation.

Note: Delete this clause 2.1D if planning permission for the works is not required or if the Works fall within permitted development under the Town and Country Planning (General Permitted Development) Order 1995.

Note: Delete the option (and square brackets) which does not apply in respect of applying for planning permission.

[NEW CLAUSE 2.1E PLANNING CONDITIONS]
2.1E.1 Without prejudice to the Contractor's duty to comply with the Statutory Requirements, the Contractor shall be responsible for the discharge of the planning conditions under application number [insert]. Whenever requested by the Employer, the Contractor shall provide to the Employer evidence that he has discharged the planning conditions that he is required to discharge under planning application number [insert].

2.1E.2 Notwithstanding any other provision of this Contract, the Contractor shall not be entitled to any extension of time under clause 2.28 to the relevant Completion Date, reimbursement of loss and/or expense or any other addition to the Contract Sum as a result of complying with this clause 2.1E and a Variation shall not arise in connection therewith).

Note: Delete this clause 2.1E if planning permission for the works is not required or if the Works fall within permitted development under the Town and Country Planning (General Permitted Development) Order 1995.

Note: the following clauses [2.2 – 2.29] apply and should be selected only where there is a CDP.

[Clause 2.2]

Insert in sub-clause 2.2.1, after "the Contract Documents":

"carry out and"

Note: amendment helps the Employer create more of a single point of responsibility for design & construction of the CDP (where there is a CDP).

[Clause 2.3]

Insert in sub-clause 2.3.1 after "so far as procurable, be" (in both places it appears):

"of satisfactory quality and"

Note: ‘new’ not added to clause 2.3.1 as it could conflict with the specification of recycled materials in the ERs.

Insert at the very end of clause 2.3.1:

"The Contractor shall encourage the use of recycled or environmentally friendly raw materials and products and ethical sourcing processes, provided that such materials and products are of satisfactory quality.”

Insert in sub-clause 2.3.3 after "in the case of the Contractor's Designed Portion be" and after "shall in any other case be":

"of satisfactory quality or proper and workmanlike (as the case may be) and"

Insert new sub-clause 2.3.6:

"The Contractor shall not specify or use anything in the Works, which, at the time of specification or use, is a Deleterious Material."
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Insert new sub-clause 2.3.7:

"Without prejudice to clause 2.3.6, the Contractor shall not knowingly suffer or permit the use in the Works of anything, which, at the time of use, is a Deleterious Material. The Contractor shall immediately notify the Employer if he becomes aware of any such use."

Note: The Contractor, as the person carrying out the Works, can control what goes into the Works on the site. Therefore, new sub-clause 2.3.6 expressly refers to the Deleterious Materials/Hazardous Substances duties of the Contractor in terms that do not relate only to design liabilities.

Insert new sub-clause 2.3.8:

"The Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Materials 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 Materials 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 2.3.8 based on the Environmental Laws in effect at the time its services are rendered."

NEW CLAUSE 2.8.6 EXECUTION OF CONTRACT DOCUMENTS

Insert new Clause 2.8.6:

"The Contractor shall, no later than 21 days from receipt of the Contract documents, properly execute and return the Contract documents to the Employer. If the Contractor does not properly execute and return the Contract documents, notwithstanding any other term of this Contract, the Employer may withhold 25% (in addition to any sums withheld under clause 7.3.4) of the sums that would otherwise be due to the Contractor under this Contract, until such a time as the Contract documents have been properly executed and returned to the Employer."

NEW CLAUSE 2.8.7 EXECUTION OF COLLATERAL WARRANTIES

Insert new Clause 2.8.7:

"The Contractor procures the proper execution of all collateral warranties due under the Contract from sub-contractors and/or Consultants (and sub-consultants) prior to them starting work on site. If the Contractor does not procure all properly executed collateral warranties, notwithstanding any other term of this Contract, the Employer may withhold 10% (in addition to any sums withheld under clauses 2.8.6 and 7.3.4) of the sums that would otherwise be due to the Contractor under this Contract, until such a time as the Contractor does provide to the Employer all properly executed collateral warranties,"

[CLAUSE 2.13
Delete sub-clause 2.13.2]

Note: To create a single point of responsibility to ensure that the Contractor can be held responsible for the ERs.
Delete sub-clause 2.14.2 and replace with:

"Subject to clause 2.17, if any inadequacy is found in any design in the Employer's Requirements, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly."

