

TRANSPORT SYSTEMS CATAPULT (Company Number 08041919)

**OFFICE REFURBISHMENT WORKS AT THE PINNACLE 3RD FLOOR 170 MIDSUMMER
BOULEVARD MILTON KEYNES**

**AMENDMENTS TO THE JCT MINOR WORKS BUILDING CONTRACT WITH CONTRACTOR'S
DESIGN, 2016**

The following shall be inserted as "Special Conditions" and annexed to the standard contract conditions:

AGREEMENT

Recitals

First Recital

In line 1 after "*have the*" insert "*design and construction of the*".

Second Recital

Delete the existing recital and insert:

"the Works include the design and construction of the whole of the Works (the Contractor's Designed Portion)",

Articles

Article 1

After "*complete the*" insert:

"whole of the design and construction of the"

Article 1A

Insert as a new Article 1A:

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

- 1 as to the feasibility and practicality of the Employer's Requirements and has agreed to accept full responsibility for any design contained in them;*
- 2 that the Specification, Work Schedules or Schedules of Rates (as applicable) will meet the Employer's Requirements in respect of the Works;*
- 3 that the Employer's Requirements can be carried out within the timescale envisaged therein and in the cost indicated in the Contract Sum; and*
- 4 that the Works when completed will satisfy all of the performance specifications and requirements included, specifically referred to in or that are to be clearly implied from the Employer's Requirements."*

Article 7

Delete the existing article and insert:

"[Not Used]"

Article 8

In line 1 delete *"and (where it applies) to Article 7"*.

Article 9*

Insert the following new Article 9:

"The Employer and the Contractor hereby agree that the modifications set out in the Special Conditions annexed hereto shall be incorporated into this Contract and the provisions of the Agreement (including the Recitals, Articles and Contract Particulars), annexed Conditions and the Schedules shall have effect as modified by the Special Conditions. If there is any discrepancy between the Agreement and the Conditions and the Special Conditions, the wording of the Special Conditions shall prevail."

*** Note: this new Article is to be physically endorsed on the printed conditions.**

CONDITIONS

SECTION 1: DEFINITIONS AND INTERPRETATION

Clause 1.1

Amend the following definitions in clause 1.1:

"Agreement": Insert at the end of this definition:

"(all as amended by the Special Conditions annexed hereto)."

"CDP Works": Delete the existing definition and insert:

"the whole of the design and construction of the Works".

"Conditions": Insert at the end of this definition:

"and in all cases as amended and added to by the Special Conditions annexed hereto".

"Construction Phase Plan": Insert at the end of this definition:

"and the results of the reviews of the same".

"Employer": Insert at the end of this definition:

"(which expression shall include its successors in title and permitted assigns)."

Add as new definitions in clause 1.1:

"Collateral Warranty Agreement(s)": *a collateral warranty in the relevant form annexed hereto at Schedules 5 and 6 or as otherwise required by the Employer pursuant to clause 8."*

"Completion Documents": *the drawings, specifications, certificates, reports, manuals, files, guarantees, warranties, confirmations, statements, records and books referred to for this definition in the Works Particulars."*

"Consents": *building regulations approval, fire officer approval and any other permissions approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise for the carrying out of the Works and, if the Works are destroyed or damaged, the reinstatement of the Works."*

“Construction Site: has the meaning ascribed to it in Regulation 2 of the CDM Regulations.”

“Contractor’s Design Documents: the drawings, details and specifications of materials, goods and workmanship and other documents and information prepared by or for the Contractor in relation to the design of the Works and the completed Works.”

“Funder: each and every party providing finance in connection with the Works or for the purchase or letting of the Site (including its successors in title and assigns and those deriving title under it or them).”

“Group Company: a direct or indirect subsidiary, holding company or other associated company within the same group of companies as the Employer (within the meaning of section 1159 of the Companies Act 2006 (as amended or re-enacted));

“Interim Application Period: the period that commences on the date that is five days prior to the applicable Interim Valuation Date and expires on the date that is three weeks after such Interim Valuation Date.”

“Modern Slavery Policy: the Employer’s slavery and human trafficking statement and policy (as the same may be updated, supplemented and/or varied from time to time) where and to the extent the same is provided to the Contractor from time to time.”

“Planning Permission: the planning permission detailed in the Employer’s Requirements.”

“Practical Completion Conditions:

- (a) where expressly stated to be required in any provisions of the Contract Documents and/or the Employer’s Requirements, the testing, commissioning, regulation or adjustment of any mechanical or electrical services or the finalisation of any other particular aspects of the Works has been completed; and
- (b) the Contractor has fully complied with and completed the performance of its obligations under clause 2.10B.”

“Practical Completion Standard: a state in which the Works are complete in all respects and free from defects save for any minor items or minor defects the existence, completion or rectification of which in the opinion of the Contract Administrator would not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works; provided that the Works shall not be considered to be practically completed until the Practical Completion Conditions have been satisfied and/or discharged by the Contractor.”

“Relevant Event: means any of the following:

- .1 any matters or instructions that constitute a variation (as defined in clause 3.6.1) under this Contract;
- .2 instructions from the Architect/Contract Administrator to pursuant to clause 3.7 to expend a provisional sum to the extent that 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 programme of those instructions (except where those instructions were necessary as a result of some breach of contract or other default on the part of the Contractor or any person that the Contractor is responsible for under or in connection with this Contract);
- .3 suspension by the Contractor under clause 4.7 of the performance of any or all of his obligations under this Contract;
- .4 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer’s Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor’s Person;

- .5 exceptionally adverse weather;
- .6 loss or damage occasioned by any of the Specified Perils.”

“**Site:** the site as referred to in the Works Particulars.”

“**Statutory Agreements:** each and every agreement made pursuant to Sections 38 and/or 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 and/or Section 106 of the Town & Country Planning Act 1990 and/or any other agreement entered into or to be entered into by the Employer affecting the Site or the carrying out of the Works details of which have been provided to the Contractor (save for those that have been obtained and/or entered into by the Contractor where the Contractor will be deemed to have been provided with a copy of each such agreement).”

