

Dated

2018

DRAFT DOCUMENT

**UNITAS STOKE-ON-TRENT LTD.
and**

DEED OF AGREEMENT

**based on
JCT MINOR WORKS BUILDING CONTRACT
2016**

For in Stoke on Trent

© Bevan Brittan LLP

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THIS DEED OF AGREEMENT is made on

2018

BETWEEN

(1) **UNITAS STOKE-ON-TRENT LTD** (Company No.10669801) of/whose [registered office / address] is at Civic Centre, Glebe Street, Stoke-on-Trent ST4 1HH (the Employer); and

(2) (the Contractor)

The Recitals are deleted and replaced with the following:

Recitals

First the Employer wishes to have the following work carried out:

at various properties within Stoke-on-Trent, ('the Works') under the direction of the Architect/Contract Administrator referred to in Article 3;

Second the Employer has had the following documents prepared which show and describe the work to be done:

~~The drawings numbered/listed in [insert] ('The Contract Drawings')*~~

A Specification/Schedule of Rates ('the Contract Specification')

which (together with pricing) is attached as **Annex A** hereto; the Contract Specification together with this Agreement, the Conditions, and if applicable, a Schedule of Rates as referred to in the Third Recital (collectively 'the Contract Documents') are annexed to this Agreement;

Third the Contractor has supplied the Employer with a copy of the priced Contract Specification, which is attached as **Annex A** hereto;

Fourth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

Fifth for the purposes of the Construction (Design and Management) Regulations 2015 (the 'CDM Regulations') the status of the project that comprises or includes the Works is stated in the Contract Particulars;

Sixth whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

ARTICLES

The Articles are deleted and replaced with the following:

NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1: Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

Article 2: Contract Sum

The Employer will pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of £xxxxxx ('the Contract Sum') or such other sum as becomes payable under this Contract

Article 3: Architect/Contract Administrator

For the purposes of this Contract the Architect/Contract Administrator is TBC of Unitas Stoke-on-Trent Ltd. or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Architect and/or Contract Administrator shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 4: Principal Designer

The Principal designer for the purposes of the CDM Regulations is **Ryszard Kawak of Townsend and Renaudon, First Floor, Lakeside House, 3 Trentham Office Village, Trentham Lakes South, Stoke-on-Trent, ST4 8GH** or such replacement as the Employer at any time appoints to fulfil that role.

Article 5: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is Unitas Stoke-on-Trent Ltd or such replacement as the Employer at any time appoints to fulfil that role.

Article 6: Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2.

Article 7: Arbitration

Not used.

Article 8: Legal proceedings

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 9: Schedule of Amendments

The Conditions of the JCT Minor Works Building Contract 2016 ("MW 2016") are intended to be and are hereby incorporated into and amended and supplemented by the Schedule of Amendments contained in Appendix 1 to this Contract and this Contract shall be read and construed accordingly. In the case of inconsistency between the Schedule of Amendments and any other term of this Contract, the Schedule of Amendments shall prevail.

***Delete asterisk items as appropriate**

CONTRACT PARTICULARS

The Contract Particulars are deleted and substituted with the following:

Clause etc.	Subject	
Fourth Recitals and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	Nov 2018
Fourth Recital and clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date is a contractor for the purposes of the CIS
Fifth Recital	CDM Regulations	The project is notifiable
Seventh Recital and Schedule 3	Supplemental Provisions (<i>Where neither entry against one of the Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.</i>)	
	Collaborative working	Supplemental Provision 1 applies
	Health and safety	Supplemental Provision 2 applies
	Cost savings and value improvements	Supplemental Provision 3 applies
	Sustainable development and environmental considerations	Supplemental Provision 4 applies
	Performance Indicators and monitoring	Supplemental Provision 5 applies
	Notification and negotiation of disputes	Supplemental Provision 6 applies
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee Mark McGill Contractor's nominee Insert name Or such replacement as each Party may notify to the other from time to time
Article 7	Arbitration (<i>if neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 7 and Schedule 1 apply.</i>)	Article 7 and Schedule 1 (<i>Arbitration</i>) do not apply

