Date:

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|  | SATELLITE APPLICATIONS CATAPULT LIMITED |
|  | [CONTRACTOR] |

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| --- |
| Schedule of Amendments  JCT Design and Build Contract 2016 Edition |
| relating to  **ZEPHYR BUILDING** |
|  |

**SCHEDULE OF AMENDMENTS TO**

**JCT DESIGN AND BUILD CONTRACT 2016 EDITION**

**AGREEMENT**

**RECITALS**

**Delete** the existing Third Recital and **replace** with:

"The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for any design contained in them and is satisfied that the Contractor's Proposals will meet the Employer's Requirements."

**ARTICLES**

**Insert** new Article 10:

“**Article 10: Schedule of Amendments**

The Employer and the Contractor agree that the Schedule of Amendments attached hereto is hereby incorporated into this Contract and the provisions of the Agreement and the Conditions shall have effect as so amended. In the event of any discrepancy in or difference between the Agreement and/or the Conditions and the Schedule of Amendments, the Schedule of Amendments shall prevail.”

***Note: new Article 10 must be written onto the JCT form and a copy of these amendments annexed to each copy of the JCT contract***

**Insert** new Article 11:

“**Article 11: Contractor's liability for loss**

The Contractor acknowledges that a breach of his obligations under this Contract may result in loss not only to the Employer but also to any Funder and/or Purchaser and/or Tenant and/or Landlord for the time being of the site. The Contractor acknowledges that, without prejudice to the position of those parties and subject to the legal rules as to causation and remoteness of damage, he will be liable for losses suffered by any Funder and/or Purchaser and/or Tenant and/or Landlord for the time being of the site and that the provisions of clause 1.6 of the Conditions shall be construed accordingly."

#### **CONTRACT PARTICULARS**

**[insert any additional details not already contained within the Contract Particulars – see separate attachment]**

1.1 BIM Protocol

**Delete** and mark "does not apply"

2.4 Deferment of possession of the site

*(where possession by Sections does not apply)*

Following "Clause 2.4 \*applies/does not apply" and "Maximum period of deferment" **delete** "(if less than 6 weeks) is"

and **Insert** "(if none stated the period is 6 weeks)"

Sections: deferment of possession of Sections

Following "Clause 2.4 \*applies/does not apply" and "Maximum period of deferment" **delete** "(if less than 6 weeks) is" and **Insert** "(if none stated the period is 6 weeks)"

4.2, 4.12 and 4.13 Fluctuations Provision

**Select** the entry: "no Fluctuations Provision applies"

7.4 **Delete** the text and **replace** as follows:

"Details of the requirements for grant by the Contractor and Sub-Contractors of collateral warranties are set out in the Schedule of Amendments annexed hereto".

**ATTESTATION**

The Contract shall be executed as a deed.

**CONDITIONS**

**Section 1 Definitions and Interpretation**

**1.1 Definitions**

BIM Protocol

**Delete** and mark "does not apply"

**Insert** at the end of the definition of “Conditions”:

“all as amended by and incorporating the Schedule of Amendments attached to the Contract.”

**Delete** the definition of "Consultants"

**Insert** at the end of definition of “Employer”:

“including its successors in title and assignees as permitted under these Conditions.”

**Delete** the definition of "Employer's Rights"

**Delete** the existing definition 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 in connection with the site of the Works, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise."

**Delete** the definition of "Funder Rights"

**Delete** the definition of "P&T Rights"

**Delete** the following words from the definition of Purchaser:

"named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars"

**Delete** the definition of "Rights Particulars"

**Delete** the following words from the definition of Tenant:

"named or otherwise sufficiently identified as such (whether by class or description) in or by the Rights Particulars"

**Insert** the following definitions:

"Beneficiary: a Funder and/or Purchaser and/or Tenant and/or Landlord."

"Business Days: means a day other than Saturday, Sunday or public holiday in England and Wales.

"Deed of Novation: a deed of novation between the Employer, the Contractor and a Professional Consultant in the form attached at Schedule 9."

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC)."

"Deleterious: means goods materials equipment product or kits:

* that are generally accepted, or generally suspected, in the construction industry at the relevant time (i) to be hazardous as posing a threat to the health and safety of any person, or (ii) to pose a threat to the durability, structural stability, performance or physical integrity of the Works or any part or component of the Works, or (iii) to reduce, or possibly reduce the normal life expectancy of the Works or any part or component of the Works; or
* that are not in accordance with any relevant British or European standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
* supplied or placed on the market in breach of the Construction Products Regulations; or
* that do not comply with the guidance set out in the edition of the publication entitled “Good practice in the Selection of Materials” published by the British Property Federation and the British Council for Offices current at the time of specification or use; or
* that are specifically prohibited under this Contract."

"Force Majeure: the following circumstances outside the control of either Party and not attributable to the default of either Party which arises during the currency of the Contract which renders it impossible or illegal for either Party to fulfil his contractual obligations:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom; and

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition."

"Landlord: means The Harwell Science and Innovation Partnership Limited, or such other person, firm, company or entity having legal capacity as may own the freehold or hold a long leasehold interest in the site."

"Planning Permission: [X]"

"Professional Consultant: a professional consultant appointed by the Contractor on terms approved by the Employer (such approval not to be unreasonably withheld or delayed), in connection with the design of the Works and any replacement of a Professional Consultant."

“Project: CAT B fit out of an existing unit with the Zephyr Building, Harwell Science and Innovation Campus, Harwell, Oxfordshire.”

"Requisite Consents: those permissions consents approvals licences certificates and permits statutory agreements (including Planning Permission, any environment related permits and Statutory Requirements in legally effectual form from any local or other competent authority as may be necessary to enable carry out and commence maintain and complete the Works or any part of them or to reinstate the Works or any part of them after damage or destruction."

"Snagging Items: minor items or minor defects the existence completion or rectification of which (in the opinion of the Employer's Agent) would not prevent or interfere with the use and enjoyment of the Project or the Works (as applicable) and which are contained in any snagging list attached to the Practical Completion Statement or Section Completion Statement (as applicable)."

"Specification: the specification as defined in the Third Party Agreements between the Employer and the Employer’s architect; The Fairhursts Design Group Limited, the Employer’s structural and civil engineers; Waterman Group PLC and the Employer’s services consultant; Cundall Johnston & Partners LLP. ".

"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 of a similar scope, nature, size, value, timescale, complexity and character to the Works."

“Sub-Contractor: any sub-contractor appointed or to be appointed by the Contractor with design or material works responsibilities for the Works.”

"Third Party Agreements: the extracts from an agreement or agreements entered into by the Employer or that the Employer intends to enter into with third parties, which may affect the Works, attached at Schedule 15, as supplemented by any instruction from the Employer pursuant to clause 5.1.3."