Delete sub-clause 2.14.3 and replace with:

"Subject to clause 2.17, any correction, alteration or modification under clause 2.14.1 shall be treated as a Variation. Any correction, alteration or modification under clause 2.14.2 shall not be treated as a Variation and there shall be no addition to the Contract Sum in respect of that correction, alteration or modification or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such correction, alteration or modification."

**Clause 2.16**

In sub-clause 2.16.2 delete, from the end of the sub-clause, "treated as a Variation" and replace with:

", to the extent that it relates to the removal of that discrepancy, shall not be treated as a Variation and there shall be no addition to the Contract Sum"

Note: To create a single point of responsibility. Note that this amendment still allows the CPs to prevail over the ERs, if the CPs deal with a discrepancy in the ERs. (If the Employer requires the ERs to prevail, delete "the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with such a discrepancy," in clause 2.16.2.

**Clause 2.17**

In sub-clause 2.17.2.1, after "change in the Statutory Requirements" insert:

"that was not foreseen by the Contractor at the Base Date and that could not reasonably have been foreseen by a competent contractor at the Base Date"

Note: amendment means that a Contractor should take responsibility for anticipated changes in Statutory Requirements, where these affect the CDP (and not all changes in Statutory Requirements that the Contractor should have foreseen).

**Clause 2.19**

Delete clause 2.19 and replace with:

"Where there is a Contractor's Designed Portion:"

(a) Insert new sub-clause 2.19.1:

"Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the CDP Works including (without limitation) all design work proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements."

(b) Insert new sub-clause 2.19.2:

"Without prejudice to clause 2.19.1, the Contractor shall be fully responsible in all respects for any design of the CDP Works that is
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(c) Insert new sub-clause 2.19.3:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

.1 designing the CDP Works; and

.2 selecting goods, materials, plant and equipment for incorporation in the CDP Works.

(d) Insert new sub-clause 2.19.4:

"Without prejudice to clauses 2.1 and 2.17.3, the Contractor warrants that it shall use the Standard of Care to see that its design of the CDP Works complies with Statutory Requirements."

Note: amendments applicable where there is a CDP.

CLAUSE 2.20

In sub-clause 2.20.1 after "Contractor’s Proposals or other Contractor’s Design Documents" insert:

"or the Employer’s Requirements"

and delete "those documents" and replace with: "the Contractor’s Proposals or other Contractor’s Design Documents".

Note: relates to single point of responsibility.

CLAUSE 2.29

In sub-clause 2.29.2.1 after “clause 2.15” insert: "subject always to clause 2.16)."

Note: amendment relates to single point of responsibility.

CLAUSE 2.38

Delete "within a reasonable time" in line 12.

In line 13 after "be made good" insert "within the following required times"

Insert after seventeenth line at end of clause:

"The required times are:

a) Water ingress or damp from internal services; 8 working hours
b) Electrical and heating faults; 8 working hours
c) Blocked drains; 8 working hours
d) Ill-fitting doors/windows where security affected; 8 working hours
e) Defective floor coverings or pavings; 7 working days unless in the opinion of the Employer, these represent a possible danger in which case 8 working hours."
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f) All other defects which the Architect/Contract Administrator considers require attention before the end of the Rectification Period, which are not listed above, will be attended to within 5 working days or such lesser period as the Architect/Contract Administrator may reasonably require.”

NEW CLAUSE 2.39A

Add a new clause 2.39A after clause 2.39:

"Snagging list and defects, shrinkages or other faults remaining at practical completion

Clauses 2.38 and 2.39 shall apply, all other things being equal, to:

.1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;

.2 any defects, shrinkages or other faults in the Works at practical completion; and

.3 any incomplete work, forming part of the Works, remaining at practical completion."

Note: Although a snagging list is used to identify minor works that a Contractor should carry out straight after practical completion, the JCT contracts do not include specific drafting to deal with snagging lists or minor items of incomplete work. Therefore, the amendments deal with snagging lists and envisage that any snagging list will be issued at, or straight after, practical completion. The drafting does not envisage that a snagging list is issued after practical completion during the Rectification Period.

