

## APPENDIX D - JCT ARTICLES, RECITALS, CONTRACT PARTICULARS AND AMENDMENTS

### CONTENTS

1.0 THE CLIENT'S ENQUIRY DOCUMENTATION		
	Tick signifies Inclusion	Full details are contained within
Articles and Recitals	√	Section 1
Contract Particulars	√	Section 2
Optional Contract Amendments	√	Section 3
Contract Drawings	√	Section 4
The Specification	√	Section 5
Employers Requirements (for the Contractors Design Portion)	√	Section 6
Pricing Document	√	Section 7
Parent Company Guarantee	√	Section 8
Performance Bond	√	Section 9
Collateral Warranties	√	Section 10

## Section 1: Articles of Agreement and Recitals

The Contract will be the Standard Building Contract With Quantities 2011 (SBC/Q 2011) issued by the Joint Contracts Tribunal Limited and incorporating Amendment 1 (March 2015).

Reference	Clause Heading	
<b>ARTICLES OF AGREEMENT</b>		
The Employer is		Cornwall Council of County Hall, Treyew Road, Truro, Cornwall TR1 3AY
The Contractor is		Refer to the Contractor's Tender
<b>RECITALS</b>		
<b>First</b>		<p>the Employer wishes to have the following work carried out:</p> <p>The conversion and renovation of grade II* listed mine buildings; Assay including new build café extension, Stamps Engine House (also known as South Condurrow) and Events Field</p> <p>At King Edward Mine, Troon</p> <p>("the Works") and has had drawings and bills of quantities prepared which show and describe the work to be done.</p>
<b>Second</b>		The Employer has supplied the Contractor an unpriced copy of the bills of quantities.
		<i>In Section 7</i>
		Tick if also to be provided:
		<p>Description</p> <p>And requires the Contractor to provide a priced Schedule of Activities annexed to this Contract ("the Activity Schedule")</p>
		N/A
<b>Third</b>		<p>the drawings are <del>numbered</del>/listed in the <b>Bills of Quantities Appendix A</b> and annexed to this Contract ("the Contract Drawings") and have for identification been signed or initialled by or on behalf of each Party;</p>
<b>Fourth</b>		<p>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;</p>

## CONTRACT 1

Reference	Clause Heading			
<b>Fifth</b>		Not used.		
<b>Sixth</b>		Not used.		
<b>Seventh</b>		Not used		
<b>Eighth</b>		the Supplemental Provisions identified in the Contract Particulars apply;		
<b><i>The Ninth to Twelfth Recitals apply only where there is a Contractor's Designed Portion</i></b>				
<b>Ninth</b>		<p>The Works include the design and construction of</p> <ol style="list-style-type: none"> <li>1) Assay new timber frame G20</li> <li>2) External balustrades L30</li> <li>3) Above ground drainage R11</li> </ol> <p>("the Contractor's Designed Portion")</p>		
<b>Tenth</b>		<p>The Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements for the design and construction of the Contractor's Designed Portion ("the Employer's Requirements") in <b>Section 6</b></p>		
<b>Eleventh</b>		<p>In response to the Employer's Requirements the Contractor has supplied to the Employer:</p> <ul style="list-style-type: none"> <li>• Documents showing and describing the Contractor's proposals for the design and construction of the Contractor's Designed Portion ("the Contractor's Proposals"); and</li> <li>• An analysis of the portion of the Contract Sum relating to the Contractor's Designed Portion ("the CDP Analysis")</li> </ul>		
<b>Twelfth</b>		<p>The Employer has examined the Contractors Proposals and subject to the Conditions, is satisfied that they appear to meet the Employers Requirements. The Employers Requirements, the Contractors Proposal and the CDP Analysis have each for identification been signed or initialled by or on behalf of each party and particulars of each given in the contract particulars;</p>		

## CONTRACT 1

ARTICLES		
Now it is hereby agreed as follows		
<b>Article 1</b>	Contractor's obligations	The Contractor shall complete the Works in accordance with the Contract Documents
<b>Article 2</b>	Contract Sum	Refer to Contractor's Tender
<b>Article 3</b>	Architect / Contract Administrator	For the purposes of this Contract the Architect/Contract Administrator is is pdpGREEN Consulting of Unit 3, Calenick House, Truro Technology Park, Heron Way, Truro TR1 2XN or, if he ceases to be the Architect/Contract Administrator, such other person as the Employer shall nominate in accordance with clause 3.5 of the Conditions.
<b>Article 4</b>	Quantity Surveyor	For the purposes of this Contract the Quantity Surveyor is Trevor Humphreys Associates Limited of 116 Belmont Road, St Andrews, Bristol BS6 5AU or, if he ceases to be the Quantity Surveyor, such other person as the Employer shall nominate in accordance with clause 3.5 of the Conditions.
<b>Article 5</b>	CDM Co-ordinator	The Principal Designer for the purposes of the CDM Regulations is the Architect / Contract Administrator  Or such replacement as the Employer at any time appoints to fulfil that role.
<b>Article 6</b>	Principal Contractor	The Principal Contractor for the purposes of the CDM Regulations is the <b>Contractor</b>  Or such replacement as the Employer at any time appoints to fulfil that role.
<b>Article 7</b>	Adjudication	If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.
<b>Article 8</b>		Article deleted
<b>Article 9</b>	Legal Proceedings	Subject to Article 7 and (where it applies) to Article 8 the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

## Section 2: Contract Particulars

Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)	
Fourth Recital and clause 4.7	Construction Industry Scheme (CIS)	Employer at the Base Date for the purposes of the CIS	is a 'contractor'	✓
			is not a 'contractor'	
Sixth Recital	Description of Sections	Recital deleted		
Seventh Recital	Framework Agreement	The Framework Agreement between Cornwall Council and the Contractor dated	Recital deleted	
Eighth Recital and Schedule 8	Supplemental Provisions			
	Collaborative working	Paragraph 1	Applies	✓
			<del>Does not apply</del>	
	Health and safety	Paragraph 2	Applies	✓
			<del>Does not apply</del>	
	Cost savings and value improvements	Paragraph 3	Applies	✓
			<del>Does not apply</del>	
	Sustainable development and environmental considerations	Paragraph 4	Applies	✓
			<del>Does not apply</del>	
	Performance indicators and monitoring	Paragraph 5	Applies	✓
			<del>Does not apply</del>	
	Notification and negotiation of disputes	Paragraph 6	Applies	✓
			<del>Does not apply</del>	
	Where paragraph 6 applies, the respective nominees of the Parties are:	Employers nominee:	To be advised	

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Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)
	[or such replacement as each Party may notify to the other from time to time]	Contractor's nominee:	To be advised
Tenth Recital	Employer's Requirements (state reference numbers and dates or other identifiers of documents in which these are contained)	<b>Section 6</b>	
Eleventh Recital	Contractor's Proposals (state reference numbers and dates or other identifiers of documents in which these are contained)	Refer to the Contractor's Tender	
Eleventh Recital	CDP analysis (state reference numbers and dates or other identifiers of documents in which these are contained)	Refer to the Contractor's Tender	
Article 8	Arbitration	Article 8 and clauses 9.3 to 9.8 (Arbitration) <u>do not apply</u>	
1.1	Base Date	25 <sup>th</sup> January 2016	
1.1	CDM Planning period	Shall mean the period of:	2 weeks
		Ending on the Date of Possession	✓
		Beginning/ ending on	
1.1	Date for Completion of the Works ( <i>where completion by Sections does not apply</i> )	1 <sup>st</sup> December 2016	
1.1	Sections: Dates for Completion of Sections	Section No.	Date for Completion

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Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)	
1.7	Addresses for services of notices by the Parties ( <i>if none is stated, the address in each case subject to clause 1.7.3 shall be that shown at the commencement of the Agreement</i> )	Employer:	As stated above in the Agreement.	
		Contractor:	Refer to Contractor's Tender	
2.4	Date of Possession of the site ( <i>where possession by Sections does not apply</i> )		4 <sup>th</sup> April 2016	
	Sections: Date of Possession of Sections	Section No. N/A	Date for Possession	
2.5	Deferments of possession of the site ( <i>where possession by Sections does not apply</i> )	Clause 2.5	Applies	✓
		Maximum period of deferment (if less than 6 weeks) is	6 weeks	
2.5	Sections: deferment of possession of Sections	Clause 2.5	Applies	
			Does not apply	
		Maximum period of deferment (if less than 6 weeks) is:	Section No.	Period of deferment
2.9.1.2	Master Programme	Critical Paths	Are required to be shown	✓
			<del>Are not required to be shown</del>	
2.19.3	Contractors Design Portion:	Limit of Contractor's liability for loss of use, etc. (if any)	£ 2,000,000 Reference SBC 5	