“**Third Party:** each and every Funder; and

each and every person who will first purchase (whether freehold or on a long leasehold interest) the Site or any part thereof whether before or after completion of the Works (“Purchaser”); and

each and every person who will first take a lease of the Site or any part thereof whether before or after completion of the Works; and

each and every party with responsibility for management of the whole or part of the Site or of an estate of which the Site forms part thereof;

any Group Company (as the Employer shall notify to the Contractor);

The Landlord under any relevant licence for alterations; and

each and every other party referred to in the Works Particulars (as applicable);

and in the case of Third Party Rights shall include their permitted assignees.”

“**Third Party Agreements:** any agreement relating to the Works and/or the Site, including (but not limited to) any agreements relating to the acquisition, funding, collaboration, development, letting and/or sale of the Site and/or the Works (or any part) and any relevant licence for alterations, but excluding the Statutory Agreements.”

“**Third Party Rights:** the relevant rights in favour of a Third Party set out in Schedule 4.”

“**Works Particulars:** the particulars contained at Schedule 1 to these Special Conditions.”

Clause 1.2

In line 3 after “modify” insert:

“the Special Conditions,”.

Clause 1.5

Delete the existing clause and insert:

“1.5 Other than such rights of any Third Party as take effect pursuant to clause 8 and subject to clause 3.1 (Assignment), this Contract is not otherwise intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.”

Clause 1.6.3

Insert as a new clause 1.6.3:

"1.6.3 Any notices, communications and/or documents provided for under clause 4 shall be validly served under this Contract if they are sent or transmitted by email to the relevant email address specified in the Works Particulars. If such notices, communications and/or documents are sent or transmitted by email as set out above, they shall be deemed to have been received at the time and on the date of transmission."

Clause 1.7.2

In line 3 delete "clause 2.11" and insert "clauses 1.10.2, 2.6.1, 2.10A, 2.11, 3.1.2, 3.3.2.1 and 5.2B".

Clause 1.9

Insert as a new clause 1.9:

"1.9 If any term or provision of this contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part, this Contract shall continue to be valid as to other provisions and the remainder of the affected provision."

Clause 1.10

Insert as a new clause 1.10:

"1.10.1 Save to the extent otherwise stated in this Contract and/or agreed by the Employer in writing, the Contractor shall:

.1 keep this Contract, its commercial terms and the Contract Documents, together with any information referred to in clause 1.10.1.3, confidential; and

.2 not reveal any information whatsoever in whatever form (whether written, oral, electronic, magnetic, or other media) derived from and/or generated by or on behalf of:

.1 the Employer and the Employer's Persons; and/or

.2 the Contractor's Persons in connection with the Works,

except as may be required by law, the regulations of the Stock Exchange or other regulatory requirements (including those of HM Customs and Revenue and HM Land Registry) or for the proper performance of its obligations or the proper exercise of its rights or to professional advisors properly engaged in connection with this Contract.

.3 at all times apply security measures in accordance with all applicable good industry practice to ensure protection of the documents and information referred to in clause 1.10.1.1 and 1.10.1.2, including from unauthorised disclosure, copying, use or disposal and from loss or theft;

.4 notify the Employer immediately it becomes aware that any documents and information referred to in clause 1.10.1.1 and 1.10.1.2 has or may have been disclosed to or otherwise come into the possession of any person other than in accordance with this Contract.

1.10.2 Where and to the extent that this Contract permits the disclosure of any documents and information the Contractor shall:

.1 inform such persons to whom the same is disclosed that such documents and information is confidential and that the Contractor is bound by this Contract in respect of such documents and information;

.2 obtains from such persons to whom the same is disclosed undertakings in terms at least equivalent to those in clause 1.10.1; and

.3 shall at no cost to the Employer enforce the undertakings obtained pursuant to clause 1.10.2.2 at the Employer's written request,

except to the extent that the Contractor is unable to procure that such persons give the required undertakings as a result of any disclosure required by law, the regulations of the Stock Exchange or other regulatory requirements (including those of HM Customs and Revenue and HM Land Registry).

1.10.3 The Contractor agrees that there shall be no press releases or comments to the press in connection with any term of this Contract and/or in relation to the Works or in either case the contents thereof without the prior written approval of the Employer.

1.10.4 The obligations in this clause shall continue to apply after the date stated in the certificate referred to in clause 2.10 or termination or suspension of this Contract without limitation."

SECTION 2: CARRYING OUT THE WORKS

Clause 2.1.1

In line 1 delete "reasonable skill, care and diligence," and insert:

"the standard of reasonable skill, care and diligence required by clause 2.1A.3.1, carry out and".

Clause 2.1.2

In lines 2-3 delete "Contractor's Designed Portion with the design of the".

In line 3 after "whole" insert "and the requirements of any Third Party".

In line 3 delete ", subject to the provisions of clause 3.4.2".

Clause 2.1.4

In line 1 delete "not".

In line 1 delete "or" and insert "and".

Insert at the end of this sub-clause:

"and in any event there shall be no addition to the Contract Sum, extension of time, a claim in damages nor any other sums due in respect of such alteration or modification. If the Contractor becomes aware of any inadequacy in the Employer's Requirements it shall immediately give the Architect/Contract Administrator notice and details of the same".

Clause 2.1A.1

Insert the following new clause 2.1A.1:

"2.1A.1.1 The Contractor has had an opportunity of inspecting the physical conditions and other conditions of or affecting the Site (including any existing structures, sub-surface conditions and services and geo-technical and geo-environmental conditions) and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the construction/carrying out of the Works and:

.1 no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to an addition to the Contract Sum or to claim in damages or otherwise any additional sum or to an extension of time; and

- .2 (subject to clause 2.1A.3.1) it shall take account of such physical conditions and other conditions in the design, construction and completion of the Works so that the completed Works complies with the requirements of this Contract.

2.1A.1.2 The Contractor shall not be entitled to rely upon any survey, report or other information prepared by or on behalf of the Employer regarding any such matter as is referred to in this Contract and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or information or any representation or statement, whether negligently or otherwise made, therein contained. The Contractor shall not have or make any claim whether in contract, tort or by way of misrepresentation or otherwise in respect of information provided or statements made by or on behalf of the Employer.

Clause 2.1A.2

Insert the following new clause 2.1A.2

“2.1A.2 The Contractor shall permit the Employer and/or any Third Party (or any representative thereof) at any time to have access to the Works (subject to proper and reasonable safety requirements in respect of such access).”