CLAUSE 2.41

Insert: "extension" after "refurbishment" in line 5 of clause 2.41.2 and delete the last sentence of clause 2.41.2

SECTION 4 PAYMENT

PROVISION FOR THE EMPLOYER’S PAYMENT PROCEDURE

CLAUSE 4.8

Insert at the end of clause 4.8:

In accordance with paragraph 8.1 of Schedule 8 Part 2, the Employer shall use the 7 day period in this clause 4.8 in order to verify that the Contractor’s Invoice is valid. If the Contractor’s Invoice is found to be invalid, the Contractor and the Employer will agree the amount due under the Payment Application within the 7 day period and the Contractor’s Invoice will be adjusted accordingly.”

CLAUSE 4.9.3

Insert new sub-clause 4.9.3:

"Immediately following the issue of an Interim Certificate, the Contractor shall send an invoice to the Employer and to the Architect/Contract Administrator confirming the amount due within the Interim Certificate ("the Contractor’s Invoice"). For the purpose of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of an Interim Certificate shall be the date of receipt by the Employer of a valid Contractor’s Invoice. The Contractor’s Invoice shall be deemed valid
Clause 4.10.3

Insert new clause 4.10.3:

"Where the Contractor has made a Payment Application in accordance with clauses 4.10.1 and 4.10.2.2, immediately following the issue of the Payment Application, the Contractor shall send a Contractor's Invoice to the Employer and to the Architect/Contract Administrator confirming the amount due within the Payment Application. For the purpose of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of a Payment Application shall be the date of receipt by the Employer of a valid Contractor's Invoice. The Contractor's Invoice must contain the invoice date and number, the relevant project purchase order number, the total amount payable plus VAT (if applicable), the vendor number, the Small and Medium Enterprises number (if applicable), the project name and address, the project number and the Project Officer's name and must be sent via e-mail to ctg.invoicing@westsussex.gov.uk and copied to invoices@westsussex.gov.uk".

Clause 4.11.1

Delete: '14' and insert [30] [20].

Note: the Council's payment terms under Standing Orders are 30 days (20 days for SMEs) from receipt of a valid invoice. Select appropriate payment term.

Clause 4.17

Delete clause 4.17 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.15, the Employer shall be:

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

Note: Without amendment, SBC 2016 imposes fiduciary duties on the Employer. The amendments mean, in effect, that the retention is due to the Contractor in the same way as any other sum due under the contract.

Clause 4.22

Insert at the start of sub-clause 4.22.2.3: "(subject to clause 2.14)".
BCD4 STANDARD BUILDING CONTRACT (With Quantities)

Note: amendment reflects changes to clause 2.14, to create more of a single point of responsibility for CDP. Only use where there is a CDP.

NEW CLAUSE 4.26.2A

Insert new clause 4.26.2A

"Immediately following the issue of the Final Certificate and where the balance is stated to be payable is the Contractor, the Contractor shall send an invoice to the Architect/Contract Administrator confirming the amount due within the Final Certificate ("the Contractor's Final Invoice"). The Contractor's Final Invoice must contain the invoice date and number, the relevant project purchase order number, the total amount payable plus VAT (if applicable), the vendor number, the Small and Medium Enterprises number (if applicable), the project name and address, the project number and the Project Officer's name and must be sent via e-mail to ctg.invoicing@westsussex.gov.uk and copied to invoices@westsussex.gov.uk."

AMEND CLAUSE 4.26.3

Amend clause 4.26.3 by inserting at the beginning of the clause: "Subject to clause 4.26.4,"

NEW CLAUSE 4.26.4

Insert new clause 4.26.4

"Where the due date for the final payment shall be the date of issue of the Final Certificate and where the balance is payable to the Contractor, the due date shall be the date of receipt of the Contractor’s Final Invoice."

SECTION 5 CHANGES

CLAUSE 5.9

At the end of clause 5.9, before the full stop, add:

"," provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons,"

Note: amendment added because the Contractor should not be paid more, as a result of a Variation, if the Architect or Contract Administrator had to instruct that Variation because of the Contractor's default.