**Interpretation**

**1.3 Agreement etc. to be read as a whole**

**Insert** new clause 1.3A:

"1.3A Insofar as the Contractor has performed a part of his obligations under this Contract before the date of this Contract, the obligations and liabilities of the Contractor under this Contract shall take effect in all respects as if the Contract had been dated prior to the performance of that part of his obligations by the Contractor."

**1.6 Contracts (Rights of Third Parties) Act 1999**

**Delete** and **replace** with:

"1.6 Subject always to the provisions of Article 11 and 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."

**1.8 Effect of Final Statement**

1.8.1.1 **Delete** and **insert** “Number not used”.

1.8.3 **Insert** at the end of clause:

"If neither Party commences arbitration or legal proceedings within the period referred to in clause 1.8.2, the Parties agree that any Adjudicator's decision referred to in that clause shall be conclusive on the matters with which it deals and finally binding on them."

1.9 Effect of payments other than payment of Final Statement

**Delete** "Save as stated in clause 1.8, n" and **insert** "N".

1.10 Consents and approvals

Insert after "shall not":

"(unless stated otherwise)"

Insert a full stop after "delayed or withheld"

Delete from: ”except in the case of either Party’s consent” to “from whom it is sought” (inclusive).

Insert to the end of the clause:

”Notwithstanding any other provision of this agreement, the term approval, when used in the context of any approval to be given by the Employer or the Employer’s Agent, shall have the meaning ‘acceptance of general principles only’, and no such approval or any consent given by the Employer or the Employer’s Agent 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.”

1.11 Applicable law

After "the law of England" **insert** “the courts of England shall have jurisdiction over any dispute or difference which may arise between the Parties.”

**Insert** new clause 1.12:

“**Liability period**

1.12 Neither Party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works and any adjudicator's decision under clause 9.2, other than a decision that has already become finally binding under clause 1.8, shall be finally binding on them unless either Party has referred that dispute for final determination by arbitration or legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

**Insert** new clause 1.13:

"**Interest on late payment**

1.13 Subject to 4.9.6 –

.1 where any amount payable by one Party to the other Party becomes overdue, that Party shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from when payment became overdue until payment is made;

.2 acceptance of a payment of interest under this clause 1.13 shall not in any circumstances be construed as a waiver either of any right to proper payment of the principal amount due or to suspend performance under clause 4.11 or to terminate the Contractor's employment under section 8; and

.3 interest under this clause 1.13 shall be a debt due from the payer to the other Party."

**Insert** new clause 1.14:

"1.14 - **Publicity**

.1 The Contractor shall not without the prior written consent of the Employer:

.1 disclose the identity of the Employer (or any member of the Employer's group of companies) as a customer of the Contractor; or

.2 engage in any advertising, marketing or promotion that reveals or suggests the existence of this Contract or any relationship between the Contractor and the Employer (or any member of the Employer's group of companies); or

.3 uses names, brands, logos, service or trademarks of the Employer's group of companies

.2 Notwithstanding clause 1.10, the Employer shall have complete discretion whether to give or not give the consent referred to in 1.14.1.

.3 The Contractor shall ensure that any sub-contractor or designer or supplier of any kind that the Contractor employs shall be bound by the same obligations as set out Clause 1.14.1 above not to disclose or suggest any connection with the Employer (or any member of the Employer's group of companies) without the Employer's prior written consent."

**Section 2 Carrying out the Works**

**Contractor’s Obligations**

**2.1 General obligations**

2.1.1 After "workmanlike manner" **Insert** "with due diligence",

2.1.2 **Delete** wording in clause 2.1.2 and **replace** with:

“2.1.2 Details of any consents or approvals or agreements already obtained by the Employer or to be obtained by the Employer are given in the Employer's Requirements. The Contractor shall obtain all other consents or approvals or agreements as may be required in order to carry out and complete the Works in accordance with this Contract and permit thereafter the occupation and use of the completed Works for their intended purpose (as reflected in the Employer's Requirements, subject to the Employer or others carrying out any works, additional to the Works and required for occupation or use, as contemplated in the Employer's Requirements). The Contractor shall comply with any requirements or conditions attached to any consent or approval or agreement it has to obtain and those obtained by the Employer prior to the date of this Contract. No:

.1 such approval or consent or agreement; or

.2 failure to obtain a consent or approval or agreement; or

.3 delay in obtaining any consent or approval or agreement or satisfying any condition under them; or

.4 Change required in order to obtain or comply with any consent or approval or agreement

shall give rise to any increase in the Contract Sum, extension of time or right to terminate this Contract on the part of the Contractor.”

**Insert** new clause 2.1.5:

“.5 The Contractor shall ensure that each Sub-Contractor and Professional Consultant that the Contractor appoints shall execute and deliver to the Employer collateral warranties in accordance with the provisions of Section 7 in the relevant form as appended hereto (with such amendments as the warranting party and the beneficiary of the warranty may agree) in favour of the Employer (and each Funder, Purchaser, Tenant and Landlord as the Employer may specify).

Each collateral warranty shall include specific details of the design responsibilities related to the Professional Consultant or Sub-Contractor providing the warranty. The Employer may withhold any payments which may have become due to the Contractor under this Contract until such collateral warranties have been satisfactorily executed and delivered to the Employer or its duly appointed representative.

The Contractor shall include within the terms of appointment of all Professional Consultants and Sub-Contractors a requirement to maintain professional indemnity insurance and/or product liability insurance (as applicable) for any one claim in an amount to be agreed between the Contractor and the Employer, for a period of twelve (12) years from the date of practical completion of the Works. As and when reasonably requested to do so by the Employer, the Contractor shall obtain and produce for inspection documentary evidence that such insurance is being maintained.”

**Insert** new clause 2.1.6:

".6 The Contractor has had the opportunity of inspecting the physical conditions and other conditions of the site and structures upon it and acknowledges that he shall be solely responsible for ensuring that the ground, the site and any existing structures to be retained under or upon or adjacent to the site are (or will be upon completion of the Works) suitable for the Works and the Contractor shall be responsible for dealing with any other matters required to be dealt with in order to complete the Works including (but without limitation):

.1 the provision of services (water, electricity, etc., as required for the Works);

.2 the diversion, upgrading or removal of conduits, services or other items under or on the site;

.3 the investigation of and need to remove or otherwise address any contamination, pollution or Deleterious materials under, in or upon the site;

.4 the physical condition and restrictions of the site and any other risk, contingency or circumstance which may influence or affect the Works;

.5 completing any roads and foul and surface water drainage to adoptable standards and securing the adoption of the same; and

.6 ensuring there is proper and functioning physical connection to main services of all drains, pipes, cables, wires and other conducting media to be constructed or placed in and upon the site, subject only to an application by the user of such services for the commencement of supply;

and nothing referred to above in this clause shall give rise to an increase in the Contract Sum, nor to an extension of time, nor give rise to any right on the part of the Contractor to determine his employment under this Contract.”

**Insert** new clause 2.1.7:

“.7 The Employer gives no warranty or representation as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document.”