Clause 2.1A.3

Insert the following new clause 2.1A.3:

“The Contractor warrants and undertakes to the Employer that:

2.1A.3.1 the design of the Works and/or the selection of goods and materials for incorporation therein have been and will be designed and/or selected by the Contractor exercising all the reasonable skill, care and diligence to be expected of a professionally qualified and competent designer experienced in the design of works similar in scope, type, complexity, value, time scale and character to the Works.”

2.1A.3.2 the Contractor has exercised and will continue to exercise all the reasonable skill and care required by clause 2.1A.3.1 not to specify for use or permit to be used in the Works any products or materials which:

2.1A.3.2.1 do not conform with British Standards or Codes of Practice or good building practice; and/or

2.1A.3.2.2 are generally known to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures;

2.1A.3.3 subject to clause 2.1A.3.1, it has exercised and will exercised all the skill care and diligence in the carrying out and completion of the Works to be expected of a professionally qualified adequately resourced and competent contractor experienced in the carrying out and completion of works similar in scope complexity and character to the Works;

2.1A.3.4 without prejudice to any other duty and/or obligation on the Contractor under this Contract the Contractor without any adjustment to the Contract Sum shall carry out and complete the Works in full compliance with the requirements of any relevant authority under any Statutory Agreements including but not limited to the standard or quality of any part or parts of the Works necessary to secure adoption of those parts of the Works.

2.1A.3.5 in carrying out and completing the Works it is responsible for the whole of the design and construction of the Works (including all design work prepared before or after the date hereof) (and whether carried out by or on behalf of the Contractor or the Employer) all designs contained in the Employer's Requirements and/or the Contract Documents and for any error, mistake, inaccuracy or discrepancy contained within the same and all aspects of design development and that it has exercised and will exercise all the skill care and diligence in the

carrying out and completion of the Works to be expected of a professionally qualified adequately resourced and competent contractor experienced in the carrying out and completion of works similar in scope complexity and character to the Works.

Clause 2.1A.4

Add a new clause:

“3.1A.4 Notwithstanding clause 2.3 and without prejudice to any other obligation of the Contractor, there shall be no start of the Construction Phase (as defined in the CDM Regulations) nor setting up of a Construction Site (as defined in the CDM Regulations) in breach of the CDM Regulations.”

Clause 2.1A.5

Add a new clause:

“2.1A.5 In performing his duties and obligations under or in connection with this Contract, the Contractor warrants and undertakes to the Employer that:

2.1A.5.1 it shall ensure where and to the extent relevant that each of the Contractor’s Persons shall comply with the Modern Slavery Act 2015, the requirements of the Modern Slavery Policy and the Contractor’s own policies and statements in connection with modern slavery and human trafficking;

2.1A.5.2 it shall, on the date of commencement of the Works on the Site and thereafter on each yearly anniversary of the same, provide a signed declaration (in the form required by the Employer) confirming the Contractor’s compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy together with the requirements of this clause; and

2.1A.5.3 it shall notify the Employer and the Architect/Contract Administrator forthwith as soon as it becomes aware of any breach or potential breach of this clause.”

Clause 2.1A.6

Insert the following new clause 2.1A.6:

“2.1A.6.1 The Contractor will supply to the Employer copies of all applications made for any permission, approval, licence or consents requisite for the carrying out of the Works and of all grants or refusals that may be made in respect of such applications.

2.1A.6.2 Save for those stated in the Employer’s Requirements to be the specific responsibility of the Employer the Contractor shall be responsible for:

.1 obtaining all those Consents (and discharging all conditions and reserved matters in relation thereto) necessary from any relevant authority for the carrying out and completion of the Works; and

.2 satisfying and discharging all conditions and reserved matters in the Planning Permission where and to the extent that they apply to the Works.”

Clause 2.2.1

In lines 5 – 6 delete *“in the case . . . any other case”*.

Insert at the end of the clause:

“Subject as aforesaid, all materials and goods shall be new, of a satisfactory quality and reasonably suitable for their purpose(s)”

Clause 2.3A

Insert the following new clause 2.3A:

"2.3A.1:

- .1 *the Contractor shall allow the Employer and/or any persons (including Third Parties) authorised or engaged by the Employer and/or the Architect/Contract Administrator to use or occupy the Site or the Works, whether for storage or otherwise, and also permit the execution of work not forming part of this Contract by any persons authorised or licensed by the Employer and/or the Architect/Contract Administrator to carry out work on those parts of the Site (including for the avoidance of doubt any works to be carried out by employees and/or independent contractors of Third Parties) in the Contractor's possession in accordance with this Clause 2.3A.1 and the Employer and/or any such persons may at any time re-enter those parts of the Site and any part of the Works or any Section for the purposes of such use and executing any work or installing any goods equipment or other articles for fitting-out.*
 - .2 *the Employer and/or the Architect/Contract Administrator will discuss any access requirements and the extent and location of such works referred to in clause 2.3A.1.1 with the Contractor before giving any authorisation for the same to be carried out and the Contractor shall advise the Employer and the Architect/Contract Administrator of the information it shall require in order to programme and manage the integration of such works with the carrying out of the Works.*
 - .3 *the Contractor shall not interfere with or impede the progress of any works being carried out by or on behalf of the Employer or a Third Party on the Site and shall observe all reasonable requirements of the Employer or Third Party in relation to the carrying out of such works.*
 - .4 *the Contractor shall not without having previously notified the Employer and the Architect/Contract Administrator in writing thereof, impose or agree to any such programming or other arrangements which would or may be likely to delay or disrupt the carrying out and completion of the Works and (except to the extent that such programming or other arrangements as are settled pursuant to this clause 2.3A.1) the Contractor hereby confirms that it has made or shall be deemed to have made all due allowances in its programming planning and pricing of the Works in connection with such access for such access, use and works and the Third Party's works.*
 - .5 *the Contractor shall permit the execution of work not forming part of this Contract by any statutory undertakers or authorities engaged by or employed by the Employer and/or the Architect/Contract Administrator.*
- 2.3A.2 *The access and use of the Site or any part thereof and the execution of the work referred to in clauses 2.3A.1 shall not in any way be deemed to be or treated as taking possession of part or parts of the Works by the Employer.*
- 2.3A.3 *Every person referred to in this clause 2.3A shall for the purposes of clauses 5.1 to 5.3 be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor of the Contractor and for the purposes of the CDM Regulations the Contractor shall act as Principal Contractor in respect of such works and undertakes to instruct each and every independent contractor (to whom this clause 2.3A shall apply) to comply (and shall use reasonable endeavours to ensure compliance) with all site regulations and reasonable site directions of the Contractor with regard to such works and all health and safety matters.*
- 2.3A.4 *The Contractor undertakes and agrees to co-operate fully with the Employer and/or the Architect/Contract Administrator and if directed by the Employer and/or the Architect/Contract Administrator, with each independent contractor with regard to the programming of access for such access, use and works as are referred to in this clause 2.3A, the co-ordination of the same with regard to the carrying out of the Works and the shared use (if necessary) of the*

