
**AMENDMENTS FOR USE WITH JCT INTERMEDIATE BUILDING
CONTRACT (WITH CONTRACTOR'S DESIGN) 2016**

CONDITIONS

THIS CONTRACT SHALL INCORPORATE ALL THE PROVISIONS OF THE JOINT CONTRACTS TRIBUNAL INTERMEDIATE BUILDING CONTRACT (WITH CONTRACTOR'S DESIGN) 2016 AS AMENDED BY THE FOLLOWING AMENDMENTS:

SECTION 1: DEFINITIONS AND INTERPRETATION

1.1 Amend clause 1.1 as follows:

In the definition of "Conditions", **insert** after the words "sections 1 to 9 of these Conditions" the following: "as amended by the schedule of amendments attached to the Agreement"

Insert new definition of "Confidential Information" as follows: "information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998."

Delete the definition of "Contract Documents" and replace with the words: "the documents referred to in Recital 14."

Insert after the definition of "Employer" the words "and its successors in title and assigns."

Insert new definition of "EIR" as follows: "the Environmental Information Regulations 2004 together with any guidance and/or code of practice issued by the Information Commissioner or relevant Government department in relation to such regulations."

Insert new definition of "Employer's Policies": "the policies referred to in the tender documentation [and set out in Schedule [] hereto]."

In the definition of "Employer's Rights", **delete** "by way of JCT collateral warranty SCWa/E" and **replace** with the words: "in substantially the form of the collateral warranty set out in Schedule D (with only such amendments as the Employer shall approve)"

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

Insert new definition of "FOIA" as follows: "the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to that Act."

Insert new definition of "FOIA Code" as follows: "the Department of Constitutional Affairs Code of Practice on the Discharge of functions of Public Authorities under Part I FOIA or any replacement or revision of that Code."

Delete the definition of “Fluctuations Provision”.

In the definition of “Funder Rights”, **delete** “by JCT collateral warranty CWa/F” and **replace** with the words: “in substantially the form of the collateral warranty set out in Schedule C (with only such amendments as the Employer shall approve)”

In the definition of “Funder Rights”, **delete** “in accordance with the Rights Particulars” and **replace** with the words: “in substantially the form of the collateral warranty set out in Schedule D (with only such amendments as the Employer shall approve)”

Insert new definition of “Group Company” as follows: “any subsidiary or holding company of the Contractor or another subsidiary or holding company of such company, as ‘subsidiary’ and ‘holding company’ are defined in s1159 of the Companies Act 2006.”

Insert new definition of “Information” as follows: “information as defined in Section 84 of the FOIA and which relates to the Contract (or any preceding tender process leading up to it), the Contractor, or any sub-contractor, of the Works.”

In the definition of “Interest Rate”, **replace** 5% with 2%.

In the definition of “P&T Rights”, **delete** “by JCT collateral warranty CWa/P&T” and **replace** with the words: “in substantially the form of the collateral warranty set out in Schedule C (with only such amendments as the Employer shall approve)”

In the definition of “P&T Rights”, **delete** “in accordance with the Rights Particulars” and **replace** with the words: “in substantially the form of the collateral warranty set out in Schedule D (with only such amendment as the Employer shall approve)”

Insert new definition of Practical Completion as follows: “in all respects, the Contractor has completed all of its obligations in relation to the Works, including (without limitation):

- (a) that the Works have been completed in accordance with the Contract and are free from apparent defects, subject only to minor defects which do not affect or impair the use, enjoyment, occupation and/or fitting out of the Works by the Employer. Such minor items shall be deemed for the purposes of clause 2.30 to be defects appearing within the Rectification Period;
- (b) that all collateral warranties requested by the Employer have been provided;
- (c) all testing, calibration, regulation, commissioning or adjustment as required by the Contract has been successfully completed and passed;
- (d) all records and documents in relation to the Works (including the operation and maintenance manuals and manufacturers’ guarantees) have been provided; and
- (e) the Health and Safety file has been provided.”

Insert new definition of “Request for Information (or “Request”)” as follows: “a request for Information within the meaning given in Section 1 of the FOIA or any request for Information under the EIR.”

