

DATED _____ **201[*]**

THE ROYAL VETERINARY COLLEGE (1)

AND

(2)

**SCHEDULE OF AMENDMENTS TO JCT
STANDARD BUILDING CONTRACT
2016 WITHOUT QUANTITIES**

in relation to the development of

RVC HAWKSHEAD CAMPUS SITE A

Recitals

- Ninth Recital: After the word “design” in the first line delete “and” and replace with a comma and after the word “construction” add “and commissioning”.
- Eleventh Recital: After the words (“the Contractor’s Proposals”) and before the semi-colon in the first bullet point add “which the Contractor is satisfied will meet in all respects the Employer’s Requirements in respect of the Contractor’s Designed Portion”.
- Twelfth Recital: Delete “the Employer has examined the Contractor’s Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer’s Requirements.”

Articles

- Article 1: After the words “The Contractor shall” delete “carry out and complete” and replace with the words “(1) carry out and complete the design for the Contractor’s Designed Portion and (2) carry out, complete and commission”.
- Article 3: After the words “the Conditions” in line 3 add “who shall be the Specified Person, as defined in Section 110A(6) of the Housing Grants, Construction and Regeneration Act 1996 (as amended)”.
- Article 8 Delete this Article and replace with “not used”.
- Article 10: Add a new Article 10:
“The amendments to the JCT Standard Building Contract (without Quantities) 2016, set out in the Schedule of Amendments attached to this Contract are hereby incorporated into this Contract and the provisions of the Agreement, the Conditions and the Schedules shall have effect as so amended by the Schedule of Amendments.”

Contract Particulars

In the reference to clause 2.19.3, amend the clause reference to refer to clause “2.19.5”.

[Delete the whole of the section which references “4.3 and 4.14 Fluctuations Provisions”.]¹

In the reference in clause 6.15 to professional indemnity insurance, where the insurance is in the aggregate, it shall be for an amount with [three] automatic reinstatements in any policy year period of insurance.

¹ Remove the square brackets only if fluctuations will not be applicable on the project. If fluctuations are to apply, delete this entire amendment.

In the reference to clause 7.3.1 add: “The form of performance bond is set out in Appendix 7 to the Schedule of Amendments.”

In the reference to clause 7.3.2 add: “The form of Parent Company Guarantee is set out in Appendix 6 to the Schedule of Amendments.”

Delete the whole of the section which references clause 7.4.

Delete the whole of the section which references clause 9.4.1.

Conditions

Section 1: Definitions and Interpretation

1.1 Definitions

Add the following definitions in clause 1.1:

“Beneficiary: any one of (and “Beneficiaries” means any or all of as applicable in the circumstances) the Employer, a funder or funders providing finance in connection with the Works, a tenant or tenants taking a leasehold interest in part or whole of the Works, a purchaser or purchasers purchasing an interest in the whole or part of the Works, [insert any relevant third parties by name if relevant], and any other existing or future person with an interest in the Works which the Employer notifies to the Contractor from time to time. A person with an interest in the Works shall include any future developer, contractor, sub-contractor, consultant, operator, lender to any party or other party with an interest (including any property and/or commercial interest) in the site and/or the development of the whole or any part of the Works or any part thereof.”

“BIM Documents: the documents set out or referred to in the BIM Protocol.”

“Bribery Act: the Bribery Act 2010 (as amended from time to time).”

“Building Regulations: the Building Regulations 2010.”

Amend the following definitions:

CDM Regulations: add at the end of this definition after “2015” “together with any guidance requirements issued under these by the Health and Safety Executive from time to time”.

Conditions: add after “Conditions” the words “(as amended by the Schedule of Amendments)”.

Delete definition and replace:

“Consultants: any consultant engaged by the Contractor, whether directly or by novation, to design all or part of the Contractor’s Designed Portion.”

Add new definitions:

“Contract: the Agreement, the Conditions and the Schedules all as amended by the Schedule of Amendments.”

[**“Contamination:** all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste residue or radiated energy in any spectrum (whether in solid, semi-solid or liquid form or a gas or vapour).”]

Amend the following definition:

Contractor’s Design Documents: delete the definition and insert “any and all drawings, details, activity schedules, bills of quantities, BIM Documents,

design documentation or information provided by the Contractor, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual “cloud”, in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Contractor, any sub-contractor or any member of the Contractor's Design Team in relation to the project or the Works whether in existence or to come into existence”.

Add the following definitions:

“**Contractor’s Design Team:** any or all of the Contractor, Consultant, a sub-contractor and/or other party undertaking design and specification work on behalf of the Contractor in relation to the Works or the project including [novated consultants] and including Sub-Contractors”.

“**Contractor’s Programme:** see clause 2.4A.”

Amend definition:

“**Employer:**” after “Agreement” add “and its successors and permitted assigns”.

Delete the definition of “**Employer Rights**”.

[Delete the definition of “**Fluctuations Provisions**”.²]

Add the following definition:

“**Force Majeure:** an event hindering or delaying the progress of the Works caused by circumstance not within a party's reasonable control including acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom.”

Amend the following definitions:

Delete the definition of “**Funder**” and replace with “any company, bank or institution providing finance in connection with or secured (whether by charge, sale and leaseback or otherwise) upon the Works or any part of the Works”.

Delete the definition of “**Funder Rights**”.

“**Interest Rate:** Delete “5%” and replace with “2%”. Add at the end “The Contractor acknowledges that this is a substantial remedy pursuant to the

² Remove the square brackets only if fluctuations will not be applicable on the project. If fluctuations are to apply, delete this entire amendment.

relevant sections of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).”

Delete the definition of “**P&T Rights**”.

Add the following definitions:

[“**Planning Matrix**: the documents headed "Schedule of Planning Conditions with Responsibilities" and "Reserve Matters Conditions Responsibility Schedule" which are included in the Employer's Requirements at [insert reference];]

“**Practical Completion**: when

- (i) the Works or the relevant Section (as appropriate) are complete and free from apparent defects save for any minor issues with the Works the existence or completion or rectification of which in the opinion of the Architect/Contract Administrator (acting reasonably) would not prevent or interfere with the use (or the fitting-out or equipping for use) of the Works or the relevant Section (as appropriate) for the intended purpose as indicated in the Employer's Requirements; and
- (ii) all planning conditions relating to the Works or the relevant Section (as appropriate and to the extent they are the Contractor's responsibility as set out in the Planning Matrix) have been discharged.”

“**Prohibited Acts**:

- (i) offering, giving, promising or agreeing to give any officer or employee of the Employer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this Contract or any other agreement with the Employer or for showing or not showing favour or disfavour to any person in relation to this Contract or any other agreement with the Employer; or
- (ii) in connection with this Contract paying or agreeing to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Employer; or
- (iii) requesting, agreeing to receive or accepting a financial or other advantage from any person in relation to the performance or award of this Contract or any other agreement with the Employer or any agreement with another person relating to the Works or this Contract.”

Amend the following definitions:

[“**Provisional Sum**: Add at the end of this definition “and which is categorised as “defined” or “undefined” work as set out in the Measurement Rules, except Provisional Sums which are included in the Contractor's Proposals and/or the

Contract Sum Analysis (if any) that are not included in the Employer's Requirements are to be treated as fixed allowances made by the Contractor and will not be subject to instruction by the Employer and/or adjustment³.]

Add the following definition:

"Schedule of Amendments: the document entitled "Schedule of Amendments to the JCT Standard Building Contract 2016 without Quantities" attached to this Contract."

Amend the following definitions:

Scheme: add at the end of the definition "(as amended)".

Add the following definitions:

"Specified Person: the Architect/Contract Administrator."

"Sub-Contractor: any sub-contractor with design responsibility employed by the Contractor to carry out all or part of the design and/or installation of any part of the Works or Contractor's Designed Portion."

Amend the following definition:

Tenant: delete "as such (whether by class or description) in or by the Rights Particulars" and replace with "by the Employer or referred to in the Schedule of Amendments".

Interpretation

Agreement etc. to be read as a whole

- 1.3 Add at the end after the full stop "In the event of an inconsistency, discrepancy or ambiguity in or between the Schedule of Amendments and any other Contract Document, the Schedule of Amendments shall take precedence".

Headings, references to persons, legislation etc

- 1.4.5 Delete "and" from the end of the sub-clause.
- 1.4.6 Delete the full stop and replace with a semi colon.

Add new sub-clauses 1.4.7 to 1.4.9 as follows:

- "1.4.7 the word "including" and the words "shall include" shall be construed as being followed immediately by the words "without limitation";
- 1.4.8 all references to the words "practical completion" shall be construed as "Practical Completion"; and

- 1.4.9 all references to the words “force majeure” shall be construed as “Force Majeure”.

Contracts (Rights of Third Parties) Act 1999

- 1.6 Delete the words “Other than such rights of any Purchasers, Tenants and/or Funders as take effect pursuant to clauses 7A and/or 7B” and replace with “Without prejudice to any third party rights acquired pursuant to clause 7”.

Notices and other communications

- 1.7.2 In the first line change “clause” to “clauses” and before “1.7.4” insert “1.7.3,” and after “1.7.4” delete “,” and insert “and 1.7.6”.

Delete clause 1.7.3 and replace with:

- “1.7.3 Subject to clause 1.7.2, any notice, communication or document shall be duly given to or served on either Party if delivered by hand or sent by Royal Mail special delivery to its address stated in the Contract Particulars or such other address as either Party may specify from time to time by written notice to the other Party.”

- 1.7.4 Delete “Recorded Signed for or by Special Delivery post” and replace with “Royal Mail special delivery”.

Renumber clause 1.7.5 as clause 1.7.6 and add a new clause 1.7.5 as follows:

- “1.7.5 Any notice, as referred to in this clause 1.7, shall be deemed to have been received on the day of delivery if delivered by hand, the second working day after the day of posting if sent by Royal Mail special delivery and on the day of sending if sent by facsimile.”

Effect of Final Certificate

- 1.9.1.1 Delete this clause.

Effect of certificates other than Final Certificate

- 1.10 Delete “Save as stated in clause 1.9 no” and replace with “No”.

Applicable law

- 1.12 Delete this clause and replace with “This Contract shall be governed by and construed in accordance with the laws of England. If any dispute or difference arises between the Contractor and Employer in connection with this Contract which cannot be resolved by mutual agreement, subject to clause 9.2 (adjudication), it shall be referred 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.”

Insert new clause 1.13

“1.13 References in this Contract to the "Contractor" shall, where appropriate, be deemed to include references to the Contractor's Persons.”

Add a new heading: **“Tender”**

Add a new clause:

1.14 “Nothing in the Contractor’s tender for the Works shall operate to exclude or limit the Contractor’s liability for the design of the Contractor’s Designed Portion or for the execution, completion and commissioning of the Works.”

Add a new heading: **“Early Warning”**

Add a new clause 1.15:

“1.15.1 The Contractor shall liaise and cooperate fully with the Employer throughout the Contractor’s performance of his obligations under this Contract, including by giving the Employer early warning of the anticipated occurrence of any Relevant Event or Relevant Matter as soon as reasonably practicable after the Contractor becomes aware thereof.

