

# FREETHS

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SCHEDULE OF AMENDMENTS TO JCT 2016 DESIGN AND BUILD CONTRACT

RELATING TO A PROJECT KNOWN AS

REDEVELOPMENT OF MARKS AND SPENCER'S UNIT ON 35-36 BRIDGE STREET,  
BANBURY

NB: A new sentence as follows must be added in manuscript to the end of Article 1 in the JCT contract booklet and this must be initialled:

"The Contract Documents are amended by the Schedule of Amendments which forms part of them and overrides clause 1.3 of the Conditions".

The following amendments shall be made to the JCT Design and Build Contract 2016 Edition

## **RECITALS**

**Third Recital** Delete and insert:

"The Contractor has examined the Employer's Requirements and is satisfied:

1. as to the feasibility and practicality of the Employer's Requirements and has agreed to accept full responsibility for any design contained in them; and
2. that the Contractor's Proposals and the Contract Sum Analysis will meet the Employer's Requirements in respect of the Works."

## **ARTICLES**

**Article 1** After "shall" insert "carry out and".

**Article 4** Add the following to the end:

*"Where the Employer's Requirements contain or make reference to any particular specification the particular specification so contained or referred to does not form part of the Employer's Requirements and where and to the extent adopted the particular specification forms and will be deemed for all purposes of this Contract to form part of the Contractor's Proposals. The Employer makes no representation or warranty as to the accuracy or completeness of the particular specification and the Contractor will not be entitled to rely upon the same. The Employer will have no liability arising out of or in relation to the same or any representation or statement therein contained. For the avoidance of doubt a particular specification will be treated as so adopted unless the Contractor's Proposals refer to the particular specification in question and make it clear that it will not be adopted (For example, ERs: "Red door handle - Smith Limited type*

*ABC/123" CPs: "Smith Limited door handle type ABC/123 is blue - Contractor will provide red door handle (as required by ERs) Jones Limited type DEF/456")".*

**Article 8** Delete and replace with the following:

"The reference to "Article 8" in the Contract Particulars and clauses 9.3 to 9.8 shall be deemed deleted".

**Article 10** Add new Article as follows:

"The Contractor will engage the services of the sub-consultants notified to the Contractor by the Employer."

**Article 11** Add new article as follows:

"Prior to the date of this Contract the Employer engaged the services of the consultants referred to in the Contract Particulars entry relating to this Article 11 (hereinafter called "the Novated Consultants"). On the date hereof the Employer, the Contractor and each of the Novated Consultants shall execute and deliver as deeds Novation Agreements in the form of the drafts annexed hereto whereby the Contractor is substituted for the Employer as employer of each of the Novated Consultants. The Contractor warrants to the Employer that he is entirely satisfied with the terms and conditions upon which the Novated Consultants are so engaged and that without prejudice to the generality of clause 3.3.1, he accepts entire responsibility for the work and designs of the Novated Consultants and for any negligence, omission or default on the part of the Novated Consultants whether prior or subsequent to the date hereof, as if such work, designs, negligence, omission or default were his own. The Contractor shall not:

1. vary or waive any of the obligations of any Novated Consultant under the terms and conditions upon which they are so engaged; nor
2. terminate any of their appointments;

without the prior written consent of the Employer".

## CONTRACT PARTICULARS

Insert additional Contract Particulars entries and amend existing entries as follows.

Article 11      The consultants who are to be novated to the Contractor as referred to in Article 11 are:

- [Engineer]
- [Architect]
- [other]

2.27.2.1      The specific criteria to be satisfied as preconditions to practical completion are as follows:

- Provision of the health and safety file under the CDM Regulations (or where the Contractor is not the Principal Designer all information likely to be needed under the CDM Regulations for inclusion in the health and safety file)
- Provision of all Collateral Warranties which the Contractor is then obliged under this Contract to provide or procure in relation to the Works or Section in question
- Provision of all operation and maintenance manuals required in relation to the Works or Section in question (containing as a minimum the information specified in the Contract Documents as to be included in operation and maintenance manuals); and
- Provision of all other documents and information listed in the practical completion checklist at [paragraph [ ] in the Employer's Requirements].

2.27.2.2 Practical completion of the Works will not be accepted during the period from 18<sup>th</sup> December to and including 2<sup>nd</sup> January.

2.44 The agreements to which clause 2.44 refers are the following:

- [agreement for lease between the Employer and [ ], dated [ ]]

- [ ]<sup>1</sup>

4.2, 4.12 and 4.13 Delete the whole of the existing entry against these numbers in both columns and replace with the following:

"The Contract Sum and the prices contained in the Contract Sum Analysis will be deemed to allow for all price fluctuations (whether occurring before or after the Base Date) and no adjustment will be made to the Contract Sum in the event of such fluctuations and all references in this Contract to any Fluctuations Provision, Schedule 7 and any Fluctuations Options will be deemed deleted".

7.3.1 After the words "is set out in" insert "Schedule 6".

7.3.2 In the entry against 7.3.2 insert "ultimate" before "parent company".

7.4 Delete the existing text and replace with the following:

The sub-contractors from whom collateral warranties are required are any sub-contractor who either has a design responsibility (including without limitation responsibility for the selection of goods and materials and the supply of proprietary products and systems) or is responsible for any of the following elements of the Works:

piling; foundations; structural frame; cladding; glazing; roofing;  
mechanical services; electrical services; lifts; [others].<sup>2</sup>

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<sup>1</sup> [To be considered for each individual Phase.]

<sup>2</sup> [To be considered for each individual Phase.]

The sub-consultants from whom collateral warranties are required are any sub-consultant who has a design responsibility (including without limitation responsibility for the selection of goods and materials and the supply of proprietary products and systems) or other responsibility in respect of the Works including (but not limited to) the architect and the principal designer.

The beneficiaries in whose favour collateral warranties may be required are:

- Any Fund;
- The owners of the Site (if not the Employer);
- The Employer (save that the Employer shall not require a warranty from the Contractor);
- Any Purchaser or Tenant;
- [other]<sup>3</sup>

## CONDITIONS

### Section 1 Definitions and Interpretation

#### 1.1 Insert new definition as follows:

"Consents	The planning permissions referred to in the Employer's Requirements, approval of reserved matters or details pursuant thereto, building regulations approval, fire officer approval and any other permissions approvals, certificates, and licences that may be necessary pursuant to the Statutory Requirements or otherwise for the
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<sup>3</sup> [To be considered for each individual Phase.]

carrying out of the Works and if they are destroyed or damaged the reinstatement of the Works.