Contractor's temporary lifts, hoists and other facilities with the Third Party's employees, contractors and consultants and any independent contractor.

2.3A.5 *The Contractor acknowledges that it will not have exclusive possession of the Site and that other contractors (appointed by the Employer, Statutory Undertakers and Third Parties (including Purchasers, Tenants and potential Tenants)) will be working on and adjacent to the Site (including on part of the Works) at the same time as the Contractor. The Contractor warrants that it has made or shall be deemed to have made all due allowance in its programming planning and pricing of the Works for the fact that other contractors will be on the Site (including on part of the Works) at the same time."*

Clause 2.5.1

In line 3 after "shall" insert "not".

Insert at the end of the clause:

"and there shall be no addition to the Contract Sum, extension of time, a claim in damages nor any other sums due in respect of the same".

Clause 2.5.2

In line 1 after "Works" insert:

"and/or between the same and any documents referred to in Clause 2.5.1".

Insert at the end of the clause:

"and there shall be no addition to the Contract Sum, extension of time, a claim in damages nor any other sums due in respect of the same".

Clause 2.6.1

In line 4 after "divergence" insert:

"and the Contractor shall notify the Architect/Contract Administrator in writing of his proposed amendment for removing it. With the Architect/Contract Administrator's consent, the Contractor shall entirely at his own cost carry out and complete the design and construction of the Works in accordance with the amendment".

Clause 2.6.2

Delete this clause and insert "[Not Used]".

Clause 2.8

In line 3, after "Administrator" insert "together with the material circumstances relating to the delay (including, but not limited to the cause or causes of the delay and any event which, in the Contractor's opinion, is a Relevant Event)".

In lines 3-5, delete "occurs for...default of the Contractor" and substitute:

"is caused by a Relevant Event and subject to the remainder of this clause 2.8 and clause 2.8A".

Delete the final sentence and substitute:

"It shall be a condition precedent to the Contractor's entitlement to any extensions of time pursuant to this clause 2.8 that:

- .1 *the Contractor has provided the Architect/Contract Administrator with the notification required pursuant to this clause 2.8 within 5 weeks of the occurrence of the event or events to which the notice relates (or would have related had it been given within the timescales provided by this clause); and*
- .2 *in respect of any notification given under this clause 2.8 by the Contractor, the Contractor shall forthwith notify the Employer of any change in the estimated delay and shall forthwith supply such further information as the Employer may at any time reasonably require."*

Clause 2.8A

Insert new clause 2.8A:

"Notwithstanding any other provision of this Contract the Contractor shall not be entitled to any extension of time for the completion of the Works on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor or of any of its employees or agents or any sub-contractor or supplier, or any of their respective employees or agents."

Clause 2.9.1

In line 4 delete *"of practical completion"* and insert *"on which the Works achieved the Practical Completion Standard and the Contractor has complied sufficiently with clauses 2.1.3 and 3.9 in respect of the supply of documents and information (or, where applicable, the date stated in the statement issued pursuant to clause 2.10A) "*.

Clause 2.10

In line 1, delete *"certify"* and insert *"issue a statement, subject to the Contractor having provided to the Architect and/ or the Contract Administrator the Completion Documents, confirming"*.

In line 2 delete *"practical completion"* and insert *"Practical Completion Standard"*.

Clause 2.10A

Insert new clause 2.10A:

"2.10A The Architect/Contract Administrator at his absolute discretion (and with the consent of the Employer) may issue a statement confirming practical completion notwithstanding that minor items of work and/or removal of minor defects and/or final testing and commissioning remain to be completed and/or not all relevant documents have been provided, in which such event:

2.10A.1 such (if any) minor items of work and/or minor defects and/or final testing and commissioning shall be included in an appropriate schedule by the Architect/the Contract Administrator and completed by the Contractor within the relevant time scale and at the times set out in such schedule by the Architect/the Contract Administrator (failing which the Employer may employ others to complete such works and deduct the cost of the same from the Contract Sum or recover the same from the Contractor as a debt); and

2.10A.2 such (if any) relevant documents shall be included in an appropriate schedule by the Architect/the Contract Administrator and provided forthwith to the Employer and notwithstanding any other provisions of this Contract until such time as all the missing documents have been provided to the Employer no payments shall become due or payable to the Contractor."

Clause 2.11

In line 1 after *"appear"* insert:

"prior to the commencement of or"

In line 1 after "Period" insert:

"and/ or any incomplete works at practical completion of the Works"

In line 5, after "cost" insert:

"within a reasonable period of time after the date of receipt of each notification of any defects, shrinkages or other faults".

Insert at the end of the clause:

"If the Contractor does not make good such defects, shrinkages or other faults within a reasonable time after the date of receipt of each notification of any defects, shrinkages or other faults the Employer may without prejudice to any other remedy it may have make good such defects, shrinkages or other faults itself or arrange for a third party to undertake the work or supply any materials. The Employer may deduct all costs incurred from any payment due or becoming due to the Contractor or if there is no payment due such costs shall be a debt due and recoverable from the Contractor."

Clause 2.12

In line 2 delete "certificate" and insert "statement".

Insert at the end of this clause:

"provided that the Architect/Contract Administrator shall not be required to issue any such statement any earlier than the expiry of the Rectification Period."