**CONTRACT 1**

Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)		
2.32.2	Liquidated damages ( <i>where completion by Sections does not apply</i> )	At the rate of	£900 per week or pro-rata for part thereof		
2.32.2	Sections: rate of liquidated damages for each Section	Section No.	£ per week or pro-rata for part thereof		
2.37	Sections: Section Sums	Section No	£		
2.38	Rectification Period ( <i>where completion by Sections does not apply</i> )	Months From the date of practical completion of the Works	12		
	Sections: Rectification Periods ( <i>if no other period is stated, the period is 6 months</i> )	Section No	Months*		
4.8	Advance payments ( <i>Not applicable where the Employer is a Local Authority</i> )	Clause 4.6	Applies		
			Does not apply	✓	
		If applicable The advance payment will be			
		And will be paid to the Contractor on			
		It will be reimbursed to the Employer in the following amount(s) and at the following time(s)			

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Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)	
4.8	Advance Payment Bond  <i>(not applicable where the Employer is a Local Authority)</i>  <i>(where an advance payment is to be made, an advance payment bond is required unless stated that it is not required)</i>	An advance payment bond	Is required	
			Is not required	✓
4.9.1	Interim payments - due dates  <i>(If no date is stated, the first due date is one month after the Date of Possession)</i>	The first due date is:  within 1 month of the Date of Possession  and thereafter the same date in each month or the nearest Business Day in that month.		
4.17.4	Listed Items – uniquely identified  <i>(Delete the entry if not bond is required)</i>	<del>For uniquely identified Listed Items a bond in respect of payments for such items is required for</del>	Clause will be deleted	
4.17.5	Listed Items – not uniquely identified  <del><i>(Delete) the entry if clause 4.9.5 does not apply</i></del>	<del>For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for</del>	Clause will be deleted	
4.19	Contractor's Retention Bond  <i>(not applicable where the Employer is a Local Authority)</i>  <i>(not applicable unless stated to apply and relevant particulars are given below)</i>	Clause 4.19	Applies	
		If clause 4.19 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is:	Does Not Apply	✓
		For the purposes of clause 6.3 of the bond, the expiry date shall be:		
4.20.1	Retention Percentage	5 per cent		

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<b>Clause Reference</b>	<b>Subject</b>	<b>Default Particulars</b>	<b>Additional Risk Option (applies if ticked)</b>	
4.21 and Schedule 7	Fluctuation Options	Clause 4.21, 4.22 and Schedule 7 do not apply		
6.4.1.2	Contractor's Insurance: injury to persons or property - insurance cover ( <i>for any one occurrence or series of occurrences arising out of one event</i> )	£10,000,000	✓	
6.5.1	Insurance - liability of Employer	Insurance	May be required	✓
			Is not required	
		Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event	£10,000,000	
6.7 and Schedule 3	Insurance of the Works - Insurance Options	Schedule 3: Insurance		
		<del>Option A applies</del>		
		<del>Option B applies</del>		
		Option C applies	✓	
6.7 and Schedule 3 Insurance Option A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2)	Percentage to cover professional fees <i>(if no other percentage is stated, it shall be 15 per cent)</i>	15%	✓	
6.7 and Schedule 3 Insurance Option A (paragraph A.3)	Annual renewal date of insurance <i>(as supplied by the contractor)</i>	<b>Refer to Contractor's Tender</b>		

**CONTRACT 1**

Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)	
6.10 and Schedule 3	Terrorism Cover - details of the required cover <i>(State reference numbers and dates or other identifiers of documents setting out the requirements. Unless otherwise stated, Pool re Cover is required)</i>		Pool re Cover	✓
6.12	Professional Indemnity Insurance	Amount of Indemnity Required	and is	
	Level of cover <i>(if an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated)</i>  <i>(If no amount is stated, insurance under clause 6.12 shall not be required)</i>	Relates to claims or series of claims arising out of one event	£2,000,000	✓
		Is the aggregate amount for any one period of insurance		
6.12	Cover for pollution and contamination claims (if no amount is stated such cover shall not be required; , unless otherwise stated, the required limit of indemnity is an annual aggregate amount)		Is required with a sub-limit of indemnity of £2,000,000	✓
			<del>Is not required</del>	
6.12	Expiry of required period of Professional Indemnity Insurance (after the date of practical completion of the Works) is		6 years	
			12 years	✓
6.14	Joint Fire Code	The Joint Fire Code	Applies	✓
		If the Joint Fire Code applies, state whether the insurer under Schedule 3 Insurance Option A B or C (paragraph C.2) has specified that the Works are a "Large Project"	<del>Does not apply</del>	
			Yes	
			No	✓

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Clause Reference	Subject	Default Particulars	Additional Risk Option (applies if ticked)	
6.17	Joint Fire Code - amendments/revisions  <i>(The cost shall be borne by the Contractor unless otherwise stated)</i>	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by	<del>The Employer</del>	
			The Contractor	✓
7.2	Number not Used			
8.9.2	Period of suspension  <i>If none is stated, the period is 2 months)</i>		2 months	✓
8.11.1.1 to 8.11.1.5	Period of suspension  <i>(if none is stated, the period is 2 months)</i>		2 months	✓
9.2.1	Adjudication  Nominating body is  Tick options that apply	<del>Royal Institute of British Architects</del>		
		The Royal Institution of Chartered Surveyors	✓	
		Constructionadjudicators.com		
		<del>Association of Independent Construction Adjudicators</del>		
		<del>Chartered Institute of Arbitrators</del>		
<b>Part 2 : Collateral Warranties</b>		<b>Section 10</b>		



**DEFAULT  
SCHEDULE OF AMENDMENTS  
TO JCT STANDARD BUILDING  
CONTRACT (WITH QUANTITIES) 2011**

**Ashfords**  
[www.ashfords.co.uk](http://www.ashfords.co.uk)

**DEFAULT PROVISIONS**

**The following amendments to the Conditions shall apply in all JCT Standard Building Contract (With Quantities) 2011 Underlying Contracts**

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Definitions and Interpretation</b>	1.1	DELETE the existing text in the definition of "Article" and replace with: "an article in the relevant Appendix of the Enquiry or Agreement."
<b>Definitions and Interpretation</b>	1.1	Insert new definition: "Beneficiary: any Funder, Purchaser and/or Tenant and/or other party identified in the Enquiry or reasonably required by the Employer."
<b>Definitions and Interpretation</b>	1.1	At the end of the definition of "CDM Regulations" INSERT "and the related Approved Code of Practice together with any guidance requirements issued by the Health and Safety Executive from time to time".
<b>Definitions and Interpretation</b>	1.1	In the definition of Conditions: add to the end of the definition, before the full stop: "as amended by the relevant Schedule of Amendments and the selected Optional clause Amendments".
<b>Definitions and Interpretation</b>	1.1	DELETE the definition text of "Contractor's Design Documents" and SUBSTITUTE "the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium (excluding internal memoranda and documents, working papers, and templates) created and/or developed by or for the Contractor in relation to the Contractor's Design Portion".
<b>Definitions and Interpretation</b>	1.1	Insert new definition: "Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British Standard or equivalent EU standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément."
<b>Definitions and Interpretation</b>	1.1	Replace the existing definition text of "Funder" and replace with: "a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works; or the site of the Works, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise."
<b>Definitions and Interpretation</b>	1.1	DELETE the definition and the associated text of: "Information Release Schedule"
<b>Definitions and Interpretation</b>	1.1	Insert new definition: "Key Sub-contractor: a sub-contractor named or identified in the Enquiry, or a sub-contractor with significant design responsibility, and any replacement of that sub-contractor."