**Insert** new clause 2.1.8:

".8 The Contractor shall be deemed to have satisfied himself that all designs and any information set out in the Employer's Requirements is accurate, suitable and sufficient to be used in connection with the Works and this Contract, and the Employer makes no representation or warranty as to its accuracy, completeness or its conformity with Statutory Requirements."

**Insert** new clause 2.1.9:

".9 The Contractor shall determine the position of all underground and overground services and drainage. The Contractor shall liaise with and obtain all necessary consents and licences from Statutory Undertakers for service and drainage diversions and connections and shall bear all costs incurred or arising in respect thereof. The Contract Sum shall be deemed to be inclusive of all costs of or arising out of any diversions and connections to services and drainage and the costs of the Contractor's operations in the vicinity of such services, unless express contrary provision is made in the Employer's Requirements.

**Insert** new clause 2.1.10:

".10 In performing his obligations under this Contract, the Contractor shall and shall ensure that each of his sub-contractors shall comply with the Modern Slavery Act 2015

**2.2 Materials, goods and workmanship**

2.2.1 **Delete** ", so far as procurable, be" and **insert** "be of satisfactory quality and"

2.2.1 **Insert** at the end of the clause:

"Notwithstanding clause 1.10, the Employer shall have complete discretion whether to give or not give the consent referred to in this clause where the Contractor is proposing to substitute any materials or goods described in the Specification"

**Insert** new clause 2.2.6:

“.6 The Contractor shall use the Standard of Care not to specify or approve for use or use anything in the Works which, at the time of specification approval or use is Deleterious.”

**Insert** new clause 2.2.7:

“.7 Without prejudice to clause 2.2.6, the Contractor shall not suffer or permit the specification approval or use in the Works of anything which, at the time of specification approval or use, is Deleterious. The Contractor shall immediately notify the Employer if he becomes aware of any such specification approval or use.”

**Insert new** clause 2.2.8:

“.8 The Contractor accepts responsibility for the suitability of any proprietary product specified in the Employer’s Requirements or Contractor’s Proposals and accepts full responsibility for the performance of any supplier, consultant or sub-contractor named in or otherwise required to be engaged under the Contract. Where any proprietary product is specified or a supplier, consultant or sub-contractor is required to be used or engaged, the Contractor shall if necessary propose an alternative or replacement to be approved by the Employer and no inability to use or procure any such product, supplier, consultant or sub-contractor, nor any requirement to terminate any arrangement entered into in respect of them or requirement to obtain a replacement of them (nor any circumstances arising as a result of such) shall entitle the Contractor to any increase in the Contract Sum or any extension of time or give rise to any right to terminate the Contractor’s employment under this Contract.”

**Possession**

**2.4 Deferment of possession**

**Delete** "6 weeks or lesser" and **insert** "the"

2.6 Work not forming part of the Contract

**Insert** new clauses 2.6.3 to 2.6.4:

“.3 the Contractor shall take all reasonable steps to manage the Employer’s Persons in the execution of work referred to in this clause 2.6 and to co-ordinate such work with the Works so as to minimise (as far as reasonably practicable) any disruption or interference to such work caused by the carrying out of the Works (and vice versa);

.4 the Contractor shall afford all reasonable facilities for the Employer and the Employer’s Persons in the execution of work referred to in this clause 2.6 to enable them to execute such work subject to the Contractor's reasonable requirements as to security and health and safety. In particular (but without limitation) the Contractor shall:

.1 provide a suitable means of access to and egress from the relevant part of the site for such persons; and

.2 allow such persons to enter the site to deliver and install plant, goods and materials to the relevant part of the site at times to be agreed."

**Insert** new clause 2.6A:

“2.6A Where any authorities or statutory bodies are employed in the execution of any work on or near the site of the Works, the Contractor shall permit them to enter the site and any part of the Works for the purposes of executing any such work, subject to the Contractor's reasonable requirements as to security and health and safety.”

**Supply of Documents, Setting Out etc.**

**2.8 Construction information**

**Delete** from "Save for any" to "Contractor's Proposals, the" (inclusive) and **replace** with "The"

**Discrepancies and Divergences**

**2.11 Preparation of Employer's Requirements**

**Delete** and **insert** "Number not used".

**2.12 Employer's Requirements – inadequacy**

**Delete** and **insert** "Number not used".

**2.13 Notice of discrepancies etc.**

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

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

**2.14 Discrepancies in documents**

**Delete** and **replace** with:

"2.14 Where there is a discrepancy within the Employer's Requirements or the Contractor's Proposals and/or other Contractor's Design Documents (including any non-compliance with the Statutory Requirements and including a discrepancy that results from a Change), or a divergence between the Employer's Requirements and the Contractor's Proposals and/or other Contractor's Design Documents (including a divergence that results from a Change), the Contractor shall notify the Employer of the discrepancy or divergence and of his proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the discrepancy or divergence shall be dealt with. Subject to clause 2.15, the Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract."

**2.15 Divergences from Statutory Requirements**

2.15.2.1 **Insert** after "change in Statutory Requirements":

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

2.15.2.2 **Delete** and **insert** "Number not used"

2.15.2.3 **Delete** and **insert** "Number not used"

**2.17 Design Work – liabilities and limitation**

**Delete** entire clause and its heading, and **replace** with a new clause and heading:

**"Design Work - liabilities**

"2.17

.1 Without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works including all design work prepared by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements.

.2 Without prejudice to clause 2.17.1, the Contractor shall be fully responsible in all respects for any design work carried out by any Professional Consultant or by any sub-contractor that the Contractor has appointed or will appoint (including a person appointed at the Employer's request), whether such design work is carried out before, on or after the date of this Contract.

.3 Without derogating from any other provision in this Contract, the Contractor warrants and undertakes to the Employer that:

.1 he has used and shall use the Standard of Care in:

.1 designing the Works (including any design carried out by any Professional Consultant, sub-contractor or supplier engaged by the Contractor or any sub-contractor and including any design contained in the Employer’s Requirements);

.2 selecting goods, materials, plant and equipment for incorporation in the Works;

.3 ensuring that the Project complies with the Requisite Consents;

.2 when completing the detailed design for the Works, he shall not vary the outline design and/or details set out in the Specification without the prior approval of the Employer and he shall comply with any instructions from the Employer;

.3 the Works and all design and workmanship comprised therein shall be fully and properly carried out so as to meet the requirements of the Employer as set out in the Employer’s Requirements;

.4 the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer’s Requirements or in any instruction effecting a Change issued in accordance with clause 3.9;

.5 his design complies with Statutory Requirements."