Delete the definition of “Consultants”.

In the definition of “Contractor’s Design Documents” replace “prepared by or for the Contractor in relation to” with “which set out”.

Insert new definitions as follows:

“Delay Event	any event (whether or not a breach of contract by the Contractor) which is not a Relevant Event and which delays any item of work which is on the critical path for the Works (or which would be on the critical path but for any Relevant Event effects which are concurrent with its effects)”
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"Documents	in clauses 2.38 and 2.40 only, means all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever and designs contained in them (and any works executed from them) provided by or on behalf of the Contractor in the course of performing its obligations under this Contract".
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Delete the definition of “Employer Rights”.

Insert new definition as follows:

"Fund	each and every bank, financial institution or other person or entity having legal capacity which may acquire any interest in the Site or any part as an investment whether before or
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after completion of the Works and/or provide finance in connection with or secured on the Works or any part of them".

Delete the definitions of Funder and Funder Rights.

Insert new definition as follows:

"Obvious Omissions those items of work which are not specifically identified in the Contract Documents but which it is reasonable to expect an experienced design and build contractor to identify from them as being necessary. For example (but without prejudice to the generality of the foregoing) taps on a wash basin".

Delete the definition of P&T Rights.

Replace the definition of "Purchaser" with the following:

"Purchaser each and every first purchaser of the Site or any part or of a lease of the Site or any part for more than 50 years and granted for a premium and whether before or after completion of the Works".

Delete the definition of "Rights Particulars".

Insert new definitions as follows:

"Schedule of Amendments The Schedule of Amendments to the JCT Design and Build Contract which forms part of the Contract Documents or is otherwise annexed hereto".

"Site or site The site as defined pursuant to clause 2.9".



In the definition of "Statutory Requirements" insert "or other relevant" before "authority" in line 4 and add to the end "and any requirements which may be stipulated as pre-requisites for the adoption of any roads, services, drains, sewers, pipes, wires, cables or other service transmission media by any such authority or body (where the same are to be adopted)".

Replace the definition of "Tenant" with the following:

"Tenant                      each and every first tenant (whether from the Employer or not) of the Site or any part under a lease which does not constitute him a Purchaser and whether before or after completion of the Works".

1.2                      Add a new sentence to the end as follows:

"All references to Recitals, Articles, Contract Particulars, Conditions, Contract Documents, Agreement or any other part of this Contract mean the same as amended by the Schedule of Amendments".

1.3                      Add to the end "(save that the Schedule of Amendments shall modify all other parts of this Contract)".

1.4.7                    Add new clause as follows:

"References to the "reverse charge applying" (or similar) mean any case where the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to the relevant tax authority for the VAT chargeable in respect of the supply."

1.6                      In lines 1 and 2 delete "Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B".

- 1.7.2 Add to the end “and the Parties have agreed that Payment Notices and Pay Less Notices may be served by email or any other means and shall be deemed to have been duly served as soon as delivered to the recipient’s address or to a representative of the recipient”.
- 1.8.1.1 Add to the end “and is for the avoidance of doubt subject to clause 1.13”.
- 1.10 Add to the end “unless expressly stated otherwise and except in the case of any provision in this Schedule of Amendments where a consent is expressly stated to be at a party’s absolute discretion or is otherwise expressly made subject to additional qualifications or exceptions”.
- 1.12 Add new clause as follows:
- “For the avoidance of doubt all references to sub-contractors include professional design consultants”.
- 1.13 Add new clause as follows:
- “Notwithstanding any other provision of this Contract, the term “approval” when used in the context of any approval to be given by or on behalf of the Employer shall have the meaning “acceptance of general principles only” and no such approval shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract.”
- 1.14 Add new clause as follows:
- “The provisions of this Contract and the warranties and undertakings which it contains are hereby deemed to apply to all design, construction and other work carried out by the Contractor in relation to the Works prior to the date of this Contract as if this Contract had been signed prior to the commencement of such work.”
- 1.15 Add new clause as follows:

"This Contract may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement."

## **Section 2        Carrying out the Works**

2.1.1        In the third line after "shall" insert "carry out and". Delete "so far as not described or stated in the Employer's Requirements or the Contractor's Proposals."

2.1A        Add new clause as follows:

"2.1A.1        The Works include the obtaining by the Contractor of all those approvals, permissions and consents necessary for carrying out the Works and including without limitation all those (if any) identified in the Employer's Requirements or the Contractor's Proposals as to be obtained by the Contractor and the discharge of planning conditions.

2.1A.2        The Contractor shall not have or make any claim for an extension of time under clause 2.25 or for loss and/or expense under clause 4.19 and the Contractor shall not be entitled to exercise his rights under Section 8 where and to the extent that the course of the progress of the Works or any Section having been delayed, affected or suspended arises from non-compliance by the Contractor with its obligations under clause 2.1A.1 or any failure by the Contractor to provide necessary drawings, information or documents in due time.

2.1A.3        The Contractor will supply to the Employer copies of all applications made for any permission, approval or licence or consent requisite for the carrying out of the Works and of all grants or refusals which may be made in response to such applications".

2.2        Add new clauses as follows:

"2.2.6        Subject to clause 2.17.1 the Contractor warrants in relation to the Works that there have not been and will not be specified or used by it

and that it has not and will not authorise or approve the specification or use by others of any products or materials not in conformity with relevant British or European Standards or Codes of Practice or which at the time of use are widely known to builders or designers of the relevant discipline within the United Kingdom to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery or any parts thereof in the particular circumstances in which they are used.

2.2.7 If in the performance of its duties under this Contract the Contractor becomes aware that he or any other person has specified or used or authorised or approved the specification or use by others of any such products or materials as are referred to in clause 2.2.6 the Contractor will notify the Employer in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by this Contract".