Clause etc.	Subject	
2.2	Works Commencement date	January 2019
2.2	Date for Completion	July 2019
2.8	Liquidated damages	At the rate of £2,000.00 per week
2.10	Rectification Period (<i>The period is 3 months unless a different period is stated.</i>)	12 months from the date of practical completion
4.3	Interim payments – Interim Valuation Dates (<i>Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.2) and thereafter at monthly intervals.</i>)	The first Interim Valuation Date is 7 days before last day of each calendar month and thereafter at intervals of 1 month
4.3	Payment due prior to practical completion – percentage of the total value of work etc. (<i>The percentage is 95 percent unless a different rate is stated.</i>)	95% per cent
4.3	Payment becoming due on or after practical completion –percentage of the total amount to be paid to the Contractor (<i>The percentage is 97.5 per cent unless a different rate is stated.</i>)	97.5% per cent
4.3 and 4.8	Fluctuations provision (<i>Unless another provision or entry is selected, Schedule 2 applies.</i>)	No Fluctuations Provision applies and the Contractor shall not be entitled to any adjustment to the Contract Sum or any other remuneration as a result of cost fluctuations.
4.3 and 4.8	Percentage addition for Schedule 2 (paragraph 13) (if applicable)	Not used.
4.8.1	Supply of documentation for computation of amount to be finally certified (<i>The period is 3 months unless a different period is stated.</i>)	3 months from the date of practical completion
5.3	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£5,000,000 for any one occurrence or series of occurrences arising out of one event
5.4A, 5.4B and 5.4C	Insurance of the Works etc. – alternative provisions	Clause 5.4A (Works insurance by Contractor in Joint Names)

Clause etc.	Subject	
		applies/
		Clause 5.4B (Works and existing structures insurance by Employer in Joint Names) applies
		Clause 5.4C (Works and existing structures insurance by other means) applies
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15% Per cent
5.4C	Insurance arrangements – details of the required policy or policies	Are set out in the following document(s) Not applicable
7.2	Adjudication Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	The Adjudicator is -The Royal Institution of Chartered Surveyors
Schedule 1 (paragraph 2.1)	Arbitration – appointor of Arbitrator (and of any replacement) <i>(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)</i>	Not applicable.

EXECUTED AS A DEED

Unitas Stoke on Trent Ltd acting by:

Director

Director/Company Secretary

Contractor X acting by:

Director

Director/Company Secretary

APPENDIX

CONDITIONS

The following amendments will be made to the Contract Conditions:

Clause 1 Definitions

Clause 1.1

Definitions

Amend these definitions:

"Agreement" add to the end of the definition, before the full stop:

", each as amended by the Schedule of Amendments".

"Article" add to the end of the definition, before the full stop:

", as amended by the Schedule of Amendments".

"Beneficiary"

has the meaning given to it in Clause 1.5A.1."

"CDM Regulations"

add "as the same may be amended from time to time" at the end of the line.

"Conditions" add to the end of the definition, before the full stop:

", each as amended by the Schedule of Amendments".

"Contract Particulars" add to the end of the definition, before the full stop:

", as amended by the Schedule of Amendments".

"Interest" replace "5%" with "8%".

"Recital" add to the end of the definition, before the full stop:

", as amended by the Schedule of Amendments".

Insert the following additional definitions at the appropriate alphabetical point:

"Contract"

"the contract between the parties comprising the Contract Documents."

"DBS Check"

"checks carried out by the Disclosure and Barring Service

"Schedule of Amendments"

"the parties, background, agreed terms and schedules forming this part of this agreement, which amend the JCT Minor Works Building Contract, 2016 Edition (MW 2016)"

"Standard of Care"

"the skill and care to be expected of a properly qualified and competent contractor of the relevant discipline experienced in carrying out such work for projects of a similar size, scope, value, character and complexity to the Works."

"Third Party Rights"

"the rights set out in Schedule 4 as conferred by the Contractor in favour of a Beneficiary in accordance with this Contract;

Contracts (Rights of Third Parties) Act 1999

Clause 1.5 **Delete** the words "Notwithstanding any other provision of this Contract" and replace with "Other than as provided in Clause 1.5A and Schedule 4 in respect of Third Party Rights".

