

**DATED** \_\_\_\_\_ **2021**

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY**
  
- (2) **[CONTRACTOR]**

**BUILDING CONTRACT**

Incorporating and amending the

**JCT Design and Build Contract, 2016 Edition**

**Relating to the design and construction of a  
new retail unit at Plot 1, Edginswell Business  
Park, Torquay, Devon**

**ashfords**

**THIS AGREEMENT is dated**

**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of Town Hall, Castle Circus, Torquay, TQ1 3DR (**Employer**); and
- (2) **[CONTRACTOR]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[ADDRESS]** (**Contractor**).

**BACKGROUND**

- (A) The Employer wishes to procure the design and construction of certain works.
- (B) The Contractor has agreed to carry out the design and construction of those works, as required by this agreement.
- (C) The Employer and the Contractor have agreed to incorporate and amend the JCT Design and Build Contract, 2016 edition as set out in this agreement.

**AGREED TERMS**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

**1.1 Definitions:**

|                                      |  |
|--------------------------------------|--|
| <b>JCT Articles</b>                  | the section of the JCT Design and Build Contract titled "Articles".  |
| <b>JCT Attestation</b>               | the section of the JCT Design and Build Contract titled "Attestation".   |
| <b>JCT Conditions</b>                | the section of the JCT Design and Build Contract titled "Conditions".  |
| <b>JCT Contract Particulars</b>      | the information set out in Part 3 of Schedule A.   |
| <b>JCT Design and Build Contract</b> | the JCT Design and Build Contract, 2016 edition, a copy of which is attached at Annex D.   |
| <b>JCT Recitals</b>                  | the section of the JCT Design and Build Contract titled "Recitals".  |
| <b>Schedule of Amendments</b>        | the parties, background, agreed terms and schedules forming part of this agreement, which amend the JCT Design and Build Contract. |

- 1.2 Capitalised terms used in this agreement have the same meaning as in the JCT Design and Build Contract unless the meaning given in the JCT Design and Build Contract is different from, or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.

- 1.3 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.7 References to clauses, schedules and annexes are to the clauses, schedules and annexes of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.8 Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT Design and Build Contract, the Schedule of Amendments shall prevail.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative only and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. INCORPORATION AND AMENDMENT OF THE JCT DESIGN AND BUILD CONTRACT**

- 2.1 This agreement incorporates and amends the JCT Design and Build Contract as follows:
  - (a) it incorporates the JCT Recitals, as amended by **Part 1 of Schedule A**;
  - (b) it incorporates the JCT Articles, as amended by **Part 2 of Schedule A**;
  - (c) it incorporates the JCT Contract Particulars, as set out in **Part 3 of Schedule A**; and
  - (d) it incorporates the JCT Conditions, as amended by **Part 4 of Schedule A**.

- 2.2 This agreement does not incorporate the JCT Attestation.

## **3. GOVERNING LAW AND JURISDICTION**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The parties hereby submit to the exclusive jurisdiction of the English Courts.

## **4. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **THE COUNCIL** )  
**OF THE BOROUGH OF TORBAY** was )  
hereunto affixed in the presence of:

)  
)  
) .....  
) Authorised signatory

.....  
Authorised signatory

Executed as a deed by )  
**[CONTRACTOR]**

acting by two directors or by a director )  
and the company secretary

)  
) Director

)  
)  
) Director / Secretary

## **SCHEDULE A - SCHEDULE OF AMENDMENTS**

### **PART 1. Recitals**

#### **1. FIRST RECITAL**

Complete the first recital with this description of the Works:

The design and construction of a new retail unit at Plot 1, Edginswell Business Park, Torquay, Devon (as further detailed in the Contract Documents).

#### **2. THIRD RECITAL**

Delete the existing third recital and replace with:

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

**PART 2. Articles**

**1. ARTICLE 2: CONTRACT SUM**

Complete Article 2 with this Contract Sum:

[SUM IN WORDS] (£[SUM IN FIGURES])

**2. ARTICLE 3: EMPLOYER'S AGENT**

Complete Article 3 with this Employer's Agent:

TORBAY ECONOMIC DEVELOPMENT COMPANY LIMITED (T/A TDA OR TORBAY DEVELOPMENT AGENCY) of Tor Hill House, Union Street, Torquay, Devon, TQ2 5QW (company number 07604855).

**3. ARTICLE 5: PRINCIPAL DESIGNER**

Complete Article 5 with this Principal Designer:

TORBAY ECONOMIC DEVELOPMENT COMPANY LIMITED (T/A TDA OR TORBAY DEVELOPMENT AGENCY) of Tor Hill House, Union Street, Torquay, Devon, TQ2 5QW (company number 07604855).

**4. ARTICLE 6: PRINCIPAL CONTRACTOR**

Complete Article 6 with this Principal Contractor:

The Contractor.

**5. NEW ARTICLE 10: EFFECT OF APPROVAL**

Insert new Article 10:

"Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from its obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the Employer or the Employer's Agent or their agents or representatives on the site of the Works, or the carrying out of tests on the instructions of the Employer or the Employer's Agent or by any instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer or the Employer's Agent."

**PART 3. Contract Particulars**

| Clause Reference                                | Subject  | Particulars   |                              |                     |
|---|--|---|------------------------------|---------------------|
| <i>Fourth Recital and clause 4.5</i>            | Construction Industry Scheme (CIS)   | The Employer at the Base Date for the purposes of the CIS | [is / is not] a 'contractor' | [Torbay to confirm] |
| <i>Fifth Recital</i>                            | Description of Sections (if any)<br><br><i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown)</i> | Not applicable<br><br>[Torbay to confirm]                 |                              |                     |
| <i>Sixth Recital</i>                            | Framework Agreement (if applicable)<br><br><i>(State date, title and parties.)</i>   | Not applicable  |                              |                     |
| <i>Seventh Recital and Part 1 of Schedule 2</i> | Supplemental Provisions - Part 1<br><br><i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision <u>does not</u> apply.)</i>                    |   |                              |                     |
|   | Named Sub-Contractors  | Supplemental Provision 1                                  | Applies                      |                     |
|   |  |   | Does not apply               | ✓                   |
|   | Valuation of Changes - Contractor's estimates  | Supplemental Provision 2                                  | Applies                      | ✓                   |
|   |  |   | Does not apply               |                     |
|   | Loss and expense - Contractor's estimates  | Supplemental Provision 3                                  | Applies                      | ✓                   |
| Does not apply                                  |  |   |                              |                     |