2.3A Add new clauses as follows:

"2.3A.1 Prior to the earliest Date of Possession the Contractor will produce a programme for the design and execution of the Works in such form and giving such information as the Employer may reasonably require ("the Works Programme"). Thereafter the Contractor will from time to time revise the Works Programme as appropriate to minimise or avoid any or any anticipated delay or disruption to the carrying out of the Works. The Contractor will supply a copy of the Works Programme and any revised Works Programme to the Employer forthwith after its production.

2.3A.2 The Contractor will report to the Employer monthly in writing comparing the progress of the design and execution of the Works with the then current Works Programme and will promptly advise the Employer in the event of delay or disruption and will set out the measures which the Contractor is taking or proposes to take to minimise or make good such delay or disruption."

- 2.6 Replace the full stop at the end with a semi-colon and add new clauses as follows:
- “2.6.3 the Contractor will (in the case of work under clause 2.6.1) ensure and in the case of other work use his reasonable endeavours to ensure that wherever appropriate the execution and completion of the Works are co-ordinated with the work of others engaged or authorised by the Employer, all statutory undertakers and all suppliers of goods, materials and plant and will provide to the Employer all information necessary for this purpose;
- 2.6.4 the Contractor will provide access to the Site for those engaged or authorised by the Employer as referred to in clauses 2.6.1 and 2.6.2;
- 2.6.5 during the course of the Works the Contractor will produce programmes in such form and at such times as may reasonably be required by the Employer and/or those referred to in clause 2.6.3 to facilitate such work not forming part of this Contract;
- 2.6.6 the Contractor will use his reasonable endeavours to facilitate the execution of such work not forming part of this Contract”.

Add new clause 2.6A as follows:

- “2.6A The Contractor shall prior to practical completion of the Works allow any contractor employed by the Employer or any Purchaser or Tenant of the building or a part thereof being the subject of the Works (an “Independent Contractor”) and any consultant engaged by the purchaser/tenant reasonable access to the Works or part or parts thereof on the terms of an agreed access regime (the “Access Regime”) to carry out works therein. The Employer will discuss the timing of such works, access and the extent and location of such works, access of such works with the Contractor before permitting such works to be carried out. The Contractor shall advise the Employer of the information he needs to order the programme and manage the integration of such works with the carrying out of the Works so as not

to delay or disrupt the carrying out and completion of the Works. The Contractor will submit to the Employer its proposals for the Access Regime setting out relevant information on the Contractor's programme and the Contractor's proposals for access arrangements for labour, plant and materials, health and safety issues, use of shared facilities (if any), delivery arrangements, and any other information which the Contractor considers needs to be agreed to avoid disruption between works being carried out by the Contractor and any Independent Contractor. The Contractor in making its proposals shall have due regard to any method statement(s) provided by the Employer and agrees to adjust his proposals for the Access Regime as and when reasonably requested by the Employer. The Contractor shall comply with any further requirements that may be set out (as the same may further be detailed or reasonably adjusted by the Employer from time to time) and with all reasonable instructions of the Employer with regard to the same. In addition:

- 2.6A.1 The Contractor undertakes to co-operate fully with the Employer and, if so directed by the Employer, with each Independent Contractor and the purchaser/tenant and consultants engaged by them with regard to the programming of such access and works and the co-ordination of the same with the carrying out of the Works and the Contractor may at its sole discretion make available to any Independent Contractor shared use of the Contractor's temporary lifts, hoists and other facilities;
- 2.6A.2 Without prejudice to clause 3.16, the Contractor shall act as Principal Contractor and Principal Designer for the purposes of the CDM Regulations with regard to such access and shall be required to establish, distribute to all relevant personnel and at all times monitor compliance with all necessary site regulations and reasonable site directions with regard to such access and works and to health and safety matters;

- 2.6A.3 The Employer will instruct each Independent Contractor and the purchaser/ tenant and consultants engaged by them that they are to comply with the Access Regime and all site regulations and directions relating to health and safety and proper site direction of the Contract with regard to such access and works;
- 2.6A.4 The Contractor shall immediately notify the Employer in writing if he at any time considers that any such Independent Contractor or purchaser/tenant or consultants engaged by them is failing to comply with the Access Regime and with such programming or other arrangements as are settled pursuant to this Clause 2.6A and/or with any site regulations relating to health and safety and/or proper site directions of the Contractor with regard to such access and works and to health and safety matters;
- 2.6A.5 The Contractor will not cause any unreasonable obstruction to any Independent Contractor carrying out the works”.
- 2.7.4 In the penultimate line after “Employer” insert “and any Fund, Purchaser or Tenant or those authorised by them” and before "maintenance" insert "construction".
- 2.8 Add the following to the end of the clause:
- “The Contractor will not vary, amend, add to or alter the Works as described in the Employer’s Requirements, the Contractor’s Proposals or any drawings or other documents approved by the Employer, without first complying with the Design Submission Procedure in relation to the variation, amendment, addition or alteration. In seeking the approval of the Employer in respect of any matter pursuant to that Procedure the Contractor shall provide to the Employer adequate details of the proposed variation, amendment, addition or alteration including (without limitation) relevant performance and qualitative criteria in relation to any materials and highlighting on any relevant drawings the nature of the proposed variation, amendment, addition or alteration”.

- 2.9A. Add new clause as follows:
- “2.9A.1 The Contractor has had an opportunity to and shall be deemed to have inspected and examined the Site, its physical and other conditions (including without limitation the sub-surface conditions), its surroundings all existing structures thereon and thereunder and any existing site infrastructure and services (together “the Site Conditions”) and generally to have obtained for himself all necessary information as to conditions, risks, contingencies and all other circumstances related to Site Conditions which could influence or affect the Works and/or their execution.
- 2.9A.2 No failure on the part of the Contractor to discover or foresee or allow for any such condition, risk, contingency or circumstance, whether or not the same ought reasonably to have been discovered or foreseen or allowed for, (and no Change to the extent that it is reasonably necessary in order to deal with such failure) shall entitle the Contractor to any adjustment of the Contract Sum or to any extension of time. The Contractor shall not have nor make any claim in contract, tort or by way of innocent or negligent misrepresentation in respect of information provided, or statements made, by or on behalf of the Employer in respect of such conditions, risks, contingencies or circumstances relating thereto.
- 2.9A.3 As between the Contractor and the Employer the Contractor will not and will not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.9A and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer will have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, therein contained. Any such survey, report or document is provided without prejudice and merely with the intention of being helpful to the Contractor (for example but without



prejudice to the generality of the foregoing by identifying where the Contractor could make cost savings by having its own investigations and reports carried out by consultants who have previously done similar work for the Employer or others)".