**Adjustment of Completion Date**

**2.24 Notice by Contractor of delay to progress**

2.24.3 **Insert** at the end of clause after "reasonably require":

"including a critical path analysis showing progress to date and the effect of the expected delay on the completion of the Works"

**2.25 Fixing Completion Date**

2.25.1 After "notice" **delete** "and particulars" and **insert** ", particulars and analysis".

2.25.1 **Insert** after “save where these Conditions expressly provide otherwise”:

“and provided always that the delay has not arisen as a result of negligence, omission, default or breach of contract on the part of the Contractor, the Contractor's Persons or of any sub-contractor or consultant appointed by the Contractor.”

2.25.2 After "particulars" **insert** "and analysis".

2.25.6.3 **Delete** "and" from the end

2.25.6.4 **Delete** the full stop from the end and **replace** with: "; and"

**Insert** new clause 2.25.6.5:

".5 (save where the Relevant Event is as defined in clause 2.26.9 and provided, in that case, that the Contractor has complied fully with any obligation upon him to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time to the extent that the Relevant Event has been caused or contributed to by the negligence, omission, default or breach of contract on the part of the Contractor, the Contractor's Persons or any sub-contractor (of any tier) or supplier (of any tier) or their employees or agents.”

**2.26 Relevant Events**

2.26.2.1 **Delete** and **insert** "Number not used".

2.26.2.2 After “3.11” **insert:**

“(provided that instructions given under clause 3.11 are only Relevant Events if the Employer’s Requirements provided insufficient information to enable the Contractor to make a sufficient allowance prior to the issue of such instructions for the effects on the programme of those instructions)”.

2.26.2.3 **Insert** at the end of the clause before the semi-colon:

"or if it is determined by an Adjudicator appointed pursuant to clause 8.2 that no extension of time should be awarded in respect of such instruction given"

2.26.7 **Insert** at the end before the semicolon:

"provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work the Statutory Undertaker 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"

2.26.8 **Delete** and **Insert** "not used"

2.26.11 **Insert** at the end before the semicolon:

"provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor"

2.26.12 **Insert** at the end before the semicolon:

"which the Contractor could not have reasonably foreseen at the Base Date"

2.26.13 **Delete** and **insert** "Not used"

2.26.14 Change "force majeure" to "Force Majeure"

**Practical Completion, Lateness and Liquidated Damages**

**2.27 Practical Completion**

**Insert** at the beginning:

“For the purposes of this clause “practical completion” of the Works or any Section means that:

.1 the Works or Section are suitable for beneficial use and occupation in accordance with the Employer’s Requirements;

.2 the Works or Section are free from apparent defects save for Snagging Items;

.3 the practical completion checklist is signed off by the Employer’s Agent; and

.4 the Contractor has satisfied the conditions set out in this clause."

**Delete** in line 3: "complied sufficiently" and **replace** with: "complied"

**Insert** after "documents and information”:

"and has supplied all operating manuals, guarantees and warranties for products and services used in the Works, test certificates, copies of statutory approvals, condition schedules and any other documents specified in the Contract Documents as being required to be provided before practical completion."

**Insert** at the end of the clause:

“The Employer may at its discretion issue a Section Completion Statement and/or the Practical Completion Statement notwithstanding that parts of the Works remain to be completed and/or that final commissioning and adjustment of any installations remain to be completed. In such event, such incomplete work and/or commissioning and adjustment shall be completed as soon as reasonably practicable after the issue of the Section Completion Statement or Practical Completion Statement (as applicable).”

**2.29 Payment or allowance of liquidated damages**

2.29.1 **Delete** wording and **replace** with:

“Provided the Employer has issued a Non-Completion Notice for the Works or a Section, the Employer may not later than 5 days before the final date for payment of the amount payable under clause 4.24, give notice in writing to the Contractor in the terms set out in clause 2.29.2.”

2.29.4 **Amend** both references to "2.29.1.2" to: "2.29.1"

**Partial Possession by Employer**

**2.32 Defects etc. – Relevant Part**

**Insert** before the full stop:

", provided that the Employer shall not be required to issue that notice earlier than the expiry of the Rectification Period for the Relevant Part"

**Defects**

**2.35 Schedules of defects and instructions**

2.35.2 **Delete** from the start "prior to the issue of that schedule,"

**Delete** “after delivery of that schedule of defects or more than 14 days after” and **insert** “later than 14 days after”.

Final paragraph **delete**: “Within a reasonable time” and **insert** “Subject to clause 2.35A, as soon as reasonably practicable”.

Final paragraph after each instance of “other faults” **insert** “(and any consequential damage to the remainder of the Works and their contents)”.

**Insert** new clause 2.35A:

"2.35A Where the defect shrinkage or other fault:

.1 affects the use or occupation of the completed Works; or

.2 gives rise to a health and safety or security risk; or

.3 has caused or is causing damage;

or is likely to do so if not rectified without delay, the Contractor shall ensure that the required works of making good are commenced:

.1 in the event of emergency within 24 hours of being requested to do so; or

.2 at the earliest time possible after being instructed to do so; or

.3 at such later time and date as the Employer may specify;

and thereafter diligently carried out and completed as soon as possible.”

**2.36 Notice of Completion of Making Good**

**Insert** at the end of the clause before the full stop:

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

**Insert** new clause 2.36A:

“2.36A Clauses 2.35A and 2.36 shall apply, all other things being equal, to:

.1 any items identified on any snagging list issued by or on behalf of the Employer at or around practical completion or attached to a Practical Completion Statement or Section Completion Statement;

.2 any defects, shrinkages or other faults in the Works at practical completion; and

.3 any incomplete work, forming part of the Works, remaining at practical completion."

**Contractor's Design Documents**

**2.38 Copyright and use**

2.38.2 **Delete** "Subject to all sums due and payable under this Contract to the Contractor having been paid, the", and **insert** "The".

2.38.3 **Delete** wording and replace with:

“The licence referred to in clause 2.38.2 carries the right to grant sub-licences and is transferable to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor’s employment under this Contract.”

**Insert** new clauses 2.38.5 and 2.38.6:

“.5 Where the copyright in any of the Contractor’s Design Documents is not vested in the Contractor, the Contractor shall procure that the person in whom the copyright is vested grants to the Employer a licence similar to that granted in clause 2.38.2 (or the Contractor shall itself grant a sub-licence having the same effect, if he has the right to do so) in relation to all such Contractor’s Design Documents.

.6 Insofar as the Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Contractor's Design Documents and/or of the Works, the Contractor waives any moral rights which he might otherwise be deemed to possess under Chapter IV of that Act in respect of them. Where the Contractor is not the author, the Contractor shall use all reasonable endeavours to obtain for the Contractor a corresponding waiver from the author."

**Insert** new clause 2.39:

"**Third Party Agreements**

2.39

.1 The Contractor shall be deemed to have read the Third Party Agreements at Schedule 15 and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.

.2 The Contractor shall perform and assume, as part of his 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.

.3 The Contractor shall ensure that no act or default or omission on his part or on the part of any Contractor's Persons in relation to the performance by the Contractor of his 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.