| Clause Reference  | Subject  | Particulars                              |                          |         |   |
|---|--|--|--------------------------|---------|---|
| Seventh Recital and Part 2 of Schedule 2  | Supplemental Provisions - Part 2<br><i>(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)</i> | Acceleration Quotation                   | Supplemental Provision 4 | Applies | ✓ |
|   |  |  | Does not apply           |         |   |
|   | Collaborative working  | Supplemental Provision 5                 | Applies                  | ✓       |   |
|   |  |  | Does not apply           |         |   |
|   | Health and safety  | Supplemental Provision 6                 | Applies                  | ✓       |   |
|   |  |  | Does not apply           |         |   |
|   | Cost savings and value improvements  | Supplemental Provision 7                 | Applies                  | ✓       |   |
|   |  |  | Does not apply           |         |   |
|   | Sustainable development and environmental considerations   | Supplemental Provision 8                 | Applies                  | ✓       |   |
|   |  |  | Does not apply           |         |   |
|   | Performance indicators and monitoring  | Supplemental Provision 9                 | Applies                  |         |   |
|   |  |  | Does not apply           | ✓       |   |
|   | Notification and negotiation of disputes   | Supplemental Provision 10                | Applies                  | ✓       |   |
|   |  |  | Does not apply           |         |   |
| Where Supplemental Provision 10 applies, the respective nominees of the Parties are | Employer's nominee   | [ ] [Torbay to confirm]                  |                          |         |   |
|   | Contractor's nominee   | [ ]                                      |                          |         |   |
|   | or such replacement as each Party may notify to the other from time to time  |  |                          |         |   |
| Article 4   | Employer's Requirements<br><br><i>(State reference numbers and dates or other identifiers of the relevant documents)</i>   | As attached at Annex A to this Contract. |                          |         |   |



| Clause Reference | Subject   | Particulars   |
|------------------|---|---|
| Article 4        | Contractor's Proposals<br><i>(State reference numbers and dates or other identifiers of the relevant documents)</i>   | As attached at Annex B to this Contract.                                      |
| Article 4        | Contract Sum Analysis<br><i>(State reference numbers and dates or other identifiers of the relevant documents)</i>  | As attached at Annex C to this Contract.                                      |
| Article 8        | Arbitration   | Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply                   |
| 1.1              | Base Date   | [DATE]  |
| 1.1              | BIM Protocol (where applicable)<br><i>(State title, edition, date or other identifiers of the relevant documents)</i>   | Not applicable  |
| 1.1              | Date for Completion of the Works <i>(where completion by Sections does not apply)</i>   | [INSERT DATE]   |
| 1.1              | Sections: Dates for Completion of Sections  | Not applicable  |
| 1.7              | Addresses for service of notices by the Parties <i>(if none is stated, the address in each case subject to clause 1.7.3 shall be that shown at the commencement of the Agreement)</i> | Employer: Town Hall, Castle Circus, Torquay, TQ1 3DR<br>Contractor: [ADDRESS] |
| 2.3              | Date of Possession of the site <i>(where possession by Sections does not apply)</i>   | [INSERT DATE]   |

| Clause Reference | Subject  | Particulars  |
|------------------|--|--|
| 2.3              | Sections: Dates of Possession of Sections  | Not applicable   |
| 2.4              | Deferment of possession of the site ( <i>where possession by Sections does not apply</i> ) | <p>Clause 2.4 applies</p> <hr/> <p>Maximum period of deferment (if less than 6 weeks) is:</p> <p>Not applicable – the maximum period is 6 weeks</p>  |
| 2.4              | Sections: deferment of possession of Sections  | Clause 2.4 does not apply  |
| 2.27A            | Additional pre-requisites to achievement of practical completion or sectional completion   | <p>In addition to the matters listed at clause 2.27A, the following shall be a pre-requisite to achievement of practical completion or sectional completion (as applicable):</p> <ul style="list-style-type: none"> <li>• any landscaping forming part of the Works has been laid out at least by way of topsoil and mulch and any Works regarding landscaping referred to in the Satisfactory Planning Permission (as defined in the AFL) have been completed</li> <li>• all entrance and directional signage forming part of the Works has been erected</li> <li>• the car park, service yard and the access forming part of the Works has been completed and marked out and suitable for use by the Tenant;</li> <li>• all works or other obligations forming part of the Works and referred to in the Satisfactory Planning Permission and/or any Planning Agreement, Works Agreement or Highways Agreement (all as defined in the AFL) which require completion or</li> </ul> |

| Clause Reference | Subject  | Particulars   |  |
|------------------|--|---|--|
|                  |  | <p>compliance with before the completed Works can be occupied, fitted out and opened for trade have been completed or complied with;</p> <ul style="list-style-type: none"> <li>• any Highway Works (as defined in the AFL) forming part of the Works have been completed to a standard to allow uninterrupted public access to and egress from the site;</li> <li>• the pavements onto which the site fronts have been completed to final level;</li> <li>• the Contractor has delivered any and all documentation required in order for the principal designer to prepare the health and safety file;</li> <li>• the Contractor has done all things required under this Contract which are necessary to satisfy the Access Condition (as defined in the AFL)</li> </ul> |  |
| 2.29.2           | Liquidated damages <i>(where completion by Sections does not apply)</i>  | At the rate of  | £[SUM] per week or pro rata for part thereof |
| 2.29.2           | Sections: rate of liquidated damages for each Section  | Not applicable  |  |
| 2.34             | Sections: Section Sums   | Not applicable  |  |
| 2.35             | Rectification Period <i>(where completion by Sections does not apply) (If no other period is stated, the period is 6 months)</i> | 12 months from the date of practical completion.  |  |
| 2.35             | Sections: Rectification Periods <i>(if no other period is stated, the period is 6 months.)</i>                                   | Not applicable  |  |

| Clause Reference | Subject   | Particulars  |   |
|------------------|---|--|---|
| 4.6              | Advance payment<br><i>(Not applicable where the Employer is a Local or Public Authority)</i>  | Clause 4.6 does not apply  |   |
| 4.6              | Advance Payment Bond<br><i>(where an advance payment is to be made, an advance payment bond is required unless stated that it is not required)</i>  | An advance payment bond is not required  |   |
| 4.7.1            | Method of payment – alternatives<br><br><b>[Torbay to confirm]</b>  | <b>[By stages in accordance with Alternative A (clause 4.12)]</b><br><br><b>OR</b><br><br><b>[Periodically in accordance with Alternative B (clause 4.13)]</b> |   |
|                  | Alternative A: Stage Payments   | <b>[WORK STAGE]</b>  | <b>[PERCENTAGE / VALUE OF CONTRACT SUM]</b> |
|                  |   |  |   |
|                  |   |  |   |
| 4.7.2            | Interim Payments - Interim Valuation Dates<br><br><i>(The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession)</i> | The first Interim Valuation Date is <b>[DATE]</b> and thereafter the same date in each calendar month.   |   |

| Clause Reference | Subject  | Particulars  |                |
|------------------|--|--|----------------|
| 4.15.4           | Listed Items - uniquely identified<br><i>(Delete the entry if no bond is required)</i>   | For uniquely identified Listed Items a bond in respect of payment for such items is required for   | Not applicable |
| 4.15.5           | Listed Items - not uniquely identified<br><i>(Delete the entry if clause 4.15.5 does not apply)</i>  | For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for  | Not applicable |
| 4.17             | Contractor's Retention Bond<br><i>(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply and relevant particulars are given below)</i> | Clause 4.17 does not apply   |                |
| 4.18.1           | Retention Percentage   | 5%   |                |
| 5.5              | Daywork  | The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in the following document:<br><br>Not applicable   |                |
| 6.3B             | Third party consents, approvals, licences and permissions  | The Contractor is responsible for obtaining the following without addition to the Contract Sum:<br><br>[TBC (in particular whether the Contractor will be expected to directly procure the EPC required under the terms of the AFL)] [Torbay to confirm] |                |