2.11 Delete and insert:

"The Contractor shall to the extent set out in clause 2.17:

2.11.1 be fully responsible in all respects for the design of the Works including (without limitation) all design work prepared before or after the date of this Contract and including (without limitation) any design contained in the Employer's Requirements;

2.11.2 adopt and take responsibility for any design work in relation to the Works which may be carried out or which may have been carried out by professional consultants or specialist sub-contractors or any other person employed by the Contractor (including without limitation any employed at the request of the Employer)".

2.12 Delete and insert:

"The Contractor will be held to have checked all designs and verified all information contained in the Employer's Requirements and to have obtained any supplementary information needed in respect thereof. The Employer will not be liable for any error or omission in such designs or information however it occurred".

2.14 Delete and insert:

"Where there is a discrepancy or conflict between or within or a mistake, inaccuracy or Obvious Omission in any of the Contract Documents (including without limitation any non-compliance with the Statutory Requirements) the Schedule of Amendments will prevail over all other Contract Documents and the Articles of Agreement, the

Conditions, the Supplementary Provisions, the Contract Particulars and the Schedules to the Conditions will prevail over all Contract Documents other than the Schedule of Amendments. If this does not resolve the matter the Contractor shall inform the Employer in writing of the matter and of its proposed amendment to deal with it (which shall be a reasonable proposal in accordance with good design and building practice and if not the Employer shall be entitled to make such a proposal). Subject always to compliance with the Statutory Requirements, the Employer shall decide to adopt either such proposal or one of the discrepant or conflicting items and the Contractor shall be obliged to comply with such decision without any adjustment of the Contract Sum or extension of time for completion of the Works or any Section and without affecting in any way the design or other responsibilities of the Contractor under this Contract".

2.15.1 In line 8 after "cost" insert "and without being entitled to any extension of time".

2.15.2.1 Delete "If after the Base Date there is a change in the Statutory Requirements" and replace with:

"If after the date of this Contract there is a change in the Statutory Requirements (other than one which was generally known in the construction industry at the date of this Contract as likely to come into force before the date of practical completion)".

2.15.2.2 Replace "Base Date" with "date of this Contract". Add to the end:

"and provided the permission or approval was not one to which clause 2.1A.1 related".

2.17.1 Delete and insert:

"The Contractor shall in exercising its responsibilities for the design of the Works exercise (and hereby warrants that it has exercised) all the reasonable skill, care and diligence to be expected of a competent and appropriately qualified engineer or architect or, as the case may be,

other appropriately qualified designer experienced in exercising such responsibilities in relation to works of the same type, complexity, value and time scale as the Works".

2.17.2 In lines 2 and 3 replace "the clause 2.17.1 reference to the Contractor's liability includes liability" with "the Contractor shall exercise reasonable skill, care and diligence as required by clause 2.17.1 to avoid liability for the Employer or any other person".

2.17.3 Delete and insert:

"The Contractor warrants and undertakes that he shall design and construct the Works:

2.17.3.1 in compliance with all Consents, Statutory Requirements, law, British Standard Institute recommendations, requirements of codes of practice, manufacturers' recommendations, and any requirements and codes of practice of local or other authorities affecting the Works and/or the Site current at the time of the Contract;

2.17.3.2 without infringement of any rights, reservations, covenants, restrictions, stipulations or other incumbrances binding upon or affecting the Site (save as may have been agreed with the Employer) in so far as details of the same have been included or specifically referred to in the Employer's Requirements or otherwise made known to the Contractor;

2.17.3.3 so as to comply with any performance specification or requirement included or referred to in the Employer's Requirements or the Contractor's Proposals (including without limitation any Changes)".

2.17.4 Add new clause as follows:

"All references to design done or to be done by the Contractor shall include a reference to design prepared or issued by others at the Contractor's request and any design relating to or for the Works obtained by the Employer prior to the date of this Contract and forming part of the Contract Documents."

- 2.24.4 Add new clause as follows:
- “It shall be a condition precedent to the Contractor’s entitlement to claim an extension of time that the Contractor has notified the Employer in writing within 28 days of the occurrence of a Relevant Event that such a claim may be made in respect of that Relevant Event (but for the avoidance of doubt this does not require the Contractor to notify the length of extension to be claimed but only that a claim may be made)”.
- 2.25.6.5 Add new clause as follows:
- “except to the extent that clause 2.26.9 applies the Contractor shall not in any event be entitled to an extension of time to the extent that any delay in the progress of the Works is due to any negligence, breach of statutory duty, breach of contract or other default of the Contractor or any of the Contractor’s Persons”.
- 2.25.6.6 Add new clause as follows:
- “no extension of time shall be granted where and to the extent that the progress of the Works is concurrently delayed due to a Delay Event”.
- 2.26.2.1 Delete.
- 2.26.2.3 Add to the end “or unless the instruction was given following previous inspections or testing which had shown that work, materials or goods were not in accordance with this Contract and the instruction was not given vexatiously”.
- 2.26.7 Delete.
- 2.26.11 Add to the beginning “Save where it affects only the Contractor and/or any Contractor Persons and/or any members of any group, joint venture or other business structure of which the Contractor and/or any Contractor Persons are a part any”.
- 2.26.15 Add a new Relevant Event as follows:

“changes after the Base Date to the situation relating to coronavirus or coronavirus disease (both as defined in the Coronavirus Act 2020) resulting in changes to the Construction Leadership Council’s Site Operating Procedures which have to be implemented at the Site”.

2.27 Renumber as 2.27.1 and insert at the beginning “Subject to clause 2.27.2”. Add a new clause 2.27.2 as follows:

“2.27.2 Unless the Employer otherwise agrees in writing (which agreement may relate to either practical completion or Retention release or both) and notwithstanding anything to the contrary elsewhere in this Contract no part of the Works will be deemed to be practically complete and no part of the Retention will be released to the Contractor:

2.27.2.1 If any of the specific criteria listed in the Contract Particulars entry relating to this clause 2.27.2.1 have not, in the reasonable opinion of the Employer, been satisfied;

2.27.2.2 During any period in which the Contract Particulars entry relating to this clause 2.27.2.2 states that practical completion will not be accepted in relation to the Works or any relevant Section;

2.27.2.3 Until the Contractor has first followed any relevant procedure set out in any of the “Related Agreements” as defined in clause 2.44.”