Clause 2.13

Insert as a new clause 2.13:

*"2.13.1 The Contractor shall have regard to any obligations owed by the Employer under any agreement relating to the Works or the Site or any part ("**Third Party Agreements**") in so far as details of such obligations have been provided to the Contractor prior to the date of the Contract. The Contractor believes that the requirements thereof in respect of the carrying out and completion of the Works are reasonable and attainable and shall carry out the design for the Works and carry out and complete the Works in such a manner as not to constitute, cause or contribute to any breach by the Employer of any such obligations.*

Clause 2.14

Insert as a new clause 2.14:

"2.14 Notwithstanding any other provision of the Contract, the Contractor shall not be relieved from his liabilities or obligations under this Contract nor shall such liabilities or obligations be restricted or qualified in any way by the presence of the Employer or the Architect/Contract Administrator or a representative of either on the Site, or the carrying out of tests on the instructions of the Employer or the Architect/Contract Administrator or a representative of either or by any instruction, direction, admission, consent, approval, confirmation, comment, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer or the Architect/Contract Administrator or a representative of either."

Clause 2.15

Insert as a new clause 2.15:

"2.15 The Contractor agrees to ensure that all environmental obligations set out in this Contract are performed and The Contractor agrees that in addition to the obligations set out above, it shall

at all times ensure that it complies and that all those for whom it is responsible comply in all respects with any applicable Statutory Requirements environmental laws or regulations when performing any obligations under this Contract. The Contractor shall neither create, produce, allow, exacerbate or permit any pollution, contamination and/or hazardous substance in on under over or around the Site: nor introduce the same in on under over or around the Site: nor introduce or allow to be created pathways nor exacerbate any pathways existing prior to the date of this Contract relating to such pollution, contamination and/or hazardous substance in on under over or around the Site. The Contractor shall further ensure that the Contractor by way of action or inaction does not allow any such pollution, contamination and/or hazardous substance that is in on under over or around the Site to escape leach or be released from the Site.”

SECTION 3: CONTROL OF THE WORKS

Clause 3.1

Delete the existing clause and insert:

“3.1.1 The Employer may, without the consent of the Contractor, assign or charge the benefit of all or any of the Contractor's obligations under this Contract and/or any benefit arising under or out of this Contract. Further the Employer may, without the consent of the Contractor assign or charge (whether before or after Practical Completion) to any third party, the benefit of this Contract, including all rights, actions, proceedings and claims that the Employer may have against the Contractor

3.1.2 The Contractor shall not, without the prior written consent of the Employer, assign the benefit of all or any of the Employer's obligations under this Contract and/or any benefit arising under or out of this Contract.”

Clause 3.3.2

Re-number clause 3.3.2 to 3.3.3 and insert new clause 3.3.2 as follows:

“The Contractor shall in relation to any sub-letting of any material portion of the Works:

3.3.2.1 procure the relevant sub-contract/appointment shall in all respects be compatible with the terms of the Contract and be in a form previously approved by the Employer (or, if approved instead by the Employer, contain a scope of works/services previously approved by the Employer)(such approval not to be unreasonably withheld or delayed) and shall be made as a deed; and

3.3.2.2 provide to the Employer on demand certified copies of any sub-contract/appointment (save for particulars of the sub-contract sum/fee).”

Clause 3.3.3

In line 1 after “appropriate” insert “and subject to clause 3.3.2”.

Clause 3.4.2

Delete the existing clause and insert “[Not Used].”

Clause 3.5

In lines 1-2 delete after “the Contractor”, “unreasonably delays...clause 3.4.2 or”.

Clause 3.9

In line 2 after “Regulations” insert:

“and/or any duty, obligation and/or function imposed by the CDM Regulations on such Party”.

Clause 3.9.1

Delete the existing clause and insert:

“3.9.1 where the Contractor is not the Principal Designer, the Employer shall see that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall see that the Principal Contractor carries out his duties under those regulations;”.

Clause 3.9.1A

Insert as a new clause 3.9.1A:

“3.9.1A where the Contractor is and while he remains the Principal Designer the Contractor shall comply with the duties of a Principal Designer and shall without charge prepare, and deliver to the Employer, the health and safety file;”

Clause 3.9.2

In line 2 after “14” insert:

“and where he is the Principal Designer, with regulations 9 to 11 (inclusive) of the CDM Regulations”.

Clause 3.10

Delete the existing clause and insert:

“The Contractor warrants and undertakes to ensure that:

3.10.1 it is fully aware of its functions, obligations and duties under the CDM Regulations and:

3.10.1.1 possesses the requisite skills, knowledge, experience and organisational capability necessary to fulfil the roles it is appointed to undertake in a manner that meets its obligations and duties under the CDM Regulations and secures the health and safety of any person affected by the Project and/or the Works; and

3.10.1.2 shall co-operate with any other person working on or in relation to a Project, at the same or an adjoining Construction Site, to the extent necessary to enable any person with a duty, obligation or function to fulfil that duty, obligation or function; and

3.10.1.3 shall report to the Architect/Contract Administrator anything that it is aware of in relation to the Project which is likely to endanger its own health and safety or that of others;

SECTION 4: PAYMENT

Clause 4.1A

Insert as a new clause 4.1A:

“4.1A Notwithstanding the provisions contained in clause 4.1 or any other provisions of this Contract it shall be a condition precedent to the payment of any sums by the Employer due to the Contractor under this Contract that the Contractor shall issue to the Employer a VAT invoice showing the net amount of that payment together with the amount of VAT calculated by the Contractor as being due under the terms of the VAT Regulations current at that time. Notwithstanding the other provisions contained in Section 4, the final date for payment of monies calculated as due to the Contractor shall not be earlier than 21 days from the issue by the Contractor of the relevant VAT invoice. Insofar as there is any conflict or discrepancy between this clause 4.1A and the remainder of clause 4, this clause shall prevail.”

Clause 4.3

In line 2 after “case” insert “*subject to clauses 4.3A and 4.4.1*”.

In lines 10-11 delete “*and adjusted for...to apply*”.

In line 13 after “*certificate*” insert “, *any sums that the Employer is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any statute, at common law or equity or otherwise),*”

In the final line delete “14” and insert “28”.

Clause 4.4.1

In line 1 delete “*may*” and insert “*shall*”.