| Clause Reference   | Subject   | Particulars  |   |
|--|---|--|---|
| 6.4.1  | Contractor's Public Liability Insurance: injury to persons or property - the required level of cover is not less than | £10,000,000 for any one occurrence or series of occurrences arising out of one event<br><br><b>[Note: Contractor to provide evidence of public liability cover.]</b> |   |
| 6.5.1  | Insurance - liability of Employer   | Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event   | £[TBC if required] [Torbay to confirm]<br><br><b>[Note: Contractor to provide evidence of non-negligent liability cover (if required).]</b> |
| 6.7 and Schedule 3   | Works insurance - Insurance Option applicable   | Schedule 3: Insurance  |   |
|  |   | Option A Applies   | ✓   |
|  |   | Option B Applies   |   |
|  |   | Option C Applies   |   |
|  | Percentage to cover professional fees<br><i>(if no other percentage is stated, it shall be 15 per cent)</i>           | 15%  |   |
| Where cover is to be provided under the Contractor's annual policy, the annual renewal date is | <b>[Note: To be provided by Contractor.]</b>  |  |   |
| Where Insurance Option C applies, paragraph C.1  | Not applicable  |  |   |
| 6.10 and Schedule 3  | Terrorism Cover - details of the required cover<br><br><i>(Unless otherwise stated, Pool Re Cover is required)</i>    | <b>[Note: Contractor to confirm whether its CAR policy includes terrorism cover]</b>   |   |

| Clause Reference | Subject  | Particulars  |
|------------------|--|--|
| 6.15             | <p>Professional Indemnity Insurance</p> <p>Level of cover</p> <p><i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated)</i></p> <p><i>(If no amount is stated, insurance under clause 6.15 shall not be required)</i></p> | <p>Amount of Indemnity required</p> <p>Relates to claims or series of claims arising out of one event and is £10,000,000</p> <p><b>[Note: Contractor to provide evidence of PI cover.]</b></p>   |
|                  | <p>Cover for pollution and contamination claims</p> <p><i>(If no amount is stated such cover shall not be required;, unless otherwise stated, the required limit of indemnity is an annual aggregate amount)</i></p>   | <p>Is required with a sub-limit of indemnity of £[TBC if required] <b>[Torbay to confirm]</b></p> <p><b>[Note: Contractor to provide evidence of pollution and contamination cover (if required).]</b></p>   |
|                  | <p>Expiry of required period of Professional Indemnity Insurance (after the date of practical completion of the Works) is</p>  | <p>12 years</p>  |
| 6.17             | <p>Joint Fire Code</p>   | <p>The Joint Fire Code <b>[applies / does not apply]</b> <b>[Torbay to confirm]</b></p> <p>If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a "Large Project":</p> <p><b>[Yes / No]</b></p> |
| 6.20             | <p>Joint Fire Code - amendments/revisions</p> <p><i>(The cost shall be borne by the Contractor unless otherwise stated)</i></p>  | <p>The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor.</p>   |

| Clause Reference     | Subject  | Particulars   |
|----------------------|--|---|
| 7.3.1                | Performance bond or guarantee from bank or other approved surety<br><br><b>[Security requirements TBC]</b>   | [is / is not] required  |
|                      |  | The required form of the bond or guarantee is set out in Schedule C to the Schedule of Amendments.                              |
|                      |  | Value: 10% of the Contract Sum  |
|                      |  | Period of validity: the expiry date of the performance bond or guarantee is to be the date of practical completion of the Works |
|                      | Reduction in value - if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is | Not applicable  |
| 7.3.2                | Guarantee from the Contractor's parent company<br><br><b>[Security requirements TBC]</b>   | [is / is not] required  |
|                      |  | Parent company's name and registration number: <b>[Insert details]</b>  |
|                      |  | The required form of the guarantee is set out in Schedule B to the Schedule of Amendments.                                      |
| 8.9.2                | Period of suspension<br><br><i>(If none is stated, the period is 2 months)</i>   | 2 months  |
| 8.11.1.1 to 8.11.1.6 | Period of suspension<br><br><i>(If none is stated, the period is 2 months)</i>   | 2 months  |
| 9.2.1                | Adjudication   | The Adjudicator is to be nominated by the Adjudicator nominating body.  |



| <b>Clause Reference</b> | <b>Subject</b>  | <b>Particulars</b>                           |
|-------------------------|---|--|
|                         | Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) | The Royal Institution of Chartered Surveyors |

## **PART 4. Conditions**

### **1. CLAUSE 1.1**

#### 1.1 Amend these definitions:

- (a) Agreement: add to the end of the definition, before the full stop:  
", each as amended by the Schedule of Amendments".
- (b) Article: add to the end of the definition, before the full stop:  
", as amended by Part 2 of the Schedule of Amendments".
- (c) CDM Regulations: add to the end of the definition, before the full stop:  
"and any related guidance requirements issued by the Health and Safety Executive from time to time, or any remaking thereof or any amendments to a regulation therein".
- (d) Conditions: add to the end of the definition, before the full stop:  
", each as amended by Part 4 of the Schedule of Amendments".
- (e) Contract Particulars: add to the end of the definition, before the full stop:  
", as set out in Part 3 of the Schedule of Amendments".
- (f) Recitals: add to the end of the definition, before the full stop:  
", as amended by Part 1 of the Schedule of Amendments".
- (g) Tenant: delete the existing definition and replace with "any person who takes or agrees to take a leasehold interest in the whole or any part of the Works or the site, including Wickes Building Supplies Limited (company number 01840419)".

#### 1.2 Add these definitions:

"AFL: an agreement for lease made between the Employer and Wickes Building Supplies Limited (company number 01840419) in respect of the site."

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU), both as amended by the Construction Products (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/465)."

"Covid-19 Pandemic: the outbreak of the virus known as Coronavirus or Covid-19 (recognised as a pandemic by the World Health Organization on 11 March 2020), including any secondary or subsequent resurgence of that virus or a mutated form of the same."

"Deeds of Novation: the deeds of novation between the Employer, the Contractor, and those Professional Consultants listed at Part 1 of Schedule D, in the form attached at Part 4 of Schedule D to the Schedule of Amendments."

"Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the time of specification or use as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British or European Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations."

"Key Sub-contractor: a sub-contractor appointed by the Contractor to carry out design works and/or named or identified in Part 1 of Schedule E to the Schedule of Amendments and any replacement of a Key Sub-contractor."

"Material: designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other documents or materials in any medium which have been created, developed and/or provided by the Contractor or its sub-consultants or sub-contractors in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Works (and the completed Works)."