2.35 Delete “after delivery of that schedule or” from line 3 of clause 2.35.2. Also delete the final paragraph and insert:

"The Contractor shall

(1) make good any such defects shrinkages and other faults which the Employer reasonably considers need making good as a matter of urgency within 24 hours (or such shorter period as the Employer may reasonably specify in the case of defects shrinkages or other faults endangering health or safety) of

receiving the Employer's instruction ("the Emergency Defects") and

- (2) make good any such defects shrinkages and other faults which the Employer reasonably considers to be serious defects shrinkages or other faults within 7 days of receiving the Employer's instruction ("the Serious Defects") and
- (3) make good all other such defects, shrinkages and other faults notified to the Contractor within 4 weeks of receipt of the Employer's instructions ("the Routine Defects").

All such defects, shrinkages and other faults shall be made good by the Contractor at no cost to the Employer unless the Employer shall otherwise instruct and if the Employer does so otherwise instruct then an appropriate deduction in respect of any such defects, shrinkages or other faults not made good shall be made from the Contract Sum or may be recoverable from the Contractor by the Employer as a debt. If the Contractor fails to comply with its obligations in this clause 2.35 (time being of the essence) the Employer may forthwith engage others to carry out the relevant work and the Contractor shall indemnify the Employer in respect of all costs, losses and expenses arising from such failure including without limitation the cost to the Employer of having the relevant works carried out by others".

2.38 Delete and insert the following:

"2.38.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Contractor but the Contractor hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Employer with effect from the date of this Contract or in the case of Documents not yet in existence with effect from the creation of them an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor's obligations or termination of its employment under this Contract or any dispute under this Contract) to

use and reproduce all Documents for any purpose whatsoever connected with the Works (including but without limitation the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works). Such licence will carry the right to grant sub-licences and will be transferrable to third parties.

2.38.2 The Contractor will not be liable for any use the Employer may make of the Documents for any purpose other than that for which they were originally provided unless the Contractor authorises such use and confirms that the Documents are suitable for it.

2.38.3 The Contractor warrants that the Documents (save to the extent that sub-contractors have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person. The Contractor further warrants that where sub-contractors have been used or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 2.38.1.

2.38.4 The Contractor agrees that on the Employer's reasonable request at any time and following reasonable prior written notice it will give the Employer or those authorised by it access to the Documents and will provide copies of them (including without limitation copy negatives and/or CAD disks or other approved electronic versions) at the Employer's expense.

2.38.5 The Contractor now waives and agrees to waive and not to assert (and agrees to procure that any sub-contractors do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988".

2.39 Add new clauses as follows:

"2.39.1 The Contractor will not without the prior written approval of the Employer in his absolute discretion take or permit to be taken any

photographs of the Works for use in and may not use the name of the Employer or of any person to whom a collateral warranty is to be given or any details of the Works in any publicity or advertising.

2.39.2 The Contractor and its agents and employees, will not without the prior written approval of the Employer in his absolute discretion disclose to any other person (other than any person to whom disclosure must be made in order for the Contractor to fulfil its duties under this Contract, or as may be required by statute) any information about the Works including without limitation drawings, plans, sketches, calculations and other materials relating to them or any information about the Employer or its business or activities or any information about any person in whose favour the Contractor is obliged under this Contract to execute a warranty or their businesses or activities, nor will the Contractor exploit any such information for the benefit of itself or any other person. The Contractor's obligations under this clause 2.39.2 will not apply to any information which is already in the public domain or to any information which came to it otherwise than in connection with its involvement in relation to the Works save where its entry into the public domain or its coming to the Contractor was as a result of a breach by the Contractor or any other person of any contractual obligation.

2.39.3 The Contractor will ensure that similar provisions are included in its contracts with sub-contractors and will enforce such provisions".

2.40 Add new clause as follows:

"In the event of the determination of the Contractor's employment and notwithstanding that the validity of such determination may be disputed by the Contractor, the Contractor shall provide to the Employer two hard copies and (where they were generated electronically) one electronic copy of all Documents and draft Documents".

2.41 Add new clause as follows:



"The Contractor shall at all times use reasonable endeavours to prevent any nuisance or other interference with the rights of any adjoining land-owner tenant or occupier or any statutory undertaker of which the Contractor is or ought reasonably to have been aware arising from the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. 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 of default by the Contractor in performing its obligations under this clause 2.41".

2.42 Add new clause as follows:

Without prejudice to the obligations of the Contractor under clause 2.41, the Contractor shall ensure at all times that there is no trespass by the Contractor, its servants, agents, sub-contractors or suppliers (including, without limitation, the oversailing of cranes and/or scaffolding) on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including, without limitation, the occupiers of adjoining or neighbouring property and members of the public. If the carrying out of the Works or of any obligation pursuant to clause 2.35 is likely to necessitate any interference (including, without limitation, the oversailing of cranes and/or scaffolding) with the rights of adjoining and neighbouring owners or occupiers, then the Contractor shall, at no cost to the Employer obtain the prior written agreement of such owners and/or occupiers thereto and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement".

2.43 Add new clause as follows:

- "2.43.1 In carrying out the Works the Contractor shall make proper provision for the support and use of any land, walls, buildings, roads and footpaths upon, adjacent or near to the Site and which are affected by the Works.
- 2.43.2 The Contractor shall make good any damage to footpaths, roads, pavements or adjoining property and any services therein arising out of or in the course of or by reason of the execution of the Works and reinstate such roads, pavements, property or services to the reasonable satisfaction of the Employer and any competent authority".
- 2.44 Add new clauses as follows:
- "2.44.1 The Contract Particulars entry relating to this clause 2.44 lists certain agreements copies of which (or of parts of them) are annexed hereto and/or have previously been supplied to the Contractor (receipt of which the Contractor acknowledges) and such agreements or parts are referred to in this clause 2.44 as "the Related Agreements".
- 2.44.2 The Contractor shall carry out and complete the Works and perform its other obligations under this Contract in conformity with and so as not to put the Employer in breach of and so as to facilitate the Employer's performance of the Employer's obligations under the Related Agreements including (without prejudice to the generality of the foregoing) those relating to provision of information and the giving of notice and permitting inspections before the Practical Completion Statement or any Section Completion Statement may be issued. For the purposes of clause 2.6 information provided in the Related Agreements shall be treated in the same way as if it was provided in the Employer's Requirements.
- 2.45 Add new clause as follows:
- "2.45.1 Where the Contractor has been or is in the future engaged by the Employer under a contract for the construction of works adjoining or near to the Site or in some other way connected with or which may

affect the Works in any way (including, for the avoidance of doubt and without limitation, any works procured under the framework made between the Employer and the Contractor dated [ ] ) then notwithstanding any provision to the contrary in either this Contract or such other contract, where the Contractor fails to properly perform its obligations under one contract he will not be entitled under the other contract to any:

2.45.2.1 extension of time for completion of the works to be performed under it; or

2.45.2.2 reimbursement of direct loss and/or expense;

to the extent that the entitlement to any such extension of time or reimbursement is the result (howsoever arising and whether directly or indirectly) of such failure. In the event that instructions are issued by the Employer under either contract which are reasonably necessary to deal with the effects of any such failure (including without limitation to minimise the overall costs and losses to the Employer arising from such failure) such instructions will not be treated as Changes under either contract and there will be no extension of time or addition to the Contract Sum under either contract or any payment of any other kind by the Employer relating to them.

### **Section 3            Control of the Works**

3.1                    Re-number as 3.1.1 and insert new clauses as follows:

"3.1.2                The Contractor hereby grants to the Employer and those authorised by the Employer an irrevocable licence to enter upon the site prior to the date of practical completion on first giving reasonable notice to the Contractor for the purpose of inspecting the Works or any part. The Employer shall procure that no interference in or obstruction of the progress of the Works by the Contractor shall be caused thereby.

3.1.3                The Contractor shall permit the Employer and those authorised by the Employer to attend all site meetings (of which the Contractor shall give

not less than five Business Days' notice and which shall be held not less frequently than every four weeks and more if requisite). The Contractor shall prepare full and proper minutes of all such meetings and shall pass copies of such minutes to the Employer and all others who attended within five Business Days of each such meeting".

3.4.1 Add to the end "and in the case of any sub-contract or sub-consultant appointment awarded to one of the sub-contractors referred to in clause 7.4 (being one from whom a collateral warranty may be required) or notified to the Contractor under Article 10, that its terms have been previously approved by the Employer and that it is executed as a deed and, in the case of any sub-consultant appointment, that such appointment is substantially in the form appended at Schedule 8".

3.4.2.5 Delete and replace with the following:

"in the case of any sub-contract or sub-consultant appointment for one of the sub-contractors referred to in clause 7.4 (being one from whom a collateral warranty may be required) or notified to the Contractor under Article 10, such obligations as are necessary to ensure that it is in all respects compatible with the terms of this Contract (including without prejudice to the generality of the foregoing as regards giving collateral warranties);"

3.4.4 Add new clauses as follows:

"3.4.4.1 the Contractor shall provide on demand to the Employer certified copies of any sub-contract or sub-consultant appointment (save for particulars of the sub-contract sum or fee) under which the Contractor has employed any sub-contractor from whom a collateral warranty may be required;

3.4.4.2 the Contractor shall not do or omit to do any act or thing which will entitle any sub-contractor from whom a collateral warranty may be required to treat its sub-contract or sub-consultant appointment as terminated by breach;

- 3.5.1 Delete.
- 3.8 Delete the second sentence and substitute the following:
- "The Contractor will notwithstanding such request or the Employer's response to it comply with the said instruction. Unless it is subsequently decided in any proceedings that the provision specified by the Employer in answer to the Contractor's request does not empower the issue of the said instruction then the issue of the same will be deemed for all the purposes of this Contract to have been empowered by the provision of the Conditions so specified by the Employer".
- 3.9.1 Delete everything after "clause 3.9.4".
- 3.9.2 Delete.
- 3.9.3 Add to the end "and the Employer may at any time (but subject to clause 2.6) engage others to carry out any work instructed to be omitted from this Contract".
- 3.12 Add to the end "or unless the instruction was given following previous inspections or tests which had shown that materials, goods or work were not in accordance with this Contract and the instruction was not given vexatiously".
- 3.13.3 Delete and replace with the following:
- "having due regard to the Code of Practice set out in Schedule 4 issue (but not vexatiously) instructions under clause 3.12 to open up for inspection or to test to establish to the reasonable satisfaction of the Employer the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that such instructions are not given vexatiously, whatever the results of the opening up, no addition shall be made to the Contract Sum and no extension of time shall be granted".

3.17

Add new clause as follows:

The liability of the Contractor under this Contract shall not be released, reduced or in any other way affected by:

- 3.17.1 any direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Employer;
- 3.17.2 any act omission or delay by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works;
- 3.17.3 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer;
- 3.17.4 the inclusion of the value of any work, materials or goods in any Interim Payment;
- 3.17.5 the appointment or failure to appointment any clerk of works or other person to inspect or otherwise report in respect of the Works or by any act or omission of any clerk of works or other person whether or not such act or omission might give rise to an independent liability to such clerk of works or another person to the Employer and/or any third party;
- 3.17.6 the issue of the Practical Completion Statement, any Section Completion Statement and/or the Notice of Completion of Making Good Defects.”

**Section 4      Payment**

4.4.1

Delete and replace with the following:

"The Contract Sum is exclusive of VAT and, in relation to each payment to the Contractor for any supply made under this Contract:

- .1 the Contractor shall within two Business Days following the issue by the Employer of a Payment Notice issue to the Employer an appropriate VAT invoice in respect of such supply, indicating whether or not the reverse charge applies to the supply; and
- .2 subject to the Contractor complying with clause 4.4.1.1 and unless the reverse charge applies, the Employer shall in addition pay to the Contractor the amount of any VAT properly chargeable in respect of such supply."

4.7.3 In lines 3 and 4 replace "Interim Payment Application is" with "Interim Payment Application and a proper VAT invoice in respect of it are both". In lines 5 and 6 replace "if the Interim Payment Application is received later, the due date shall be 7 days after the date of receipt by the Employer" with "if either or both of the Interim Payment Application and the proper VAT invoice in respect of it are received later, the due date shall be 7 days after the date of receipt of both by the Employer".