1.15.2 The Contractor shall liaise and cooperate fully with the Employer’s Persons throughout the Contractor’s performance of his obligations under this Contract.”

Section 2: Carrying out the Works

Contractor’s Obligations

General obligations

Renumber clause 2.1 as 2.1.1

2.1.1 After “out” in the first line delete “and” and replace with “,” and after “complete” add “and commission”. After “shall” in the third line add “check and assume responsibility for the Employer’s Requirements and”.

Add new clauses 2.1.2 to 2.1.6

“2.1.2 No enquiry, inspection, admission, consent, appraisal, comment, sanction, approval, direction, confirmation, acknowledgement, guideline or advice made or given by or on behalf of the Employer or the Architect/Contract Administrator under this Contract shall in any way exclude or limit the duties and responsibilities of the Contractor under it.”

2.1.3 It is agreed that the Contractor will not be entitled to any increase in payment in respect of any additional, changed or varied work or system or sequence of construction from that included in the Employer’s Requirements as a consequence, wholly or partly, of a preference of the Contractor (whether or not approved by the Employer), or as a result of any error, failure, omission or default in its execution of the Works under it.

2.1.4 The obligations and liabilities of the Contractor under this Contract shall not be released, diminished or in any other way affected by:

2.1.4.1 any enquiry, inspection, acknowledgement, comment or consent made or given by or on behalf of the Employer; or

2.1.4.2 the Architect/Contract Administrator including the value of any work, materials or goods in any certificate or statement or any interim or final payment, or issuing the Practical Completion Certificate or, in relation to a Section, a Section Completion Certificate or the certificate of making good, where any non-compliance of materials or goods or workmanship with the requirements of this Contract becomes apparent after the date of such certificate or payment.

2.1.5 The Contractor shall:

2.1.5.1 [act in accordance with the design development protocol set out in section [CROSS REFERENCE] of the Employer's Requirements in order to] integrate, coordinate and ensure compatibility of the Contractor's design of the CDP Works with the design of the rest of the Works;

2.1.5.2 [act in accordance with the site working protocol set out in section [CROSS REFERENCE] of the Employer's Requirements in order to] manage, coordinate the work of and use reasonable endeavours to liaise with Statutory Undertakers and the Employer's Persons in connection with the design, construction and commissioning of the Works and take all reasonably practicable steps to avoid impeding or otherwise delaying the progress of Employer's Persons' work (without being obliged to take any step which would result in the Contractor incurring substantial and unreasonable additional expenditure); and

2.1.5.3 comply with the BIM Protocol.

[2.1.6 Without prejudice to the Contractor's duty to comply with the Statutory Requirements, the Contractor shall (at its own expense and without any entitlement to an extension of time) be responsible for the discharge of those planning conditions which are identified in the Planning Matrix to be the Contractor's responsibility to discharge. The Contractor shall diligently proceed with discharging such planning conditions and shall keep the Employer fully informed of the progress made, including by copying to the Employer any applications made by the Contractor and the responses he receives from the planning authority or any other body of competent jurisdiction. Whenever requested to do so by the Employer, the Contractor shall provide to the Employer evidence (including, if requested by the Employer, the originals or certified copies of approvals, consents, certificates and the like) that it has discharged the planning conditions which are identified as his responsibility to discharge in the Planning Matrix. The Employer shall be entitled to attend meetings held with the planning authority or other body of competent jurisdiction. Provided that the Contractor shall not, without the prior written approval of the Employer, seek to negotiate or agree any approval or relaxation which imposes any additional management, maintenance or cost burden on the Employer or the owner of the Works from time to time. 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 (whether under clause 4.20 or otherwise) as a result of its complying with this clause 2.1.6 and a Variation shall not arise in connection therewith.”]

Add new clause:

“2.1A.1 The parties warrant that:

- .1 they have not committed any offence under the Bribery Act or done any of the Prohibited Acts;
- .2 they have in place adequate procedures to prevent bribery and corruption as contemplated by section 7 of the Bribery Act; and
- .3 they shall comply, and the Contractor shall ensure that its sub-contractors shall comply, with the Modern Slavery Act 2015 and any anti-slavery policy of the Employer.

2.1A.2 If the parties, their sub-contractors, sub-consultants, employees or agents (or anyone acting on their or associated with them in accordance with section 8 of the Bribery Act) have done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act in relation to this Contract or any other agreement (the “defaulting party”):

- .1 the innocent party shall be entitled to:
 - .1 terminate this Contract and recover from the defaulting party the amount of any loss arising from or connected with the termination;
 - .2 recover from the defaulting party the amount or value of any gift, consideration or commission concerned; and
 - .3 recover from the defaulting party any other loss or expense sustained as a consequence of the carrying out of the Prohibited Act or the commission of the offence, and
- .2 any termination under clause 2.1A.2.1.1 shall be without prejudice to any right or remedy that has already been accrued or subsequently accrues to the innocent party.

2.1A.3 The Contractor shall impose on any sub-consultants, sub-contractors or suppliers obligations substantially similar to those imposed on it by this clause 2.1A.

2.1A.4 Notwithstanding clause 9, any dispute relating to:

- .1 the interpretation of clauses 2.1A.1 and/or 2.1A.2; or
- .2 the amount or value of any gift, consideration or commission, shall be determined by the Employer and the decision shall be final and conclusive.

2.1A.5 Any price-fixing, collusion or any other form of anti-competitive behaviour with

other tenderers, sub-contractors or suppliers by the Contractor, or any corrupt practices employed by the Contractor in relation to the Works, shall give the Employer the right to terminate this Contract, and it may result in a reference being made to the Office of Fair Trading.

2.1A.6 If the Contractor (or any of its directors or others exercising powers of representation, decision-making or control over the Contractor) is found to have breached EU or UK competition laws, to the extent that the Employer considers that (i) the breach is serious enough to amount to an act of grave misconduct and/or (ii) the breach constitutes a criminal offence, the Employer shall have the right to terminate this Contract.”

2.2.2 Delete “and” from the end of the sub-clause.

2.2.3 Delete the full stop at the end of the sub-clause and replace with a semi-colon.

Add new sub-clauses:

“2.2.4 check and assume responsibility for the Contractor’s Designed Portion in the Employer’s Requirements; and

2.2.5 ensure the proper integration, co-ordination and compatibility of the various components and elements that comprise the Contractor’s Designed Portion, with one another and with the remainder of the Works.”

Materials, goods and workmanship

2.3.1 Delete from the third line “, so far as procurable, be of the kinds and standards described in the Employer’s Requirements or, if not there specifically described, as described in the Contractor’s Proposals or other Contractor’s Design Documents” and replace with “be of new and satisfactory quality and comply with standards, full specification or requirements set out in the Employer’s Requirements”.

At the end of this clause after the word “obligations” add “and such substitution shall not give rise to any addition to the Contract Sum”.

2.3.2 Before the full stop at the end of this clause add “and sufficient to comply with the Contractor’s obligations under clause 2.9”.

2.3.6 Add a new clause 2.3.6:

“The Contractor undertakes and warrants to the Employer that (unless otherwise instructed or authorised by or on behalf of the Employer):

.1 the Contractor has not specified, selected and/or approved and shall not specify, select and/or approve for use; and

.2 the Contractor has used and shall use the level of skill, care and diligence referred to in clause 2.19.1 to ensure that there shall not be used in the project or the Works,

any material, substance, building practice or technique which is:

- .3 prohibited by this Contract;
- .4 not in accordance with any relevant British Standard, Eurocode, code of practice, best up-to-date building practice or agrément certificate issued by the British Board of Agrément;
- .5 not in accordance with the guidance and comment contained in the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011"; or
- .6 generally known within the construction industry or relevant profession (as referred to in clause 2.19.1) at the time of specification, selection, approval or use (as the case may be) to:
 - .1 be deleterious;
 - .2 be harmful to the health or safety of any person;
 - .3 threaten the structural stability, physical integrity or performance of the Works or the project or any part or component of the Works or the project; or
 - .4 reduce the normal life-expectancy of the Works or the project or any part or component of the Works or the project.

2.3.7 Add a new clause 2.3.7

"The Contractor shall immediately inform the Employer as soon as it becomes aware or ought reasonably to have become aware of the specification for or use in the Works or the project of any of the materials of the type specified or referred to in clause 2.3.6."

Possession

Date of Possession – progress

- 2.4 At the beginning add "Subject to clause 2.4A" and change "On" to "on".

Add a new clause 2.4A:

"2.4A.1 On or before the date of this Contract, the Contractor is to submit a programme (the "Contractor's Programme") for acceptance to the Architect/Contract Administrator. The Contractor is to provide five paper copies and also an electronic data copy contained on a CD/DVD. The Contractor's Programme must contain detailed activity logic link dependencies and give such further information as the Architect/Contract Administrator may reasonably require but as a minimum it shall contain the following items:

- (i) the activities in all work packages including those by the principal sub-contractors and suppliers, Statutory Undertakers, and those contractors and suppliers directly employed by the Employer and others (if made known to the Contractor);
- (ii) the earliest and latest start and finish dates for every activity in

each work package including dates when the Contractor plans to complete work to allow the Employer, Statutory Undertakers and others to do their work;

- (iii) access dates for each and any phase or Section of the Works;
- (iv) programme details including connection dates and dates when services are to be made or disconnected and re-made live (including detailed method statements) are required for the connection of common mains services for electricity, heating, water, telephones and data, sewage, rain water, and potable water;
- (v) critical path analysis;
- (vi) milestones and key dates;
- (vii) holiday periods, and due allowance for the Employer's examination and graduation periods and other such notified dates;
- (viii) dates by which the Contractor's Designed Portion design work or drawings to be produced by the Contractor or its Design Team, sub-contractors or suppliers will be submitted to the Employer for acceptance and dates by which acceptance of such design work or drawings will be required by the Contractor, allowing a reasonable time for submittal and review, and for the process to be repeated, if necessary, in accordance with the Design Submission Procedure;
- (ix) dates by which samples to be produced by the Contractor will be submitted for approval by the Employer, and dates by which approval of such samples will be required by the Contractor, allowing a reasonable time for submittal and review, and for the process to be repeated if necessary;
- (x) procurement periods and delivery dates for the major items of goods, plant and materials;
- (xi) dates for which the Works and/or any Section or phase of the Works will be ready for testing and inspection by the Architect/Contract Administrator;
- (xii) details and dates of any information required from the Employer for the work contained in Provisional Sums (if any);
- (xiii) commissioning periods;
- (xiv) provisions for float, time risk allowances, quality control procedures, health and safety requirements (and any other requirements that may be set out by the Contractor);
- (xv) a sub-contract package procurement and sub-contract package completion programme; and

- (xvi) Contractor's Designed Portion design procurement and Contractor's Designed Portion design completion programme.