Clause 1.5A **Insert** new Clause 1.5A

Clause 1.5A.1 The Employer may by written notice to the Contractor confer Third Party Rights in favour of any party acquiring an interest in the Works and/or site of the Works or any part or parts thereof (including, without limitation any owner and/or any purchaser and/or any tenant and/or any funder of the Works or the site comprising the Works) and/or any other third party notified to the Contractor by the Employer as the Employer may require by notice in writing (**Beneficiary**). Those Third Party Rights shall vest in the Beneficiary or Beneficiaries stated in the relevant notice on the date of receipt by the Contractor of any such notice from the Employer. The Employer shall confer Third Party Rights on a maximum of two Beneficiaries.

Clause 1.5A.2 The parties agree that the rights of Employer and/or the Contractor:

- i. to terminate this Contract;
- ii. to agree to amend or otherwise to vary or to waive any terms of this Contract; and/or
- iii. to agree to settle any dispute or other matter arising out of or in connection with this Contract in each case in or on such terms as they shall in their absolute discretion see fit,

shall not be subject to the consent of any Beneficiary.

References to Companies etc.

Clause 1.9 **Insert** new clause 1.9 as follows:

Clause 1.9.1 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Clause 1.9.2 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:

- i. another person (or its nominee), by way of security or in connection with the taking of security; or
- ii. its nominee.

Clause 1.9.3 In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights."

Contractor's obligations

Clause 2.1.4 **Insert** new sub-clause 2.1.4 as follows:

"The Contractor warrants that it has not used and shall not use any products or materials which:

- 2.2.3.1 do not conform with British or European standards (where appropriate) or codes of practice (or, where no such standard exists, do not conform with a British Board of Agrément Certificate); and/or;
- 2.2.3.2 are generally known to the construction industry to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- 2.2.3.3 do not comply with the guidance set out in the publication entitled "Good practice in the selection of construction materials 2011" published by the British Property Federation and the British Council of Offices; and/or
- 2.2.3.4 are specifically prohibited under this Contract,

and shall as soon as reasonably practicable notify the Employer if it becomes aware of any proposed or actual specification and/or use in the Works of any materials or products which do not comply with this clause 2.1.4."

Inspection

Clause 2.3A **Insert** new clause

"The Architect/Contract Administrator may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be added to the Contract Sum unless provided for in the Contract Documents or unless the inspection or test shows that the materials, goods or work are not in accordance with the Contract or unless the opening up for inspection or test was reasonably required by reason of any similar, or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract."

Clause 2.4 **Insert** at the end of the clause "unless the inconsistency in or between the Contract Documents would have been apparent to an experienced contractor exercising the Standard of Care at the Base Date."

Extensions of time

Clause 2.7 **Delete** the first sentence of clause 2.7 and **replace** with the following:

"If and whenever it becomes reasonably apparent and/or whenever information comes to the attention of the Contractor which indicates that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall as soon as reasonably practicable give notice to the Architect/Contract Administrator of the material circumstances, including the cause or causes of the delay and provide a narrative explaining in reasonable detail the circumstances of the event and documentary evidence supporting any extension of time claimed, save that weather conditions will not entitle the Contractor to an extension of time unless the Contractor can demonstrate to the Architect/Contract Administrator that the weather conditions are exceptionally adverse weather conditions."

Delete the final sentence of clause 2.7 and **replace** with the following:

"Reasons within the control of the Contractor include any error, omission, negligence or default of the Contractor, of any Contractor's Person, of any of their respective suppliers of goods or materials for the Works and any matter that an experienced contractor exercising the Standard of Care could have foreseen at the Base Date.