Insert new definition of “Subordinate Legislation” as follows: “the meaning given in Section 84 of the FOIA.”

Insert new definition of “Working Day” as follows: “the meaning given in Section 10 of the FOIA.”

Delete clause 1.9.1.1 in its entirety.

Delete the words "Save as stated in clause 1.9" from clause 1.10.

[Notwithstanding the amendment below, the client should consider whether to delete clause 1.11 in its entirety]

In clause 1.11.2, **delete** "and either Party's consent under clause 7.1"

SECTION 2: CARRYING OUT THE WORKS

- 2.1 After "Construction Phase plan", **delete** "(where applicable) and other" and **insert** "and".
- 2.1A **Insert** new clause 2.1A as follows: "The Contractor shall comply with the Employer's Policies."
- 2.2.3 **Insert** new clause 2.2.3 as follows:
- "The Contractor warrants that it has used and shall continue to use the standard of skill, care and diligence required of a contractor carrying out similar works to the Works to see that there are not used or specified in the Works any materials which by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations contained in the publication "Good Practice in Selection of Construction Materials 2011"(British Council for Offices)."
- 2.4 **Delete** clause 2.4 and **replace** with:
- "On the Date of Possession of the site or, in the case of a Section, the Contractor shall be given a non-exclusive licence to occupy such part or parts of the site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Works or the Section in accordance with the Contract. Access to the site shall be subject to any restrictions and rights for third parties set out in the Employer's Requirements. Upon access to the site being given, the Contractor shall commence construction of the Works or the Section and regularly and diligently proceed with and complete the same on or before the [relevant] Completion Date[s]."
- Insert** new clause 2.4A as follows:
- 2.4A "If for any reason which does not entitle the Contractor to an extension of time the rate of progress of the Works or any Section is at any time in the opinion of the Employer too slow to achieve Practical Completion by the relevant Completion Date the Employer may notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and to which the Employer may consent to expedite the progress of the Works or any Section so as to achieve Practical Completion of the Works or the relevant Section by the relevant Completion Date. The Contractor shall not be entitled to any additional payment for taking such steps."
- 2.7.2 **Delete** the words "with the Contractor's consent". **Insert** the words "subject to the Contractor's reasonable requirements as to security and health and safety" after the words "that work".