.4 The Contractor shall be responsible for and shall indemnify the Employer from and against any and all costs, expenses, liabilities, losses, claims and proceedings arising from any breach by the Employer of its obligations under the Third Party Agreements if and to the extent that such breach and such costs, expenses, liabilities, losses, claims or proceedings have been caused by any act default or omission on the Contractor's part or on the part of any Contractor's Persons.

.5 The Contract Sum includes the cost of compliance with this clause 2.39 and (save if and insofar as clause 5.1.3 applies) the Contractor shall not be entitled to:

.1 any adjustment to the Contract Sum; or

.2 payment of any loss and / or expense; or

.3 any extension of time,

in connection therewith."

**Section 3 Control of the Works**

**Access and Representatives**

**3.1 Access for Employer's Agent**

After "authorised by him or the Employer" **Insert**

"(including, without limitation, any Funder, Purchaser, Tenant or Landlord and/or their respective representatives)"

**Delete** “the Employer and any person authorised by him” and insert

“the Employer, the Employer’s Agent and any person authorised as aforesaid”

**Sub-Contracting**

**3.3 Consent to sub-contracting**

**Insert** new clause 3.3.3:

“3.3.3

.1 The Contractor shall ensure that no Sub-Contractor commences work until a formal contract setting out the terms upon which the sub-contract works are to be carried out (pursuant to clause 3.4) has been entered into (executed as a deed and properly completed) between the Contractor and the Sub-Contractor. In the event that the sub-contract works commence in default of this provision the Employer's Agent may in his complete discretion require that any such sub-contract works cease forthwith until the sub-contract formalities are completed and the Contractor and not the Employer shall be held liable for any consequential delay to the Works.

.2 The Contractor shall ensure that:

.1 a certified copy of each sub-contract with a Sub-Contractor (from which the Contractor may delete sub-contract sum and sub-contract sum analysis information) validly executed by both the Contractor and the Sub-Contractor, shall be provided by the Contractor to the Employer within 10 Business Days of entering into the sub-contract; and

.2 a copy of the Sub-Contractor's current certificate of professional indemnity or products liability insurance (as applicable) shall be provided by the Contractor to the Employer on or before execution of a collateral warranty by the Sub-Contractor.

.3 If the Contractor is in breach of his obligations under this clause 3.3.3, then, notwithstanding any other provision of this Contract, the Employer may withhold any payment which has or may become due to the Contractor under the Contract."

**3.4 Conditions of sub-contracting**

**Delete** "Where considered appropriate, the Contractor shall engage the sub-contractor using the JCT Design and Build Sub-Contract" and insert

"The Contractor shall engage the Sub-Contractor on terms no less onerous than the terms in this Contract (as applicable to the sub-contract) and in particular (but not limited to) in respect of the Contractor's obligations under clause 2.39."

3.4.1 **Delete** and **insert** “Number not used”

3.4.2.5 **Delete**: "the Rights Particulars provide" and replace with: "this Contract provides"

3.4.2.5.1 **Delete**: "if those particulars require"

3.4.2.5.2 **Delete** "14 days" and **replace** with: "10 Business Days"

3.4.2.5.3 **Delete** and **insert** “Number not used”

**Employer's Instructions**

**3.5 Compliance with instructions**

3.5.1 **Delete** and **insert** “Number not used”

**3.9 Instructions requiring Changes**

3.9.1 **Delete** from “and provided that the Employer” to “Contractor's consent” (inclusive).

3.9.2 **Delete** and **insert** “Number not used”

**Inspection – tests**

3.12 **Insert** at the end:

"Notwithstanding the foregoing, if the Employer at any time gives notice to the Contractor that it wishes to inspect any part of the Works not yet covered up, the Contractor shall give the Employer reasonable notice in writing prior to the covering up of that part of the Works, in default of which the Contractor shall bear the whole cost of any opening up, any testing and any making good required by the Employer whether or not the Works were found on inspection to be in accordance with the Contract."

**3.13 Work not in accordance with the Contract**

3.13.1 **Insert** after "removal from site of":

"or rectification of"

3.13.2 **Delete:** "(to which the proviso in clause 3.9.1 applies)"

**3.16 CDM Regulations**

3.16.1 **Delete** and **insert** “Number not used”

**Insert** new clause 3.16.6:

".6 Subject to clauses 3.16.2 to 3.16.4, the Contractor warrants and undertakes to ensure that:

.1 it is fully aware of his obligations arising as a result of the Statutory Requirements including but not limited to the CDM Regulations and possesses the requisite degree of competence and level of resources to meet those obligations; and that

.2 all sub-contractors employed by the Contractor are fully aware of their obligations arising as a result of the Statutory Requirements including but not limited to the CDM Regulations and possess the requisite degree of competence and level of resources to meet those obligations.”

**Insert** new clause 3.16.7:

".7 where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to 12(10) of the CDM Regulations at no cost to the Employer and which shall not entitle the Contractor to an extension of time."

**Section 4 Payment**

**Contract Sum and Adjustments**

**4.2 Items included in adjustments**

4.2.3 Delete and replace with "Number not used"

**Payments and Notices - general provisions**

**4.9 Interim and final payments – final date and amount**

4.9.1 **Delete** “14 days” and **insert** “30 days"

4.9.2 After "clause 4.9.5" **insert**

“and subject to the provision of any performance bond or guarantee and/or parent company guarantee and/or any deeds of collateral warranty required under this Contract”

4.9.5 **Delete** "not later than 5 days" and **insert** "not later than 2 days"

**4.10 Pay Less Notices and other general provisions**

4.10.4 **Delete** “Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent it from exercising"” and **insert**

“Employer may exercise"

**4.11 Contractor's right of suspension**

4.11.1 After "notice to the Employer of his intention to suspend the performance of" **insert:**

"any or all of"

4.11.3 **Delete** "or on request" and, at the end of the clause, **insert** a new sentence:

"The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

Insert new clause 4.11.4:

".4 Where the Contractor exercises his right of suspension under clause 4.11.1, he shall ensure that:

(a) the Works are suspended in an orderly fashion;

(b) the site, the Works and the Site Materials are adequately protected; and

(c) he maintains the insurances he is required to hold under this Contract throughout the period of suspension."

**Interim Payments – calculation of sums due**

**4.12 Gross Valuation – Alternative A**

**Delete** and **insert** "Not used."

**4.13 Gross Valuation – Alternative B**

4.13.1.2 **Insert** at the end of clause before the semi-colon:

“and provided that such materials and goods are reinstated at the Contractor’s expense if they are at any time repossessed or taken away from the site by any supplier or sub-contractor claiming reservation of title in them”

4.13.1 **Delete** in the sentence after 4.13.1.3"any applicable Fluctuations Provision or"

4.13.2.5 **Delete** and **insert** "Number not used."

4.13.3.2 **Delete** "or under any applicable Fluctuations Provision,"]

**Retention**

**4.16 Rules on treatment of Retention**

**Delete** clause and **replace** with:

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

.1 under no fiduciary obligation to the Contractor or any third party;

.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and

.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest."