Practical Completion

Insert new clause 2.9A

Clause 2.9A .1

"Notwithstanding clause 2.9, the Works or relevant Section shall not be certified as practically complete unless:

- i. the Works are complete in accordance with the Contract Documents in all respects and free from apparent defects, save for any minor items of incomplete work or minor defects the existence, completion or rectification of which would not prevent or interfere with the use of the Works;
- ii. all unused materials belonging to and rubbish created by the Contractor and any subcontractors or others carrying out works or services on the Contractor's behalf have been removed from the site or the relevant part of the site to allow beneficial use of the relevant Section by the Employer as the case may be;
- iii. the documentation or stipulation referred to within the Contract Documents have been satisfactorily provided to the Architect/Contract Administrator;
- iv. all guarantees, warranties and other certifications required in respect of the Works have been satisfactorily provided to the Architect/Contract Administrator;
- v. the relevant Statutory Requirements have been complied with and any necessary consents or approvals obtained; and
- vi. all 'as built' information and operating and maintenance information required by the Contract have been delivered to the Architect/Contract Administrator.

Clause 2.9A.2

'Notwithstanding clause 2.9 the Contractor shall be responsible for giving the Employer and the Architect/Contract Administrator sufficient notice of the date it expects practical completion to be achieved and inspection to take place provided that practical completion inspection will not occur on:

- i. a Friday or Monday
- ii. the last working day before a Bank Holiday
- iii. within seven working days before or after Christmas
- iv. within the building industry Christmas Holiday period
- v. within the building industry Easter Holiday period"

Defects

Clause 2.10.1

Re-number the first paragraph 2.10.1

In line 3 after "Rectification Period" **insert** "or at any time during the Rectification Period"

Clause 2.10.2

Insert new sub clause

"Any defects, shrinkages or other faults as referred to above shall be made good by the Contractor within the following stipulated time periods following notification to the Contractor:

- i) [24 Hours for burst water pipes, gas leaks, drainage blockages, fire alarm failures, warden call failures, electrical or emergency lighting failures and any other defect likely to cause injury or hardship to the occupier;
- ii) [7 Days for non-emergency but urgent items;]
- iii) [28 Days for all other defects, or faults required to be made good prior to the expiry of the Rectification Period;]
- iv) [All other minor defects shall be dealt with at the expiry of the Rectification Period in a time period no more than 28 days from notification."]¹

Clause 2.10.3 **Insert** new sub clause

"In the event that the Contractor fails to make good any such defects, shrinkages or defaults within the time periods specified in clause 2.10.2 the Employer may on giving the Contractor 5 Working Days' written notice instruct a third party to carry out the relevant work and recover from the Contractor the reasonable costs of doing so. Such 5 Working Day notice period shall not apply in respect of defects, shrinkages or faults covered by clause 2.10.2(i) or 2.10.2(ii) above"

Certificate of making good

Clause 2.11 **Insert** at the end of the clause prior to ".":

"provided that the Architect/Contract Administrator shall not be required to issue such certificate any earlier than 14 days after the end of the Rectification Period"

Clause 2.12 **Copyright and use**

Insert new clause 2.12 as follows:

Clause 2.12.1 "The Contractor grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy and use any documents prepared by or on behalf of the Contractor for the purpose of the Works and to reproduce such documents and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. That licence shall enable the Employer to copy and use the documents for an extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any such extension.

Clause 2.12.2 The licence shall be assignable to any owner from time to time of the Works or any part of them and may be sub-licensed to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 2.12.1

Clause 2.12.3 The Contractor warrants that the use of the documents referred to in clause 2.12.1 for the purposes of the Works and/or pursuant to the licence granted pursuant to clause 2.12.1 shall not infringe the rights of any third party."

General

Clause 2.13 **Insert** new clause 2.13 as follows:

¹ These are examples only. Employer to advise any specific categories of defects applicable to the works on a case by case basis.

"No inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the Employer shall diminish any duty or liability on the Contractor under this Contract."

Clause 2.14 **Insert** new clause 2.14 as follows:

"To the extent permitted by law, the Contractor shall procure that appropriate DBS Checks are carried out in relation to all persons engaged in the Works."