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- 2.8.3 **Insert** after the word “divulge” the words “(except in compliance with any statutory obligations or the requirements of any auditor or otherwise in accordance with this Contract)”.
- [The following clause is only to be used if there will be 3rd party agreements which the contractor needs to comply with in carrying out its works]*
- [2.10.A **Insert** new clause 2.10A as follows:
- “The Contractor acknowledges that the Employer may enter into agreements with third parties in connection with the development, funding, sale or letting of the whole or part of the Works. The Contractor warrants that it has used and shall continue to use the skill and care required by clause 2.2.3 so as not to cause a breach by the Employer of the obligations owed by the Employer to any such third parties under such agreements, to the extent that the Employer shall have provided the Contractor with copies of (or relevant extracts from) such agreements.”]
- 2.11A **Insert** new clause 2.11A as follows:
- “Notwithstanding clause 2.11, the Contractor shall be responsible to see that his sub-contractors and suppliers provide to the Architect/Contract Administrator, in sufficient time to permit the unimpeded progress of the Works, such designs, specifications and other information as they are obliged to provide, in such form and detail as is necessary to enable the Works to be completed in accordance with this Contract.”
- 2.16.4 **Insert** new Clause 2.16.4:
- “The Contractor shall make due allowance in his master programme for any work to be undertaken by any Statutory Undertaker and shall give sufficient notice in writing to each of them of the dates and times when their work can be undertaken on site without causing any delay or disruption to the Works. The Contractor shall be responsible for co-ordinating their work with the Works.”
- 2.17 **Insert** the words “or discharged” after the word “paid”.
- 2.19.6 **Insert** new clause as follows:
- “The Contractor shall not be entitled (except in the circumstances referred to in clause 2.20.9) to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or any of the Contractor’s Persons.”
- 2.20.2.3 **Insert** the words “or series thereof” after the words “inspection or test” in line 2.
- 2.20.7 **Delete** this clause.
- 2.23.1 **Replace** “5 days” with the words “the day”.
- 2.27 **Insert** at the end of the clause the following:
- “provided however that the Rectification Period for the relevant part shall continue until the expiry of the Rectification Period in respect of the Works.”
- 2.30 **Insert** after “shall at no cost to the Employer be made good by the Contractor” in line 4 the words “(together with any physical damage to the Works caused by such defects, shrinkages or other faults or the remedy thereof, and in accordance with programmes and methods of working reasonably required by the Employer)”
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- 2.30A **Insert** new clause 2.30A as follows:
- “In cases of urgency, the Employer may require the Contractor to make good any matter notified under clause 2.30 within such period of time as the circumstances require.”
- 2.32 **Delete** clause 2.32 in its entirety 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 Contractor’s Designed Portion as built or relate to the maintenance and operation of it or its installations.”
- 2.33.1 **Delete** the words “Subject to all sums due and payable under this Contract to the Contractor having been paid” in line 1 and **capitalise** the “t” of the word “the”.
- 2.33.1 **In** line 2, after “irrevocable,” **insert** “perpetual,”.
- 2.33.1 **Insert** at the end of the clause:
- “The Contractor agrees that the Employer may grant sub-licences to other persons to use and to reproduce the Contractor’s Proposals and the designs and content of them for any purposes relating to the Works. To the extent that the Contractor does not have ownership of the copyright in any of the Contractor’s Proposals the Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Contractor’s Proposals in the same terms as set out above.”
- 2.33.4 **Insert** new clause 2.33.4 as follows:
- “If the use of any such Contractor’s Proposals or the designs contained in them for the said purposes infringes the rights of any third party, the Contractor shall indemnify the Employer against all resulting costs, damages and expense.”
- 2.33.5 **Insert** new clause 2.33.5 as follows:
- “The Contractor shall and undertakes to procure that its sub-contractors and sub-consultants shall:
- 2.33.5.1 not assert against the Employer or any other person, who with the permission of the Employer publishes commercially, exhibits in public, films, broadcasts, includes in a cable programme service, photographs or otherwise copies or deals with any image of the Works or any of the Contractor’s Proposals any right which the Contractor, the sub-contractors and/or the sub-consultants may have to be identified as author of the Works (or any part thereof) or the Contractor’s Proposals pursuant to Section 77 of the Copyright, Designs and Patents Act 1988 (the “1988 Act”) or any other legislation which may supplement the 1988 Act; and
- 2.33.5.2 waive any rights the Contractor, the sub-contractors and/or the sub-consultants may have pursuant to Section 80 of the 1988 Act or any legislation which may supplement the 1988 Act.”
- 2.34.1 **Delete** from the words “shall in respect” to the end of the clause and **insert** the words “warrants that it has exercised and will continue to exercise in relation to the preparation
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of such design the reasonable skill, care and diligence to be expected of a properly qualified and competent professional designer in each of the disciplines required for the Works who is experienced in preparing such design in relation to works of a similar size, scope, nature, complexity and value as the Works”.

2.34.1 At the end of the clause, **insert** a new sentence as follows:

“The Contractor shall ensure the proper co-ordination and integration of the various elements of and shall have sole responsibility for the Contractor’s Designed Portion.”

2.34.3 **Delete** clause 2.34.3.

Insert new clause 2.35 as follows:

“2.35.1 The Contractor shall be deemed to have visited the site or, in the case of a Section, each relevant part of the site, before submitting its tender or offer and to have made all reasonable investigations (by way of inspection, enquiry to otherwise) to satisfy itself as to the site conditions and any such matter which may affect the Works. The Contractor shall not be entitled to any extension of time, addition to the Contract Sum nor any reimbursement for loss or expense resulting from a site condition or other matter affecting the Works which the Contractor could have reasonably foreseen by carrying out such investigations diligently.

2.35.2 The Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement whether negligent or otherwise, therein contained.”

SECTION 3: CONTROL OF THE WORKS

3.6.1 **Insert** at the beginning of the clause: “Subject to clause 8.7.2.3”

3.6.4 **Insert** a new clause 3.6.4 as follows: “forthwith upon entering into any sub-contract, the Contractor shall deliver to the Employer a certified copy of the relevant sub-contract executed by the sub-contractor.”