2.4A.2 The Contractor's Programme shall set out the Contractor's intentions for carrying out the design, procurement, execution and commissioning of the Works or relevant Section or phase by the Date for Completion, and must clearly show the critical paths, earliest and latest start and finish dates for all activities, and identify any activity float. Immediately following the giving of any extension of time by the Architect/Contract Administrator, the Contractor is to revise the Contractor's Programme and issue it to the Architect/Contract Administrator providing the updated information in exactly the same format as the original.

2.4A.3 The Contractor is to provide a detailed progress update to the Architect/Contract Administrator monthly in writing and shall issue a marked-up Contractor's Programme comparing the progress of the design, procurement, execution and commissioning of the Works or relevant Section or phase with the current Contractor's Programme, within 7 days if requested by the Architect/Contract Administrator at a monthly project meeting or within 7 days after a decision under clause 2.28.1. The Contractor shall immediately advise the Architect/Contract Administrator in the event of delay or disruption to the Works and will set out the measures which the Contractor is taking or proposes to take to minimise or make good such delay or disruption which must be added to the Contractor's Programme."

[Deferment of possession

2.5 Re-number this clause as 2.5.1 and in line one delete "If" and replace with "Subject to clause 2.5.2 below, if".]

Insert new clause 2.5.2:

["2.5.2 Provided the Employer satisfies the requirements of clauses 2.32.1.1 and 2.32.1.2 in respect of Section [1] of the Works, the Employer may defer the giving of possession of the site for Section [2] to the Contractor for a period equal to the difference between the Completion Date of Section [1] and the date that the Section Completion Certificate is actually issued in relation to Section [1] under clause 2.30 and the Contractor shall not be entitled to an extension of time under clause 2.28 (and the same shall not be a Relevant Event under clause 2.29) or to loss and expense under clause 4.20 (and the same shall not be a Relevant Matter under clause 4.22) in respect of Section [2] for the period of such deferment."]

Early use by Employer

2.6.1 In the first line, delete "with the Contractor's consent" and replace with "but not so as deliberately to hinder or delay the progress of the Works". In the second sentence, delete "Before the Contractor gives his consent to such use or occupation, the" and replace with "The".

Work not forming part of the Contract

2.7.1 At the end of this clause, before the semi-colon, add "by the Employer or by any of the Employer's Persons".

2.7.2 [After the word “may” on the second line add the words “(but subject always to any Access Regime agreed by the parties under clauses 2.7A to 2.7E).”.] In the second line, delete “with the Contractor’s consent” and replace with “, but not so as deliberately to hinder or delay the progress of the Works,”.

[Insert new clauses 2.7A to 2.7E:

“2.7A The Contractor shall liaise and cooperate with any Employer’s Persons undertaking any works on the site. The Contractor shall take all reasonable steps to avoid impeding or otherwise delaying the progress of Employer’s Persons’ work. The Contractor shall immediately inform the Employer if in its opinion an Employer’s Person is impeding or delaying its progress or may be about to do so. The Contractor shall take all measures it reasonably can to mitigate the impact of such works of Employer’s Persons on the Works.

2.7B The Contractor agrees that the Employer and/or third parties with an actual or prospective interest in the site, Works or the completed Works, or persons employed or otherwise engaged by them, may require access to or the use of completed areas of the Works or across the site before Practical Completion of the relevant part of the Works or Section in order to carry out fitting-out, surveys or other works, including any such access or use which may be specifically anticipated in the Contract Documents. The Contractor shall allow all such access and use. In each case in good time before such access or use is required by the Employer and/or third parties, the Employer and the Contractor (both acting reasonably) shall agree an access regime which shall describe the extent and location of, and other relevant matters relating to, such access or use (including the programme, the steps the Contractor will take to connect and/or protect appliances or machinery and arrangements for the co-ordination of activities on site), and the Contractor shall advise the Employer of the information he needs in order to programme and manage the co-ordination of its own activities with the activities of the Employer and/or the said third parties (or persons employed or otherwise engaged by them) and to assess whether the same will or is likely to delay or disrupt the carrying out and completion of the Works or any part thereof or any other relevant matter. Such access regime, once agreed between the parties (including any revised version thereof), is referred to in this Contract as the “Access Regime”. The Contractor shall also prepare and agree with the Employer (both acting reasonably) a schedule of condition for the areas to which such access will be given pursuant to this clause 2.7B. The Contractor shall comply with any requirements set out in the Contract Documents and with all reasonable instructions of the Employer with regard to the preparation and implementation of the Access Regime. In addition, the Contractor:

.1 shall appoint a person who shall have previously been approved by the Employer (such approval not to be unreasonably withheld or delayed) to manage and co-ordinate such access, and the Contractor shall not change any such appointed person except with the Employer’s prior written approval;

.2 shall co-ordinate such access with the carrying out of the Works which have yet to be completed and shall constantly use best endeavours (without incurring substantial additional costs) to prevent any delay or disruption to the carrying out of such works and of such fitting-out or other works, however caused, and the Contractor undertakes that in so doing he shall cooperate fully with the Employer or, if so directed

by the Employer, with any said third party or with persons employed or engaged by them;

.3 shall not, without having previously notified the Employer in writing thereof, impose or agree to any aspect of the Access Regime which would or is likely to delay or disrupt the carrying out and completion of the Works or any Section, and (except to the extent the Employer or any said third party, or persons employed or otherwise engaged by them, fails to comply with the Access Regime) the Contractor agrees that he has made or shall be deemed to have made all reasonable allowance in the programming, planning and pricing of the Works for allowing such access; and

.4 shall promptly notify the Employer in writing if at any time he considers that the Employer or any said third party, or any persons employed or otherwise engaged by them, is failing to comply with the Access Regime and/or with any site induction procedures and site regulations and directions of the Contractor concerning such access or use or concerning health and safety matters generally.

Where and to the extent that the Contractor has, or ought reasonably to have, allowed in its programme and/or in the Contract Sum for complying with its obligations in this clause 2.7B, it 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 (whether under clause 4.20 or otherwise) as a result of such compliance.

2.7C The Employer shall comply, and shall use reasonable endeavours to procure that the said third parties shall comply with the Access Regime and with any site induction procedures and site regulations and directions of the Contractor concerning access to or use of the site or concerning any health and safety matters which have previously been notified to the Employer by the Contractor.

2.7D The Employer shall not be regarded as having taken possession of any part of the Works within the meaning of clause 2.33 by reason of any such fitting-out or other works or by the Contractor allowing any access or use as referred to in clause 2.7B.

2.7E The Contractor shall liaise and cooperate fully with the Employer and any third parties which are from time to time notified to the Contractor by the Employer. Such liaison and cooperation shall include the provision of reports and other information and such attendance by the Contractor at progress meetings as is reasonably required by the Employer. The Contractor shall have no authority to represent the Employer in any dealings with any such third parties. The Contractor shall not act on any instructions purportedly given to him by or on behalf of any such third parties but shall forthwith notify the Employer of the same. 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 (whether under clause 4.20 or otherwise) as a result of its compliance with this clause 2.7E."]

Supply of Documents, Setting Out etc.

Construction information and Contractor's master programme

2.9.1.2 After "programme" in the second line add "setting out such information as the Architect/Contract Administrator may reasonably require".

2.9.4 Delete clause 2.9.4. Add new clauses 2.9.4A to 2.9.4E:

"2.9.4A In relation to the CDP Works, the Contractor without further charge to the Employer shall submit to the Architect/Contract Administrator at one or other's request [five (5)⁴] copies, a negative and an electronic file in an appropriate format of all drawings, details, documents and any other information which are:

- .1 reasonably necessary from time to time to explain and amplify the Employer's Requirements or the Contractor's Proposals; or
- .2 necessary to explain, amplify, show or describe the Contractor's Designed Portion or to enable the Contractor to complete the Contractor's Designed Portion or to comply with instruction issued by the Architect/Contract Administrator; or
- .3 stated in the Employer's Requirements or the Contractor's Proposals to be provided by the Contractor, and permitted in a form that enables judgement of either part of, or a complete system or element that is part of, the Works.

2.4.9B In addition the Contractor shall nevertheless supply information as stated in this clause on the dates shown on the Contractor's Programme which the Contractor is to provide to the Architect/Contract Administrator in accordance with clause 2.4A.1 or, failing that, in sufficient time to allow the Architect/Contract Administrator to comment upon them, should it wish to do so, before details are finalised and issued for construction and, in any event, before the Date of Possession of the site of the Works, at least 21 Business Days before the date upon which it proposes to carry out work pursuant to them and within 14 days of the issue of any Variation under clause 5 or decision under clause 2.28, with copies of the amendments and revisions to the Contractor's Programme to take account of any such Variations or decision.

2.9.4C If, within 14 days of receipt of any drawing, detail or document or any other information provided for in clause 2.9.4A, the Architect/Contract Administrator returns such drawing, detail, document or information together with its comments, the Contractor shall immediately act on those comments and incorporate them and promptly return an amended copy of the drawing, detail, document and information showing it has done so.

2.9.4D If the Architect/Contract Administrator does not return the drawing, detail, document or any other information referred to in clause 2.9.4A within 14 days of receipt, the Contractor may use such drawing, detail, document or other information for the construction of the Works.

⁴ Delete or amend as appropriate for the Project.

2.9.4E Any comments received from the Architect/Contract Administrator in accordance with the provisions of this clause shall not, negate or otherwise limit the Contractor's obligations under the Contract".

Add new clauses 2.9.6 and 2.9.7:

"2.9.6 The Contractor shall comply with any restrictions on working hours, acceptable noise levels and other constraints on working space, permitted periods of working or working conditions in relation to the carrying out of the Works and access to and from the site, together with any rules governing site management or the conduct of operations on site, that are set out in or reasonably capable of being inferred from the Employer's Requirements. The Employer shall agree with the Contractor any such matters which are not set out in, or reasonably capable of being inferred from, the Contract Documents, and the Contractor shall comply with the same.

2.9.7 The Employer may, subject to prior consultation with the Contractor, issue instructions making reasonable alterations to any of the matters referred to in clause 2.9.6 at any time after the commencement of the Works. Such alterations shall constitute a Variation if they amount to an imposition of substantial obligations or restrictions or the addition or alteration or omission of substantial obligations or restrictions of the kind referred to in clause 5.1.2, but otherwise they shall not constitute a Variation or give rise to any entitlement to any extension of time under clause 2.28 to the relevant Completion Date or reimbursement of loss and/or expense under clause 4.20 or any addition to the Contract Sum."

Levels and setting out of the Works

Add "**and ground/site/exiting building conditions**" to the end of the heading

[2.10 Renumber clause 2.10 as 2.10.1.]