SECTION 6 INJURY DAMAGE AND INSURANCE

CLAUSE 6.1

In clause 6.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

Note: amendment widens the Contractor's scope of liability. Without amendment, the Contractor is only liable for personal injury or death arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a design or statutory obligation.
BCD4 STANDARD BUILDING CONTRACT (With Quantities)

**Clause 6.2**

In clause 6.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions”.

Note: amendment widens the Contractor’s scope of liability. Without amendment, the Contractor is only liable for property damage arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a design or statutory obligation.

**Clause 6.10.5**

Insert new clause 6.10.5:

"The Contractor shall ensure that his insurer is a member of the Pool Reinsurance Company Limited scheme (or of any similar successor scheme) prior to entering into the contract and if requested to do so by the Employer, shall produce for inspection documentary evidence of such membership."

Note: JCT default position is that Pool Reinsurance applies in respect of terrorism. Contractor’s insurer must be a member of the scheme in order to benefit under the scheme, but this will only be relevant where Insurance Option A applies

**Clause 6.15**

Delete clause 6.15 and replace with:

"Obligation to insure

The Contractor shall maintain professional indemnity insurance for an amount of at least £[**£*1** million] 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 practical completion of the Works, provided that (subject to clause 6.15A) such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

.1 with reputable insurers lawfully carrying on insurance business in the UK;

.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.”

Note: amendment to clause 6.15 only required where there is a CDP.

*Note: Standing Orders require a minimum level of indemnity for Professional Indemnity insurance of £2,000,000.00. This figure may need to be increased according to project specific circumstances.

**New clause 6.15A**

Insert new clause 6.15A, after clause 6.15:

"Commercially reasonable rates"
Any increased or additional premium required by insurers for the insurance referred to in clauses 6.15, 6.16B and 6.16C 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.

**New Clause 6.15B**

Insert new clause 6.15B, after clause 6.15A:

"Evidence of insurance"

Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.15 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 professional indemnity insurance; and

.2 that the premiums for that insurance have been paid in full at the date of that letter."

Note: additional clauses 6.15A and 6.15B only required where there is a CDP.

**New Clause 6.16A**

Insert new clause 6.16A after clause 6.16:

"Sub-contractors' and professional consultant or specialist designer’s professional indemnity insurance"

The Contractor shall procure that sub-contractors with a design responsibility and professional consultants or specialist designers who are required by the Employer to provide a deed of collateral warranty shall maintain professional indemnity insurance in accordance with the required form of collateral warranty. Within 14 days of the date of this Contract (or, if later, within 14 days of the appointment of a sub-contractor or professional consultant or specialist designer), the Contractor shall procure and shall send to the Employer evidence that the sub-contractor's or professional consultant’s or specialist designer’s insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each sub-contractor's or professional consultant’s or specialist designer’s insurers or brokers confirming:

.1 the sub-contractor's or professional consultant’s or specialist designer’s then current insurance, as referred to in this clause; and

.2 that the premiums for that insurance have been paid in full at the date of that letter."

If the sub-contractor or professional consultant or specialist designer does not have and/or is unable to obtain professional indemnity insurance cover, the Employer will be entitled to call upon the Contractor's professional indemnity insurance policy under and pursuant to the Contract. For the avoidance of doubt, the sub-contractor's or professional consultant's or specialist designer's professional indemnity insurance cover shall be the first and primary cover for the purposes of any matter for which professional indemnity insurance is required pursuant to the Contract."

Note: The Contractor should ensure that it appoints sub-contractors professional consultants and specialist designers with the required level of insurance.

**New Clause 6.16B**

Insert new clause 6.16B after clause 6.16A:
BCD4 STANDARD BUILDING CONTRACT (With Quantities)

6.16B.1 Cover for asbestos claims [is required, with a limit of indemnity of £2,000,000 (Two Million Pounds). The required limit of indemnity is an annual aggregate amount.] [is not required].

6.16B.2 Where asbestos is known to be present or is later discovered in connection with the Works, all removal, movement and any other activities involving asbestos shall be carried out by a specialist contractor or sub-contractor licenced by the Health and Safety Executive (if the Contractor is not a specialist and licenced asbestos contractor) and who has taken out and is maintaining adequate insurance cover for asbestos claims.