3.6.5 **Insert** new clause 3.6.5 as follows: “the sub-contractor shall enter into or procure any manner of direct warranties, undertakings, guarantees or indemnities concerning the provision of the Works and its compliance with this Contract in all respects.”

3.6A **Insert** a new clause 3.6A as follows:

“No sub-letting by the Contractor and no consent by the Employer and no identification of a person in the Employer’s Requirements or in the Contractor’s Proposals shall in any way relieve the Contractor from his responsibility for the construction, execution, completion and his part of the design of the Works in accordance with this Contract. The Employer shall not be obliged to make any payment to the Contractor under this Contract in respect of any of the services, works or supplies which are performed by a sub-consultant, sub-contractor or supplier not appointed in accordance with this Contract.”

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- 3.8.1 **Delete** this clause.
- 3.10 **Delete** this clause.
- 3.11.2 **Delete** this clause.
- 3.15.2 **Delete** “7 days” in line 3 of clause 3.15.2 and **replace** with “14 days”. Before the words “then any dispute or difference” in line 4, **insert** the words “or inform the Contractor of the reason why its objection is not agreed”.

SECTION 4: PAYMENT

- 4.4 **Delete** clause 4.4 in its entirety.
- 4.9.1.2 **Insert** before the semi-colon at the end the words: “and provided the Contractor has supplied to the Employer reasonable evidence that property in such materials and goods will pass to the Employer after the value of such materials and goods included in an Interim Payment has been discharged by the Employer, pursuant to clause 2.17.”
- 4.12.1 **Delete** “14 days” and **replace** with “30 days”.
- 4.12.5 **Delete** “5” and **replace** with “the day”.
- 4.15A **Insert** new clause as follows:
- “The Contractor shall not be entitled to recover any loss and/or expense incurred by reason of any act, breach of contract, negligence, omission or default by the Contractor or any of the Contractor’s Persons.”
- 4.19 **Delete** clause 4.19 and **replace** with the following:
- “Reimbursement of the Contractor for loss and/or expense under this clause shall be full compensation for the Contractor in respect of the Relevant Matters, and the Employer shall have no further liability to the Contractor therefor.”

SECTION 5: VARIATIONS

- 5.1.1.1 **Insert** after the word “omission” the words: “(whether or not the Employer requires the same work to be carried out by others)”.

SECTION 6: INJURY, DAMAGE AND INSURANCE

- 6.1 **Insert** after “Works” the words: “or in the performance of the Contractor’s other obligations under Clause 2.30”
- 6.2 **Insert** after “Works” the words: “or in the performance of the Contractor’s other obligations under Clause 2.30”
- 6.2A **Insert** new clause as follows:
- “Without prejudice to the generality of clause 6.2, the Contractor shall at all times take all reasonably practicable precautions to prevent any public or private nuisance (including such nuisance caused by noxious fumes, noisy working operation or the deposit of any materials or debris) or other interference with the rights of any permitted occupier of the site or the Works, and/or any adjoining or neighbouring landowner,

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- tenant or occupier or any Statutory Undertaker arising out of the Works or of any obligation pursuant to clause 2.30 and the Contractor shall indemnify the Employer against all reasonably mitigated costs, expenses, liability, loss, claim or proceedings to the extent that the same arises or results from any such nuisance or interference save only where such nuisance or interference is the result of the carrying out of the Works in accordance with the Contract and which could not have been avoided by the Contractor using all reasonably practical precautions in accordance with this clause 6.2A.”
- 6.4.1 **Insert** the words “and 6.2A” after “6.2” in line 2.
- 6.5.1.1 **Insert** the words “and 6.2A” after “6.2”.
- 6.6 **Insert** the words “and 6.2A” after “6.2” in line 1.
- 6.8 **Insert** in the definition of “Joint Names Policy” after the word “Contractor” the following words:
- “and any one or more third person specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or mortgage or charge over the site or the Works.”