2.10.1 Delete "2.9.4.2" and replace with "2.9".

[Add new clauses 2.10.[2] to 2.10.[3][4]:]

"[2.10.2 The Contractor shall be deemed to have inspected, examined and ascertained fully and shall accept full responsibility for ascertainment of the physical and surrounding conditions that affect the site and its surrounds and information available in connection therewith and to have satisfied itself so far as is practicable and reasonable as to:

.1 the condition of the soil, geological and hydrological conditions at and below its surface level on the site;

.2 the ground to be remediated, excavated and/or built upon and any existing structures and/or services at or below surface level including but not limited to the composition of such existing structures and/or services;

.3 the extent and nature of work and materials necessary for constructing and completing the Works; and

.4 the means of communication with and access to the site and the accommodation it may require,

and in general to have obtained for itself all necessary information as to risks contingencies and all other circumstances which may influence or affect the Works. The Contractor shall not be entitled to rely on any surveys, reports or other documents supplied to it by or on behalf of the Employer regarding the said physical and other conditions. The Contractor shall not be entitled to any addition to the Contract Sum or to any extension of time for completion of the Works as a result of any such physical or other conditions. 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.]

[2.10.3 The Contractor shall be responsible for, and hold the Employer harmless from cleaning up or otherwise dealing with any Contamination on the site that arises as a result of any act, omission or default of the Contractor and/or any of the Contractor's Persons so that it shall at all times comply with its obligations under this Contract including complying with, at its own cost, any applicable Statutory Requirements and any consents, permissions, approvals, licences, orders, notices or directions of any regulatory body (whether made against the Employer or the Contractor or another person).]

[2.10.4 Without prejudice to clauses 2.10.2 and 2.10.3, and subject always to the provision of a warranty (in a form to be provided by the Employer) from a third party contractor, in the event that the Employer notifies the Contractor that a third party contractor has carried out demolition, site clearance, site/ground remediation or other preparatory work at the site (where the existence and identity of such a contractor is made known to the Contractor it shall be the "First Contractor"), and in the event that conditions of the site are not as set out in any document, drawing or information prepared by or on behalf of the First Contractor and supplied by the Employer to the Contractor, the Contractor agrees that it shall pursue any claims (including claims which the Contractor might otherwise have had against the Employer under clause 4.20) against the First Contractor.]

Errors, Discrepancies and Divergences

Preparation of Employer's Requirements

2.13 Delete the clause and replace with "The Contractor unconditionally assumes and accepts full responsibility for the contents of the Employer's Requirements and for any mistake, discrepancy or omission contained in the Employer's Requirements or in the Contractor's Proposals or between them. The Contractor undertakes that the Contractor's Proposals meet the Employer's Requirements. The Contractor is not responsible under this Contract for the content or adequacy of the **Concept Brief** as described in the Employer's Requirements [reference]."

CDP-related documents – errors and inadequacy

2.14.1 Delete "and the Contractor under clause 2.13 is not responsible for verifying its adequacy,". Delete "and, subject to clause 2.17, that alteration or modification shall be treated as a Variation" and replace with "by the

Contractor without any alteration to the Contract Sum or any entitlement to an extension of time under clause 2.28 to the relevant Completion Date and without that alteration or modification constituting a Variation.”

- 2.14.2 Insert after “Contract Sum” in the third line the words “nor any entitlement to an extension of time under clause 2.28”.

Notification of discrepancies etc.

- 2.15 At the end of this clause delete the full stop, add “and such instructions shall not give rise to any addition to the Contract Sum nor any entitlement to an extension of time under clause 2.28. The Contractor accepts the full risk of any such inadequacy, discrepancy or divergence.”

Discrepancies in CDP-related documents

- 2.16.1 After “and/or other Contractor’s Design Documents” insert “and/or the Employer’s Requirements”. Delete “but, to the extent that they relate to the removal of that discrepancy or divergence,” and replace with “and”.

- 2.16.2 Delete this clause.

Divergences from Statutory Requirements

- 2.17.2.1 In the last line after “Requirements”, before the semi-colon, add “provided that the planned change in the Statutory Requirements was not in the public domain on the Base Date; if it was, the alteration or modification shall not be treated as a Variation (with no addition to the Contract Sum and no entitlement to an extension of time under clause 2.28), and the Contractor shall complete the design and construction of the Works as altered or modified entirely at its own cost”.

- 2.17.3 Delete this clause and replace with “Number not used”.

CDP Design Work

Design liabilities and limitation

Delete clauses 2.19.1 and 2.19.2 and replace with new clauses 2.19.1 to 2.19.4. Renumber the existing clause 2.19.3 as 2.19.5:

- “2.19.1 Without prejudice to clause 2.1.1, the Contractor undertakes and warrants to the Employer that, where there is a Contractor’s Designed Portion:

- .1 the design of the Contractor’s Designed Portion (excluding the Concept Brief as described in the Employer’s Requirements for which the Contractor is not responsible) whether or not prepared by or on behalf of the Contractor and whether contained in the Contractor’s Proposals, the Employer’s Requirements or in what the Contractor is to complete under this Section 2 in accordance with the Employer’s Requirements and the Conditions (including any further design which the Contractor is to carry out as a result of a Variation to the Employer’s Requirements), has been or will be prepared using all the reasonable skill, care and attention as it is reasonable to

expect of a suitably qualified and experienced consultant of the appropriate discipline undertaking like services and designing works for projects of a similar scope, purpose, size and complexity to the Contractor's Designed Portion;

- .2 the design of the Contractor's Designed Portion, in accordance with the standard required under clause 2.19.1.1, and the construction of the Contractor's Designed Portion, which for the avoidance of doubt comprise all workmanship, manufacture and/or fabrication, will, when completed, comply with any performance specification or requirement included in the Employer's Requirements or reasonably to be inferred from them;
- .3 the design of the Contractor's Designed Portion, in accordance with the standard required under clause 2.19.1.1, and the construction of the Contractor's Designed Portion, which for the avoidance of doubt comprise all workmanship, manufacture and/or fabrication has been and will be prepared and specified using best up-to-date practice and to standards consistent with the intended use of the Contractor's Designed Portion;
- .4 the design of the Contractor's Designed Portion, in accordance with the standard required under clause 2.19.1.1, and the construction of the Contractor's Designed Portion will, when completed, comply with the Statutory Requirements.

Nothing in clause 2.19.1 shall be construed as imposing a fitness for purpose obligation on the Contractor in relation to the design of the Contractor's Designed Portion.

- 2.19.2 The Employer shall be deemed to have relied exclusively upon the obligations of the Contractor set out in clause 2.19.1.
- 2.19.3 There shall be no addition to the Contract Sum, the Contractor shall not have or make any claim for an extension of time under clause 2.28 or for loss and/or expense under clause 4.20, and clause 8.9 shall not have effect where, and to the extent that, the cause of the progress of the Contractor's Designed Portion having been affected, delayed, or suspended is any mistake, inaccuracy, discrepancy or omission in the Contractor's Proposals and/or the Employer's Requirements or any failure by the Contractor to provide necessary drawings or documents in due time.
- 2.19.4 The Contractor, rather than the Employer, is responsible for choosing the manufacturers and suppliers of all goods, materials and products used in the Contractor's Designed Portion, and for the performance of the goods, materials and products, whether or not they are referred to in the tender documents, or in any other documents produced by or on behalf of the Employer, in connection with this Contract."

Relevant Events

- 2.29 After "clauses 2.27 and 2.28" in the first line, add:

“but only to the extent that such events are not in any way consequent upon or necessitated by, or concurrent with, any other delay caused by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor or Contractor’s Persons”.

2.29.2.1 After “5.3.2” and before the semi-colon at the end of this clause add:

“or unless the Architect/Contract Administrator had reasonable grounds, based on a previous opening up or testing having revealed that materials, goods or work of a similar nature were not in accordance with this Contract, for suspecting that such materials or goods are not in accordance with this Contract”.

[2.29.3 Delete “2.5” and replace with 2.5.1” and add at the end before the semi colon “(but not clause 2.5.2)”.]

2.29.7 Add at the end of the sub-clause and before the semicolon "provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work the Statutory Undertaker is to undertake is required to commence and be completed and has used reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates".

2.29.9 After "loss or damage" add "to the Works ". After "Specified Peril" insert "at the site".

2.29.11 Add at the end of the sub-clause and before the semicolon "provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

Add a new clause 2.29A:

“2.29A If the Contractor has failed to complete the Works or the relevant Section by the Completion Date then, during the period from the Completion Date until the date of Practical Completion:

- .1 the Contractor shall not be entitled to an extension of time under clause 2.28.1 to the extent that the cause of any further delay in the completion of the Works or the Section is one or more of the Relevant Events referred to in clause 2.29.14 occurring after the Completion Date;
- .2 in the case of any delay arising out of Relevant Events other than the Relevant Event in clause 2.29.14, the Contractor shall be entitled to an extension of time in accordance with clause 2.28.1 and the Architect/Contract Administrator shall be entitled to fix a new Completion Date under clause 2.28.1 by reference to an extension of time of the period of delay caused by such Relevant Event calculated from the Completion Date previously fixed and not from the date of occurrence of the Relevant Event; and
- .3 for the avoidance of doubt, the Contractor hereby acknowledges that the Architect/Contract Administrator shall continue to be entitled to issue instructions as referred to in

clause 2.29.2 notwithstanding that the Completion Date has passed.”

[Add a new clause 2.29B:

“2.29B Notwithstanding anything to the contrary contained in this Contract, and without prejudice to the Contractor’s obligation in clause 2.27.1 (if and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed to give notice to the Architect/Contract Administrator of such delay), if the Contractor does not:

.1 notify the Architect/Contract Administrator within twelve weeks of becoming aware of the event making express reference to clause 2.27; and

.2 comply with the provisions of clause 2.27 within twelve weeks of the notice referred to in clause 2.27.1,

it shall not be entitled to an extension to the Completion Date under this Contract or otherwise, regardless of the reason for the delay.”]

Practical Completion, Lateness and Liquidated Damages

Practical Completion and certificates

Add new clause 2.30A:

“2.30A.1 The Architect/Contract Administrator may at its discretion issue a list of incomplete or defective work before or at the time of issuing the Practical Completion Certificate or a Section Completion Certificate, as appropriate, and make the issue of the Practical Completion Certificate or a Section Completion Certificate subject to the completion and/or remedying by the Contractor of the incomplete or defective work included or referred to in this list.

2.30A.2 The Contractor shall complete and/or remedy this incomplete or defective work at no cost to the Employer at such times and within such periods as may be required by the Employer acting reasonably. The Contractor shall confirm in writing its agreement to complete and/or remedy this incomplete or defective work before the Practical Completion Certificate or a Section Completion Certificate, as appropriate, is issued. Even if the Contractor does not confirm its agreement, it shall complete and/or remedy the incomplete or defective work under this Contract.

2.30A.3 In completing and/or remedying this work following Practical Completion of the Works and/or any Section, the Contractor shall cause as little disturbance and inconvenience as possible to the Employer and any other occupier or user of the premises comprising the Works, and the Contractor shall co-operate fully with the Employer in working only in restricted areas outside normal working hours, during holiday periods, at weekends and on bank holidays.”