"Professional Consultant: a professional consultant appointed by (or novated to) the Contractor to carry out design services and/or named or identified in Part 1 of Schedule D to the Schedule of Amendments and any replacement of a Professional Consultant."

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope, character, value and complexity to the Works."

"Third Party Agreements: the agreements, or extracts from agreements, between the Employer and third parties, which may affect the Works, attached at Schedule F to the Schedule of Amendments, as supplemented by any instruction from the Employer referred to in clause 5.1.3. For the avoidance of doubt, the Third Party Agreements include the AFL."

**2. CLAUSE 1.3**

In clause 1.3, after "override or modify" add: "the Schedule of Amendments,"

**3. CLAUSE 1.6**

Delete "Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B," and replace with "Subject to clause 7 of this Contract,".

**4. CLAUSE 1.8**

- 4.1 Delete clause 1.8.1.1 and replace with "Number not used".
- 4.2 In clause 1.8.2.1, delete "the date of issue of the relevant statement" and replace with "the due date for the final payment".

**5. CLAUSE 1.10**

In clause 1.10 delete "either Party's consent under clause 7.1 the giving of which shall be at the sole discretion of the Party from whom it is sought" and replace with "the Employer's consent under clause 7.1.4 the giving of which shall be at the Employer's sole discretion".

**6. CLAUSE 1.12**

Insert a new clause 1.12:

"The appointment of the Contractor under this Contract shall be deemed to have commenced with effect from the date when the Contractor first began to carry out any services or works relating to the Works. To the extent that any such services or works were carried out prior to or otherwise than pursuant to this Contract, the duties and obligations contained in this Contract shall be deemed to apply to the carrying out of those services or works. All payments made in respect of services or works carried out prior to the date of this Contract shall be treated as payments on account of sums due under this Contract."

**7. CLAUSE 2.1**

- 7.1 Insert the following at the end of clause 2.1.1: "Without prejudice to the foregoing, the Contractor shall ensure that the Works are carried out and completed:
- .1 with due diligence and in a good and workmanlike manner;
  - .2 using only good quality sound materials and well maintained plant and equipment;  
and
  - .3 in accordance with:
    - .1 the AFL;
    - .2 the Approvals and the Specification (both as defined in the AFL);
    - .3 the CDM Regulations;
    - .4 any applicable British Standards, codes of practice and good building practice; and
    - .5 in accordance with all statutory or other legal requirements and the recommendations or requirements of any local authority or statutory undertakings."
- 7.2 Delete sub-clause 2.1.2 and replace with: "The Contractor shall make due allowance in its 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."

- 7.3 Insert a new clause 2.1.5: "The Contractor will permit the Tenant under the AFL to erect a temporary sign advertising its prospective occupation of the completed Works in a suitable location within the site of the Works agreed with the Contractor (acting reasonably) without charge to the Employer."

**8. CLAUSE 2.1A**

Insert new clause 2.1A:

**"Site conditions**

The Contractor shall be deemed to be fully acquainted with any physical and other conditions of or affecting the site of the Works which a competent and experienced contractor should have reasonably made allowance for, having regard to any opportunity afforded to the Contractor to survey and/or inspect the site before the Base Date, the information contained in any site reports provided to the Contractor by the Employer before the Base Date and any publicly available information regarding the site. The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances relating to such site conditions as ascertainable from the aforementioned surveys, inspections and information which may influence or affect the execution of the Works. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment (whether by way of an addition to the Contract Sum or otherwise) or an extension of time."

**9. CLAUSE 2.1B**

Insert new clause 2.1B:

**"Covid-19 precautions**

The Contractor undertakes:

- .1 to take all practicable steps to prevent the transmission of Covid-19 (and other disease and infection) at the site and generally among the Contractor's Persons;
- .2 to comply, and to require all persons coming onto the site or otherwise performing the Works to comply, at all times with all Statutory Requirements, good industry practice, guidance and operational protocols relating to the Covid-19 Pandemic;
- .3 to comply with all Covid-19 Pandemic related reporting requirements, data gathering and information sharing requirements reasonably imposed by the Employer from time to time; and
- .4 to require its subcontractors (at all levels) to agree a clause equivalent in all material respects to this clause 2.1B."

**10. CLAUSE 2.2**

- 10.1 In sub-clause 2.2.1, after "so far as procurable, be" add: "of satisfactory quality, reasonably fit for their intended purposes and".
- 10.2 In sub-clause 2.2.2, insert a new final sentence: "To the extent not described in the Employer's Requirements or Contractor's Proposals, or to the extent these contain a lesser

standard, all workmanship shall be of satisfactory quality and carried out in a good and workmanlike manner."

10.3 Add a new sub-clause 2.2.6:

"The Contractor shall not specify or use anything in the Works which, at the time of specification or use, is Deleterious."

10.4 Add a new sub-clause 2.2.7:

"The Contractor shall ensure that all goods, materials, products and equipment intended for incorporation in the Works are correctly and properly installed in accordance with manufacturer's instructions and recommendations. To the extent that the Contractor considers an alternative method of installation is required or would better suit any goods, materials, products or equipment, it shall seek the Employer's Agent's prior written approval. Any such approval given by the Employer's Agent shall not relieve the Contractor from his obligation to ensure that goods, materials, products and equipment are correctly and properly installed."

**11. CLAUSE 2.3**

Delete "On" at the start of this clause and replace with "Subject always to clause 2.3A, on".

**12. CLAUSE 2.3A**

Insert a new clause 2.3A:

“.1 The Contractor acknowledges the possibility of certain early access rights being granted to the Tenant under the AFL prior to practical completion of the Works and that certain related persons (the "**Tenant Personnel**") may therefore be present during the carrying out of the Works. The Contractor further acknowledges that the Tenant may procure the completion of certain works not forming part of this Contract (the "**Early Access Works**") during the aforementioned early access period. The Contractor shall:

- .1 fully and actively cooperate with the Tenant Personnel and any contractors engaged in connection with the Early Access Works in the performance of the Contractor's duties and obligations under this Contract;
- .2 comply with all reasonable instructions issued by the Employer (or the Employer's Agent) in respect of the coordination of the Works with the Early Access Works and the requirements and activities of the Tenant Personnel; and
- .3 take all reasonably practicable measures to ensure that no unforeseen interruption or interference is caused by or to the Tenant Personnel or the Early Access Works in the execution of the Works.

Subject to clauses 2.3A.2 and 2.3A.3, the Contractor shall not be entitled to an extension of time or additional payment (whether by addition to the Contract Sum or otherwise) due to the requirements of this clause.

.2 Where and to the extent that the Early Access Works or the requirements and activities of the Tenant Personnel are not sufficiently detailed in the Contract

Documents to enable a competent and experienced contractor to carry out and complete the Works in conjunction with the same, without consequent delay and/or disruption to the Works, then such consequent delay and/or disruption shall be treated as a Relevant Event and a Relevant Matter.

.3 Where and to the extent that the regular progress of the Works is delayed or disrupted due to any impediment, prevention or default (whether by act or omission) by the Tenant Personnel or any contractor engaged in connection with the Early Access Works, then this shall be treated as a Relevant Event and a Relevant Matter."