SECTION 7: ASSIGNMENT, PERFORMANCE BONDS AND GUARANTEES AND COLLATERAL WARRANTIES

- 7.1 **Delete** clause 7.1 in its entirety and **replace** with:
- “The Employer may without the consent of the Contractor assign, charge or transfer the benefit of all or any of his rights arising under or out of this Contract. The Contractor shall not, without the prior written consent of the Employer, assign, charge or transfer the benefit of all or any of his rights under this Contract to any person.”
- 7.2.1 **Delete** clause 7.2.1 in its entirety and **replace** with:
- “within 7 days of execution of this Contract a performance bond in an amount equal to the percentage of the Contract Sum and for the period stated in the Contracts Particulars in favour of the Employer duly executed by the Contractor’s surety in the form attached in Schedule B and the Employer shall be entitled to withhold 20% of any payment due in any certificate until the Contractor has complied with this clause 7.2.1; and/or”
- 7.2.2 **Delete** clause 7.2.2 in its entirety and **replace** with:
- “within 21 days of execution of this Contract a parent company guarantee in favour of the Employer duly executed by the Contractor’s parent company in the form attached in Schedule A and the Employer shall be entitled to withhold 20% of any payment due in any certificate until the Contractor has complied with this clause 7.2.2. If during the currency of this Contract the parent company ceases to be the parent company of the Contractor, the Contractor shall (as a condition of the Contract) procure a parent company guarantee in substantially the same form from its new parent company. If the new parent company is not of the same financial covenant, the Employer shall be entitled to demand security of equivalent standing in the form of an insurance backed guarantee or bond.”
- 7.2 **Delete** the final two lines of clause 7.2 in their entirety.

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- 7.6 **Delete** “in the form CWa/P&T completed in accordance with the relevant Rights Particulars.” and **insert** “substantially in the form of the collateral warranty set out in Schedule C.”
- 7.7 **Delete** “in the form CWa/F completed in accordance with the relevant Rights Particulars.” and **insert** “substantially in the form of the collateral warranty set out in Schedule C.”
- 7.8 **Delete** from and including “and/or the Employer:” to the end of the clause and **insert**:
“and/or the Employer, the Contractor shall within 21 days from receipt of the Employer’s notice identifying the relevant sub-contractor, procure such warranties as the Employer requests in substantially the form of the collateral warranty set out in Schedule D (with only such amendments as the Employer may approve) properly executed by the relevant sub-contractor in favour of the relevant beneficiary. The Contractor shall be liable for and shall indemnify the Employer from and against any and all expense, liability, loss, claim or proceedings (including the cost of defending any such claim or proceedings) to the extent that the same arises out of or in connection with any failure by the Contractor to procure any warranty referred to in this clause 7.8.”
- 7.9 **Insert** new clause 7.9 as follows:
“Any payment from the Employer to the Contractor pursuant to this Contract which is outstanding at the time that any collateral warranty referred to in Clauses 7.6, 7.7 or 7.8 is demanded by the Employer shall (notwithstanding any other provision of this Contract) cease to be due to the Contractor and the Employer shall be entitled to withhold 20% of any payment due in any certificate until such warranty deed is executed and delivered to the Employer.”

SECTION 8: TERMINATION

- 8.4.1.3 **In** line 2, after the word “remove”, **insert** the words “or rectify”.
- 8.4.4 **Insert** new clause as follows: “The Employer may terminate this Contract by giving the Contractor 7 days’ written notice of such termination.”
- 8.5 **Delete** this clause and **replace** with the following:
“If the Contractor or Group Company is or becomes Insolvent:
.1 the Contractor shall forthwith so notify the Employer;
.2 either party may at any time by notice to the other party terminate the Contractor’s employment under this Contract;
.3 as from the date of termination under clause 8.5.2:
.1 clauses 8.7 and 8.8 shall apply;
.2 the other provisions of this Contract which require any further payment to the Contractor or any release of Retention shall cease to apply; and
.3 the Employer may take measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are not removed

from the site; the Contractor shall allow and shall not hinder or delay the taking of those measures.”

8.6 **Insert** after the words “shall be entitled by” in line 1 “giving seven (7) days’ prior written”

8.7.4 **Insert** at the end of the clause the following words:

“provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this clause 8.7.4, the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 8.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract;”.