Assignment

Clause 3.1 **Delete** clause 3.1 and **substitute** with:

The Contractor shall not assign or transfer this Contract without the prior written consent of the Employer. The Employer shall be entitled to assign the benefit of this Contract without the Contractor's consent. The Contractor shall not be entitled to contend that any person to whom this Contract is assigned is precluded from recovering any loss under this Contract incurred by such assignee resulting from a breach of this Contract (howsoever happening) by reason that such person is an assignee and not a named party under this Contract.

Sub-contracting

Clause 3.3.2 **Delete** "Where considered appropriate," from the beginning of the first sentence.

At the end of the first sentence before "." **insert** "or such other form as the Employer may approve (such approval not to be unreasonably withheld) and shall provide the Employer within 5 Business Days of completion of the same a certified copy of each sub contract between the Contractor and every Sub-contractor provided that the Contractor shall be entitled to delete the sub contract sum and any commercially sensitive information (which, for the avoidance of doubt, shall not include details of any caps on liability) from the certified copy of the sub contract documentation to be provided in accordance with this clause"

Clause 3.3.3 **Insert** new sub-clause

"The Contractor shall not be entitled to dismiss any of the sub-contractors without the written approval of the Employer."

Clause 3.3.4 **Insert** new sub-clause:

"The Contractor shall ensure that it pays to its sub-contractors and suppliers all undisputed amounts within thirty (30) days of the date of the sub-contractor or supplier's invoice being regarded as valid and undisputed."

CDM Regulations

Clause 3.9.1 **Insert** after "Employer" in clause 3.9.1: (except where the Contractor is Principal Designer in which case the Contractor shall)

Interim Payments - dates and certificates

Clause 4.3. In the fifth line of the final paragraph, after "3.5." **insert** "In making any evaluation, the Architect/Contract Administrator shall be entitled to reconsider and if necessary adjust the assessments made by him in arriving at any previous statement. Where applicable the Contractor shall provide a revised VAT invoice."

Delete "14" and replace with "21"

Insert at end of the clause

"or within 5 days of receipt by the Employer of an appropriate VAT invoice whichever is the later".

Clause 4.5.7 **Insert** new sub-clause 4.5.7:

"Where NHBC Contractors insolvency cover is required, the Employer shall not be required to make any payment until the Contractor has delivered to the Employer or the Contract Administrator, NHBC Confirmation of Acceptance, receipt invoice and registration of the project documentation"²

Employer's approval

Clause 4.10 **Insert** new clause

"Neither the issue by the Architect/Contract Administrator of any statement nor the payment of any amount by the Employer to the Contractor pursuant thereto shall constitute or imply or be evidence of the Employer's approval or acceptance of any work, materials or equipment forming part of the works or relieve the Contractor of any of his obligations hereunder".

Retention

Clause 4.11 **Insert** new clause

"The Employer's interest in the percentage of the total value not included in the amounts of interim payments to be certified under clause 4.3 (the Retention) shall not be fiduciary and the relationship of the Employer and the Contractor with regard to the same shall be solely that of debtor and unsecured creditor. Any right of the Employer to deduct or set off any amount (whether arising under any express term or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies consist of or include any Retention. The Employer shall:

- 4.11.1 have no obligation to invest the Retention or any part of the Retention;
- 4.11.2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner; and
- 4.11.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including, without limitation interest and income arising from the Retention)"

Final certificate and final payment

Clause 4.8.3 **Delete** "14" and replace with "21"

Contractor's insurance of his liability

Clause 5.3.2 After 'arising out of one event' **insert** "with no limit to the number of events."

Clause 5.8 **Additional Insurance**

Insert new clause 5.8A:

"The Contractor shall also maintain:

- .1 [professional indemnity insurance for an amount of at least [£2 million] for any one occurrence, or series of occurrences, arising out of any one event

² Applicable where NHBC Contractor insolvency cover is required.

for a period beginning on the date of this contract and ending 12 years after the date of practical completion of the Works;]³

.2 [Product liability insurance of at least £[2 million] in respect of any one claim or series of claims arising out of the same original cause for a period beginning on the date of this contract and ending 12 years after the date of practical completion of the Works; and]⁴

.3 [Employers' liability insurance in accordance with the applicable law and of at least £5million].