**4.17 Retention Bond**

4.17.5 **Delete** and **insert** "Number not used."

**Loss and Expense**

**4.19 Matters materially affecting regular progress**

4.19.1 after “subject to clause 4.19.2” **Insert** ”, 4.19.3”

**Insert** a new clause 4.19.3:

”Without affecting clause 4.19.2, no such entitlement arises and the Contractor shall not claim that such an entitlement arises where any such loss and/or expense arises by reason of any error, omission, negligence or default of the Contractor or any Contractor’s Persons (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).”

**Insert** new clause 4.19.4:

".4 The Contractor shall use his best endeavours to prevent or minimise any disruption to the regular progress of the Works as aforesaid and to mitigate any direct loss and/or expense incurred by him.”

**4.21 Relevant Matters**

4.21.4 **Delete** and **insert** "Number not used."

**4.23 Reservation of Contractor’s rights and remedies**

4.23 **Delete** and **insert** "Number not used."

**Section 5 Changes**

**General**

**5.1 Definition of Changes**

**Insert** at the end of clause 5.1:

“Provided always that no change to the Employer’s Requirements or to such obligations or restraints as are referred to above shall be treated as a Change requiring an adjustment to the Contract Sum or an extension of time or an entitlement on the part of the Contractor to terminate this Contract insofar as it is instructed at the request of the Contractor, or arises or is instructed as a result of or in consequence of any error, negligence, omission, default or breach on the part of the Contractor or any Contractor's Persons.”

**Insert** new clause 5.1.3:

".3 without prejudice to the rest of this clause 5, an instruction from the Employer providing, supplementing or amending the Third Party Agreements or an instruction of a Change required in order to comply with a Third Party Agreement or in respect of a change required to the Works arising from compliance by the Contractor with his obligations under clause 2.39."

**5.5 Daywork**

**Delete** “the Valuation shall comprise:” and **insert**

“the Contractor shall provide a quote and shall not undertake any additional or substituted work unless and until the quotation is approved by the Employer in writing.”

# 5.5.1 and 5.5.2 Delete in their entirety up to and including "the All-inclusive Rates stated in such document."

**5.6 Change of conditions for other work**

**Insert** at the end, before the full stop:

"provided always that the substantial change in the conditions does not arise by reason of any error, negligence, omission or default of the Contractor or any Contractor's Person"

**5.7 Additional provisions**

**Insert** new clause 5.7.3:

“.3 In the event that the Employer issues any instruction in relation to the omission of any work, and notwithstanding any other provision in this Contract to the contrary (and, in particular the provisions of clauses 5.2 to 5.10 inclusive), the Contractor shall not be entitled to claim for loss of profit or overheads as a consequence of the omission of any part of the Works.”

**Section 6 Injury, Damage and Insurance**

**Personal Injury and Property Damage**

**6.1 Contractor's liability – personal injury or death**

After “carrying out of the Works” **insert**

“or of any obligation pursuant to Section 2 or Section 3 of the Conditions”

**6.2 Contractor's liability – loss, injury or damage to property**

After “carrying out of the Works” **insert**

“or of any obligation pursuant to Section 2 or Section 3 of the Conditions”

**Delete** from “and to the extent that the same is due” to “any Contractor’s Person.” (inclusive), and **insert**

“except to the extent that the same is due to any act or neglect of the Employer or of any Employer’s Person.”

6.2A **Insert** new clause 6.2A:

“The Contractor shall at all times prevent from or in relation to the site (or as a consequence of the Works) any trespass, public or private nuisance or other actionable interference to the rights or activities of any adjoining or neighbouring landowner or occupier or any Statutory Undertaker. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all costs, expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference. For the avoidance of doubt the Employer may issue to the Contractor such instructions as it considers necessary if any injunction is granted or Court Order is made against the Employer in consequence of any such trespass, nuisance or interference, but such instruction shall not be construed as a Change.”

6.2B **Insert** new clause 6.2B:

"Without prejudice to clauses 6.1, 6.2 and 6.2A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of a crane jib or the erection of a scaffold or hoarding) on or over any nearby property arising out of the Works and shall take all reasonable health and safety and other measures to prevent damage or injury to any persons including the occupiers of nearby property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.35 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 nearby property to that act. That agreement shall be subject to the Employer's approval before its completion. The Contractor shall comply with any condition or obligation contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any condition or obligation contained in that agreement."

**Insurance against Personal Injury and Property Damage**

**6.4 Contractor’s insurance of his liability**

6.4.1 After “effect and maintain” **insert**

“(with the name of the Employer and the Funder shown as additional insured)”.

6.4.1.2 After "Employer" both times it is used **insert** "and the Funder"

After "under the terms of this Contract" **insert**

"including under any third party rights or collateral warranty between the Contractor and the Funder provided for in this Contract"

**6.5 Contractor’s insurance of liability of Employer**

6.5.1 After"in the names of the Employer": **insert** ", the Funder"

**Insurance of the Works and Existing Structures**

**Note: see details inserted in the Contract Particulars**

**6.7 Insurance Options and period**

Insert at the end of the clause:

“Insurance Option A, B or C (whichever is applicable) shall not affect the responsibility of the Contractor hereunder for any loss or damage not covered by any Joint Names Policy described therein.”

**6.8 Related definitions**

6.8 **Insert** in definition of Joint Names Policy, after “the Contractor”:

“and any other persons as the Employer may reasonably require including, but without limitation, any Funder”

**Professional Indemnity Insurance**

**6.15 Obligation to insure**

**Delete** wording and replace with:

"6.15 The Contractor shall maintain professional indemnity insurance as set out in the Contract Particulars for a period beginning on the date of this Contract and ending 12 years after the date of practical completion of the Works, provided that (subject to clause 6.15.2) such insurance is available at reasonable commercial rates and terms.

.1 The Contractor shall maintain the insurance referred to in clause 6.15:

.1 with insurers of good repute lawfully carrying on insurance business in the UK;

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

.3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

.2 The Contractor acknowledges and agrees that any increased or additional premium required by insurers for the insurance referred to in clause 6.15 because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor, shall be deemed to be within reasonable commercial rates.

.3 The Contractor shall not compromise, settle or waive any insurance claim which he may have in respect of any professional liability under this Contract without the prior consent of the Employer, provided that nothing in this clause precludes the Contractor’s insurers from taking over (in the name of the Contractor) the defence of any claim made by the Employer under this Contract and (in that capacity) from conducting and settling it as they see fit.

.4 Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.15 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:

.1 the Contractor's then current professional indemnity insurance; and

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

**Professional Indemnity Insurance**

**6.16 Increased cost and non-availability**

**Delete** “commercially” and after "reasonable" **insert** “commercial”

After “available at reasonable commercial rates” **insert**

“or on reasonable terms or at all or if there is any material reduction in the scope or level of cover offered by such insurance”.