In line 3 after “*Administrator*” insert “(a “*Payment Application*”)”

At the end of the clause insert:

“Where the Payment Application for an interim payment (but not for the final payment pursuant to clause 4.8) is received no later than the relevant Interim Valuation Date, the due date shall be the date that would apply under clause 4.3; if the Payment Application is received later, the due date shall be 7 days after the date of receipt by the Employer.”

Clause 4.4.2

In lines 1 and 6 delete “4.3 or”.

In line 8 delete “clauses 4.3 or 4.8” and insert “clause 4.8”.

Clause 4.4.3

Insert as a new clause 4.4.3:

“4.4.3 If a certificate is not issued in accordance with clause 4.3, then where the Contractor has made an application for that payment in accordance with clause 4.4.1, the applicable Payment Application is for the purposes of these Conditions a payment notice for such payment.”

Clause 4.5.7

Insert as a new clause 4.5.8:

“4.5.8 Nothing contained in this Contract shall oust or limit any right of the Employer (whether arising under any term of this Contract or under any statute or rule of law or of equity) in the nature of set-off or abatement of price (and whether or not such set-off or abatement is applied to any monies forming part of any Retention) and in particular any failure by the Architect/Contract Administrator to serve a certificate required under clause 4.3 and/or 4.8 shall not prevent the Employer from subsequently challenging the amount due to the Contractor in any interim payment.”

Clause 4.8.2.1

In lines 1-2 delete “, *any fluctuations provision that applies*”.

Clause 4.8.3

Delete “14” and insert “28”.

Clause 4.9

In lines 1-2 delete “and any fluctuations...to apply”.

SECTION 5: INJURY, DAMAGE AND INSURANCE

Clause 5.1

In line 3, after “Works” insert “(or the performance of the Contractor’s obligations under clause 2.11 (Defects))”.

Clause 5.2

In line 5, after “Works” insert “(or the performance of the Contractor’s obligations under clause 2.11 (Defects))”.

Clauses 5.2A to 5.2D

Insert the heading “**Nuisance and trespass**”

Insert as new clauses 5.2A to 5.2D:

"5.2A *The Contractor shall at all times prevent any nuisance (including, but without limitation, any noisy working operations or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceeding which may be instituted in relation thereto.*

5.2B *Without prejudice to the obligations of the Contractor under clause 5.2A above, the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over-sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.*

5.2C *The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under clause 5.2A or clause 5.2C.*

Clause 5.8

Insert as a new clause 5.8:

"5.8.1 *The Contractor warrants to the Employer that it will take out and will maintain for a period expiring no earlier than twelve years from the date of practical completion of the Works with reputable insurers carrying on business in the United Kingdom professional indemnity insurance to cover its obligations and liabilities under or in connection with this Contract (such policy not to have unduly restrictive terms or excesses) with a limit of indemnity of not less than the level and basis specified in the Works Particulars, provided always that such insurance is generally available in the UK market to the Contractor’s profession at commercially reasonable rates and upon reasonable commercial terms. If for any period such insurance ceases to be available to the profession or the Contractor at commercially reasonable rates and terms the Contractor shall forthwith inform the Employer and shall obtain in respect of that person such reduced cover (if any) as is available to it at commercially reasonable rates and terms as it would be prudent and reasonable for the Contractor to accept*

5.8.2 *The Contractor shall when required so to do supply to the Employer documentary evidence of such insurance together with the receipt for the current years premium and shall*

immediately inform the Employer if the Contractor fails to renew such insurance or fails to renew such insurance at the level required by this clause.

5.8.3 *The Contractor shall not be relieved of any of his obligations under clauses 5.1, 5.2 and 5.2D by any approval or acknowledgement by or on behalf of the Architect/Contract Administrator in respect of the identity of the insurers or in respect of such documentation or by reason of the Employer not demanding such documentation from the Contractor or failing to point out or require the Contractor to remedy any deficiency therein."*

SECTION 6: TERMINATION

Clause 6.4.1.4

Insert as a new clause 6.4.1.4:

"6.4.1.4 commits any other significant breach of this Contract".

Clause 6.5.2.1

After "given" insert:

"and, notwithstanding any other provision of this Contract, the other provisions of this Contract which require any further payment to the Contractor shall cease to apply".

Clause 6.6

Renumber the existing clause as clause 6.6.1.

Clause 6.6.2

Insert as a new clause 6.6.2:

"6.6.2 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this or any other contract with the Employer and/or any Group Company of the Employer if, in relation to this or any such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Modern Slavery Act 2015 and/or a breach of clause 2.1A.5."

Clause 6.6A

Insert as a new clause 6.6A:

6.6A.1 The Contractor undertakes and warrants to the Employer without qualification or limitation:

- .1 that at the date of signature of this Contract the Contractor has not committed and/or permitted an offence under the Prevention of Corruption Acts 1889 to 1916 and/or the Bribery Act 2010 or committed one of the common law offences of bribery and/or embezzlement; and*
- .2 that after the date of signature of this Contract the Contractor will not commit and/or permit an offence under the Bribery Act 2010.*

6.6A.2 The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, fines, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations and/or breaching any undertaking or warranty under clause 6.6A.1."

Clause 6.7.4

Insert at the end of the clause:

“provided that:

- .1 *if the Employer elects not to procure the completion of the Works then the amount to be allowed under clause 6.7.3.3 shall be the portion of the Contract Sum payable for the elements of the Works carried out and any Site Materials provided by the Contractor; and*
- .2 *if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works then for the purposes of this clause 6.7.4 the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 6.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract.”*

SECTION 8: THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

Clause 8

Insert as a new clause 8:

“8.1.1 Where the Employer chooses to vest Third Party Rights in a Third Party, these Third Party Rights shall vest in that Third Party on the date of receipt by the Contractor of the Employer’s notice to that effect, stating the name of the Third Party.

8.1.2 Any notice given by the Employer under clause 8.1.1 specifying as a Third Party a Funder or Purchaser may, if the Employer so requires, specify that such Third Party shall itself be entitled to give the Contractor notice under clause 8.1.1 conferring the benefit of the Third Party Rights upon any other Third Party and any such notice shall have effect.