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Clause Heading	Clause No.	Default Amendment
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works)."</p>
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement and repair of the Works (and the completed Works)."</p>
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Professional Consultant: a professional consultant named or identified in the Tender and any replacement of a Professional Consultant."</p>
<b>Definitions and Interpretation</b>	1.1	<p>In the definition of "Purchaser" delete from the definition: "named or otherwise sufficiently..." to "...P&amp;T Rights Particulars" (inclusive).</p>
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Schedule of Amendments - the relevant Default Schedule of Amendments Schedule 9 together with the selected Optional clause Amendments."</p>
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the CDP Works."</p>
<b>Definitions and Interpretation</b>	1.1	<p>Insert new definition:</p> <p>"Sub-Contractors: sub-contractors to the Contractor."</p>
<b>Definitions and Interpretation</b>	1.1	<p>In the definition of "Tenant" delete the words from "named or otherwise sufficiently..." to "...P&amp;T Rights Particulars" (inclusive).</p>
<b>Definitions and Interpretation</b>	1.1	<p>Delete these definitions (and associated text):</p> <p>"Fluctuation Options A, B and C";</p> <p>"Funder Rights";</p> <p>"Funder Rights Particulars";</p> <p>"P&amp;T Rights"; and</p> <p>"P&amp;T Rights Particulars".</p>

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Clause Heading	Clause No.	Default Amendment
<b>Agreement etc. to be read as a whole</b>	1.3	<p>After "CDP Documents" delete:</p> <p style="padding-left: 20px;">", nor anything contained in any Framework Agreement,"; and</p> <p>After "override or modify" add:</p> <p style="padding-left: 20px;">"the Schedule of Amendments, "</p>
<b>Contracts (Rights of Third Parties) Act 1999</b>	1.6	<p>Delete clause 1.6, but not its heading, and replace with:</p> <p style="padding-left: 20px;">"Other than any rights as take effect pursuant to section 7 of these Conditions, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it."</p>
<b>Applicable Law</b>	1.11	<p>Delete clause 1.11 and replace with:</p> <p style="padding-left: 20px;">"Number not used."</p>
<b>Modern Slavery Act 2015</b>	2.1	<p>Add a new sentence to the end of clause 2.1:</p> <p style="padding-left: 20px;">"In performing his obligations under this Contract, the Contractor shall and shall ensure that each of its sub-contractors shall comply with the Modern Slavery Act 2015 and the Anti-slavery Policy."</p>
<b>Contractor's Design Portion</b>	2.2	<p>INSERT in sub-clause 2.2.1, after "they are relevant":</p> <p style="padding-left: 20px;">"carry out and".</p>
<b>Materials, Goods and Workmanship</b>	2.3	<p>INSERT in sub-clause 2.3.1 (in both places it appears) after "so far as procurable, be":</p> <p style="padding-left: 20px;">"of satisfactory quality and".</p>
<b>Materials, Goods and Workmanship</b>	2.3	<p>INSERT in sub-clause 2.3.3 after "in the case of the Contractor's Designed Portion be" and after "shall in any other case be":</p> <p style="padding-left: 20px;">"of satisfactory quality or proper and workmanlike (as the case may be) and".</p> <p>ADD a new sub-clause 2.3.6:</p> <p style="padding-left: 20px;">"The Contractor shall use the Standard of Care to not specify or use any products or materials in the Works, which, at the time of specification or use, are Deleterious."</p> <p>ADD a new sub-clause 2.3.7:</p> <p style="padding-left: 20px;">"The Contractor shall not knowingly use or suffer or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious. If in the performance of his duties under this Contract, the Contractor becomes aware that he or any person specified, approved or used any such products or materials, the Contractor shall immediately give written notice to the Architect/Contract Administrator of the same. This clause 2.3.7 does not create any additional duty for the Contractor to inspect or check the work of others which is not otherwise required by this Contract."</p>

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Clause Heading	Clause No.	Default Amendment
<b>Materials, Goods and Workmanship</b>	2.3	<p>ADD a new sub-clause 2.3.8:</p> <p>"Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from his obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the Employer or the Architect/Contract Administrator or his agents or representatives on the site of the Works or the carrying out of tests on the instructions of the Employer or the Architect/Contract Administrator or by any instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgment, advice or inspection made or given by or on behalf of the Employer or the Architect/Contract Administrator. Notwithstanding any other provision of this Contract, the term 'approval' when used in the context of any approval to be given by the Employer or the Architect/Contract Administrator shall have the meaning 'acceptance of general principles only', and no such approval or any consent given by the Employer or the Architect/Contract Administrator nor any inspection of or failure to inspect the Works shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract. No comments made nor the fact that no comments are made shall be construed as acceptance or approval nor shall the Employer or the Architect/Contract Administrator be responsible for any work done on the basis of them and the Contractor shall remain fully responsible for the adequacy of the design of the CDP Works".</p>
<b>Construction Information and Contractor's Master Programme</b>	2.9	<p>In sub-clause 2.9.1.2 INSERT after "provide the Architect / Contract Administrator":</p> <p>"2 copies of"</p>
<b>Information Release Schedule</b>	2.11	<p><b>DELETE</b> the clause and its heading and <b>SUBSTITUTE:</b> "Number not used".</p>
<b>Further drawings, details and instructions</b>	2.12	<p>DELETE from sub-clause 2.12.1:</p> <p>"Where not included in the Information Release Schedule".</p>
<b>Divergences from Statutory Requirements</b>	2.17	<p>In sub-clause 2.17.2.1. after "change in the Statutory Requirements" INSERT:</p> <p>"that could not reasonably have been foreseen by a competent contractor at the Base Date and"</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Fixing Completion Date</b>	2.28	<p>DELETE "and" from the end of sub-clause 2.28.6.3.</p> <p>DELETE the full stop at the end of sub-clause 2.28.6.4 and SUBSTITUTE with: ";and"</p> <p>ADD a new sub-clause 2.28.6.5:</p> <p>"(save where the Relevant Event is as defined in clause 2.29.10 and provided in that case, that the Contractor has complied fully with any obligation upon it to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."</p> <p>ADD a new sub-clause 2.25.7:</p> <p>"The Architect/Contract Administrator when assessing whether the Contractor is due any extension of time under this clause 2.25 shall take into account any failure by the Contractor to give early warning of the delaying event which an experienced contractor could have given."</p>
<b>Relevant Events</b>	2.29	<p>INSERT in sub-clause 2.29.2.1 after "clause 2.15" and before the comma: "(subject always to clause 2.16)".</p> <p>In sub-clause 2.29.8 INSERT at the end of the sub-clause and before the semicolon:</p> <p>"provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work it is to undertake is required to commence and be completed and has used all reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates".</p> <p>In sub-clause 2.29.12 INSERT at the end of the sub-clause and before the semicolon:</p> <p>"provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any Sub-contractor".</p>
<b>Defects etc - Relevant Part</b>	2.35	<p>ADD to the end of clause 2.35:</p> <p>"provided that the Architect / Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part."</p>
<b>Certificate of Making Good</b>	2.39	<p>ADD to the end of clause 2.39:</p> <p>"provided that the Architect / Contract Administrator shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period."</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Snagging list and defects, shrinkages or other faults remaining at practical completion</b>	2.39A	<p>ADD a new clause 2.39A after clause 2.39:</p> <p>"Snagging list and defects, shrinkages or other faults remaining at practical completion</p> <p>In addition to any defects, shrinkages or other faults in the Works or a Section which appear within the relevant Rectification Period, clauses 2.38 and 2.39 shall apply to:</p> <p>.1 Any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;</p> <p>.2 Any defects, shrinkages or other faults in the Works at practical completion; and</p> <p>.3 Any incomplete work, forming part of the Works, remaining at practical completion."</p>
<b>Copyright and use</b>	2.41	<p>DELETE sub-clause 2.41.2 and SUBSTITUTE</p> <p>".1. The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and use of any Material prepared by or on behalf of the Contractor for any purpose relating to the Works (and the completed Works) including, without limitation, any of the Permitted Uses.</p> <p>.2. This licence allows the Employer to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.</p> <p>.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor."</p> <p>DELETE sub-clause 2.41.3 and SUBSTITUTE</p> <p>"The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided."</p>
<b>Sub-Contracting</b>	3.7.1	<p>At the end of the clause INSERT a new sentence:</p> <p>"Where the Architect/Contract Administrator has consented to the sub-contracting of the whole or any part of the Works, the Contractor shall obtain the Employer's written consent to the form of a Sub-Contract for any person, firm or company to be employed in such sub-contracting before any such Sub-Contract is entered into and shall not afterwards terminate the employment of, or substitute, any such person, firm or company, retained in respect of such sub-contracting without the prior written consent of the Employer (such consent shall not be unreasonably withheld or delayed).</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Sub-Contracting</b>	3.7.2	<p>At the end of the clause INSERT:</p> <p>“Where the Architect/Contract Administrator has consented to the sub-contracting of the design of all or any portion of the Works, the Contractor shall obtain the Employer’s written consent to the form of Sub-Contract for any person, firm or company to be employed in respect of such sub-contracting before any such sub-contract is entered into and shall not afterwards terminate the employment of, or substitute, any such person, firm or company retained in respect of such sub-contracting without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).”</p>
<b>Conditions of sub-contracting</b>	3.7.4	<p>INSERT a new clause 3.7.4:</p> <p>“3.7.4 Within 21 days of entering into a sub-contract in respect of which collateral warranties may be required as specified in the Enquiry, the Contractor shall provide the Employer with a certified copy of the relevant Sub-Contract and shall not alter, waive, vary or depart from any terms of the relevant Sub-Contract without the Employer’s prior written consent.”</p>
<b>Work not in accordance with the Contract</b>	3.18.1	<p>After “site of” INSERT “or rectification of”.</p>
<b>CDM Regulations - Undertakings to comply</b>	3.23	<p>Delete sub-clause 3.23.1 and replace with:</p> <p>"Number not used."</p>
<b>Construction Phase Plan</b>	3.23A	<p>INSERT a new clause 3.23A:</p> <p>“Construction Phase Plan</p> <p>3.23A Where it is the Contractor’s responsibility to prepare the Construction Phase Plan then:</p> <p style="padding-left: 40px;">3.23A.1 if as a result of the Construction Phase Plan not being ready construction of the works cannot start on the Date of Possession, the Contractor shall not be entitled to any addition to the Contract Sum (whether under clause 4.23 or otherwise) as a result of the Contractor not being able to commence the construction of the Works on the Date of Possession; and</p> <p style="padding-left: 40px;">3.23A.2 if the Construction Phase Plan has to be varied or supplemented during the execution of the Works due to the default or omission of the Contractor, the Contractor shall not be entitled to any addition to the Contract Sum (whether under clause 4.23 or otherwise) as a result of the varying or supplementing of the Construction Phase Plan and the Contractor shall reimburse the Employer in respect of any loss or additional expense which the Employer suffers or incurs as a result of the varying or supplementing of the Construction Phase Plan.”</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Items included in Adjustments</b>	<b>4.3</b>	In sub-clause 4.3.2.3 DELETE: "and any amounts allowable to the Employer under whichever Fluctuations Option applies".  DELETE clause 4.3.3.6
<b>Pay Less Notice</b>	<b>4.13</b>	In sub-clause 4.13.3 DELETE: "Notwithstanding the fiduciary interest of the Employer in the Retention as stated in clause 4.18" and REPLACE the word "the" (which follows) with "The".
<b>Ascertainment</b>	Clause 4.16	DELETE sub-clause 4.16.2.5 and SUBSTITUTE "Number not used."  In sub-clause 4.16.3.2 DELETE: "or under Fluctuations Option A or B,".
<b>Retention</b>	Clause 4.18	DELETE clause 4.18 and SUBSTITUTE "With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.9.2.1, the Employer shall be:  .1 under no fiduciary obligation to the Contractor or any third party; .2 under no obligation to set aside in a separate account any amount representing the Retention; and .3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."
<b>Fluctuations</b>	Clause 4.21	DELETE clause 4.21 and its heading and SUBSTITUTE: "Number not used."
<b>Fluctuations</b>	Clause 4.22	DELETE clause 4.22 and its heading and SUBSTITUTE: "Number not used"
<b>Loss and Expense</b>	Clause 4.23	ADD new sub-clause 4.23.4: ".4 not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable) in respect of any cost or loss and/or expense arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."
<b>Relevant Matters</b>	4.24.5	At the end of the clause, before the full-stop, INSERT:  "or in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract."