**13. CLAUSE 2.5**

Delete clause 2.5 and replace with "Not used."

**14. CLAUSE 2.6**

Delete clause 2.6 and replace with "Not used."

**15. CLAUSE 2.7**

In clause 2.7.4, after "divulge" insert: "(except in compliance with statutory obligations or the requirements of any auditor or otherwise in accordance with the terms of this Contract)".

**16. CLAUSE 2.11**

Delete clause 2.11 and substitute with the following:

"The Contractor accepts entire responsibility for any design contained in the Employer's Requirements and the Contractor's Proposals, including verifying the adequacy of any design contained therein, whether or not the whole or any part of the Employer's Requirements and/or Contractor's Proposals have been prepared by the Employer or by any consultants employed by the Employer."

**17. CLAUSE 2.12**

Delete clause 2.12 entirely and its heading and replace with: "Number not used."

**18. CLAUSE 2.13**

Delete the opening paragraph of the clause (before sub-clause 2.13.1) and replace with:

"If the Contractor becomes aware of any inadequacy, discrepancy or divergence in or between any of the following documents, namely:"

**19. CLAUSE 2.14**

Delete the text of clause 2.14 and replace with:

"Where there is an error, omission or discrepancy within the Employer's Requirements, the Contractor's Proposals or the Contractor's Design Documents (including any non-compliance with Statutory Requirements), or a divergence between any of the Employer's Requirements, the Contractor's Proposals and the Contractor's Design Documents, the Contractor shall notify the Employer of the error, omission, discrepancy or divergence and

of its proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the error, omission, discrepancy or divergence shall be dealt with. The Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract."

**20. CLAUSE 2.15**

20.1 In sub-clause 2.15.2.1, after "change in the Statutory Requirements" insert:

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

20.2 Delete sub-clause 2.15.2.3.

**21. CLAUSE 2.17**

21.1 Delete clause 2.17.1 and replace with the following:

Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works including all design work prepared or proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements. The Contractor warrants to the Employer that it shall use the Standard of Care when designing the Works and that its design complies with Statutory Requirements."

21.2 Delete clause 2.17.3 and replace with "Not used".

**22. CLAUSE 2.25**

Add a new sub-clause 2.25.6.5:

"The Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

**23. CLAUSE 2.26**

23.1 In sub-clause 2.26.2.1, after "clause 2.13" insert: "(subject always to clauses 2.11 and 2.14)"

23.2 Insert at the end of sub-clause 2.26.2.3 "or unless the inspection or test was reasonable in all the circumstances".

23.3 Insert the following at the end of clause 2.26.7: "(provided that the Contractor has complied fully with its obligations under clause 2.1.2 of this Contract)".

23.4 In sub-clause 2.26.11 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".

23.5 In sub-clause 2.26.12 add at the end of the sub-clause and before the semi-colon:

"save for:

- any statutory powers exercised in connection with the United Kingdom's exit from the European Union or the associated transition period (including consequent effects on economic circumstances, market conditions and/or labour availability), which shall not be treated as directly affecting the execution of the Works for the purpose of this clause 2.26.12; and
- any statutory powers exercised in connection with the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.26.15 below"

23.6 In sub-clause 2.26.14 add at the end of the sub-clause and before the full stop:

"save that the term 'force majeure' shall not include:

- any consequences of the United Kingdom ceasing to be a member state of the European Union or the cessation of the associated transition period (including any change in economic circumstances, market conditions and/or labour availability); and
- any consequences of the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.26.15 below".

23.7 Insert a new sub-clause 2.26.15:

"an event which:

- is either:
  - the imposition after the Base Date (pursuant to Statutory Requirements or published industry guidance) of any restriction on the activities and/or personnel permitted on site at any time; or
  - a delay in the delivery of goods, materials, plant and/or equipment intended for incorporation in the Works arising due to international border control restrictions and/or domestic transportation restrictions imposed after the Base Date pursuant to Statutory Requirements; and
- can reasonably be said to have arisen in consequence of the Covid-19 Pandemic; and
- a competent contractor experienced in procuring, carrying out and completing works of a similar nature, value, scope, complexity and timescale to the Works could not reasonably have avoided, mitigated or allowed for in all the circumstances."

**24. CLAUSE 2.27**

Insert the following at the end of clause 2.27: "The Contractor acknowledges that, under the terms of the AFL, the Tenant is entitled to attend the practical completion inspection and the Contractor shall permit and not do anything to prevent or hinder the Tenant's attendance or participation."

**25. CLAUSE 2.27A**

Insert new clause 2.27A:

"It shall be a pre-requisite to sectional completion or practical completion that the Contractor shall have:

- .1 completed the Works or Section such that they 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 or Section by the Employer (or the Tenant under the AFL);
- .2 delivered all collateral warranties required under clause 7 of this Contract;
- .3 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the Works or the relevant Section, in accordance with the Contract Documents and the Employer's reasonable requirements; and
- .4 satisfied any further pre-requisites to practical completion or sectional completion as may be stated in the Contract Particulars.

**26. CLAUSE 2.29**

Insert the following at the end of clause 2.29.2 as a new hanging paragraph:

"In circumstances where the employment of the Contractor is terminated after the Completion Date and prior to the date of practical completion of the Works:

- regardless of the reason for termination, the Employer shall remain entitled to recover, withhold or deduct liquidated damages for the period between the Completion Date and the date of termination of the Contractor's employment; and
- where the Contractor's employment is terminated under clause 8.4, 8.5 or 8.6, the Employer shall be further entitled to recover (in accordance with clause 8.7.4.1 and subject always to clause 8.8) any expense, loss and/or damage caused to the Employer by the delay to completion of the Works and relating to the period following the date of termination of the Contractor's employment."

**27. CLAUSE 2.35**

27.1 In clause 2.35.2, delete "prior to issue of that schedule" and delete "after delivery of that schedule or".

27.2 In the final paragraph, line 1, after "Within a reasonable time" insert:

"(and forthwith in the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation or use of the relevant part of the Works)".

27.3 At the end of the clause insert:

"The Contractor shall carry out and complete its obligations under this clause 2.35 causing as little disturbance or inconvenience as is reasonably practicable to any Tenant.

If the Contractor fails to make good any defects, shrinkages or other faults notified by the Employer pursuant to this clause within the time required under this clause then the Employer shall be entitled to instruct another contractor to carry out such works and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor."

**28. CLAUSE 2.36**

Add to the end of the first sentence in clause 2.36, before the full stop:

", provided that the Employer shall not be required to issue any Notice of Completion of Making Good earlier than the expiry of the Rectification Period"

**29. CLAUSE 2.36A**

Add a new clause 2.36A after clause 2.36:

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

Clauses 2.35 and 2.36 shall apply, without limitation, to:

- .1 any items identified on any snagging list issued by or on behalf of the Employer at or around practical completion or sectional completion or attached to a Practical Completion Statement or Section Completion Statement;
- .2 any defects, shrinkages or other faults in the Works or Section at practical completion or sectional completion; and
- .3 any incomplete work, forming part of the Works or Section, remaining at practical completion or sectional completion."