Add new clause 2.30B:

“2.30B Unless the Employer otherwise agrees in writing (which agreement may

relate to one only or to both sub-clauses 2.30B(i) and 2.30B(ii) and to one or more or all of sub-clauses 2.30B(iii) to 2.30B(xi) and notwithstanding anything to the contrary elsewhere in this Contract:

2. 30B(i) no part of the Works or any Sections shall be deemed to have reached Practical Completion; and

2.30B(ii) no part of the Retention shall be released to the Contractor,

until such time as the final copies of all of the following items which the Contractor is obliged under this Contract to provide or procure have been procured for and/or provided to the Employer:

2.30B(iii) as-built drawings (in their native format including but not limited to [INSERT]) which the Contractor is obliged to provide;

2.30B(iv) maintenance manuals;

2.30B(v) the Health and Safety File under the CDM Regulations;

2.30B(vi) the deeds of warranty referred to in clauses 7C and 7D, deed or deeds of novation under clause 7E.1 and bond or guarantee under clause 7.3;

2.30B(vii) manufacturers' guarantees;

2.30B(viii) energy performance certificates as required under Part L of the Building Regulations;

2.30B(ix) building user guides;

and where it is required by the Employer's Requirements:

2. 30B(x) the testing, commissioning or adjustment of any mechanical or electrical services (including for the avoidance of doubt lifts, fire alarms etc) has been properly completed to the reasonable satisfaction of the Architect/Contract Administrator;

2. 30B(xi) the completion of users' familiarity training to allow the buildings to be efficiently operated and safely occupied."

Add new clause 2.30C:

"2.30C Notwithstanding anything to the contrary in the Contractor's Programme, these Conditions, the Agreement or the Contract Documents, the Employer shall not be obliged to take possession of the whole, a part or any Section of the Works or to issue a Practical Completion Certificate (or in the case of a Section a Section Completion Certificate) before the Completion Date for the Works or relevant Section as set out in the Agreement (and if applicable as adjusted in accordance with these Conditions)."

Partial Possession by Employer

Contractor's consent

- 2.33 Add new sentence at the start of this clause:

“The Employer and the Contractor may agree before the commencement of the Works a date or dates on which the Employer is to possess a part or parts of the Works or a Section of them, and if they so agree, the Contractor shall give up possession of that part or parts or that Section of the Works by the agreed date or dates or any extension to it or them or adjustment to it or them under clause 2.28.”

Delete: “If” at the beginning of the next sentence and replace with: “Notwithstanding this, if”.

Practical completion date

- 2.34 Delete “, and the Rectification Period in respect of the Relevant Part shall be deemed to have commenced,”. Before the full stop at the end of clause 2.34 add “, but the Rectification Period for the Relevant Part shall be extended so as to cease at the expiry of the Rectification Period for the remainder of the Works (or, in the case of a Section, at the expiry of the Rectification Period for the Section of which the Relevant Part forms part)”.

Defects etc. – Relevant Part

- 2.35 Add to the end of clause 2.35, before the full stop, “provided that the Architect/Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part.”

Defects

Schedule of defects and instructions

- 2.38.1 After “other faults” add “(and any such consequential damage)”.
- 2.38.2 After “other fault” add “(and any such consequential damage)”.
- 2.38 In line 1 of the final paragraph delete “Within” and add “Within any time limit reasonably stated by the Employer in any schedules or instructions or if no such time limit is stated, within.”

In line 2 of the final paragraph after “other faults” add “(and any consequential damage to the remainder of the Works or the existing structures and their contents)”.

In line 4 of the final paragraph after “other faults” add “(and any such consequential damage)”.

- 2.38.2 Delete the words “after delivery of that schedule or”.

Add new clauses 2.38A and 2.38B:

- “2.38A Clause 2.38 shall apply mutatis mutandis to any defects, shrinkages or other faults and to any item of incomplete work remaining at Practical Completion of any relevant Section.

[2.38B In cases of extreme urgency the Employer (acting reasonably) may require any matter notified under clause 2.38 to be made good within such period of time specified by the Employer as the circumstances require. [In all other cases the Contractor shall comply with the following actions and timescales in relation to defects:

2.38B.1 The Contractor shall make safe by attendance to the affected parts and/or carry out such other works to maintain the affected parts as habitable for:

- Emergency Defect - response time to be within 4 hours of being notified;
- Urgent Defect - response time to be within 24 hours; and
- Routine Defect – response time to be within 7 calendar days,

and if the Contractor does not respond with the required action within the required timeframe the Employer may appoint others to make safe by attendance the affected units and/or carry out such other works to maintain the affected units as habitable and the Employer may recover the cost of so doing (with an addition of [15%] for administration costs) from the Contractor as a debt and any such action by the Employer shall not affect the collateral warranties.

2.38B.2 The Contractor shall effect a permanent repair to or remedy of a defect:

- in relation to an Emergency Defect, within 2 Business Days;
- in relation to an Urgent Defect, within 5 Business Days; and
- in relation to a Routine Defect, within 20 Business Days,

and if the Contractor does not effect a permanent repair to or remedy the affected unit within the stipulated time the Employer may appoint others to do so and the Employer may recover the cost of so doing (with an addition of [15%] for administration costs) from the Contractor as a debt.

2.38B.3 For the purposes of clause 2.38B.1 and 2.38B.2, the Contractor is deemed to have been notified of a defect once the Employer or anyone so authorised by the Employer (the “Notifying Party”) issues a written (including email) notice to the Contractor. The Notifying Party shall use reasonable endeavours to follow up any telephonic notification with a written (including email) notification, provided that any failure by the Notifying Party to do so shall be without prejudice to the Contractor’s obligations pursuant to this Contract. The Contractor shall confirm receipt of any notification issued

pursuant to this clause 2.38B.3 in accordance with the following timescales:

- in relation to an Emergency Defect, within 15 minutes;
- in relation to an Urgent Defect and/or a Routine Defect, within 1 hour; and
- in relation to a Routine Defect, within 4 calendar days,

failing which, the Contractor shall be deemed to have confirmed receipt of the notification in any event.

2.38B.4 In carrying out its obligations under clauses 2.38, 2.38A and 2.38B the Contractor shall at all times liaise with, and accept the instructions of the Employer or such other person as the Employer shall nominate. In particular but without limitation the Contractor shall agree appointment times and dates with the Employer and occupier of the affected part of the site.

2.38B.5 The time periods set out in clauses 2.38B.1, 2.38B.2 and 2.38B.3 may be extended to such other reasonable time as the Employer may from time to time specify.”]

Certificate of Making Good

2.39 Add a new second sentence:

“A Certificate of Making Good shall not be issued if any item on the list of incomplete or defective work referred to in clause 2.30A, or any item to be provided or dealt with as referred to in clause 2.30B, remains incomplete or defective, or has not been provided or dealt with, at the end of the relevant Rectification Period, and the Employer shall not be required to issue a Certificate of Making Good before the expiry of the relevant Rectification Period”.

Contractor’s Design Documents

After “**As-built Drawings**” add: “**and Operation and Maintenance Manuals**”.

2.40 Delete this clause and replace with:

“The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before Practical Completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor’s Design Documents and related information as may be specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as built, from the achievement of Practical Completion of the Works or relevant Section, or relate to the maintenance and operation of them or their installations, to enable the Employer to fit-out, operate and use fully all the parts of the Works or relevant Section. Not earlier than eight and not later than six weeks prior to the anticipated date of issue of the Practical Completion Certificate or any Section Completion Certificate (as applicable), the Employer and the Contractor shall meet to agree the precise list of

documents and information which the Employer requires to be provided by the Contractor under this clause.”

Copyright and Use

2.41 Delete and substitute:

“2.41.1 The copyright in the Contractor’s Design Documents shall remain vested in the Contractor (or the relevant sub-contractor or member of the Contractor’s Design Team as applicable).

2.41.2 The Contractor grants to the Employer an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding Practical Completion of the Works or the termination of this Contract, to copy and use the Contractor’s Design Documents and to reproduce the designs and contents of them for:

- .1 any purpose relating to the Works, project and/or the Employer’s interest in the Works and/or project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the project and/or the Employer’s interest in the project; and
- .2 the extension of the Works or the project, so that the Employer can interface any extension of the Works or the project with the existing Works or project, but the licence shall not include a licence to reproduce the designs in the Contractor’s Design Documents for any extension of the Works or the project.

2.41.3 The Employer shall be entitled to grant sub-licences under the Employer’s licence and both the Employer’s licence and any sub-licences shall be transferable to others.

2.41.4 The Contractor undertakes and warrants that it shall procure that each individual author of the Contractor’s Design Documents, on or before Practical Completion, signs a waiver in respect of the Contractor’s Design Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Employer and it shall include any sub-licensees and assignees under clause 2.41.3, any assignees under clause 7, any successors in title to the copyright in the design under this Contract and any successors in title to the Employer’s business.

2.41.5 Notwithstanding the Practical Completion of the Works or the termination of this Contract, the Contractor shall give to the Employer any paper copies and electronic copies of the Contractor’s Design Documents that the Employer reasonably requests. The Contractor shall give these copies to the Employer within five (5) working days of any request, and the Employer shall pay the Contractor’s reasonable copying costs. The Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Contractor’s Design Documents that the Contractor

gives to the Employer.

2.41.6 The Contractor warrants that in performing the Works and the design of the Works it has not infringed and shall not infringe any copyright or other intellectual property or design rights of any third party.

2.41.7 The Contractor shall not be liable for any use of the Contractor's Design Documents for any purpose other than the purpose they were prepared for."

Insert new clause 2.42:

"2.42 In the event of termination of the Contractor's employment however effected, the Contractor without charge to the Employer shall provide the Employer with, and the Employer may retain, two copies of the Contractor's Design Documents, all drawings, details and other information as the Contractor has prepared or had prepared on its behalf or previously provided, together with any additional drawings or information required for the purposes referred to in clauses 2.40 and 2.41 in respect of those parts of the Contractor's Designed Portion designed by or on behalf of the Contractor and completed before the termination of the Contractor's employment hereunder."

Section 3: Control of the Works

Access and Representatives

Access for Architect/Contract Administrator

3.1 Re-number this clause as 3.1.1. Delete "so far as possible" from lines 4 and 5.

Add new clauses 3.1.2, 3.1.3 and 3.1.4:

"3.1.2 The Architect/Contract Administrator and its representative shall have access to attend all regular site meetings.

3.1.3 The Contractor shall without charge provide all necessary facilities and equipment for the inspection of the Works or any part thereof by the Employer and Architect/Contract Administrator or any other person or persons authorised by him at all times prior to Practical Completion of the Works or Section and also for the inspection by such persons of all remedial works carried out pursuant to clauses 2.38, 2.38A and 2.38B.

3.1.4 The Contractor shall not act in accordance with or rely on any instructions or approvals (or similar) made by or on behalf of any person authorised by the Architect/Contract Administrator to carry out inspections pursuant to this clause 3.1, but the Contractor shall promptly report the same to the Architect/Contract Administrator."

Sub-Contracting

Consent to sub-contracting

Insert new clauses 3.7.3, 3.7.4, 3.7.5, 3.7.6:

"3.7.3 The Contractor shall satisfy itself prior to sub-contracting the whole or any

part of the Works or the design of the Contractor's Designed Portion that the proposed consultant or sub-contractor is competent and has allocated or will allocate adequate resources to enable it to comply with all its obligations under the CDM Regulations.