Insert new clause 5.8B:

"The Contractor covenants:

1. to maintain the insurances in accordance with clause 5.8A with reputable insurers lawfully carrying on insurance business in the UK and on customary and usual terms and conditions prevailing for the time being in the insurance market provided always that such insurance is available in the UK insurance market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts or omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates;
- .2 to inform the Employer in writing immediately of any failure or inability to maintain such insurance cover in accordance with clause 5.8A and of any circumstances likely to render such insurance void or voidable, in order that the Contractor and the Employer can discuss means of best protecting their respective positions in the absence of such insurance; and
- .3 upon request by the Employer, provide evidence that the insurance is being maintained in accordance with this clause by way of broker's certificate."

Termination

Clause 6.4.1.4 **Insert** new sub-clause

"refuses or neglects to comply with a notice or instruction from the Architect/Contract Administrator requiring him to remove or rectify any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected,"

Clause 6.4A **Insert** new Clause 6.4A

"The Employer shall be entitled to terminate this Contract if the Contractor's appointment under the Agreement is terminated."

Clause 6.6 **Delete** clause 6.6 and insert:

"The Employer shall be entitled to terminate the Contractor's appointment under this Contract by notice in writing with immediate effect if the provisions of Clause 14.5 of the Agreement apply."

Clause 6.7 **Insert** after "6.4," "6.4A (where the termination of the Agreement is due a breach of the Contractor or performance related matter)"

³ Only required for Lot 1 (central heating), Lot 2 (electrical installation testing, upgrading and rewires) and Lot 7 (structural and damp proofing).

⁴ Not required for Lot 8 – Void property clearance and valets

Clause 6.7.5 **Insert** new sub clause

"Notwithstanding that the validity of such termination may be disputed by the Contractor the Contractor shall vacate the site as soon as reasonably practicable leaving the site safe and secure and deliver possession of the Works to the Employer."

Clause 6.7.6 **Insert** new sub clause

"The Contractor shall deliver to the Employer copies of the documents relating to Contractor's Design Portion, including but not limited to plans, drawings, documents, schedules, specifications and the like relating to the Works within its possession and/or control within 7 days of termination."

Clause 6.11 **Insert** before "6.8" "6.4A (where the Agreement is terminated for reasons other than a breach by the Contractor or a performance related matter)"

SCHEDULE 4

THIRD PARTY RIGHTS SCHEDULE

The Employer and the Contractor agree that:

COMPLY WITH CONTRACT

1. The Contractor warrants and undertakes to the Beneficiary that:
 - 1.1. it has performed and shall continue to perform all of its duties and obligations under or arising out of the Contract; and
 - 1.2. it will maintain all required insurances in accordance with the Contract
2. In proceedings for breach of paragraph 1, the Contractor may:
 - 2.1. rely on any limit of liability or other term of this Contract; and
 - 2.2. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the employer, under this Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under this Contract).

COPYRIGHT

3. The Beneficiary shall have rights and licences in the same terms as those conferred on the Employer by this Contract.

ASSIGNMENT

4. The Beneficiary may (without the consent of the Contractor) assign the benefit of this warranty and/or its rights under this warranty to any mortgagee and by way of re-assignment on redemption, and on two other occasions only. Further assignments shall be permitted with the consent of the Contractor, such consent not to be unreasonably withheld or delayed.
5. In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under paragraph 4.
6. The Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty by reason that the person is an assignee and not the original party to this warranty.

NOTICES

7. Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered or principal office for the time being (or if neither are known or applicable, the last known principal business address) by personal delivery or pre-paid registered or recorded delivery mail or facsimile transmission (transmitted before 4.00 pm on a Business Day) and confirmed by first class pre-paid post.
8. Notices and communications shall be deemed to have been served or received in the case of:
 - 8.1. personal delivery on the date of delivery;
 - 8.2. pre-paid registered or recorded delivery mail on the second Business Day after the notice of communication is posted;
 - 8.3. facsimile transmission sent in accordance with paragraph 7 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

ANNEX A

Schedule of Prices