**30. CLAUSE 2.37**

30.1 After "and use by the Employer" insert "operation and maintenance manuals and".

30.2 After "as is specified in the Contract Documents" insert: "and/or (to the extent such information is within the Contractor's possession or control) at **[clause 16.2]** of the AFL".

**31. CLAUSE 2.38**

31.1 Delete sub-clause 2.38.2 and replace with:

"The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free, world-wide licence to copy and make full use of any Material prepared by or on behalf of the Contractor for any purpose relating to the Works (and the completed Works) including any of the Permitted Uses.

31.2 Delete sub-clause 2.38.3 and replace with:

"The licence referred to in clause 2.38.2 carries the right to grant sub-licences and is freely transferable to third parties without the Contractor's consent."

31.3 Insert new clause 2.38.5:

".5 The Employer may, at any time (whether before or after completion of the Works, or termination of the Contractor's engagement under this Contract), request a copy or copies of (some or all of) the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Employer."

**32. CLAUSE 2.39**

Add a new clause 2.39:

**"Third Party Agreements**

- .1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.
- .2 The Contractor shall ensure that no act or default or omission on its part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

**33. CLAUSE 2.40**

Insert a new clause 2.40:

**"GIA**

The Contractor shall be deemed to be fully aware of the adverse financial and other consequences (including loss of rent in respect of the completed Works) that the Employer may incur, pursuant to [clause 20] of the AFL, if the Contractor fails to carry out and complete the Works so as to provide the requisite GIA (as defined in the AFL). Such losses shall be deemed to be a direct loss to the Employer and within the reasonable contemplation of both parties for the purposes of recovery under this Contract."

**34. CLAUSE 3.1**

34.1 Insert after "and any person authorised by him or the Employer": "including representatives of the Tenant under the AFL".

34.2 Insert the following at the end of the clause: "The Contractor must ensure that any reasonable representations of the Tenant regarding the state or progress of the Works, made following any such access granted under this clause 3.1 or following any project meeting, are promptly dealt with to the Employer's and the Tenant's reasonable satisfaction."

**35. CLAUSE 3.2**

Insert the following at the end of clause 3.2:

"The Employer shall be entitled (acting reasonably) to require the removal of the Site Manager or any other person engaged on the carrying out of the Works if, in the Employer's opinion, their performance or conduct is or has been unsatisfactory and the Contractor shall promptly remove such person and replace them with such person as the Employer shall first have approved in writing. Any cost incurred by the Contractor in replacing the Site Manager or any other person engaged on the carrying out of the Works (in any circumstances) shall be borne by the Contractor. The Site Manager shall keep complete and accurate records regarding on-site activity in accordance with any requirements reasonably imposed by the Employer and shall make the same available for inspection by the Employer at all reasonable times."

**36. CLAUSE 3.4**

36.1 In sub-clause 3.4, after "Design and Build Sub-Contract." insert:

"The appointment of all Professional Consultants and Key Sub-Contractors shall be on terms and conditions which are to be approved by the Employer (such approval not to be unreasonably withheld or delayed). The Employer shall be entitled to withhold approval in respect of an appointment if (without limitation):

- it does not have a limitation period of at least 12 years from completion of the relevant services or works; or
- in the case of any Professional Consultant appointment for architectural services:
  - it includes any net contribution clause; and/or
  - it includes any aggregate limit on the Professional Consultant's liability.

The Contractor shall upon reasonable request (but not later than 14 days from request) by the Employer or the Employer's Agent, provide a full copy of the form of sub-contract to the Employer or the Employer's Agent (as applicable), redacted as necessary to remove commercially sensitive pricing information only."

36.2 Delete the existing text of sub-clause 3.4.2.5 and replace with the following:

"where applicable, for the execution and delivery by the sub-contractor, in each case within 10 Business Days of receipt of a written request by the Contractor, of such collateral warranties as comply with this Contract;"

**37. CLAUSE 3.5**

Before the semi-colon at the end of clause 3.5.1 insert: "on the grounds of health and safety".

**38. CLAUSE 3.8**

Delete clause 3.8 and insert "Not used".

**39. CLAUSE 3.9**

In clause 3.9.1, delete from and including "and provided that" to and including the end of the sub-clause.

**40. CLAUSE 3.12**

Insert the following at the end of clause 3.12, before the full stop: "or unless the inspection or test was otherwise reasonable in all the circumstances".

**41. CLAUSE 3.13**

41.1 In clause 3.13.1, before "removal from" insert "rectification of or".

41.2 In clause 3.13.3 delete from and including "but clauses 2.25" to and including the end of the sub-clause and replace with: "and there shall be no extension of time for completion".

**42. CLAUSE 3.16**

In sub-clause 3.16.5, delete "immediately" and replace with "promptly".

**43. CLAUSE 3.17**

Insert new clause 3.17:

**"Project meetings**

The Contractor shall keep the Employer and the Employer's Agent regularly informed as to the progress of the Works and shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals. Representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Employer or the Employer's Agent (including, without limitation, representatives of the Tenant under the AFL) shall be permitted to attend such meetings."

**44. CLAUSE 4.2**

Delete sub-clause 4.2.3 and replace with: "Number not used;"

**45. CLAUSE 4.4**

**[Note: Further amendments will be required here, to reflect the parties' final agreed arrangements re the VAT reverse charge. Details TBC.]**

Delete the existing text of clause 4.4.1 and replace with: "The Contract Sum is exclusive of VAT. In relation to each payment made under or in connection with this Contract, the payer shall in addition pay the amount of any VAT properly chargeable in respect of it."

**46. CLAUSE 4.9**

In clause 4.9.5 (final paragraph), delete "5 days" and replace with "1 day".

**47. CLAUSE 4.10**

In sub-clause 4.10.4, delete "The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent him exercising" and replace with "The Employer is entitled to exercise".

**48. CLAUSE 4.11**

48.1 In clause 4.11.1, after "7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of" insert: "any or all of".

48.2 In clause 4.11.3, 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."

**49. CLAUSE 4.12**

49.1 Delete sub-clause 4.12.1.4 and replace with: "Number not used."

49.2 In the last paragraph of clause 4.12.1, delete "any applicable Fluctuations Provision or".

49.3 Delete sub-clause 4.12.2.5 and replace with: "Number not used."

49.4 In sub-clause 4.12.3.2 delete: "or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.12.1".

**50. CLAUSE 4.13**

50.1 Insert at the end of clause 4.13.1.2 "and provided that the Contractor has provided reasonable evidence that unencumbered title to the Site Materials shall pass to the Employer upon payment".