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Early Warning</b>	<b>4.27</b>	<p>INSERT new clause 4.27 as follows:</p> <p>"Early Warning</p> <p>The Architect/Contract Administrator or Quantity Surveyor when assessing whether the Contractor is entitled to an adjustment to the Contract Sum under clause 4.23 shall take into account any failure by the Contractor to give early warning of the delaying event which an experienced contractor could have given."</p>
<b>Change of conditions for other work</b>	5.9	<p>ADD to the end of clause 5.9, before the full stop:</p> <p>"provided always that such change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons"</p>
<b>Liability of Contractor - personal injury or death</b>	6.1	<p>In clause 6.1 after "caused by the carrying out of the Works" INSERT:</p> <p>"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".</p>
<b>Liability of Contractor - injury or damage to property</b>	6.2	<p>Line 4, after "Works" INSERT "or of any other obligation pursuant to Section 2 or Section 3 of the Conditions."</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Nuisance</b>	6.3A	<p>After clause 6.3 INSERT a new clause 6.3A:</p> <p>“Nuisance</p> <p>6.3A.1 The Contractor shall at all times take reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring land owner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any relevant action or proceedings which may be instituted.</p> <p>6.3A.2 The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of a Variation or other instruction by or on behalf of the Employer (which is itself not the result of any negligence, default or breach of contract by or on behalf of the Contractor or any of the Contractor’s Persons and has not been avoided despite the Contractor using all reasonable and practical means to avoid the same).</p> <p>6.3A.3 The Architect/Contract Administrator may issue to the Contractor such instructions as he considers necessary if any injunction is granted or Court order is made in consequence of any such trespass, nuisance or interference, but (except as described above) the Contractor shall not be entitled to any additional payment (whether by way of any addition to the Contract Sum or otherwise) by reason of any such instruction if such instruction is required due to the act or omission of the Contractor or the Contractor’s Persons.”</p>
<b>Trespass</b>	6.3B	<p>ADD new clause 6.3B after new clause 6.3A:</p> <p>"Contractor to prevent trespass to neighbours</p> <p>Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including, without limitation, the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising 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 carrying out the Works or any obligation pursuant to clause 2.38 would otherwise be an act of trespass, the contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring to that act. That agreement shall be subject to the approval of the Employer before its completion, such agreement not to be unreasonably withheld or delayed. The Contractor shall comply, at no cost to the Employer, with any conditions contained in that agreement."</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>CDP Professional Indemnity Insurance</b>	Clause 6.12	<p>Delete clause 6.12 and replace with:</p> <p>"Obligation to insure</p> <p>The Contractor shall maintain professional indemnity insurance for such amount and on such basis stated in the Tender (if stated) for a period beginning on the date of this agreement and expiring after the period of years stated in the Contract Particulars, provided that (subject to clause 6.12A) such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that professional indemnity insurance:</p> <p>.1 with reputable insurers lawfully carrying on insurance business in the UK or EU;</p> <p>.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and</p> <p>.3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930."</p>
<b>Professional Indemnity Insurance</b>	6.12A	<p>Add a new clause 6.12A, after clause 6.12:</p> <p>"Commercially reasonable rates</p> <p>Any increased or additional premium required by insurers for the insurance referred to in clause 6.12 because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates."</p>
<b>Professional Indemnity Insurance</b>	6.12B	<p>Add new clause 6.12B, after clause 6.12A:</p> <p>"Evidence of insurance</p> <p>Whenever the Employer reasonable requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.12 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:</p> <p>.1 the Contractor's then current professional indemnity insurance; and</p> <p>.2 that the premiums for that insurance have been paid in full at the date of that letter."</p>

## CONTRACT 1

Clause Heading	Clause No.	Default Amendment
<b>Professional Indemnity Insurance</b>	6.13A	<p>Add a new clause 6.13A , after clause 6.13:</p> <p>"Key Sub-contractors' professional indemnity insurance</p> <p>The Contractor shall procure that the Key Sub-contractors shall maintain professional indemnity insurance in the sum, and on the basis, stated in the Tender or if not so stated, in such minimum sum to be reasonably approved by the Employer. Within 10 Business Days of the date of this Contract (or, if appointed later), within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the Key Sub-contractor's insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each Key Sub-contractor's insurers or brokers confirming:</p> <p>.1 the Key Sub-contractor's then current insurance, as referred to in this clause; and</p> <p>.2 that the premiums for that insurance have been paid in full at the date of that letter."</p>
<b>Assignment</b>	Clause 7.1	<p>DELETE clause 7.1 and SUBSITUTE</p> <p>".1 The Employer may, assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.</p> <p>.2 Without prejudice to clause 7.1.1, the Employer may charge, or assign by way of security, the benefit of this Contract to any Funder (and the Funder may reassign the benefit of this Contract to the Employer on redemption of that security).</p> <p>.3 The Employer shall notify the Contractor of any assignment. If the Employer fails to notify the Contractor, the assignment shall still be valid.</p> <p>.4 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.</p> <p>.5 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the prior written consent of the Employer, which the Employer may withhold at its absolute discretion."</p>
<b>Rights of enforcement</b>	Clause 7.2	<p>DELETE the whole clause and its heading and SUBSTITUTE:</p> <p>"Number not used."</p>
<b>Warranties and Third Party Rights</b>	7.3 to 7E	<p>Clauses 7.3 to 7E (inclusive)</p> <p>Delete existing clauses 7.3, 7.4 and 7A to 7E (inclusive).</p>
<b>Default by Contractor</b>	Clause 8.4	<p>In sub-clause 8.4.3 after "requiring him to remove" INSERT: "or rectify"</p>