8.9.3 **Delete** “14 days” in lines 1 and 3 and **insert** “30 days”.

[If termination under clause 8.4.4 is included, then include the amendment to clause 8.12.1]

8.11.3 **Insert** after the words “shall be entitled by” in line 2 the words “giving seven (7) days’ prior written”

8.12.1 **Insert** after “8.11” the words “or 8.4.4”.

8.12.3 **Delete** the first sentence and **insert**:

“where the Contractor’s employment is terminated under clause 8, the Contractor shall promptly provide the Employer with all relevant receipts and documents as the Employer may reasonably require in order for the Employer to prepare an account.”

8.12.6 **Insert** new clause 8.12.6 as follows:

“upon determination of this Contract or the Contractor’s employment under it, and notwithstanding that the validity thereof may be disputed by the Contractor, the Contractor shall vacate the site and shall immediately deliver to the Employer possession of the site and the Works in a secure and safe condition.”

SECTION 9: SETTLEMENT OF DISPUTES

9.2.3 **Insert** new clause 9.2.3 as follows:

“The Adjudicator shall have the power to determine more than one dispute under this Contract at the same time and/or adjudicate at the same time on related disputes under this Contract and any other contract with any person relating to the development comprising the Works, and if requested to do so by either party, shall determine any matter raised by such party in the nature of set-off, abatement or counter-claim at the same time as he determines any other matter referred to him.”

9.3 to 9.8 **Delete** clauses 9.3 to 9.8 and **insert** “Arbitration shall not apply”.

SCHEDULE 4

Delete this schedule.

SCHEDULE 5

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- 7 **Delete** “Freedom of Information Act 2000 (‘FOIA’) and **replace** with “FOIA”.
- 7A **Insert** new clauses 7A as follows:
- “7A.1 The Contractor acknowledges that, in order to be compliant with the FOIA and the EIR, the Employer may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 7A, the Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to facilitate the Employer's compliance with the FOIA and/or EIR in that regard.
- 7A.2 The Contractor shall:
- (i) transfer any Request for Information that it or its sub-contractors receive, to the Employer as soon as practicable after receipt and in any event within 2 Working Days of receiving that Request for Information; and
- (ii) provide the Employer with a copy of all Information in its or its sub-contractors possession or power that the Employer reasonably considers is relevant to the Request in the form that the Employer requires as soon as practicable and in any event within 5 Working Days of the Employer requesting that Information and any follow up Information required by the Employer thereafter within 2 Working Days of the Employer's follow up request.
- 7A.3 The Contractor acknowledges that the Employer may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:
- (i) in certain circumstances without consulting the Contractor; or
- (ii) following consultation with the Contractor and having taken the Contractor's views into account,
- provided always that where clause 7A.3 applies, the Employer shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.
- 7A.4 Subject to the Employer complying with its obligations under this clause 7A, the Employer shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor or any sub-contractor arising from the disclosure of any Information whether or not such Information is Confidential Information falling within the scope of the FOIA or EIR.
- 7A.5 The Contractor shall indemnify the Employer against all claims, demands, actions, costs proceedings and liabilities that the Employer incurs due to the Contractor's or any sub-contractor's breach of this clause 7A.
- 7A.6 The Contractor shall ensure that the terms of any sub-contract which it enters into with a sub-contractor replicate the provisions of this clause 7A such that the Employer has the same rights against a sub-contractor as it does against the Contractor under this clause 7A.
- 8.1 **Insert** after “113(2)(c)(i) and (ii)” the words “including that:”.
- 8.1.1 **Insert** new clause 8.1.1 as follows:
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“the Contractor shall ensure that all sub-contracts contain a provision requiring:

- .1 the Contractor to pay any sums which are due from it to a sub-contractor within 30 days from the date of a valid and undisputed invoice;
- .2 the Contractor to consider and verify any invoices for payment submitted by a sub-contractor in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- .3 the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 8.1.1.”

8.1.2 **Insert** new clause 8.1.2 as follows:

“Clause 8.1.1 is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that clause;”

Schedule A: Parent Company Guarantee

THIS GUARANTEE is made the [] day of [] 20[]

BETWEEN:

- (1) [] whose registered office is at [] (the "Guarantor"); and
- (2) [] whose registered office is at [] (the "Employer" which expression includes its permitted successors and assigns).