8.1.3 Any notice given by the Employer under clause 8.1.1 may, if the Employer so requires, specify that such Third Party shall be entitled to the benefit of paragraph 12 of Schedule 4 (Step-in), and such notice shall have effect.

8.1.4 Where Third Party Rights have vested in any Third Party then:

.1 the Employer and the Contractor shall not be entitled without the consent of such Third Party to amend or vary the express provisions of this clause 8.1 or of Schedule 4 (Third Party Rights);

.2 the rights of the Employer and/or the Contractor to terminate the Contractor’s employment under this Contract (whether under section 6 or otherwise), or to agree to rescind this Contract shall not be subject to the consent of any Third Party save where Third Party rights have vested in a Funder and/or Purchaser in which case neither the Employer nor the Contractor shall agree to rescind this Contract without the consent of such Funder and Purchaser, and the rights of the Contractor to terminate his employment under this Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 12 of Schedule 4

but, subject thereto, unless and until a Funder or Purchaser gives notice under paragraph 12 of Schedule 4, the Contractor shall remain free without the consent of any Third Party to agree with the Employer to amend or otherwise vary or to waive any term of this Contract and to settle any dispute or any other matter arising out of or in connection with this Contract, in each case in such terms as they think fit, without any requirement that the Contractor obtain the consent of any Third Party.

8.2 [The Contractor shall ensure that every sub-contractor with a material responsibility appointed by the Contractor shall execute and deliver to the Employer within 14 days of receipt of relevant engrossments Collateral Warranty Agreements in the relevant form set out in Schedule 5, with such reasonable amendments as the beneficiary of the warranty shall require or agree, in favour of the Employer and/ or any Third Party. The Contractor shall also forthwith on the engagement of every sub-contractor provide to the Employer certified copies of any sub-

contract/appointment (save for particulars of the sub-contract sum/fee). Notwithstanding any other provisions of this contract and in addition to any other right or remedy of the Employer, compliance with this clause 8.2 shall be a condition precedent to the Contractor's entitlement to payments under this contract.]"

SECTION 9: COPYRIGHT

Clause 9

Insert as a new clause 9:

- "9.1 *The Contractor as beneficial owner and/or on behalf of its sub-contractors and suppliers hereby grants to the Employer with effect from the date of this Contract or, in the case of documents not yet in existence, with effect from the creation thereof without further charge and notwithstanding the completion or abandonment of the Works or determination or alleged determination of the Contractor's employment under this Contract, a non-exclusive , royalty free, irrevocable licence to use and reproduce all the Contractor's Design Documents which have been or are hereafter produced by or for the Contractor, its sub-contractors and suppliers for any purpose whatsoever relating to the Works including without limitation, the execution, completion, maintenance, repair, operation, extension, reconstruction, and use of the Works. Provided also that in the case of the Contractor's Design Documents produced on behalf of the Contractor, its design consultants, its sub-contractors or its suppliers the Contractor shall use its best endeavours to obtain an assignable licence from such other parties who have copyright in the Contractor's Design Documents. Copyright in the Contractor's Design Documents shall, subject to the Employer's licence as aforesaid, remain vested in the Contractor, or its sub-contractors or suppliers, as the case may be. Such licence shall be capable of sub-licence and assignment.*
- 9.2 *In addition to any other obligation under this Contract to provide copies of documents to the Employer the Contractor shall upon the written request of the Employer whether before or after termination of the Contractor's employment hereunder, (but subject to reimbursement of the Contractor's reasonable photocopying charges) provide to the Employer copies of the Documents and such other information in relation to the Works as the Contractor can reasonably supply.*
- 9.3 *The Contractor warrants that the use of the Contractor's Design Documents for the purposes of the Works will not infringe the rights of any third person."*

SCHEDULE 1

Delete the existing Schedule 1 and insert the new Schedule 1 attached..

SCHEDULE 2

Delete the existing Schedule 2.

SCHEDULE 4

Insert the new Schedule 4 attached

SCHEDULE 5

Insert the new Schedule 5 attached

SCHEDULE 1 OF THE SPECIAL CONDITIONS
WORKS PARTICULARS

Clause	Subject	
1.1	Description of Site	
1.1	Completion Documents	<p><i>The Completion Documents are:</i></p> <ul style="list-style-type: none"> • <i>two complete sets of drawings and specifications prepared by or on behalf of the Contractor (including any prepared by the Contractor's Design Consultants);</i> • <i>two complete sets of copies of test certificates and commissioning reports full maintenance and operation manuals for the mechanical and electrical installation (if any) and any other plant and equipment installed at the Works or a Section;</i> • <i>one copy of the Health and Safety File maintained in relation to the Works pursuant to the CDM Regulations or a Section;</i> • <i>copies of all guarantees or warranties which are available or should properly be available in respect of the Works or a Section;</i> • <i>completion certificates from the local authority;</i> • <i>[]</i>.
1.1	Additional Third Parties	<ul style="list-style-type: none"> • each and every person that has an interest in the Site or any part thereof;
1.6.3	Email Service	<p>Email Address for service on the Employer:</p> <p>Email Address for service on the Contractor:</p>
5.6.1	Professional Indemnity Insurance	£5,000,000 for each and every claim.

SCHEDULE 4

Third Party Rights

1 DUTY OF CARE

1.1 The Contractor warrants to the Third Party that

- (a) it has carried out and completed or has carried out and will continue to carry out and complete the Works fully in accordance with and subject to the terms of this Contract and has observed and performed and will continue to observe and perform all of its obligations expressed in or arising out of this Contract;
- (b) without derogation from paragraph 1.1(a), the design of the Works and the selection of goods materials plant and equipment for incorporation therein have been or will be designed and selected using all the reasonable skill, care and diligence to be expected of a professionally qualified, competent and adequately resourced designer experienced in the design of works similar in scope, type, complexity, value, time scale and character to the Works;
- (c) subject to paragraph 8.2, it owes to the Third Party the same (but no greater and of no longer duration) duty of care as it would have had if the Third Party had been named jointly as employer under this Contract.

2 MATERIALS

2.1 The Contractor warrants to and undertakes with the Third Party that it has (1) exercised and will continue to exercise all the reasonable skill, care and diligence required by clause 1.1(b) not to specify for use; and/or (2) has not used or permitted to be used and will not use or permit to be used in the Works any products, goods, materials or systems which at the time of use:

- (a) do not conform with British Standards Institution recommendations and specifications and/or relevant codes of practice or good building practice; and/or
- (b) are generally known to be deleterious, in the particular circumstances in which they are specified for use or used, to health and safety and/or the durability of buildings or structures.