- “3.7.4 The Contractor shall not appoint a Consultant, sub-contractor or supplier if compulsory grounds for excluding the Consultant, sub-contractor or supplier under Regulation 57 of the PC Regulations apply to it.
- 3.7.5 The Contractor shall provide details of any sub-contractor to whom the Contractor wants to sub-contract the whole or any part of the Works as the Employer (acting reasonably) may require. The Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1 and the Contractor's obligations under this Contract shall remain unaffected notwithstanding any such sub-contracting.
- 3.7.6 Within 21 days of entering into a sub-contract or an appointment of any Contractor's Design Team member in respect of which collateral warranties may be required under clause 7D, the Contractor shall (subject to the deletion of any commercially sensitive information) provide the Employer with a certified copy of the relevant sub-contract or appointment and shall not alter, waive, vary, or depart from any terms of the relevant sub-contract without the Employer's prior written consent.”

List in Specification/Work Schedules

- 3.8 After “discretion” in the fourth line insert “(but subject always to the Contractor's compliance with clauses 3.7, 3.9 and 3.9A)”.

Conditions of sub-contracting

- 3.9 Delete “Where considered appropriate, “the” and replace with “The”. After "JCT Standard Building Sub-Contract" add ", such contract to be executed as a deed,”.

Add new clauses 3.9.2.6 to 3.9.2.8:

- “3.9.2.6 for the Contractor to pay his Consultants and sub-contractors no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- 3.9.2.7 for the Contractor to consider and verify invoices in a timely fashion and without undue delay; and
- 3.9.2.8 for the Consultants and sub-contractors to pass the terms of this clause 3.9.2 down the sub-contractors' supply chain.”

Add new clauses 3.9.4 and 3.9.5:

- “3.9.4.1 The Contractor shall not be entitled to any extension of time to complete the Works, or to any addition to the Contract Sum, as a result of its sub-contracting the whole or any part of the Works or the Contractor's Designed Portion.
- 3.9.4.2 The Contractor shall not finalise with any sub-contractor the details of the

JCT Standard Building Sub-Contract with sub-contractor's design Agreement and Conditions 2011 without the Employer's prior written consent. The sub-contract shall be amended to remove the automatic termination of the sub-contract if the Contractor becomes Insolvent and the Contractor shall not agree with the sub-contractor to amend the sub-contract otherwise without the Employer's prior written consent, which consent is not to be delayed or withheld unreasonably. The Contractor must disclose to the Employer the sub-contract in full for the purpose of confirming its compliance with this clause.

3.9.5 The Contractor shall ensure that:

- .1 any sub-contractor shall be required to maintain either professional indemnity insurance or product liability insurance (as appropriate) in an amount commensurate with the sub-contract works being performed for the period that the sub-contractor retains liability for breach of the terms of the sub-contract and/or any warranty provided pursuant to the terms of the sub-contract; and
- .2 the sub-contractor shall, as and when reasonably requested to do so by the Contractor, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained in accordance with the terms of the sub-contract."

Add new clause 3.9.A:

"3.9.A.1 The Contractor shall not be entitled to any adjustment of the Date for Completion, or any addition to the Contract Sum as a result of it sub-contracting the whole or any part of the Works or the design of the Works.

3.9.A.2 The Sub-Contract Conditions shall be amended to preclude the automatic termination of the Sub-Contract Agreement if the Contractor becomes Insolvent. The JCT Standard Building Sub-Contract shall contain amendments so that the sub-contracts are no less onerous than these Conditions as amended by the Schedule of Amendments and the Contractor shall not agree with the Sub-Contractor to otherwise amend the Sub-Contract Conditions. For the sake of clarity, the Contractor must disclose to the Employer the Sub-Contract Agreement and Conditions in full for the purpose of confirming its compliance with this clause as required by clause 3.9A."

Architect/Contract Administrator's Instructions

Compliance with instructions

3.10.1 Delete ", save that:" to the end of the clause including deletion of the sub-clauses and replace with a full stop.

Instructions requiring Variations

3.14.2 Delete this clause and replace with: "Number not used".

3.14.3 Delete this clause and replace with: "Number not used".

Instructions on Provisional Sums

3.16 Insert at the end of this clause:

"The Contractor agrees that the Employer's Requirements contain sufficient information concerning work for which a Provisional Sum has been included in the Employer's Requirements so that the Contractor has planned, programmed and priced the CDP Works to take into account such work. Accordingly, the Contractor shall not be entitled to any extension of time under clause 2.28 or reimbursement of loss and/or expense under clause 4.20 by reason or in consequence of any instruction to expend a Provisional Sum, except to the extent that any such instruction or work constitutes a material alteration to the overall nature and/or scope of the CDP Works or the Employer has failed to release information to the Contractor by the latest date contained in the Contractor's Programme (the latest version of which has been sent to the Employer under clause 2.4A.3), unless due to any act, omission or default of the Contractor or any person for whom the Contractor is responsible."

"Work not in accordance with the Contract

3.18.1 After: "site of" insert "or rectification of".

CDM Regulations

3.23.1 In lines 1 and 2, delete "ensure" and replace with "require".

3.23.4 At the end delete "." and add "before the issue of the Practical Completion Certificate or Section Completion Certificate under clause 2.30. Where the Contractor is the Principal Designer, or is required by the Architect/Contract Administrator to deliver the health and safety file, the Contractor shall without charge prepare, and deliver to the Employer, the health and safety file before the issue of the Practical Completion Certificate or a Section Completion Certificate under clause 2.30;"

Add a new clause 3.23.5:

"3.23.5 where it is the Contractor's responsibility to prepare the Construction Phase Plan:

3.23.5.1 if as a result of the Construction Phase Plan not being ready, the construction of the Works or the relevant Section does not start on the Date of Possession, the Contractor shall not be entitled to any extension of time or addition to the Contract Sum as a result of the Contractor being unable to commence the construction of the Works or the relevant Section on the Date of Possession; or

3.23.5.2 if the Construction Phase Plan has to be varied or supplemented during the execution of the Works as a result of the negligence, omission or default of the Contractor, the Contractor will not be entitled to any extension of time or any addition to the Contract Sum as a result;

and the Contractor will reimburse the Employer in respect of any loss or additional expense which the Employer incurs as a result."

Add a new clause 3.24:

"3.24 The Contractor warrants to the Employer that it is competent to fulfil the role[s] of Principal Contractor [and Principal Designer] for the purposes of the CDM Regulations and that it will allocate adequate resources for health and safety to enable it to perform its duties as Principal Contractor [and Principal Designer]⁵."

Section 4: Payment

Contract Sum and Adjustments

Items included in adjustments

[4.3.3 Delete this sub-clause 4.3.3 and insert "not used;".]

VAT

After clause 4.5.2 insert new clause 4.5.3:

"4.5.3 The Contractor shall at the same time as submitting its Payment Applications referred to in clause 4.10.1 or Payment Notices under 4.10.2 submit to the Employer a VAT invoice for such amount. If the Architect/Contract Administrator gives an Interim Certificate to the Contractor under clause 4.9 or a notice under clause 4.11.5 the Contractor shall re-submit to the Employer a VAT invoice for the revised amount due. If the Contractor gives a notice under clauses 4.8 or 4.11.5 the Contractor shall at the same time as submitting the relevant notice submit to the Employer a VAT invoice for such amount."

Payments, Certificates and Notices – general provisions

Interim certificates and valuations

4.9.1.1 In line 1 after "have been due" add the words "(which sum may be zero or a negative amount)".

Contractor's Payment Applications and Payment Notices

4.10.1 Insert at the end of the clause "Each Payment Application shall be accompanied by a detailed priced statement of work executed and materials on the site prepared at the date of the Payment Application with approximate quantities and unit rates monies out to agree with amount claimed. The statement shall be annotated in order to refer to and be subdivided into the same elements and work sections as in the Contract Sum Analysis and the Contractor shall provide such assistance as the Quantity Surveyor or Architect/Contract Administrator may require to enable it to evaluate the Payment Application."

⁵ Amend as necessary

Interim and final payments – final date and amount

4.11.1 Delete “14 days” and insert “28 days”.

Add a new clause 4.11.8:

“4.11.8 Notwithstanding sub-clauses 4.11.1 to 4.11.7, and without prejudice to clause 8 of this Contract, if the Contractor becomes Insolvent 5 or fewer days before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under clause 4.11.”

Pay Less Notices and other general provisions

4.12.2 After “zero”, before the full stop, insert the words “or a negative figure”.

4.12.3 Delete the clause and replace with “The Employer shall be entitled to withhold or deduct from a sum due to the Contractor under this Contract, even if that sum includes any Retention due for release under clause 4.19.”

Contractor's right of suspension

4.13.1 After "the performance of" add "any or all of".

4.13.3 In clause 4.13.3, delete "or on request" and at the end of the sub-clause, add a new sentence: "The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer".

Gross Valuation

4.14.1.2 After “prematurely” and before “;” at the end add “and provided also that the Contractor has produced to the Employer satisfactory evidence that there is no term of any contract or other circumstance which might operate to prevent the passing of property in any of the Site Materials to the Employer”.

Sums due as Interim Payments

4.15.1 After “(‘the Retention’)” but before the semi colon add “and amounts under clauses 2.38B.1, 2.38B.2 and 6.15A”.

Retention

Rules on treatment of Retention

4.17.1 Delete the sub-clause and replace with “the Employer shall be under no duty or obligation with regard to the Retention and shall be under no obligation to set aside in a separate account any amount representing the Retention;”.

Delete sub-clause 4.17.3 and substitute:

“4.17.3 the Employer shall be entitled to the full beneficial interest in the Retention and every part thereof (and interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract.”

Loss and Expense

Matters materially affecting regular progress

4.20.1 After the words “subject to” in line 4 add “the support of contemporaneous evidence and records where appropriate and”. Delete “clause 4.20.2 and compliance with the provisions of clause 4.21” and add “the conditions precedent in clauses 4.20.2, 4.20.3, 4.20.4, 4.20.5, 4.21.1, 4.21.2, 4.21.3, 4.21.4 and 4.21.5”.

Add new clauses 4.20.3, 4.20.4 and 4.20.5:

“4.20.3 The Contractor shall make reasonable and proper efforts to avoid or reduce such loss and/or expense.

4.20.4 The Contractor shall not be entitled to any loss and/or expense on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or any of the Contractor’s Persons.

4.20.5 The Contractor shall not be entitled to claim any reimbursement of loss and/or expense to the extent that the Contractor would in any event have incurred such loss and/or expense for a reason which is not a Relevant Matter or Contractor’s risk under this Contract.”

Notification and ascertainment

4.21.1 Add after “apparent to him” before the full stop the words “and in any event no later than 12 weeks after the date on which it became apparent or the date on which it should have become apparent to a competent contractor acting reasonably”.