## CONTRACT 1

<b>Clause Heading</b>	<b>Clause No.</b>	<b>Default Amendment</b>
<b>Insolvency of the Contractor</b>	Clause 8.5	In sub-clause 8.5.3.3 at the start of the sub-clause, after "the Employer may", INSERT: "at the Contractor's expense"
<b>Consequences of termination</b>	Clause 8.7	In sub-clause 8.7.2, in the first line after the words "the Contractor shall" before the colon, INSERT: "at the Contractor's expense"
<b>Third Party Rights</b>	Schedule 5	Delete Schedule 5 to the JCT Conditions and replace with: "Schedule 5 not used."
<b>Forms of Bonds</b>	Schedule 6	This agreement incorporates Schedule 6 to the JCT Conditions save as amended by the forms of bond attached to the Agreement.
<b>Fluctuations Options</b>	Schedule 7	Delete schedule 7 to the JCT Conditions and replace with: "Schedule 7 not used."

### Section 3: Optional Contract Amendments

If selected in this section below the following amendments to the Conditions shall apply.

Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC1	Eleventh recital	ADD after second bullet point "The Contractor has examined the Employer's Requirements and is satisfied that the Contractor's Proposals meet the Employer's Requirements."	SBC1 Applies
	Twelfth recital	DELETE first sentence and SUBSTITUTE: "The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for any design contained in them."	
	2.13	DELETE sub-clause 2.13.2 and SUBSTITUTE: "Number not used".	
	2.14	DELETE sub-clause 2.14.2 and SUBSTITUTE "Subject to clause 2.17, if any inadequacy is found in any design in the Employer's Requirements, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly".	

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC 1 cont'd...		<p>DELETE sub-clause 2.14.3 and SUBSTITUTE:</p> <p>"Subject to clause 2.17, any correction, alteration or modification under clause 2.14.1 shall be treated as a Variation. Any correction, alteration or modification under clause 2.14.2 shall not be treated as a Variation and there shall be no addition to the Contract Sum in respect of that correction, alteration or modification or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such correction, alteration or modification"</p>	
	2.16	<p>DELETE in sub-clause 2.16.2 from the end of the sub-clause "treated as a Variation" and SUBSTITUTE with:</p> <p>"to the extent that it relates to the removal of that discrepancy, there shall be no addition to the Contract Sum".</p>	
	2.20.1	<p>INSERT in clause 2.20.1 after "Contractor's Proposals":</p> <p>"or the Employer's Requirements".</p>	

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC2	Article 10	<p>Insert new Article 10</p> <p>"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached in <b>Section 8</b>. The parent company guarantee shall be executed and delivered by the parent company of the Contractor, or if more than one parent company, the parent company as determined by the Employer. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, no sum shall be due to the Contractor under this Contract until such parent company guarantee has been executed and delivered to the Employer."</p>	SBC2 Applies
SBC3	Article 11	<p>Insert new article 11:</p> <p>"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form stated in <b>Section 9</b>. If the Contractor does not procure execution and delivery of the bond, then, notwithstanding any other term of this Contract, the Employer may deduct the value of 10% of any payment due under this contract up to a maximum of the full bond value (10% of contract sum) until such bond has been executed and delivered to the Employer."</p>	SBC3 Applies

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<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
SBC4	1.1	Insert new definition: "Third Party Agreements: the extracts from agreements between the Employer and third parties, which are notified to the Contractor prior to the Base Date or identified in the Tender, as supplemented by any instruction from the Architect / Contract Administrator referred to in clause 5.1.3."	SBC4 Applies

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<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
SBC 4 cont'd...	2.42	<p>Add a new clause 2.42:</p> <p>"Third Party Agreements</p> <p>.1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.</p> <p>.2 The Contractor shall perform and assume, as part of its obligations under this Contract, the Employer's obligations, liabilities and risks contained within the Third Party Agreements that relate to the carrying out of the Works as if they were expressly referred to in this Contract as obligations, liabilities and risks of the Contractor, all other things being equal.</p> <p>.3 The Contractor shall ensure that no act or default or omission on its part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."</p>	
	5.1	<p>Change the full stop at the end of sub-clause 5.1.2.4 to a semicolon and add a new sub-clause 5.1.3:</p> <p>".3 without prejudice to the rest of this clause 5.1, an instruction from the Architect / Contract Administrator supplementing or amending the Third Party Agreements."</p>	

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
<p>SBC5 [used in conjunction with SBC1]</p>	<p>2.19</p>	<p>DELETE clause 2.19 (and its sub-clauses) and SUBSTITUTE:            "Where there is a Contractor's Designed Portion:            2.19.1            "Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the CDP Works including (without limitation) all design work proposed by or on behalf of the Employer before the date of this Contract that forms part of the Employer's Requirements.            2.19.2            "Without prejudice to clause 2.19.1, the Contractor shall be fully responsible in all respects for any design of the CDP Works that is carried out by a professional consultant or specialist designer or sub-contractor that the Contractor has or will employ (including, without limitation, a person employed at the request of the Employer or novated to the Contractor) whether such design work is carried out before, on or after the date of this Contract. Any design of the CDP Works undertaken prior to the Base Date shall be treated for all the purposes of this Contract as undertaken by the Contractor."            2.19.3            "Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when            .1 designing the CDP Works;            .2 selecting goods, materials, plant and equipment for incorporation in the CDP Works;            and            .3 complying with any</p>	<p>SBC5 Applies</p>

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<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
SBC6	2.20A	<p>INSERT new clause 2.20A:</p> <p>“Site Conditions 2.20A</p> <p>The Contractor has had an opportunity of inspecting the physical conditions (including the sub-surface conditions) and other conditions of or affecting the site of the Works and shall be deemed to be fully acquainted with the same before the date of this Contract and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment (whether by way of an addition to the Contract Sum or otherwise). As between the Contractor and the Employer, the Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.20A and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.”</p>	SBC6 Applies

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
<p>SBC7 [Used where a Funder requires naming as Joint Insured Party]</p>	6.4	<p>In sub-clause 6.4.1, after "take out and maintain insurance", insert:</p> <p>"(with the names of the Employer and the Funder shown as additional insureds)"</p> <p>In sub-clause 6.4.1.2, after "Employer" (both times it is used), insert:</p> <p>"and the Funder"</p>	<p>SBC7 Does Not Apply</p>
	6.5	<p>In sub-clause 6.5.1, after "maintain a policy of insurance in the" delete "names of the Employer and the Contractor" and replace with:</p> <p>"names of the Employer, the Contractor and the Funder"</p>	
	6.8	<p>In the definition of "Joint Names Policy" delete "the Employer and the Contractor" and replace with:</p> <p>"the Employer, any person acquiring the Employer's interest in the whole or part of the Works, the Contractor and the Funder"</p>	

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<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
SBC8	6.12A	In clause 6.12A, insert after the words "referred to in clause 6.12" the following: "and clause 6.13C".	SBC8 Applies
	6.13C	<p>Add new clause 6.13C, after clause 6.13B:</p> <p>"Contractor to co-operate with Employer's reasonable insurance requirements</p> <p>The Contractor shall fully co-operate with any measures reasonably required by the Employer, including:</p> <p>.1 completing any proposals for insurance and associated documents; or</p> <p>.2 maintaining insurance at rates above commercially reasonable rates, if the Employer reimburses the Contractor for the net cost of that insurance above commercially reasonable rates."</p>	