Note: amend clause 6.16B; include cover for asbestos as appropriate with regard to the project requirements.

NEW CLAUSE 6.16C

Insert new clause 6.16C after clause 6.16B:

"Cover for pollution and contamination claims [is required, with a limit of indemnity of £2,000,000.00* (Two Million Pounds). The required limit of indemnity is an annual aggregate amount] [is not required]."

Note: Select option in square brackets as appropriate with regard to the project specific requirements and delete obsolete text. *An increased limit may be required for high value contracts; seek advice from Legal Services.

Note: the PI insurance amendments above are generally a more ‘belt and braces’ approach.

SECTION 7 ASSIGNMENT THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

CLAUSE 7.1

Delete clause 7.1 and replace with:

"General right to assign"

.1 The Employer may assign or otherwise transfer the benefit of this Contract twice without the Contractor’s consent (upon any subsequent assignments, such consent not to be unreasonably withheld) to any person taking an interest in the Works or the completed Works. In this Contract, the term "Employer" shall be construed accordingly.

.2 The Employer shall notify the Contractor of any assignment within 14 days. If the Employer fails to do this, the assignment shall still be valid.

.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion.

Note: Assignment of rights under a contract is the complete transfer of the rights to receive the benefits accruing to one of the parties to that contract. An Assignment only transfers the rights/benefits to a new owner. The original Employer will remain liable to the Contractor for any payments due under the Contract (unless the original Employer’s obligations are novated). The words “taking an interest in the Works or the Completed Works” have been included to give the Contractor some legal comfort that the benefit of the Contract will not be assigned to an inappropriate third party. Assignment is limited to two occasions without the requirement for the Contractor’s consent.
Note: JCT clause 1.7 requires any notice/communication to be in writing. Therefore, the requirement of s136 Law of Property Act 1925, that assignments must be in writing, will be complied with by virtue of clause 1.7.

**Clause 7.2**

Delete clause 7.2 and its heading.

Note: consequential amendment; JCT clause 7.2 is inconsistent with amended clause 7.1.

**Clause 7.3**

Delete clause 7.3 and replace with:

Add a new clause 7.3.1:

An on demand performance bond in favour of the Employer in the form previously provided by the Employer. The bond amount shall be no less than 10% of the Contract Sum.

Add a new clause 7.3.2:

A parent company guarantee in favour of the Employer in the form previously provided by the Employer.

[Add new clause 7.3.3:]

If the Employer selects a bond, the Contractor may elect to deposit the bond amount with the Employer’s bank in lieu of a bond. In such circumstances, the Contractor shall, no later than the date of this Contract, enter into an Agreement for Deposit by Way of Security with the Employer in the form included within the Employer’s Requirements and to deposit into the Employer’s bank account an amount which shall be no less than 10% of the Contract Sum and the Contractor shall make such deposit.

Note: the Employer’s standard wording for an Agreement for Deposit by Way of Security is available from Legal Services.

[Add new clause 7.3.4:]

If the Contractor does not procure execution and delivery of either the bond, Guarantee or Deposit by Way of Security then, notwithstanding any other term of this Contract, the Employer may deduct £[insert figure which equates to 10% of the Contract Sum] from the Contract Sum or the sums that would otherwise be due to the Contractor under this Contract, until the Contractor procures such execution and delivery. The above figure will be deducted in equal amounts from the first three Interim Payments and will be released upon procurement of the bond, Guarantee or Deposit by Way of Security.

Note: include new clause 7.3 only where a bond or PCG is required (where the Contract Sum is £250,000 or more).

**Section 8 Termination**

**Clause 8.4**

In sub-clause 8.4.1.3 after “requiring him to remove” insert:

“or rectify”

Note: Employer may require an element of the Works, which does not comply with the
Clause 8.6

In clause 8.6 delete ‘73(1)(b)’ and insert ‘73(1)(a), (b) and (c)’ in line 7.

Clause 8.7.2.4

Insert new clause 8.7.2.4:

"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:

i) they present no hazard to any personnel and the general public;
ii) they are compliant with all Health and Safety legislation; and
iii) 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."

Clause 8.12

Delete sub-clause 8.12.3.5.