**Insert** new clause 6.16A:

"**Contractor to co-operate with Employer's reasonable insurance requirements**

6.16A The Contractor shall co-operate fully with any measures reasonably required by the Employer, including:

.1 completing any proposals for insurance and associated documents; or

.2 maintaining insurance at rates above reasonable commercial rates, if the Employer reimburses the Contractor for the net cost of that insurance above reasonable commercial rates."

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

**Assignment**

**7.1 General**

**Delete** clause 7.1 and **replace** with:

“7.1

.1 The Employer may assign or otherwise transfer the benefit of this Contract to any person taking an interest in the Works or the completed Works. In this Contract the term "Employer" shall be construed accordingly.

.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).

.3 The Employer shall notify the Contractor of any assignment within 10 Business Days. If the Employer fails to do this, the assignment shall still be valid.

.4 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.5 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior written consent, which the Employer may withhold at its absolute discretion."

**7.2 Rights of enforcement**

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

**7.3 Performance Bonds and Guarantees**

**Delete**: the words "whichever of the following the Contract Particulars state as being required"

7.3.1 **After** "performance bond or guarantee" **insert** "in the form at Schedule 11"

7.3.2 After "a guarantee by the Contractor's parent company" **insert** "in the form at Schedule 10".

**Delete** ";" and **replace** with "."

**Delete** from "any such bond or guarantee" to the end of the clause (inclusive).

**Clauses 7A to 7E – Preliminary**

7.4 to 7E (inclusive) **Delete**.

**Insert** new clause 7.4:

"**Contractor's collateral warranty and third party rights**

7.4

.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 a Beneficiary in the form of the Contractor's deed of collateral warranty contained in Schedule 12 of this Schedule of Amendments.”

.2 By notice from time to time to the Contractor in accordance with clause 1.7.4, the Employer may grant the rights including the right to enforce such rights referred to in Schedule 5 to the Schedule of Amendments to a Beneficiary. Such a notice shall take effect on the date of the notice. The Employer's notice shall state the name of the person to whom the rights are granted and whether they are granted rights as a Funder, Purchaser, Tenant or Landlord."

**Reinstate** clause 7A.2 and **renumber** as clause 7.4.3, **deleting**, from the start of the clause "Where P&T Rights have vested" to "but, subject thereto, the" (inclusive) and **insert**, at the start of the clause:

"The"

**Insert** new clauses 7.4.4 and 7.4.5:

.4 Where the Employer has given notice to the Contractor under clause 7.4.2 then, notwithstanding clause 7.4.3, the Employer and the Contractor may not (without the persons referred to in those notices' consent) amend or vary clauses 7.4.2 to 7.4.5 (inclusive) or the relevant part or parts of Schedule 5.

.5 Without prejudice to clause 7.4.4, where the Employer has given notice to the Contractor under clause 7.4.2 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 right of step in as set out in Schedule 5 but, unless and until the Funder gives notice of step in pursuant to Schedule 5, the Employer and the Contractor may (without the consent of the Funder) agree to amend, vary or waive any term of this Contract."

**Insert** new clause 7.5:

"**Sub-Contractor collateral warranties and third party rights**

7.5

.1 The Contractor shall ensure, within 10 Business Days of the date of this Contract or, if later, within 10 Business Days of the appointment of a Sub-Contractor, that each Sub-Contractor has executed and delivered a deed of collateral warranty in favour of the Employer in the form set out in Schedule 13 of this Schedule of Amendments.

Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty in favour of a Beneficiary from any Sub-Contractor then appointed, in the form set out in Schedule 13 of this Schedule of Amendments. If any deed of collateral warranty provided by a 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."

.2 Within 10 Business Days of the date of this Contract or, if later, within 10 Business Days of the appointment of a Sub-Contractor, the Contractor shall grant third party rights including the right to enforce such rights to the Employer in the form set out in Schedule 5 to this Schedule of Amendments. Within 15 Business Days of a request from the Employer, the Contractor shall grant third party rights including the right to enforce such rights from any Sub-Contractor then appointed in favour of a Beneficiary in the form set out in Schedule 5 to this Schedule of Amendments."

**Insert** new clause 7.6:

"**Professional Consultant collateral warranties and third party rights**

7.6

.1 The Contractor shall ensure, within 10 Business Days of the date of this Contract or, if later, within 10 Business Days of the appointment or novation of a Professional Consultant, that each Professional Consultant appointed by or novated to the Contractor has executed and delivered a deed of collateral warranty in favour of the Employer in the form set out in Schedule 14 of this Schedule of Amendments. Within 15 Business Days of a request from the Employer, the Contractor shall procure a deed of collateral warranty in favour of a Beneficiary from any Professional Consultant then appointed, in the form set out in Schedule 14 of this Schedule of Amendments. 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."

.2 Within 10 Business Days of the date of this Contract or, if later, within 10 Business Days of the appointment of a Professional Consultant by the Contractor, the Contractor shall grant third party rights including the right to enforce such rights to the Employer in the form set out in Schedule 5 to this Schedule of Amendments. Within 15 Business Days of a request from the Employer, the Contractor shall grant third party rights including the right to enforce such rights from any Professional Consultant then appointed in favour of a Beneficiary in the form set out in Schedule 5 to this Schedule of Amendments."

**Insert** new clause 7.7:

"**Professional Consultant appointments**

7.7

.1 Within 10 Business Days of the date of this Contract, the Contractor shall (where required to by the Employer) appoint the Professional Consultants.

**Insert** new clause 7.8:

"**Professional Consultants - Contractor's duty not to terminate or vary appointments**

7.8 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."

**Insert** new clause 7.9:

**"Execution of performance bond or guarantee, guarantee by the Contractor's parent company and collateral warranties**

7.9

.1 Subject to 1.12, the Contractor’s obligations under clauses 7.3 to 7.7 shall continue notwithstanding the termination of this Contract, or the termination of the Contractor’s employment hereunder, and the Contractor shall ensure that the obligation of any Sub-Contractor under clause 7.5 or of any Professional Consultant under clause 7.6 shall also continue notwithstanding the termination of their sub-contract, or the termination of their employment thereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer.

.2 Notwithstanding any other provision in the Contract, if the Contractor is in breach of its obligations under this clause 7 the Employer may withhold withhold any payment which has or may become due/withhold payment of £5,000 in respect of each guarantee bond or guarantee by the Contractor's parent company or collateral warranty from any sum which has or may become due to the Contractor under this Contract until such time as such document has been provided to the Employer as set out in this clause 7.”

**Insert** new clause 7.10:

**"Novation of this Contract to another Employer**

7.10 If required by the Employer, the Contractor shall on receipt of a deed of novation from the Employer (in a form to be agreed by the Parties), within 15 Business Days execute and return the deed of novation to the Employer. Subject to clause 1.12, the Client's rights under this clause 7.10 shall continue after the Contractor's appointment under this Contract has concluded or terminated."