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<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
<p>SBC9 [Applies where Contractors warranties are required]</p>	<p>7.3 to 7E (inclusive)</p>	<p>Clauses 7.3 to 7E (inclusive) Delete existing clauses 7.3 to 7E (inclusive). Replace clause 7.3 with "Contractor's collateral warranty 7.3.1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Beneficiary in the form of the relevant deed of collateral warranty Renummer JCT clause 7A.2 as clause 7.3.2 and reinstate that clause, as renumbered. Insert new sub-clauses 7.3.3 and 7.3.4: ".3 Where the Employer has given notice to the Contractor under clause 7.3.1 then, notwithstanding clause 7.3.2, the Employer and the Contractor may not (without the persons referred to in those notices' consent) amend or vary clauses 7.3.1 to 7.3.4 (inclusive) or the relevant part of parts of the form of warranty.</p>	<p>SBC9 Does Not Apply</p>

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC9 continued		.4 Without prejudice to clause 7.3.3, where the Employer has given notice to the Contractor under clause 7.3.1 that refers to a Funder, neither the Employer nor the Contractor shall agree to rescind this Contract, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall be subject to the Funder's step-in rights under the collateral warranty but, unless and until the Funder gives notice of step-in under the collateral warranty, the Employer and the Contractor may (without the consent of the Funder) agree to amend, vary or waive any term of this Contract."	
SBC10	7.4	<p>Insert a new clause 7.4: "Professional consultants -"</p> <hr/> <p>[Use where CDP consultant appointed by Contractor:] "Within 10 Business Days of the date of this Contract, the Contractor shall appoint the Professional Consultants."</p> <hr/>	SBC10 Does Not Apply

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Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
<p>SBC11 [Applies where consultant warranties are required]</p>	<p align="center">7.5</p>	<p>Insert new clause 7.5: "Professional Consultants - collateral warranties  Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Professional Consultant), the Contractor shall ensure that each Professional Consultant has executed and delivered a deed of collateral warranty in favour of the Employer in the relevant form set out in Schedule 1 to the Framework Agreement. Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed, or deeds, of collateral warranty from any Professional Consultant in favour of any Beneficiaries in the form set out in the relevant form set out in Schedule 1 to the Framework Agreement. If any deed of collateral warranty provided by a Professional Consultant requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause."</p>	<p align="center">SBC 11 Does Not Apply</p>
	<p align="center">7.6</p>	<p>Insert new clause 7.6: "Professional consultants - Contractor's duty not to terminate or vary appointments  The Contractor shall not terminate or vary the appointment of any Professional Consultant without the Employer's prior consent, which shall not be unreasonably withheld or delayed."</p>	

**CONTRACT 1**

Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC12 [Applies where sub-contractor warranties are required]	7.7	<p>Insert new clause 7.7:</p> <p>"Sub-contractor collateral warranties</p> <p>Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall ensure that each Key Sub-contractor named Section 10 and delivered a deed of collateral warranty in favour of the Employer in the relevant form set out in Section 10.</p> <p>Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed, or deeds of collateral warranty from any Key Sub-contractors then appointed, in favour of any Beneficiary in the relevant form set out in Section 10. If any deed of collateral warranty provided by a Key Sub-contractor requires execution by the Contractor, the Contractor shall execute and deliver the collateral warranty to the Employer within the time limits set out in this clause."</p>	SBC12 Applies
SBC13	8.12	<p>Delete sub-clause 8.12.3.5.</p> <p>Delete sub-clause 8.12.4 and replace with:</p> <p>"Number not used."</p>	SBC 13 Applies
SBC14	9.1	<p>Delete existing clause 9.1 and replace with:</p> <p>"Tiered dispute resolution</p> <p>Subject to Article 7:</p>	SBC 14 Applies

**CONTRACT 1**

Option Reference	Clause No.	Default Amendments	Amendments Apply if selected
SBC14 continued		<p>.1 if any dispute or difference arises under this Contract, directors or other senior representatives of the parties with authority to settle the dispute shall, within 10 Business Days of a notice (served in accordance with clause 1.7.4) from one Party to the other, meet in a good faith effort to resolve the dispute or difference;</p> <p>.2 if the dispute or difference is not resolved at the meeting referred to in clause 9.1.1, the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure or such other mediation procedure as shall be agreed between the parties. To initiate a mediation, a party shall give a notice (ADR notice), to the other party, requesting a mediation. The parties shall agree the identity of the mediator or, if not agreed between the parties within 10 Business Days of the ADR notice, the party who served the ADR notice shall apply to a mediator nominating body to nominate the mediator, attaching a copy of the ADR notice to its application and copying its application to the other party.</p> <p>.3 neither Party may commence any proceedings (which for the avoidance of doubt shall not include adjudication) in relation to any dispute or difference arising under this Contract until it has attempted to settle the dispute or difference by mediation under clause 9.1.2 and either the mediation has</p>	

**CONTRACT 1**

<b>Option Reference</b>	<b>Clause No.</b>	<b>Default Amendments</b>	<b>Amendments Apply if selected</b>
SBC14 continued		terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay."	
SBC15	9.2	<p>Add new sub-clauses:</p> <p>".3 The Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 Business Days of making his decision.</p> <p>.4 The Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication, or the parties."</p>	SBC 15 Applies

## Section 4: Contract Drawings

Refer to Appendix A of the Bills Of Quantities

## Section 5: The Specification

Refer to Appendix A of the Bills of Quantities

## Section 6: Employers Requirements

Employer's Requirement	Contractor's Proposals	CDP Analysis
<p>G20.115A                      New timber frame walls to existing and new Assay extension.                      Complete the design in accordance with the designated code of practice to satisfy specified performance criteria for timber frames to loadbearing walls.</p>	<p>To be provided during the contract in accordance with A31 550</p>	<p>2/11/m-n                      3/12/a-b</p>
<p>G20. 115B                      New timber roof frame to new Assay extension.                      Complete the design in accordance with the designated code of practice to satisfy specified performance criteria for timber and metal roof trusses and supporting posts, etc. to seating area roof and timber truss to kitchen/store roof.</p>	<p>To be provided during the contract in accordance with A31 550</p>	<p>3/8/b-n</p>
<p>L30.105                      External balustrading to Assay.                      Complete the design in accordance with the designated code of practice to satisfy specified performance criteria.</p>	<p>To be provided during the contract in accordance with A31 550</p>	<p>4//B-C</p>
<p>R11.210                      Complete the design of the above ground foul drainage system to Assay.                      Submit drawings, technical information, calculations and manufacturers' literature.</p>	<p>To be provided during the contract in accordance with A31 550</p>	<p>2/39/a</p>

# Section 7: The Pricing Document

Refer to Bills of Quantities

## Section 8: PARENT COMPANY GUARANTEE

DATED \_\_\_\_\_ 201[ \* ]

- (1) THE CORNWALL COUNCIL
- (2) [PARTY 2]

### PARENT COMPANY GUARANTEE FROM CONTRACTOR'S PARENT COMPANY

Relating to King Edward Mine Museum  
Redevelopment



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## CONTRACT 1

THIS DEED is dated \_\_\_\_\_ 201[\*]

### BETWEEN

- (A) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Guarantor**); and
- (B) **Cornwall Council** of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY (**Employer**).
- (C) **BACKGROUND**

By an agreement in writing (**Building Contract**) dated [DATE] and made between the Employer and [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**), the Contractor has agreed to bound to the terms and conditions stated therein.

The Guarantor (the [immediate OR ultimate] parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties or obligations under the Building Contract.

### AGREED TERMS

#### Interpretation

The definitions and rules of interpretation in this clause and the background apply in this deed.

1. **Insolvency Event** a person suffers an insolvency event if it:
- 1.1. stops or suspends payment of any of its debts, or is unable to (or admits inability to) pay its debts as they fall due; or
  - 1.2. enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or
  - 1.3. suffers any of the following events:
    - 1.3.1. a moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganisation (as a voluntary arrangement, scheme of arrangement or otherwise), petition for bankruptcy, composition, compromise, assignment or arrangement with any creditor; or
    - 1.3.2. any liquidator, receiver, administrative receiver, administrator, compulsory

## CONTRACT 1

manager or other similar officer is appointed in respect of that person or any of its assets; or

- 1.3.3. any event occurs in relation to that person that is analogous to the events listed in this definition.

If a person carries out a solvent, voluntary winding up that is solely for the purpose of reconstruction or amalgamation, that person does not suffer an Insolvency Event.

Clause headings shall not affect the interpretation of this deed.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

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

Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.