50.2 In the last paragraph of clause 4.13.1, delete "any applicable Fluctuations Provision or".

50.3 Delete sub-clause 4.13.2.5 and replace with: "Number not used."

50.4 In sub-clause 4.13.3.2 delete: "or under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1".

**51. CLAUSE 4.16**

Delete clause 4.16 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.14, the Employer shall be:

- .1 under no fiduciary obligation to the Contractor or any third party;
- .2 under no obligation to set aside in a separate bank account any amount representing the Retention; and
- .3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

**52. CLAUSE 4.19**

Insert new clause 4.19.3:

"The Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment in respect of any cost and/or loss and/or expense arising by

reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

**53. CLAUSE 4.21**

In sub-clause 4.21.2.2 add to the end of the sub-clause, before the semi-colon:

"or unless the inspection or test was otherwise reasonable in all the circumstances".

**54. CLAUSE 5.1**

Change the full stop at the end of sub-clause 5.1.2.4 to a semicolon and add a new sub-clause 5.1.3:

".3 without prejudice to the rest of this clause 5.1, an instruction from the Employer supplementing or amending the Third Party Agreements."

**55. CLAUSE 5.6**

Add to the end of clause 5.6, before the full stop:

"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"

**56. CLAUSE 6.1**

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

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

**57. CLAUSE 6.2**

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

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

**58. CLAUSE 6.3A**

Add new clause 6.3A after clause 6.3:

**"Contractor to prevent nuisance**

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably be aware, arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference for which it has been responsible. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A."

**59. CLAUSE 6.3B**



Add new clause 6.3B after new clause 6.3A:

**"Trespass and third party consents**

- .1 Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public.
- .2 The Contractor shall obtain, without addition or adjustment of the Contract Sum, any third party consents, approvals, licences or permissions stated in the Contract Particulars.
- .3 If requested by the Employer, the Contractor at its own cost shall provide reasonable assistance (including the provision of copies of drawings and specifications) to the Employer and its nominated representatives and consultants in obtaining any third party consents, approvals, licences or permissions which are not the Contractor's responsibility to obtain under clause 6.3B.2.
- .4 The Contractor shall comply, and shall procure that all Contractor's Persons comply, in all respects with any third party consents, approvals, licences or permissions referenced in this clause 6.3B, as the same may be varied from time to time."

**60. CLAUSE 6.15**

Delete the text of clause 6.15, but not its heading, and replace with:

"The Contractor shall maintain professional indemnity insurance with a minimum limit of indemnity and on the basis and for the duration as set out in the Contract Particulars, provided that (subject to clause 6.15A) such insurance is available at commercially reasonable rates. The Contractor shall maintain such professional indemnity insurance:

- .1 with reputable insurers lawfully carrying on insurance business in the UK;
- .2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- .3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010."

**61. CLAUSE 6.15A**

Add new clause 6.15A, after clause 6.15:

**"Commercially reasonable rates**

Any increased or additional premium required by insurers for the insurance referred to in clause 6.15 because of the Contractor's claims record or other acts, omissions, matters or

things particular to the Contractor shall be deemed to be within commercially reasonable rates."

**62. CLAUSE 6.15B**

Add new clause 6.15B, after clause 6.15A:

**"Evidence of professional indemnity insurance etc.**

- .1 Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the insurance required to be maintained under clause 6.15 is in force and that all premiums due have been paid.
- .2 The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements.
- .3 The obligation under this Contract to take out and maintain professional indemnity insurance shall continue notwithstanding termination of the Contract, or determination of the Contractor's employment hereunder, in either case for any reason whatsoever."

**63. CLAUSE 6.16A**

Add a new clause 6.16A , after clause 6.16:

**"Key Sub-contractors' professional indemnity insurance**

The Contractor shall procure that the Key Sub-contractors shall maintain professional indemnity insurance in accordance with the required form of sub-contractor's deed of collateral warranty and Part 2 of Schedule E to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the Key Sub-contractors' insurance referred to in this clause is in force and that all premiums due have been paid."

**64. CLAUSE 6.16B**

Add a new clause 6.16B , after clause 6.16A:

**"Professional Consultants' professional indemnity insurance**

The Contractor shall procure that the Professional Consultants shall maintain professional indemnity insurance in accordance with the required form of professional consultant's deed of collateral warranty and Part 2 of Schedule D to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Professional Consultant), the Contractor shall procure and shall send to the Employer evidence that the Professional Consultant's insurance referred to in this clause is in force and that all premiums due have been paid."

**65. CLAUSE 7.1**

Delete the whole of clause 7.1 and its heading and replace with:

**"General right to assign**

- .1 The Employer may on two occasions without the consent of the Contractor assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.
- .2 The Employer shall notify the Contractor of any assignment within 10 Business Days.
- .3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.
- .4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion (save that the Employer's consent shall not be required where and to the extent that the assignment is automatically permitted by virtue of the Business Contract Terms (Assignment of Receivables) Regulations 2018)."

**66. CLAUSE 7.2**

Delete the whole of clause 7.2 and its heading and replace with: "Number not used."

**67. CLAUSE 7.3**

Insert the following at the end of clause 7.3:

"If the Contractor does not procure execution and delivery of the parent company guarantee and/or performance bond (as applicable) within 10 Business Days of the date of this Contract, then, notwithstanding any other term of this Contract, the Employer shall be entitled to withhold any sum which shall become due to the Contractor under this Contract until such time as the required security is executed and delivered."

**68. CLAUSES 7.4 TO 7E (INCLUSIVE)**

Delete existing clauses 7.4 to 7E (inclusive) and their headings.

Replace clause 7.4 with:

**"Contractor's collateral warranty**

- .1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Tenant identified in the request in the form of the Contractor's deed of collateral warranty contained in Schedule G to the Schedule of Amendments.
- .2 If the Contractor does not procure execution and delivery of any such warranty then, notwithstanding any other term of this Contract, the Employer shall be entitled to withhold any sum which shall become due to the Contractor under this Contract until such time as the required warranty is executed and delivered."

**69. CLAUSE 7.5**

Insert a new clause 7.5:

**"Professional Consultants - collateral warranties**

- .1 The Contractor shall ensure, within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Professional Consultant), that the Professional Consultant identified in the request has executed and delivered a deed of collateral warranty in favour of the Employer and/or in favour of any Tenant identified in the Employer's request, in the relevant form set out in Part 3 of Schedule D to the Schedule of Amendments.
- .2 If the Contractor fails to procure any executed deed of collateral warranty from any Professional Consultant within the time period required under clause 7.5.1, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Professional Consultant and claimed by the Contractor in its application for payment until such time as the required warranty is executed and delivered."

**70. CLAUSE 7.6**

Insert new clause 7.6:

**"Sub-contractor collateral warranties**

- .1 Within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall ensure that the Key Sub-contractor identified in the request has executed and delivered a deed of collateral warranty in favour of the Employer and/or in favour of any Tenant identified in the request in the relevant form set out in Part 3 of Schedule E to the Schedule of Amendments.
- .2 If the Contractor fails to procure any executed deed of collateral warranty from any Key Sub-contractor within the time period required under clause 7.6.1, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Key Sub-contractor and claimed by the Contractor in its application for payment."

**71. CLAUSE 7.7**

Insert new clause 7.7:

**"Contractor's duty not to terminate or vary appointments or sub-contracts**

The Contractor shall not terminate or vary the appointment of any Professional Consultant or Key Sub-Contractor without the Employer's prior consent, which shall not be unreasonably withheld or delayed."