**Section 8 Termination**

**Termination by Employer**

**8.4 Default by Contractor**

8.4.1.3 After “requiring him to remove” **insert** “or rectify”.

**8.5 Insolvency of Contractor**

8.5.1 **Delete** wording and **replace** with:

"This Contract will terminate automatically in the event that the Contractor is insolvent."

8.5.3 **Delete** ", whether or not the Employer has given such notice of termination"

8.5.3.1 **Delete** "as if such notice had been given"

8.5.3.3 After "the Employer may" **insert** ", at the Contractor's expense,"

**8.6 Corruption and regulation 73(1)(b) of the PC Regulations**

**Insert** after "or acting on his behalf": "or associated with him,"

**Insert** at the end of the clause, after the full stop:

"For the purpose of this clause 8.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes, but is not limited to, any of the Contractor's Persons."

**8.7 Consequences of termination under clauses 8.4 to 8.6**

8.7.2 **Insert** after the Contractor shall: "at the Contractor's expense"

8.7.4After "in a statement prepared by the Employer" before the colon **insert** ", at the Contractor's expense”

**Termination by Contractor**

**8.9 Default by Employer**

8.9.1.2 **Delete** and **insert** “Number not used”.

**8.11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

8.11.1.1 Change "force majeure" to "Force Majeure"

**Section 9 Settlement of Disputes**

**9.2 Adjudication**

**Insert** new sub-clauses in clause 9.2:

".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.

.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."

**Insert** new clause 9.9:

"**Dispute Resolution Procedure**

9.9 Before any dispute under or in connection with this Contract is referred to the Court or to arbitration (if applicable) the Parties shall meet on a without prejudice basis or alternatively seek to resolve their differences by mediation. The Parties agree that the Court (or the arbitrator, as appropriate) may stay proceedings to allow negotiations or mediation to take place and that if (contrary to the requirements of this clause) proceedings are issued, then proceedings shall be stayed on the application of either Party to allow the Parties to meet on a without prejudice basis or mediate, except in exceptional circumstances where urgent steps are necessary to preserve the interests of one or other of the Parties."

**Insert** new Section:

"**Section 10 Safety and Security**

**10 Safety and Security**

.1 The Contractor shall throughout the progress of the Works:

.1 take full responsibility for the safety of all persons upon the site of the Works; and

.2 keep the Works (so far as the same are not occupied by the Employer) in an orderly state in order to avoid danger to such persons; and

.3 in connection with the Works provide and maintain at his own cost all lights, guards, fencing and warning signs when and where necessary or as required by the Employer or by any competent statutory or other authority for the protection of the Works or for the safety or convenience of the public or others.

.2 Without prejudice to other obligations under the terms of this Contract, the Contractor shall comply with and shall procure that the Contractor's Persons or any sub-contractor (of any tier) or supplier (of any tier) or their employees or agents and others on the site shall comply with all their respective duties and obligations under all legislation and other requirements having the force of law relating to the health, safety and conduct of construction operations.

.3 The Contractor shall indemnify the Employer in respect of any liability, loss, claim or proceedings of whatsoever nature arising out of or in connection with any breach of the duties and obligations referred to in clause 10.2.

.4 The Contractor shall ensure that the Works shall be kept secure at all times including, as fully as may reasonably and properly be practicable, against unauthorised entry.

.5 Except with the written permission of the Employer (such permission to be given when necessary for the execution of the Works and subject to such terms as may be imposed) the Contractor shall not be permitted to enter any other building or lands of the Employer other than the site of the Works and the Contractor shall warn the Contractor's Persons, sub-contractors and suppliers that any person found within those premises without authority is liable to be removed from the Works.

.6 The Contractor shall:

.1 take all reasonable precautions to prevent any nuisance or inconvenience to the owners, tenants or occupiers of other premises upon or in the locality of the site of the Works and to the public generally, including measures to reduce the nuisance from noise, dust, smell, fumes and vibration during the carrying out of the Works;

.2 ensure that the access to the site of the Works is unobstructed at all times and that there is no interference with or obstruction of any vehicles using the site of the Works in order to gain access to other premises; and

.3 at all times cooperate with and not interfere with or obstruct any other contractor engaged by the Employer to perform other works on or in the vicinity of the site of the Works."

**Schedules**

**Schedule 1 Contractor's Design Submission Procedure**

**Delete** Schedule 1 and **replace** with: "Schedule 1 Not Used".

**Schedule 2 Supplemental Provisions**

**Schedule 3 Insurance Options**

**Schedule 4 Code of Practice**

**Schedule 5 Third Party Rights**

(Section 7)

**Part 1: Third Party Rights for Purchasers and Tenants**

Paragraph 1.3 delete and mark "number not used"

Paragraph 2 delete and replace with clause 2.2.6

Paragraph 4 line 3, delete "and subject to the Contractor having been paid all sums due and payable under this Contract,"

Paragraph 9 delete and mark "number not used"

**Part 2: Third Party Rights for a Funder**

Paragraph 1.1 delete and mark "number not used"

Paragraph 2 delete and replace with clause 2.2.6

Paragraph 8 line 1, delete "Subject to the Contractor having been paid all sums due and payable under this Contract," and change "the" to "The"

Paragraph 13 delete and mark "number not used"

**Schedule 6 Forms of Bonds**

**Delete** Schedule 6 and **replace** with "Schedule 6 Not Used".

**Schedule 7 JCT Fluctuations Option A**

**Delete** Schedule 7 and **replace** with "Schedule 7 Not Used".

**Insert new Schedules 8 – 15:**

**Schedule 8 Professional Consultants**

Not used

**Schedule 9 Form of Deed of Novation**

[Not used]

**Schedule 10 Form of Parent Company Guarantee**

(7.3) **Insert** template Parent Company Guarantee

**Schedule 11 Form of Guarantee Bond**

(7.3) **Insert** template Guarantee Bond

**Schedule 12 Form of Contractor's Deed of Collateral Warranty**

(7.4) **Insert** template Contractor's Deed of Collateral Warranty in favour of Purchaser/Tenant/Funder/Landlord

**Schedule 13 Form of Sub-Contractor's Deed of Collateral Warranty**

(7.5) **Insert**

* template Sub-Contractor's Deed of Collateral Warranty in favour of Employer
* template Sub-Contractor's Deed of Collateral Warranty in favour of Purchaser/Tenant/Funder/Landlord

**Schedule 14 Form of Professional Consultant's Deed of Collateral Warranty**

(7.6) **Insert**

* template Professional Consultant's Deed of Collateral Warranty in favour of Employer
* template Professional Consultant's Deed of Collateral Warranty in favour of in favour of Purchaser/Tenant/Funder/Landlord

**Schedule 15 Third Party Agreements**

**Insert** extracts from relevant third party agreements