A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

A reference to writing or written includes faxes but not e-mail.

A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.

References to clauses are to the clauses of this deed.

Where the words **include(s)**, **including** or **in particular** are used in this deed, they are deemed to have the words "without limitation" following them.

### **Guarantee**

The Guarantor guarantees as primary obligor to the Employer the due and proper and punctual performance by the Contractor of each and every

## CONTRACT 1

obligation and term of the Building Contract;

The Guarantor agrees that if the Contractor:

1.2.1 shall in any respect fail to perform any of its duties or obligations arising under the Building Contract, or shall commit any breach of any term set out or implied in the Building Contract;

1.2.2 suffers an Insolvency Event; or

1.2.3 fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Building Contract,

then the Guarantor will forthwith perform and fulfil in the place of the Contractor each and every duty or obligation in respect of which the Contractor has defaulted or as may be unfulfilled by the Contractor, and the Guarantor will, subject to clause 7 of this Deed, indemnify and save harmless the Employer from and against any and all losses, damages, expenses, liabilities, claims, costs or proceedings without any deduction or set-off which the Employer may suffer or incur by reason of the said failure or breach.

2.3 The Guarantor agrees that this deed shall not be revocable by the Guarantor and that this deed shall be a continuing guarantee and shall be additional to any other guarantee or security from time to time held by the Employer.

### **Amendments to the Building Contract**

The Building Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Building Contract as modified, amended or supplemented) shall not be affected by:

any such modification, amendment or supplement; or

any invalidity, avoidance or termination of the Building Contract; or

any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this deed shall apply to the terms of any such compromise as they apply to the Building Contract.

### **Employer does not have to pursue Contractor**

The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

### **Insolvency of Contractor**

Without affecting clause 2.2, if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

### **Priority of claims against the Contractor**

As long as any liability incurred by the Contractor to the Employer guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect

## CONTRACT 1

(or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

### Limit of liability

The Employer may not recover any more under this deed in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter, net of any set off. The Employer may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

### Assignment

The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Building Contract.

The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Employer's written consent.

The Employer shall notify the Guarantor of any assignment. If the Employer fails to do this, the assignment shall still be valid.

The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 0 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.

### Notices

Any notice [or other communication] required to be given under this deed shall be in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier to each party required to receive the notice or communication at its address:

[GUARANTOR]: [CONTACT] [ADDRESS]; and

[EMPLOYER]: [CONTACT] [ADDRESS],

or as otherwise specified by the relevant party by notice in writing to each other party.

Any notice [or other communication] shall be deemed to have been duly received:

if delivered personally, when left at the address and for the person referred to in this clause; or

if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or

if delivered by commercial courier, on the date, and at the time, that the courier's delivery receipt is signed.

A notice or other communication required to be given under this deed shall not be validly given if sent by e-mail.

This clause 0 shall not apply to the service of any proceedings or other documents in any legal action.

### Third party rights

## CONTRACT 1

A person who is not a party to this deed shall not have any rights under or in connection with it.

### **Governing law and jurisdiction**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

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

Signed as a deed and delivered by ) .....  
**[the Guarantor]** ) Director  
acting by two directors or by a )  
director and its secretary ) .....  
 ) Director/Secretary

## Section 9: Performance Bond

### OPTION 24A - ABI MODEL FORM

**THIS GUARANTEE BOND** is made as a deed **BETWEEN** the following parties whose names and [registered office] addresses are set out in 0 to this Bond (the "Schedule"):  
**BETWEEN**

The "**Contractor**" as principal

The "**Guarantor**" as guarantor, and

The "**Employer**"

#### **BACKGROUND:**

By a contract (the "Contract") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in 0 the Contractor has agreed with the Employer to execute works (the "**Works**") upon and subject to the terms and conditions therein set out.

The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

#### **NOW THIS DEED WITNESSES** as follows:

The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor, the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.

The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in 0 (the "Bond Amount") but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.

The Guarantor shall not be discharged or released by any alteration of any of the terms, conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Guarantee Bond.

Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in 0) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.

The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

## CONTRACT 1

This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.

The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.

This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

**IN WITNESS** whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this [ ] day of [ ], [YEAR]

**EXECUTED AND DELIVERED** as a deed by [CONTRACTOR], Contractor

**EXECUTED AND DELIVERED** as a deed by [GUARANTOR], Guarantor

.....

### - Schedule

**The Contractor** [ ] whose [address] [registered office address] is [ ].

**The Guarantor** [ ] whose registered office address is [ ].

**The Employer** [ ] whose [address] [registered office address] is [ ].

**The Contract:** A contract [dated the [ ] day of [ ]] [*to be entered into*] between the Employer and the Contractor in the form known as [ ] for the construction of works comprising [ ] for the original contract sum of [ ] pounds (£[ ]).

**The Bond Amount** The sum of £[ ] pounds sterling (£[ ]).

**Expiry** Certificate of Making Good Defects which shall be conclusive for the purposes of this Guarantee Bond.

### Section 10: Collateral Warranties

The Client requires the Contractor to procure Collateral Warranties (in the appropriate form attached) in accordance with the table set out below:

Beneficiary	Tick to Select	Parties required to provide warranties	Tick to Select	Class, type or name of party required to provide warranties
Tenant		Sub-Contractors		
		Contractor		
		Consultants		
Purchaser		Sub-Contractors		
		Contractor		
		Consultants		
Funder		Sub-Contractors		
		Contractor		
		Consultants		
Employer		Sub-Contractors	✓	Mechanical and electrical installations
		Consultants		

SCHEDULE 1 - FORMS OF COLLATERAL WARRANTY  
SUB-CONTRACTOR'S FORM OF WARRANTY

**DATED** 20[ ]

- (1) **[SUB-CONTRACTOR]**
- (2) **[LANDLORD / PURCHASER / FUNDER / TENANT] OR [EMPLOYER]**
- (3) **[CONTRACTOR]**



**SUB-CONTRACTOR'S COLLATERAL  
WARRANTY TO [LANDLORD,  
FUNDER, PURCHASER OR TENANT]  
OR [EMPLOYER]**

Relating to a project at

**[ ]**

## CONTRACT 1

THIS AGREEMENT is dated \_\_\_\_\_ 20[ ]

### BETWEEN

- (D) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the 'Sub-Contractor')
- (E) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the 'Beneficiary')
- (F) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the 'Contractor').

### (G) BACKGROUND:

The Employer has engaged the Contractor to carry out design and construction work.

The Contractor has engaged the Sub-Contractor to carry out part of that design and construction work.

The Employer and the Contractor require the Sub-Contractor to enter into this collateral warranty in favour of the Beneficiary.

The Sub-Contractor has agreed to enter into this agreement with the Beneficiary for the benefit of the Beneficiary.

### AGREED TERMS:

#### Interpretation

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

2. **Building Contract** an agreement in writing dated [DATE] between the Employer and the Contractor.
3. **Business Day** a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
4. **Deleterious** materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:
- 4.1. posing a threat to the health and safety of any person; or
  - 4.2. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
  - 4.3. reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or

## CONTRACT 1

- 4.4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément.
5. **Employer** **[insert name of Employer]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS].**
6. **Material** all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Sub-Contract Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Sub-Contract Works.
7. **Permitted Uses** the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Property and the Works.
8. **Property** **[insert property details]**
9. **Sub-Contract** an agreement in writing dated **[DATE]** between the Contractor and the Sub-Contractor.
10. **Sub-Contract Works** the design, construction and completion of the building works referred to in the Sub-Contract, carried out by the Sub-Contractor under the Sub-Contract.
11. **Works** the design, construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

Clause headings shall not affect the interpretation of this agreement.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

A reference to a **company** shall include any company, corporation or

## CONTRACT 1

other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.

A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

A reference to **writing** or **written** includes faxes but not e-mail.

A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.

References to clauses are to the clauses of this agreement.

Unless otherwise expressly provided, the obligations and liabilities of the persons forming the parties under this agreement are joint and several.

Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

### **Comply with Sub-Contract**

The Sub-Contractor warrants to the Beneficiary that:

it has performed and will continue to perform diligently its obligations under the Sub-Contract;

it has carried out and completed and will carry out and complete the Sub-Contract Works in a timely and workmanlike manner using good, up to date building practices and good quality materials;

in exercising its responsibility for the design of the Sub-Contract Works, it has exercised and will continue to exercise all the reasonable skill, care and attention to be expected of a competent and qualified architect or, as the case may be, other appropriate competent and qualified designer experienced in carrying out and completing the design for works of a similar nature, value, complexity and timescale to the Sub-Contract Works;

## CONTRACT 1

has not and will not specify or use any products or materials in the Sub-Contract Works, which, at the time of specification or use, are Deleterious.