4.21.4 Delete this sub-clause and add new sub-clauses 4.21.4 and 4.21.5:

“4.21.4 The Architect/Contract Administrator shall assess the Contractor’s initial assessment in such reasonable period as is appropriate taking into account the information provided by the Contractor in support of its notification under clause 4.21 and any further information the Architect/Contract Administrator may reasonably require.

4.21.5 The Architect/Contract Administrator without binding the Employer shall aim to provide its initial assessment within [28] days of the receipt of the Contractor’s initial assessment or monthly update and the information required from the Contractor or such other period as may be necessary taking into account the level of detail and quality of the information provided.”

Relevant Matters

4.22.2.3 Before the semi-colon at the end of the clause, add “other than errors, omissions and inconsistencies in or between any of the CDP Documents or any documents for which the Contractor is responsible for under this Contract and without prejudice to the restrictions in clauses 2.14, 2.15, 2.16 and 2.17”.

Delete clause 4.24 including the heading “**Reservation of Contractor’s rights and remedies**” and insert:

“**No further claims and general provisions**

- 4.24.1 The Contractor shall have no further claim, whether in contract, tort or otherwise arising generally at law, against the Employer for compensation in respect of deferment in granting possession of the site or the Relevant Matters beyond the entitlement to be reimbursed direct loss and/or expense under clause 4.20.
- 4.24.2 If the Contractor fails to comply with the provisions of clause 4.21 then the Employer shall not be obliged to make, and the Contractor shall not be entitled to receive, any addition to the Contract Sum in respect of the direct loss and/or expense to which such failure relates.
- 4.24.3 No direct loss and/or expense shall be added to the Contract Sum insofar as the matters in clause 4.20 identified as giving rise to the application have been caused or contributed to by any negligence, omission, default, breach of contract or breach of statutory duty by the Contractor, its servants or agents, or of any sub-contractor or supplier, or their respective servants or agents.”

Add new clause

- “4.26.4 Notwithstanding clauses 4.8, 4.11.5, 4.26.1, 4.26.2 and 4.26.3, and without prejudice to clause 8 of this Contract, if the Contractor becomes Insolvent five days before the final date for payment, the Employer shall not be required to pay the Contractor the sum, or any part of the sum, due to it under this clause 4.26.”

Add new clause:

- “4.27 Notwithstanding anything in this Contract, the Employer shall be entitled to deduct, by way of set-off or counterclaim, from any money otherwise due to the Contractor, any sum or sums which the Contractor is, or may be, liable to pay to the Employer under this Contract.”

Section 5: Variations

The Valuation Rules

Measurable Work

- 5.6.3 Add at the end, before the full stop, “, provided that no such allowance shall be made in respect of compliance with an instruction for the expenditure of a Provisional Sum categorised in the Employer’s Requirements as defined work.”

Daywork

- 5.7 At the end of the clause, before the full stop, add “and the presentation of vouchers verified by or on behalf of the Employer shall not constitute conclusive evidence that any sums are due to the Contractor”.

Change of conditions for other work

- 5.9 In the paragraph below sub-clause 5.9.2, after “(including CDP Works),” 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,"

- 5.9.2 Replace the word "a" with the words "an undefined", and after the word "Sum" add "which requires the Contractor to carry out work additional to the Works."

Add new clauses 5.10.3, 5.11 and 5.12:

"5.10.3 The Contractor is not and shall not be entitled to any additional payment, any extension of time under clause 2.28 or loss and/or expense under clause 4.20 if and to the extent that any Variation is attributable to any negligence, default or breach of contract by the Contractor or the Contractor's Persons.

No adjustment to cost of preliminaries

- 5.11 The Contractor agrees that the fixed price included in the Contract Sum for preliminaries and for special and general attendances shall not be subject to adjustment (and no claim on account thereof shall be made against the Employer whether under this Contract or otherwise) following an instruction to expend a Provisional Sum, except where the Provisional Sum in question is omitted in whole or in part or there is a material alteration to the overall nature and/or scope of the Works.

No adjustment to overheads and profit

- 5.12 The Contractor agrees that the fixed price included in the Contract Sum for overheads and profit shall not be subject to adjustment (and no claim on account thereof shall be made against the Employer whether under this Contract or otherwise) following an instruction to expend a Provisional Sum, except where the Provisional Sum in question is omitted in whole or in part or there is a material alteration to the overall nature and/or scope of the Works."

Section 6: Injury, Damage and Insurance

Personal Injury and Property Damage

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

- 6.1 In line 3, after "Works", add "or any of his obligations under this Contract". In the last line, delete "or any Statutory Undertaker" and replace the comma in between "Employer" and "Employer's Persons" with "or".
- 6.2 Renumber this clause as 6.2.1. Delete from and including "and to the extent" in line 4 up to the end of the clause and insert "or of any of his obligations under this Contract, except to the extent that such loss, injury or damage is caused or contributed to by the negligence or default of the Employer or of any of the Employer's Persons."

Add new clauses 6.2.2, 6.2.3 and 6.2.4 as follows:

"6.2.2 The Contractor shall at all times use its best endeavours to prevent any nuisance (including noisy work operations) or other interference with the rights of any adjoining land owner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instigated in

relation to them. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any failure or default by the Contractor in this regard.

- 6.2.3 The Contractor shall be responsible for and shall reimburse the Employer in respect of any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of a Variation or other instruction by or on behalf of the Employer (which is itself not due to any negligence, default or breach of contract by or on behalf of the Contractor, or any of the Contractor's Persons and has not been avoided despite the Contractor using all reasonable and practical means to avoid the same).
- 6.2.4 The Contractor shall (unless expressly stated otherwise in the Employer's Requirements), at no cost to the Employer, obtain all necessary consents and licences for the carrying out of the Works from any adjoining land owners, tenants or occupiers. Without prejudice to the generality of the foregoing, the Contractor shall carry out all negotiations with adjoining owners, tenants or occupiers and obtain any consents or licences which may be required for the over-sailing of tower crane jibs and shall thereafter comply in all respects with the terms thereof and any conditions contained therein."

Insurance of the Works and existing structures

Related definitions

- 6.8 In the definition of "Joint Names Policy" after the word "Contractor" add ", Funder and any other one or more third parties specified in writing by the Employer to the Contractor".

CDP Professional Indemnity Insurance

Obligation to insure

Add new clauses 6.15.4 to 6.15.6:

- "6.15.4 ensure that the terms and conditions of the Professional Indemnity insurance policy shall not include any term or condition to the effect that the Contractor must discharge the liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof. The Contractor shall not, without the prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Employer against the Contractor, or by any act or omission lose or prejudice the Contractor's right to make or proceed with such a claim against the insurers; and
- 6.15.5 place the insurance with insurers operating in the London insurance market or such other insurance market which is acceptable to the Employer with offices within the United Kingdom;

- 6.15 Add new sentence at the end of the clause “The obligations under this clause 6.15 and clause 6.15A (in their entirety) shall continue notwithstanding the termination of the Contract or termination of the Contractor’s employment hereunder, in either case for any reason whatsoever, including by the Employer.”

After clause 6.15 insert a new clause 6.15A:

- “6.15A If the Contractor has not provided evidence of any policies required under this Contract to the Employer at tender stage, the Contractor shall provide it immediately after the execution of this Contract and thereafter upon reasonable request by the Employer. In the event that in the Employer’s reasonable opinion those policies do not effect proper cover in accordance with this Contract, the Employer may require the Contractor to effect and the Contractor will effect such further insurance as the Employer may reasonably require. Failure by the Contractor to provide such documentary evidence within 15 Business Days of a written request by the Employer shall entitle the Employer to take out such professional indemnity insurance as is mentioned in clause 6.15 on the Contractor’s behalf and to recover the costs of doing so from the Contractor as a debt.”

Increased cost and non-availability

- 6.16 Renumber clause 6.16 as “6.16.1”, replace the full stop at the end with a comma and the following words “including but not limited to maintenance by the Contractor of a lower level of Professional Indemnity insurance at the Contractor’s own cost”.

Add a new clause 6.16.2:

- “6.16.2 Any increase or additional premium required by insurers by reason of the Contractor’s own claims record or act, omission, matter or circumstance particular to the Contractor shall be deemed to be within commercially reasonable rates referred to in clause 6.16.1 and shall not be taken into account determining the availability of such insurance.”

Section 7: Delete heading and insert; “Assignment, Performance Bonds and Guarantees, Third Party Rights, Collateral Warranties and Novation”

Assignment

General

- 7.1 Delete this clause and replace with:

“7.1.1 The Employer shall at any time be entitled to assign absolutely the entire legal benefit of this Contract without the Contractor’s consent on two occasions only. Any assignment to any subsidiary or holding company of the Employer and any other subsidiary of the holding company of the Employer as defined under Section 1159 of the Companies Act 2006 shall not count towards the two assignments available to the Employer.

7.1.2 The Employer shall be entitled to charge and/or assign by way of security any part, share or interest in this Contract without the

Contractor's consent to any party or parties providing finance to the Employer in connection with the procurement of the Works or to a party or parties providing finance to a subsidiary or holding company as referred to in clause 7.1.1.

7.1.3 The Contractor shall not be entitled to assign this Contract or any part, share or interest in this Contract or any right arising under it without the Employer's prior written consent."

Performance Bonds and Guarantees

Add a new clause 7.3A

"7.3A It shall be a condition precedent to the obligation of the Employer to pay any sums under this Contract that the Contractor shall have delivered to the Employer any performance bond, guarantee or parent company guarantee so required by the Employer."

Delete the heading "**Clauses 7A to 7E – Preliminary**" and insert "**Clauses 7A to 7G – Preliminary**".

Rights Particulars

Delete clause 7.4 and replace with "Not used."

Third Party Rights from Contractor

Delete clauses 7A and 7B and replace with "Intentionally blank."

Collateral Warranties from Contractor

7C Delete this clause and replace with:

"Contractor's Warranties

The Employer requires that the Contractor, from time to time whether before or after the completion of the Works, executes as deeds and delivers to the Employer within 14 days of such requests warranties in favour of Beneficiaries in the form in Appendix 1 to the Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require in favour of those parties. The Contractor shall not be required to execute more than ten (10) warranties in total under this clause 7C."

Delete existing clause 7D, add a new heading "**Collateral Warranties from Sub-Contractors**" and add a new clause:

"7D The Employer may require that any sub-contractor or member of the Contractor's Design Team, from time to time whether before or after the completion of the Works, executes as deeds and delivers to the Employer within 28 days of such request a warranty in favour of the Employer and Beneficiaries substantially in the form in Appendix 2 to the Schedule of Amendments with such further amendments as the Employer (acting reasonably) may require in favour of those parties. Each sub-contractor shall not be required to execute more than ten (10) warranties in total under this clause 7D."

Delete existing clause 7E, add new heading “**Novation**” and add a new clause:

[“**7E** Within 14 days of a request from the Employer, the Contractor shall execute and/or procure the execution of and deliver to the Employer:

- .1 one or more deed (or deeds) of novation in the form set out in Appendix 3 to this Schedule of Amendments; and
- .2 where a design consultant is being novated to the Contractor, a deed of warranty in the form set out in the relevant consultant’s appointment [and appended at Appendix 4 to this Schedule of Amendments]⁶ or in the absence of such a form of warranty, in the form set out in Appendix 2 hereto.”]