Note: Employer’s argument would be that the Contractor will be paid enough, on termination, under sub-clauses 8.12.3.1 to 8.12.3.4 and that paying the Contractor additional “loss and expense” would be too much and could, for example, include a loss of profit claim.

Delete sub-clause 8.12.4.

Note: consequential amendment; clause 8.12.4 is not required as clause 8.12.3.5 has been deleted.

Schedule 8 Supplemental Provisions

Paragraph 7 Transparency

Delete Paragraph 7 and insert:

7.1 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.

7.2 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.

7.3 The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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 Information Regulations or the Environmental Information Regulations or the National Audit Act 1983.

7.4 In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer.

7.5 The Contractor acknowledges that (notwithstanding the provisions of this paragraph 7.5 the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the 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 Information Regulations, or the Environmental Information 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 where sub-paragraph (a) above applies 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.

7.6 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.

7.7 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 costs in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

7.8 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 paragraph.

7.9 The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain contract 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, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Employer decides.
BCD4 STANDARD BUILDING CONTRACT (With Quantities)
The Contractor shall render such assistance and cooperate with the Employer to enable such publication, including, if the Employer so requires, assisting the Employer at no additional costs 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.”

**Paragraph 10 Data Protection**

Insert new Paragraph 10:

For the purposes of this paragraph 10, "Data Controller", "Data Processor", "Data Subject" and "Personal Data" have the meanings given to those terms in the Data Protection Legislation in force from time to time.

10.1 Both parties shall, and the Contractor shall procure that its Contractor’s Persons shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Contract.

10.2 The Contractor shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Employer to breach any of its applicable obligations under the Data Protection Legislation.

10.3 The Contractor shall be liable for and shall indemnify (and keep indemnified) the Employer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Employer which arise directly from a breach by the Contractor of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Contractor or the Contractor’s Persons.

10.4 The Contractor agrees that it shall enter into a data sharing agreement with the Employer if required to do so at the Employer’s absolute discretion so as to set out the Parties’ obligations in relation to any Personal Data which may be shared between the Parties.¹

10.5 The provisions of this Paragraph 10 (Data Protection) shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

[Insert new sub-paragraphs 10.6 – 10.8]

**Data Protection Obligations**

10.6 With respect to the Parties’ rights and obligations under this Contract, the Parties agree that the Employer is the Data Controller and that the Contractor is the Data Processor. A description of the Personal Data processed by the Contractor and the processing activities undertaken by the Contractor is set out in Appendix 1 (Data Processing Activities).

10.7 In respect of any Personal Data that the Contractor processes on behalf of the Employer in connection with this Contract, the Contractor shall and shall procure that the Contractor’s Persons shall:

10.7.1 solely process the Personal Data for the purposes of fulfilling its

¹ A data sharing agreement will be required where the parties are sharing personal data under the Contract and where each party is using the personal data as a data controller in its own right. The data sharing agreement should set out the protocols that the parties will follow to determine exactly what data will be shared, the means of transmission and how the parties will cooperate with one another to ensure compliance with data protection requirements.
obligations under this Contract and in compliance with the Employer’s written instructions as set out in this Contract and as may be specified from time to time in writing by the Employer;

10.7.2 notify the Employer immediately if any instructions of the Employer relating to the processing of Personal Data are unlawful;

10.7.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Employer;

10.7.4 comply with the Employer’s instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Contractor is required pursuant to applicable laws to transfer Personal Data outside the United Kingdom, in which case the Contractor shall inform the Employer in writing of the relevant legal requirement before any such transfer occurs unless the relevant law prohibits such notification on important grounds of public interest;

10.7.5 take reasonable steps to ensure the reliability of any Contractor’s Persons who have access to the Personal Data and ensure that all Contractor’s Persons used by the Contractor to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;

10.7.6 ensure that none of the Contractor’s Persons publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer;

10.7.7 not engage any Contractor’s Persons to carry out any processing of Personal Data without the prior written consent of the Employer provided that notwithstanding any such consent the Contractor shall remain liable for compliance with all the requirements of this Contract including in relation to the processing of Personal Data;