4.9.5 In line 7 replace "5 days" with "1 day".

4.10.4 Replace "The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent him exercising" with "The Employer may exercise". After "this Contract" insert "or at common law or in equity".

4.10.5 Add new clause as follows:

"For the avoidance of doubt neither the Employer's failure to serve a Payment Notice nor the Employer's failure to serve a Pay Less Notice shall be interpreted as acceptance by the Employer that any given Interim Payment Application or Contractor's Payment Notice are correct."

4.13.1.2 Add to the end:

"and provided the Contractor has produced to the Employer satisfactory evidence that there is no term of any contract or other circumstance which would operate to prevent the passing of property in

such materials and goods to the Employer as provided for in clause 2.21".

4.14A Add new clause as follows:

"Notwithstanding any other provision of this Contract: each Gross Valuation shall be a true valuation based on the true factual position and shall not assume that previous valuations or payments or decisions or notices relating to them were correct; should any Interim Payment calculation in accordance with clause 4.14 produce a negative figure then that represents a previous overpayment by the Employer and the Contractor shall reimburse the Employer the amount of the overpayment (including without limitation any VAT thereon). The due date for any such reimbursement will be the date which is 7 days after the Interim Valuation Date for the Gross Valuation in question, the final date for payment in respect of any such reimbursement will be 7 days after the due date and the period before the final date for service of a Pay Less Notice will be 5 days."

4.16 Delete 4.16.1 and 4.16.2 and replace with the following:

"4.16.1 the Employer's interest in the Retention shall not be fiduciary, either as trustee for the Contractor or any other person, or in any other capacity; the relationship of the Employer and the Contractor with regard to the Retention shall solely be that of debtor and unsecured creditor, subject to the terms hereof; and the Employer shall have no obligation to invest the Retention of any part thereof;

4.16.2 the Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever and shall be entitled to the full beneficial interest in the Retention and every part thereof (and, without limitation, interest thereon and income arising therefrom) unless and until the Retention is paid to the Contractor pursuant to this Contract".

4.19.3 Add new clause as follows:



“The Contractor shall use constantly his best endeavours to prevent or minimise any disruption to the regular progress of the Works as aforesaid and to mitigate any direct loss and/or expense incurred by him and shall not in any event be entitled to reimbursement of direct loss and/or expense to the extent that the same has been incurred through any negligence, breach of statutory duty, breach of contract or other default of the Contractor or any of the Contractor’s Persons”.

4.20.5 Add new clause as follows:

“It shall be a condition precedent to the Contractor’s entitlement to claim loss and/or expense that the Contractor has notified the Employer in writing within 28 days of the occurrence of a Relevant Matter that such a claim may be made in respect of that Relevant Matter and the Contractor’s initial estimate of the amount (for the avoidance of doubt this does not require the Contractor to provide a detailed or binding quote but merely an initial estimate).”

4.21.2.2 Add to the end “or the instruction was given following previous inspection or testing which had shown that work, materials or goods were not in accordance with this Contract and the instruction was not given vexatiously”.

4.23A Add new clause as follows:

“For the avoidance of doubt it is hereby agreed that the Contractor shall not be entitled to claim any reimbursement of loss and/or expense to the extent that the matters identified as giving rise to the application pursuant to clause 4.19 have been caused or contributed to by any negligence, default or breach of contract on the part of the Contractor, or any of the Contractor’s Persons”.

4.23B Add new clause as follows:

“No sum shall be paid to the Contractor pursuant to clause 4.19 where and to the extent that the progress of the Works is concurrently delayed due to a Delay Event”.

4.24.5 Replace the full stop at the end with a semi-colon and add a new clause 4.24.5.4 as follows:

“the date of the Employer’s receipt of a proper VAT invoice in respect of the final payment”.

**Section 5 Changes**

**Section 6 Injury, Damage and Insurance**

6.5.1 In line 1 after “is required” insert “or if a figure for such insurance is stated in the Contract Particulars”. In line 3 after “the Contractor” insert “and the Fund”.

6.8 In the definition of “Joint Names Policy” after “policy of insurance” in line 1 insert “from a reputable insurance company carrying on business in the United Kingdom”. Also in line 1 after “Contractor” insert “and the Fund”.

6.15 Delete and replace with the following:

“6.15.1 The Contractor confirms that it holds professional indemnity insurance with a limit of indemnity of the type and in the amount not less than that stated in the Contract Particulars and the Contractor shall maintain such insurance with reputable insurers carrying on business in the United Kingdom until at least 12 years after the date of practical completion provided that such insurance is generally available in the market to design and build contractors with good claims records at a commercially reasonable cost and on commercially reasonable terms (and if not so available then the Contractor shall maintain such reduced level of or reasonable alternative insurance as is so available and is acceptable to the Employer acting reasonably). For the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the Contractor’s own claims record or other acts omissions matters or things peculiar to the Contractor will be deemed within the Contractor’s obligations and what is commercially

reasonable will be judged by reference to what is being done by design and build contractors with good claims records.

6.15.2 The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements and within 7 days of the Employer's request at any time the Contractor will produce for inspection documentary evidence as to compliance with this clause 6.15 and that payment has been made in respect of the last premium payment due.

6.15.3 If the Contractor fails to comply with its obligations under this clause 6.15 the Employer may take out insurance to cover some or all of the loss or damage which could result from a breach of the Contractor's obligations under this Contract and may recover the costs and expenses of taking out such insurance from the Contractor".

6.16 Delete and replace with the following:

"The Contractor shall ensure that any sub-contractor from whom a collateral warranty may be required has when appointed and is thereafter obliged to maintain in force during the carrying out of the Works and for 12 years thereafter provided that the same is generally available in the market to sub-contractors in the relevant field at commercially reasonable rates and terms (and for the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the sub-contractor's own claims record or other acts, omissions, matters or things peculiar to it, will be deemed to be within the sub-contractor's obligations and what is commercially reasonable will be judged by reference to what is being done by sub-contractors in the relevant field with good claims records), professional indemnity (or if approved by the Employer in writing product liability) insurance to cover negligence omission or default on the part of such sub-contractor and that such sub-contractor shall be liable to the Contractor in the event of such negligence omission or default. The amount of such insurance shall be notified to the Employer for approval

prior to the appointment of the sub-contractor in question. As and when the Contractor is reasonably requested to do so by the Employer, the Contractor shall use reasonable endeavours to procure that such sub-contractor shall produce for inspection documentary evidence that such professional indemnity (or product liability if so approved) insurance is being maintained".