The Sub-Contractor's duties or liabilities under this agreement shall not be negated or diminished by:

any approval or inspection of:

the Property; or

the Works; or

the Sub-Contract Works; or

any designs or specifications for the Property or the Works; or

any testing of any work, goods, materials, plant or equipment; or

any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Contractor.

This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Sub-Contractor.

Notwithstanding any other clause of this warranty, the Sub-Contractor shall owe no greater duties to the Beneficiary under the terms of this deed than it would have owed to the Beneficiary had the Beneficiary been named as the Contractor under the Sub-Contract save that this deed shall continue in full force and effect notwithstanding the determination of the Sub-Contract for any reason.

The Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contractor under the Sub-Contract (save in respect of set-off or counterclaim) provided that the Sub-Contractor undertakes that in raising any such defence the Sub-Contractor shall not contend that the Contractor shall have suffered no loss and hence the Beneficiary shall have suffered no recoverable loss by reason of any breach of the terms of this deed.

### **[Clauses 3 and 4 only to be used in Collateral Warranty to Landlord, Employer and Funder**

#### **Step-in Rights**

The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor shall not terminate or treat as terminated its employment under the Sub-Contract, or discontinue the construction of the Sub-Contract Works, without first giving to the Beneficiary not less than 21 days' prior notice of the Sub-Contractor's intention to do so, specifying the grounds for so doing.

If the Beneficiary serves on the Sub-Contractor a notice in accordance with clause 3.3, the Sub-Contractor shall not terminate or treat as terminated its employment under the Sub-Contract, or discontinue the construction of the Sub-Contract Works, but service of such

## CONTRACT 1

notice shall not prejudice any other right or remedy the Sub-Contractor may have under the Sub-Contract or may acquire by reason of any breach of the obligations of the Beneficiary or its appointee under this clause 3.

Unless the employment of the Sub-Contractor under the Sub-Contract shall have terminated previously (and whether or not the Sub-Contractor shall have served notice on the Beneficiary pursuant to clause 3.1), if the Beneficiary serves upon the Contractor a notice to do so, the Contractor shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor under the Sub-Contract.

As against the Contractor and the Beneficiary the Sub-Contractor shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 3.3, and shall not make any enquiry into the entitlement of the Beneficiary as against the Contractor to serve such notice.

As from the date of service of notice under clause 3.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Sub-Contract, provided that this shall not affect or derogate from any right of action the Contractor may have against the Sub-Contractor in respect of any breach of duty of the Sub-Contractor under or in connection with the Sub-Contract happening prior to the date of service of notice by the Beneficiary under clause 3.3.

Within 21 days after serving notice under clause 3.3, the Beneficiary shall pay to the Sub-Contractor an amount equal to the sum then owing to the Sub-Contractor under the Sub-Contract for work done and materials supplied.

If the employment of the Sub-Contractor under the Sub-Contract is terminated before service of any notice under clause 3.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Sub-Contractor shall enter into a new sub-contract with the Beneficiary or its appointee on the same terms as the Sub-Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new sub-contract, the Beneficiary shall pay to the Sub-Contractor an amount equal to the sum which, immediately before termination of the Sub-Contractor's employment, was owing to the Sub-Contractor by the Contractor under the Sub-Contract for work done and materials delivered and which remains unpaid.

Upon payment by the Beneficiary in accordance with clause 3.6 or 3.7 of an amount equal to the relevant sum owing from the Contractor, the Sub-Contractor shall assign to the Beneficiary all the Sub-Contractor's rights against the Contractor in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by the Sub-Contractor from the Contractor.

The Beneficiary guarantees to the Sub-Contractor the performance of the obligations of any appointee of the Beneficiary nominated under

clause 3.3 or 3.7.

This clause 3 shall cease to have effect upon the prior exercise by any person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such other beneficiary with step-in rights similar to those granted to the Beneficiary under this Deed.

The Sub-Contractor agrees to the foregoing provisions of this clause 3 and agrees to be bound by them.]

### **No instructions to Sub-Contractor by Beneficiary**

Unless the Beneficiary has stepped-in under clause 3, the Beneficiary may not give instructions to the Sub-Contractor under this agreement.

### **Intellectual Property Rights**

The Sub-Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses.

This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.

The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

Where there are rights vested in the Sub-Contractor by virtue of Chapter IV (Moral Rights) of Part I of the Copyright Designs and Patents Act 1988 the Sub-Contractor hereby irrevocably waives any such rights in relation to the Works and the Material, and shall obtain a written waiver from any of the Sub-Contractor's agents or employees who may have or obtain any such rights.

The Beneficiary may request a copy or copies of (some or all of) the Material from the Sub-Contractor. On the Beneficiary's payment of the Sub-Contractor's reasonable charges for providing the copy (or copies), the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.

### **Professional indemnity insurance**

The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least £[AMOUNT] [for any one occurrence, or series of occurrences, arising out of any one event (except in respect of any claim for pollution or contamination where the cover shall be in the aggregate)] [on an aggregate claims basis] for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available at commercially reasonable rates. The Sub-

## CONTRACT 1

Contractor shall maintain that professional indemnity insurance:  
with reputable insurers lawfully carrying on insurance business in  
the UK or EU; and

on customary and usual terms and conditions prevailing for the  
time being in the insurance market.

Any increased or additional premium required by insurers because of the  
Sub-Contractor's claims record or other acts, omissions, matters  
or things particular to the Sub-Contractor shall be deemed to be  
within commercially reasonable rates.

The Sub-Contractor shall immediately inform the Beneficiary if the Sub-  
Contractor's required professional indemnity insurance ceases to  
be available at commercially reasonable rates so that the Sub-  
Contractor and the Beneficiary can discuss how best to protect the  
respective positions of the Beneficiary and the Sub-Contractor  
regarding the Works and the Property.

Whenever the Beneficiary reasonably requests, the Sub-Contractor shall  
send the Beneficiary evidence that the Sub-Contractor's  
professional indemnity insurance is in force, including, if required  
by the Beneficiary, an original letter from the Sub-Contractor's  
insurers or brokers confirming:

the Sub-Contractor's then current professional indemnity  
insurance; and

that the premiums for that insurance have been paid in full at the  
date of that letter.

### **Liability period**

The Beneficiary may not commence any legal action against the  
Sub-Contractor under this agreement after 12 years from the date  
of practical completion of the Works.

### **Assignment**

The Beneficiary may assign the benefit of this agreement:

on two occasions to any person; and

without counting as an assignment under clause 8.1.1:

by way of security to a funder (including any  
reassignment on redemption of security); or

to and from subsidiary or other associated companies  
within the same group of companies as the  
Beneficiary.

The Beneficiary shall notify the Sub-Contractor of any assignment. If the  
Beneficiary fails to do this, the assignment shall still be valid.

The Sub-Contractor shall not contend that any person to whom the benefit  
of this agreement is assigned under clause 8.1 may not recover  
any sum under this agreement because that person is an assignee  
and not a named party to this agreement.

The Sub-Contractor shall not assign or charge the benefit of this

agreement.

**Notices**

A notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

**[SUB-CONTRACTOR]: [CONTACT] [ADDRESS]**

**[BENEFICIARY]: [CONTACT] [ADDRESS]**

**[CONTRACTOR]: [CONTACT] [ADDRESS]**

or as otherwise specified by the relevant party by notice in writing to each other party.

Any notice shall be deemed to have been duly received:

if delivered personally, when left at the address and for the contact referred to in this clause; or

if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

A notice required to be given under this agreement shall not be validly given if sent by e-mail.

This clause shall not apply to the service of any proceedings or other documents in any legal action.

**Third party rights**

10.1. A person who is not a party to this agreement shall not have any rights under or in connection with it.

**Governing law and jurisdiction**

This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England.

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

**EXECUTED** (but not delivered )  
until the date hereof) **AS A DEED** )  
by **[SUB-CONTRACTOR]** )

acting by: )

.....

Director

.....

Director/Company Secretary

**[EXECUTED** (but not delivered until )

the date hereof) **AS A DEED** by )

**[CONTRACTOR ]** )

acting by: )

.....

Director

.....

Director/Company Secretary]