10.7.8 ensure that obligations equivalent to the obligations set out in these data protection paragraphs are included in all contracts between the Contractor and any permitted Contractor’s Persons who will be processing Personal Data and who have been approved in accordance with these data protection paragraphs;

10.7.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;

10.7.10 upon request provide a written description of the technical and organisational measures employed by the Contractor pursuant to these data protection paragraphs (within the timescales required by the Employer) and if the Employer does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Employer (acting reasonably) to ensure compliance;

10.7.11 taking into account the nature of the data processing activities undertaken by the Contractor, provide, at no cost to the Employer, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Employer to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation,
10.7.11.1 notifying the Employer within two (2) working days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation; and

10.7.11.2 complying with the Employer’s instructions in relation to complying with the Data Subject’s rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Employer, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Employer;

10.7.12 maintain a record of the Contractor’s processing activities in accordance with the requirements of the Data Protection Legislation;

10.7.13 assist the Employer, at no cost to the Employer, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Contractor and the information available to the Contractor, including (without limitation):

10.7.13.1 providing information and assistance upon request to enable the Employer to notify Data Security Breaches to the Information Commissioner’s and/or to affected individuals and/or to any other regulators to whom the Employer is required to notify any Data Security Breaches; and

10.7.13.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Contractor’s data processing activities;

10.7.14 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Contractor in connection with this Contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

10.7.15 notify the Employer immediately and in any event within twenty four (24) hours in writing if:

10.7.15.1 the Contractor or any Contractor’s Persons engaged by or on behalf of the Contractor suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

10.7.15.2 the Contractor or any Contractor's Persons engaged by or on behalf of the Contractor receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party’s compliance with the Data Protection Legislation

and in each case the Contractor shall provide full co-operation, information and assistance to the Employer in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Employer;
10.7.16 upon termination of this Contract, at the discretion of and at no cost to the Employer, delete securely or return all Personal Data to the Employer and delete all existing copies of the Personal Data unless and to the extent that the Contractor is required to retain copies of the Personal Data in accordance with applicable laws in which case the Contractor shall notify the Employer in writing of the applicable laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Contractor, the Contractor shall provide the Employer with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted;

10.7.17 make available to the Employer at no cost to the Employer all information necessary to demonstrate compliance with the obligations set out in these data protection paragraphs and, upon request, allow the Employer, the Information Commissioner’s Office and its representatives access to the Contractor’s premises, records and Contractor’s Persons for the purposes of assessing the Contractor’s compliance with its obligations under these Data Protection paragraphs; and

10.8 The provisions of these data protection paragraphs shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

[EMPLOYER’S DATA ON CONTRACTOR’S IT SYSTEM(S)]

10.9 The Contractor shall:

10.9.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Employer Data or other data which it stores and/or processes on behalf of the Employer and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;

10.9.2 follow its detailed archiving procedures for Employer Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Employer and as such policy may be updated by the Contractor from time to time, which shall include as a minimum, the Contractor making a back-up copy of Employer Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Employer Data can be reloaded if there is any corruption or loss of the Employer Data;

10.9.3 in the event of any corruption of or loss or damage to the Employer Data, use all reasonable endeavours to restore the lost or damaged Employer Data, at its own expense, from the latest back-up of such Employer Data maintained by the Contractor in accordance with the archiving procedure described in its archiving and back-up policy or, where the Employer Data has not been restored by the Contractor within ten (10) Working Days, at the Employer’s option, promptly reimburse the Employer for any reasonable expenses it incurs in having the Employer Data restored by a third party;

10.9.4 be responsible for any loss, destruction, alteration or disclosure of Employer Data caused by itself and any of its Contractor’s Persons including (but not limited to) any third parties sub-contracted by the Contractor to perform services related to Employer Data maintenance and back-up; and

10.9.5 in providing the Works, have in place and comply with its privacy and security policy relating to the privacy and security of the Employer Data. The Contractor shall provide a copy of its privacy and security policy to the Employer upon request and wherever such policy is
Notes:

If the Contractor will NOT be processing Personal Data on behalf of the Employer (i.e. the Contractor will be the Data Controller, processing its own Personal Data), use paragraphs 10.1 to 10.5 inclusive only and delete paragraphs 10.6 to 10.9 inclusive and Appendix 1 (Data Processing Activities).