6.21 Add new clause as follows:

"The Contractor shall not do or permit or suffer to be done any act or thing which may vitiate or prejudice the recovery of any sum under any policy or policies of insurance effected by the Contractor and shall bear or as the case may be reimburse the Employer in respect of any excess or deductible under such policy".

**Section 7      Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties**

7.1 Delete and insert:

"The Contractor will not without the prior written consent of the Employer charge, assign or hold on trust the benefit of or its rights and benefits arising from this Contract. The Employer may without any further consent of the Contractor being required by written notice to the Contractor charge and/or assign and/or hold on trust the benefit of and its rights and benefits arising from this Contract".

7.3 In the penultimate line after "unless otherwise agreed by the Employer" insert "in his absolute discretion". Add the following to the end of the clause:

"Notwithstanding any other terms of this Contract the Contractor shall not be entitled to payment of any sum (or as the case may be any further sum) whilst he is in breach of any of his obligations under this clause 7.3."

7.4 Delete and replace with the following:

"7.4.1 The Employer may at any time up to 12 years from the date of this Contract request the Contractor to procure that any of the following Warrantors execute and deliver to the Employer as deeds collateral warranties in favour of any of the following Beneficiaries:

***Warrantors***

The Contractor.

Any Novated Consultant.

Any other sub-contractor appointed by the Contractor in connection with the Works who is referred to in the Contract Particulars entry relating to this clause 7.4 as one from whom a collateral warranty may be required.

***Beneficiaries***

Any person identified in the Contract Particulars entry relating to this clause 7.4 as someone in whose favour collateral warranties may be required.

7.4.2 Such collateral warranties shall be in the appropriate form annexed hereto (with, in the case of warranties from sub-contractors other than professional design consultants, such amendments as the Contractor may request and the Employer approve (for the avoidance of doubt such approval not to be unreasonably withheld or delayed) except that the Employer shall not be unreasonable in withholding or delaying consent if the Employer has contracted to procure such a warranty in favour of a third party and that third party does not consent to the amendment in question) and if any such form contains optional clauses the Employer shall state which optional clauses should appear in any given collateral warranty.

7.4.3 The Contractor shall procure that such execution and delivery takes place within 21 days of the Employer's request provided that such request was in writing, identified the name and address of

the Beneficiary in question, and if appropriate identified which optional clauses should appear.

7.4.4 Notwithstanding any other provision of this Contract the Contractor shall not be entitled to the payment of any sum (or as the case may be any further sum) whilst he is in breach of any of his obligations to himself execute or deliver a collateral warranty (rather than to procure that another person does so) pursuant to this clause 7.4.

7.4.5 Notwithstanding any other provision of this Contract the Contractor shall not be entitled to the payment of any sum (or as the case may be any further sum) relating to the services or work of any sub-contractors from whom the Contractor is obliged at the time in question to procure collateral warranties but from whom the Contractor has failed to procure such collateral warranties (unless the reason for such failure is that the sub-contractor in question is insolvent)."

7.5 Delete and replace with the following:

"The Contractor shall obtain in favour of the Employer (or in favour of such other person as the Employer may specify) all warranties and guarantees which are available from the manufacturers and suppliers of all goods and equipment forming part of the Works and where extended warranties or guarantees are available shall notify the Employer of this in good time to enable the Employer to decide whether or not to make any necessary payments or take any other necessary actions in order to obtain such extended warranties or guarantees or to instruct (as a Change where the Contract Documents do not otherwise require the extended warranty or guarantee to be obtained) the Contractor to do so."

7.6-7E Delete clauses 7.6 and 7A-7E inclusive.

## **Section 8 Termination**

8.4.4 Add new clause as follows:

"If the Contractor fails to comply with his obligations under Article 10, clause 6.15, clause 7.3 or (insofar as it relates to the execution of collateral warranties by the Contractor himself rather than his obligation to procure that another person executes a collateral warranty) clause 7.4 then without prejudice to its other rights the Employer may by written notice to the Contractor terminate the Contractor's employment under this Contract".

8.5.4 Add new clause as follows:

"If the Contractor is Insolvent the Employer may deduct from any sums due to the Contractor under this or any other contract between them a sum equal to the cost of up to twelve year latent defects insurance in respect of the Works (and for the avoidance of doubt such deduction may be made whether or not the Employer actually buys such insurance or provides for or bears the risk in some other way)".

8.13 Add new clause as follows:

"Upon any determination of the Contractor's employment under Section 8 or if this Contract is determined, repudiated or discharged in any other manner and notwithstanding that the validity of such determination, repudiation or discharge may be disputed by the Contractor, the Contractor shall immediately deliver to the Employer possession of the whole of the Site and of the Works. On application by the Contractor, the Employer will allow the Contractor an opportunity to visit the Site to remove any equipment or plant belonging to the Contractor and which was not capable of being removed when the Contractor returned possession of the whole of the Site to the Employer".

## **Section 9 Settlement of Disputes**

9.2.2.2 Delete

## **Schedule 1 Design Submission Procedure**

## **Schedule 2      Supplemental Provisions**

1.1                      In line 2 after “(Named Sub-Contractor)” insert “then provided that the Employer’s Requirements also state (using these words) that the sub-contractor in question “shall be a Named Sub-Contractor for the purposes of Supplemental Provision 1”.

4.4                      Delete.

7.4                      In the second line after “with it” insert:

“unless the Employer can produce reasonable evidence that the proposal in question was already under discussion or being developed by the Employer or the Employer’s other consultants, contractors or advisers at the time the Contractor made it”.

## **Schedule 3      Insurance Options**

## **Schedule 4      Code of Practice**

## **Schedule 5      Third Party Rights**

Delete entire schedule.

## **Schedule 6      Forms of Bonds**

## **Schedule 7      JCT Fluctuations Option A**

Delete entire Schedule.

## **Schedule 8      Consultant Appointments**

Insert new Schedule 8.