Add new clauses 7F and 7G:

[“**7F Product Guarantees**

The Contractor shall issue to the Employer, a guarantee against defects in materials and workmanship [valid for a period of not less than 12 months from the date of issue] (in a form to be approved by the Employer (such approval not to be unreasonably withheld or delayed)) in respect of the plant and machinery which have been or will be installed into the Works by each manufacturer and/or supplier thereof, such guarantee to be in a form approved by the Employer (such approval not to be unreasonably withheld or delayed) but shall, unless the Employer otherwise directs, permit the benefit thereof to be assigned without the consent of such manufacturer and/or supplier **OR** [valid for a minimum period of 12 months and otherwise as set out in the Employer’s Requirements].]

7G The obligations contained in this clause 7 shall continue notwithstanding termination of this Contract, or determination of the Contractor’s employment hereunder, in either case for any reason whatsoever, including breach by the Employer.”

Section 8: Termination

General

Notices under section 8

8.2.1 Delete this clause and replace with: “Number not used”.

8.2.3 Delete "clause 1.7.4" and insert "clause 1.7".

⁶ The form of warranty should have been agreed when the consultant was appointed and should be added to Appendix 4. If not, delete this reference and mark Appendix 4 as “not used”.

Termination by Employer

Default by Contractor

- 8.4.1 Delete the words ", before practical completion of the Works,".
- 8.4.1.1 After "Portion", before the semi-colon, add "or any material part of either of them".
- 8.4.1.3 Delete this clause and replace with "refuses or neglects to comply with any instructions or notices properly issued by the Architect/Contract Administrator; or"
- 8.4.1.5 Replace the comma at the end of this clause with "; or".

Add new sub-clauses 8.4.1.6 to 8.4.1.9:

- "8.4.1.6 fails to comply with clause 2.1A; or
- 8.4.1.7 acts or omits to act in such a way which constitutes price-fixing, collusion or any other form of anti-competitive behaviour with other tenderers, sub-contractors or suppliers of the Contractor; or
- 8.4.1.8 employs any corrupt practices in relation to the Works; or
- 8.4.1.9 is found (or any of its directors or others exercising powers of representation, decision-making or control over the Contractor are found) to have breached EU or UK competition laws, to the extent that the Employer considers that (i) the breach is serious enough to amount to an act of grave misconduct and/or (ii) the breach constitutes a criminal offence,"

Add new sub-clauses:

- "8.4.4 Termination under clauses 8.4.1.6 to 8.4.1.9 may result in a reference being made to the Office of Fair Trading
- 8.4.5 In the event of termination under any of clauses 8.4.1.6 to 8.4.1.9 the Contractor shall indemnify the Employer against any resulting costs of retendering."

Insolvency of Contractor

- 8.5.1 Renumber this clause as 8.5.1.1. Add a new clause 8.5.1.2:
- "8.5.1.2 The fact that the Contractor has become Insolvent shall be conclusive evidence of the Contractor's failure to perform and observe the terms and Conditions of this Contract."
- 8.5.3.1 After semi-colon add "and".
- 8.5.3.2 Delete this clause.

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

- 8.6 At the beginning of the clause add: "Without prejudice to clause 2.1A" and

change “The” to “the”. After “acting on his behalf”, add “or associated with him”. At the end of the clause, after the full stop add: “For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with Section 8 of the Bribery Act and a person associated with the Contractor includes, but is not limited to, any sub-contractor of the Contractor”.

Consequences of termination under clauses 8.4 to 8.6

- 8.7.1 From line 4 delete "(subject to obtaining any necessary third party consents)". Renumber this clause as 8.7.1.1.

Add new clauses:

“8.7.1.2 the Employer may pay a supplier or sub-contractor for any goods delivered or works executed for the purposes of this Contract before the date of termination insofar as the price of them has not already been paid by the Contractor, and the amount of any such payment may be deducted from any sum due to the Contractor or may be recoverable from the Contractor by the Employer as a debt;”

8.7.1.3 In lines 1 and 2 delete "(so far as assignable and so far as he may lawfully be required to do so)" and add "(without any requirement for the consent of, and without any objection from, the respective sub-contractor, supplier and/or professional consultant)" and add at the end of the clause add "including the benefit of each contract engaging any sub-contractor and/or professional consultant.”

"8.7.4.3 At the end of the clause, before the semi-colon, add “(including work carried out under clause 8.13)”.

Add new clause 8.7.6:

“8.7.6

8.7.6.1 At any time between the date of termination and the date on which the account is prepared under clause 8.7.4, the Employer may prepare and send to the Contractor an interim forecast of the amount which it reasonably estimates will become due under clause 8.7.4.

8.7.6.2 The amount shown in such forecast shall be a debt payable by the Contractor to the Employer or by the Employer to the Contractor, as appropriate.

8.7.6.3 Any sum paid pursuant to clause 8.7.6.2 shall be treated as paid on account of the difference referred to in clause 8.7.5.”⁷

Employer’s decision not to complete the Works

8.8.1 Delete “6 months” and replace with “12 months”. Delete all references to: “6

⁷ Note that these clauses should link in to the PCG/Bond wording

month period” and replace with: “12 month period”.

8.8.1.1 In the first line between “work” and “properly”, insert “(including work carried out under clause 8.13)”.

Termination by Contractor

Default by Employer

8.9.1.1 Add at the end before “;or” the words “within one calendar month from the date of receipt by the Employer of the Contractor's VAT invoice in respect of the amount due and payable as ascertained and certified in accordance with clause 4 ”.

8.9.1.2 Delete this clause.

Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations

8.11 In the heading after “73(1)(a)” add “, 73(1)(b)”.

8.11.1.2 After “Statutory Undertaker” add “(except where such Statutory Undertaker is employed or engaged by the Contractor)”.

8.11.1.3 After “Works” add “at the site”.

8.11.3 In line 3 after “73(1)(a)” add “, 73(1)(b)”.

Add a new sub-clause 8.11.4:

“8.11.4 Where the Contract is one to which regulation 57 of the PC Regulations applies the Employer shall be entitled by notice to the Contractor to terminate the Contractor’s employment under this Contract where the Employer becomes aware that the Contractor should have been excluded from participating in the tender process for this Contract under one of the grounds for mandatory exclusion under regulation 57 of the PC Regulations.”

Consequences of Termination under clauses 8.9 to 8.11 etc.

8.12.3.3 Add “or under clause 8.13” to the end of the clause.

Add new clause 8.13:

“8.13 Upon termination of the Contractor’s employment under clause 8.4, 8.5, 8.6, 8.8, 8.9, 8.10 or 8.11 or if this Contract is terminated, repudiated or discharged (notwithstanding the fact that the Contractor may dispute the occurrence of any of these events) the Contractor shall immediately vacate the site leaving it in a safe and tidy manner, and deliver possession of the site to the Employer. On application from the Contractor, the Employer will allow the Contractor an opportunity to visit the site to remove any equipment or plant belonging to the Contractor and which was not capable of being removed when the Contractor delivered possession of the whole of the site to the Employer.”

Section 9: Settlement of Disputes

Arbitration

Delete clauses 9.3 to 9.8 and replace with "Number not used".

New Section 10: Confidentiality

- "10.1 The Contractor will not without the prior written approval of the Employer take or permit to be taken any photographs of the Works for use in any publicity or advertising and further shall not publish any publicity or advertising relating to the Employer, the project or the Works without prior written consent from the Employer.
- 10.2 The Contractor and its agents and employees, will not without the prior written approval of the Employer disclose to any other person (other than any person to whom disclosure must be made in order for the Contractor to fulfil its duties under this Contract, or as may be required by statute) any information about the Works including drawings, plans, sketches, calculations and other materials relating to them or any information about the Employer or its business or any information about any person in whose favour the Contractor is obliged under this Contract to execute a warranty or their businesses, nor will the Contractor exploit any such information for the benefit of itself or any other person. The Contractor's obligations under this clause 10.2 will not apply to any information which is already in the public domain or to any information which came to it otherwise than in connection with its involvement in relation to the Works save where its entry into the public domain or its coming to the Contractor was as a result of a breach by the Contractor or any other person of any contractual obligation.
- 10.3 The Contractor will ensure similar provisions are included in its contracts with sub-contractors (including for the avoidance of doubt professional consultants) and will enforce such provisions.
- 10.4 The Contractor's obligations under this clause 10 shall survive any termination of the Contractor's employment under this Contract."

Schedule 1: Design Submission Procedure (clause 2.9.5)

Paragraph 3 Delete and substitute:

- "3. If the Architect/Contract Administrator does not respond to a Contractor's Design Document in the time stated in paragraph 2, the Contractor shall re-submit such document to the Architect/Contract Administrator in accordance with paragraph 1 headed "Response Required". If the Architect/Contract Administrator does not then respond to a Contractor's Design Document within 10 Business Days from the date of re-submission of any Contractor's Design Document, it shall be treated as if it were marked "A"."

Paragraph 7 Re-number as sub-paragraph 7.2 and insert new sub-paragraph 7.1 as follows:

- "7.1 The Contractor may at its discretion and at its own risk proceed with further design and/or construction in the absence of comments or disregarding any comments. The Contractor will remain responsible for and will promptly rectify and/or correct any defects or other faults in the CDP Works which arise

in connection with the Contractor having exercised its discretion under this paragraph 7.1, and it shall not be entitled to any loss and expense or to any extension of time in relation to the rectification and/or correction of such defects or faults.”

Paragraph 8.2 Remove the final “and”.

Paragraph 8.3 Delete and substitute:

“no approval, comment (or failure to comment), direction, confirmation or other communication given by or on behalf of the Architect/Contract Administrator pursuant to the provisions referred to in this Schedule or under any other provision of this Contract shall in any way exclude or limit the obligations and liabilities of the Contractor under this Contract; and”.

Add a new paragraph 8.4:

“8.4 this Schedule 1 is subject to the clauses set out in sections 1 to 10 of the Conditions of this Contract in particular, but not limited to, clauses 2.4A, 2.8.1 and 2.8.2.”

Appendix 1

Contractor/Beneficiary Warranty

[insert]

Appendix 2

Sub-Contractor/Beneficiary Warranty

[insert]

Appendix 3

Deed of Novation

[insert]

Appendix 4

Post-Novation Warranty from Consultant to Employer

[insert warranty which should have been agreed with the Consultant beforehand / appended to the Consultant's appointment]⁸

⁸ If no form of warranty was agreed with the consultant / in the consultant's appointment, mark this Appendix 4 as "not used" and use the form in Appendix 3 instead (subject to the novating consultant's agreement).

Appendix 5

NOT USED

[insert]

Appendix 6

PCG

Appendix 7

Performance Bond

[insert]

Appendix 8

BIM Protocol

[BIM Protocol]