**72. CLAUSE 7.8**

Insert new clause 7.8:

**"Professional Consultants - novation**

No later than the date of this Contract, the Contractor shall execute and deliver the Deed(s) of Novation to the Employer and, following such novation, shall procure the delivery of

collateral warranties from the novated Professional Consultant(s) in favour of the Employer and the Tenant under the AFL in accordance with clause 7.5."

**73. CLAUSE 8.1**

Insert new clauses 8.1.5 and 8.1.6 as follows:

- .5 when it becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- .6 when it becomes subject to a restructuring plan under Part 26A Companies Act 2006".

**74. CLAUSE 8.4**

74.1 In sub-clause 8.4.1.3 after "requiring him to remove" insert: "or rectify". Delete "and by such refusal or neglect the Works are materially affected".

74.2 Insert new sub-clause 8.4.1.6:

".6 fails to maintain or provide adequate evidence of any insurance cover required to be procured by the Contractor under this Contract"

74.3 Insert a new sub-clause 8.4.4:

"Without prejudice to the rest of this clause 8.4, if the AFL is terminated and such termination is attributable to a breach or default of the Contractor, then the Employer may at any time terminate the Contractor's employment under this Contract immediately by giving notice in writing to the Contractor."

74.4 Insert new sub-clause 8.4.5:

"The Employer may immediately terminate the Contractor's employment under this Contract by giving written notice, if the Contractor is in material or persistent breach of its obligations under this Contract and fails to rectify such breach within 14 days of being notified of the same."

**75. CLAUSE 8.5**

In sub-clause 8.5.3.3 at the start of the sub-clause, after "the Employer may", insert: ", at the Contractor's expense,"

**76. CLAUSE 8.7**

76.1 In sub-clause 8.7.2 after "the Contractor shall" and before the colon, insert: ", at the Contractor's expense"

76.2 At the end of the first paragraph of sub-clause 8.7.4, before the colon, insert: ", at the Contractor's expense"

**77. CLAUSE 8.7A**

Insert new clause 8.7A after existing clause 8.7:

**"Additional consequences of AFL termination**

The Contractor shall be deemed to be fully aware of the adverse financial and other consequences (including loss of rent in respect of the completed Works) that the Employer may incur if the AFL is terminated due to a breach or default of the Contractor. Such losses shall be deemed to be a direct loss to the Employer and within the reasonable contemplation of both parties for the purposes of recovery under this Contract (whether or not the Contractor's employment is subsequently terminated under clause 8.4.4)."

**78. CLAUSE 8.11**

78.1 In the final paragraph of clause 8.11.1, delete "either Party, subject to clause 8.11.2," and replace with "the Employer". Delete "the other" and replace with "the Contractor".

78.2 Delete clause 8.11.2 and replace with "Not used".

78.3 Insert a new clause 8.11.4 after 8.11.3:

"Without prejudice to the rest of this clause 8.11, if the AFL is terminated and such termination is not attributable to a breach or default of the Contractor, the Employer may at any time terminate the Contractor's employment under this Contract immediately by giving notice in writing to the Contractor."

**79. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 1: CONTRACTOR'S DESIGN SUBMISSION PROCEDURE**

This agreement incorporates Schedule 1 to the JCT Conditions.

**80. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 2: SUPPLEMENTAL PROVISIONS**

This agreement incorporates Schedule 2 to the JCT Conditions.

**81. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 3: INSURANCE OPTIONS**

This agreement incorporates Schedule 3 to the JCT Conditions.

**82. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 4: CODE OF PRACTICE**

This agreement incorporates Schedule 4 to the JCT Conditions.

**83. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 5: THIRD PARTY RIGHTS**

Delete Schedule 5 to the JCT Conditions and replace with: "Schedule 5 not used."

**84. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 6: FORMS OF BONDS**

Delete Schedule 6 to the JCT Conditions and replace with "Schedule 6 not used."

**85. JCT DESIGN AND BUILD CONTRACT, 2016 EDITION, SCHEDULE 7: FLUCTUATIONS OPTIONS**

Delete Schedule 7 to the JCT Conditions and replace with: "Schedule 7 not used."

**SCHEDULE B - PARENT COMPANY GUARANTEE**

**[Note: Security requirements TBC]**



**SCHEDULE C – PERFORMANCE BOND**

**[Note: Security requirements TBC]**

**SCHEDULE D - PROFESSIONAL CONSULTANTS, PROFESSIONAL CONSULTANTS'  
PROFESSIONAL INDEMNITY INSURANCE AND PROFESSIONAL CONSULTANT'S DEED  
OF COLLATERAL WARRANTY**

**PART 1. Professional Consultants**

The Professional Consultants identifiable at the date of this Contract are:

- [Appointed architect sub-consultant (identity TBC)]
- C & A Consultants (Torquay) Limited (t/a Case Consultants) – Structural and civils engineer
- [Appointed M&E sub-consultant (identity TBC)]

The Professional Consultants to be novated to the Contractor are:

- C & A Consultants (Torquay) Limited (t/a Case Consultants) – Structural and civils engineer

**PART 2. Professional Consultants' professional indemnity insurance**

Each Professional Consultant shall maintain professional indemnity insurance in a minimum amount of:

- For the structural engineer and the architect sub-consultants: £5,000,000 on an each and every claim basis;
- For the M&E sub-consultant: £2,000,000 on an each and every claim basis.

**PART 3. Professional Consultant's collateral warranty**

[Note: To be attached.]

**PART 4. Deed of novation**

[Note: To be attached.]

**SCHEDULE E - KEY SUB-CONTRACTORS, KEY SUB-CONTRACTORS' INSURANCE AND  
KEY SUB-CONTRACTOR'S DEED OF COLLATERAL WARRANTY**

**PART 1. Key Sub-contractors**

The Key Sub-contractors identifiable at the date of this Contract are:

- [Piling sub-contractor (identity TBC)]
- [Structural steel sub-contractor (identity TBC)]
- [Cladding sub-contractor (identity TBC)]
- [Floor slab sub-contractor (identity TBC)]
- [Glazing and lobby framework sub-contractor (identity TBC)]

**PART 2. Key Sub-contractors' professional indemnity insurance**

Each Key Sub-Contractor shall maintain professional indemnity insurance in a minimum amount of:

- For the glazing and lobby framework sub-contractor: £1,000,000 on an each and every claim basis
- For all other Key Sub-contractors: £2,000,000 on an each and every claim basis

**PART 3. Key Sub-contractor's deed of collateral warranty**

[Note: To be attached.]

## SCHEDULE F - THIRD PARTY AGREEMENTS

**[Note: Relevant extracts to be attached.]**

**SCHEDULE G - Contractor's deed of collateral warranty**

**[Note: To be attached.]**

## **Annex A. Employer's Requirements**

## **Annex B. Contractor's Proposals**

## **Annex C. Contract Sum Analysis**



**Annex D. JCT Design and Build Contract**