WHEREAS:

- A. This guarantee (the "Guarantee") is given in connection with a contract [dated] (the "Contract") made between the Employer of the one part and [] (the "Contractor") of the other part for the construction and part of the design of [] (the "Project").
- B. The Guarantor has agreed to guarantee the due performance of the Contractor's obligations to the Employer under the Contract in the manner set out below.

In consideration of the Employer entering into the Contract **IT IS AGREED:**

- 1. The Guarantor hereby guarantees to the Employer the full and due performance of all the obligations of the Contractor contained within the Contract. If the Contractor fails to observe or perform any of its duties or obligations under or in connection with the Contract or if the employment of the Contractor under the Contract shall determine by operation of or notice given under clause 8 of the Contract, the Guarantor shall (subject to the remaining clauses of this Guarantee) be responsible for and hereby indemnifies the Employer against all losses, damages, costs and expenses which the Employer may incur by reason of such failure to observe or perform its duties or obligations or such termination. The Guarantor shall itself pay to the Employer without any deduction or set-off the amount of such debt, damages, interest or costs as the case shall require.
- 2. The Contract may be modified, amended or supplemented in any manner whatsoever without the consent of the Guarantor, and no such modification, amendment or supplement shall release or impair the liability of the Guarantor under this Guarantee, which shall extend to the duties, obligations and liabilities of the Contractor under the Contract as so modified, amended or supplemented. No invalidity in the Contract or its avoidance or termination shall affect or impair the liability of the Guarantor under this Guarantee. No waiver, concession, allowance of time, compromise or forbearance given to or made with the Contractor shall release, affect or impair the liability of the Guarantor under this Guarantee, and the terms of this Guarantee shall apply to the terms of such compromise as they apply to the Contract.
- 3. This guarantee shall not be affected and the Guarantor shall not be exonerated in any way by:
 - 3.1. the insolvency, bankruptcy, winding-up, dissolution, administration, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Contractor;
 - 3.2. any time, indulgence or concession being granted to the Contractor;
 - 3.3. the Employer compounding or entering into any compromise, settlement or arrangement with the Contractor or any other person; or

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- 3.4. any other matter or thing which would but for this provision affect or exonerate the Guarantor's liability hereunder.
 4. The Employer shall not be required to pursue any remedy against the Contractor before proceeding against the Guarantor under this Guarantee.
 5. So long as the obligations of the Guarantor under this Guarantee and those of the Contractor under the Contract remain outstanding and unperformed the Guarantor will not claim any set-off or counterclaim against the Contractor, prove in competition with the Employer or have the benefit of any security which the Employer holds or may hold for any money or liabilities due from or incurred by the Contractor.
 6. The Employer shall be entitled to recover no more under this Guarantee in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter and the Employer shall not be entitled to commence proceedings against the Guarantor under this Guarantee in respect of any claim once any proceedings against the Contractor in respect of such claim would be statute-barred.
 7. The Employer is entitled to assign the benefit of and its rights under this Guarantee to any party without the Guarantor's consent.
 8. The parties to this Guarantee do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
 9. Any notice or other document to be given by a party under this Guarantee shall be in writing and shall be considered to have been given if hand delivered to the other party or sent by registered post to the other party at the address above (or such other address as one party may from time to time designate by written notice to the other). Any notice or other document shall be considered to have been received by the addressee 2 business days following the date of despatch of the notice or other document by registered post or on the next business day where delivery is by hand.
 10. Each provision of this Guarantee is severable and distinct from the others. If a provision of this Guarantee is or becomes to any extent illegal, invalid or unenforceable in any jurisdiction, it shall not affect the legality, validity or enforceability of any other term of this Guarantee.
 11. This Guarantee is subject to English law and the English courts shall have jurisdiction with regard to all matters arising out of or in connection with it.

In Witness whereof the parties have executed this Deed on the date before written.

EXECUTED as a **DEED** by)

[] acting by:)

.....

Director

.....

Director/Secretary

EXECUTED as a **DEED** by)

[] acting by:)

.....

[Head of Legal Services]