However, if the Contractor WILL be processing Personal Data on behalf of the Employer, use paragraphs 10.1 to 10.8 inclusive and, but ONLY where the Contractor will be holding the Council’s Data on its IT systems, use paragraph 10.9. In addition, the Contractor must complete the Schedule of Data Processing Activities.

A Data Controller is a person who determines the purpose for and decides the manner in which Personal Data is processed, whether alone or in concert with another person. A Data Processor processes Personal Data on behalf of the Data Controller and not for any of its own purposes.

A data sharing agreement will be required where the parties are sharing Personal Data under the Contract and where each party is using the Personal Data as a Data Controller in its own right. The data sharing agreement should set out the protocols that the parties will follow to determine exactly what data will be shared, the means of transmission and how the parties will cooperate with one another to ensure compliance with data protection requirements.

**PARAGRAPH 11 CRIME AND DISORDER**

Insert new Paragraph 11

"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, employees and agents under the Contract".

5. **Execution of Contracts:**

Contracts will be executed as a Deed.
Appendix 1 (Data Processing Activities)
**Categories of Data**

Please tick all relevant boxes and add more detail if required:

**Personal Data**

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Ticked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Identification number</td>
<td></td>
</tr>
<tr>
<td>Location data</td>
<td></td>
</tr>
<tr>
<td>Online identifier (email/IP address)</td>
<td></td>
</tr>
</tbody>
</table>

Other (please insert details):

**Special Categories of Personal Data**

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Ticked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td></td>
</tr>
<tr>
<td>Ethnic origin</td>
<td></td>
</tr>
<tr>
<td>Political opinions</td>
<td></td>
</tr>
<tr>
<td>Religion</td>
<td></td>
</tr>
<tr>
<td>Trade union membership</td>
<td></td>
</tr>
<tr>
<td>Genetics</td>
<td></td>
</tr>
<tr>
<td>Biometrics (where used for ID purposes)</td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td></td>
</tr>
<tr>
<td>Sex life</td>
<td></td>
</tr>
<tr>
<td>Sexual orientation</td>
<td></td>
</tr>
</tbody>
</table>

**Criminal Offence Data**

<table>
<thead>
<tr>
<th>Offence Type</th>
<th>Ticked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allegations</td>
<td></td>
</tr>
<tr>
<td>Proceedings</td>
<td></td>
</tr>
<tr>
<td>Convictions</td>
<td></td>
</tr>
</tbody>
</table>

**Categories of Data Subjects**

Please tick all relevant boxes:

<table>
<thead>
<tr>
<th>Subject Category</th>
<th>Ticked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council service users/customers</td>
<td></td>
</tr>
<tr>
<td>Council service user/customer next of kin</td>
<td></td>
</tr>
<tr>
<td>Council employees</td>
<td></td>
</tr>
<tr>
<td>Council employees next of kin</td>
<td></td>
</tr>
</tbody>
</table>

Other (please insert details):

**Processing Operations**

Please tick all relevant boxes:

<table>
<thead>
<tr>
<th>Processing Operations</th>
<th>Ticked</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using data provided by the Council(s)</td>
<td></td>
</tr>
<tr>
<td>Collecting new data from Data Subjects</td>
<td></td>
</tr>
<tr>
<td>Transforming data by adding new data collected from service users/customers to data provided by the Council</td>
<td></td>
</tr>
<tr>
<td>Sharing data with anyone other than the Council</td>
<td></td>
</tr>
<tr>
<td>Erasure or destruction of personal data</td>
<td></td>
</tr>
</tbody>
</table>

Other (please insert details):
Location of Processing Operations

Please tick one box only:

UK ☐

EEA² (European Economic Area) ☐

Outside EEA (European Economic Area) ☐

If outside the EEA please provide details:

Identity of sub-contractors

Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process this data without prior written Council approval.

Purposes

For the purpose of performing the Contract.

If you’re using the data for a reason other than the purpose of delivering the contract, please amend this section accordingly and provide details here.

Duration

Until the expiry or termination date of the Contract.

If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Contract, please amend this section accordingly and detail how long these activities will go on for.

² Details of countries in the EEA are available at the following website: www.gov.uk/eu-eea