3 DELEGATION

It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Contractor under these Third Party Rights shall not be modified released or in any way affected by the fact that the Contractor may delegate or may have delegated all or any part of the design and/or construction of the Works to a consultant or sub-contractor.

4 COPYRIGHT

4.1 All design rights and copyright in all technical information drawings models bills of quantities specifications schedules details plans calculations or other materials provided or to be provided by the Contractor in respect of the Works and all amendments and additions thereto (whether in existence or yet to be made) and any works designs or inventions of the Contractor incorporated or referred to therein ("**the Documents**") shall remain vested in the Contractor but the Contractor hereby grants to the Third Party an irrevocable non-exclusive and royalty-free licence to use, reproduce and modify the Documents for all purposes relating to the Works including (without limitation) the construction completion reconstruction modification alteration

maintenance reinstatement repair use letting sale promotion and advertisement thereof. Such licence shall include a licence to use the Documents for the extension of the Works but such use shall not include a licence to reproduce the designs contained in the Documents for any extension of the Works. The licence shall include the right without the consent of the Contractor to assign the licence or grant a sub-licence to any person whatsoever provided that the Contractor shall not be liable for any such use by the Third Party or licensee for any purpose other than that for which the same were provided by the Contractor.

- 4.2 The Contractor shall procure that any sub-contractor or third party providing such drawings and other material shall grant a full free and irrevocable royalty-free non-exclusive licence in the same terms (*mutatis mutandis*) to the Third Party.
- 4.3 The Contractor warrants that the use of the Documents for the purposes of the Works will not infringe the rights of any third person.
- 4.4 The Contractor shall upon the written request of the Third Party (but subject to reimbursement of the Contractor's reasonable photocopying charges) provide to the Third Party copies of the Documents and such other information in relation to the Works as the Contractor can reasonably supply.

5 INSURANCE

- 5.1 The Contractor warrants that it has taken out and continue to will maintain professional indemnity insurance in and on the terms and for the period referred to in clause 5.6.
- 5.2 If for any period such insurance is not available in the market to the Contractor's profession at commercially reasonable rates, the Contractor shall forthwith inform the Third Party and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Contractor to obtain.
- 5.3 The Contractor shall whenever reasonably required so to do supply to the Third Party documentary evidence that the insurance required by this paragraph 5 is being maintained.

6 ASSIGNMENT

- 6.1 The benefit of these Third Party Rights may be assigned on two occasions only without the consent of the Contractor.
- 6.2 The limitations on assignment contained in paragraph 6.1 shall not apply to assignments:
 - (a) between, and the benefit of these Third Party Rights shall be freely assignable between, the Third Party and its Group Companies;
 - (b) to any party having or acquiring a mortgage or charge over the Works or any part of it and by way of re-assignment on redemption.
- 6.3 The Third Party shall notify the Contractor upon each occasion that it shall assign these Third Party Rights.
- 6.4 The Consultant shall not be entitled to contend that any person to whom these Third Party Rights are assigned in accordance with paragraph 6.1 or 6.2 is precluded from recovering for breach of such rights any loss incurred by such assignee resulting from the breach of these Third Party Rights (whenever happening) by reason that such person is an assignee and not the original beneficiary of such rights.

7 INDEPENDENT INSPECTION

- 7.1 The liability of the Contractor under these Third Party Rights shall not be modified released or diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Third Party nor by any failure or omission to carry out any such inspection investigation or enquiry nor by the appointment by the Third Party of any independent firm company or party whatsoever to review the progress of or otherwise report to the Third Party in respect of the Works nor by any action or omission of such firm company or party whether or not such action or omission might give rise to any independent liability of such firm company or party to the Third Party provided always that nothing in this paragraph shall modify or affect any rights which the Contractor might have but for the existence of this paragraph to claim a contribution from any third party whether under statute or at common law.

8 LIMITATION

- 8.1 No action or proceedings for any breach of these Third Party Rights shall be commenced against the Contractor after the expiry of 12 years from the date of practical completion of the whole of the Works.
- 8.2 The Contractor shall be entitled in any action or proceedings by the Third Party to rely on any limitation in this Contract and to raise the equivalent rights in defence of liability as it would have against the Employer under this Contract provided always that the Contractor shall not be entitled to raise any defence made on the basis that any loss incurred by the Third Party is not a loss to the Employer nor shall it be entitled to raise a defence to a claim under these Third Party Rights any contributory negligence defence, counterclaim or set-off that it may have against the Employer under this Contract.

9 NOTICES

Any notice provided for in this Schedule shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at its registered address or principal place of business or at such other address as such party may specify from time to time by written notice to the other parties hereto. If the notice is sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.

10 LAW

This Schedule and any dispute or claim arising out of, relating to or in connection with these Third Party Rights is governed by, and construed in accordance with, the laws of England and shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.

11 GENERAL

- 11.1 The provisions of this Schedule shall remain in full force and effect notwithstanding the termination of this Contract.
- 11.2 Within fourteen days of a written notice so to do by the Third Party the Contractor shall obtain from any sub-contractor or consultant appointed by the Contractor in connection with the carrying out and completion of the Works a warranty or warranties (to be executed as a deed) in favour of any Third Parties (including the Third Party) for whom the Contractor is required, under this Contract, to procure warranties from its sub-contractors or consultants. Such

warranties shall be in the same form as is required under this Contract.

12 STEP-IN RIGHTS

- 12.1 This paragraph 12 shall apply in favour of any Third Party who is granted a right to enforce it pursuant to a notice under clause 7A.1.1, and in that case shall have effect according to its terms, but otherwise shall be of no effect.
- 12.2 The Contractor will not in any circumstances exercise any right it may have to terminate its employment under this Contract or to treat its employment under this Contract as having been terminated by the Employer or to discontinue the performance of its duties and responsibilities hereunder until it shall first have given to the Third Party not less than twenty one days written notice of such matters ("**the Contractor's Notice**") **PROVIDED THAT** compliance by the Contractor with the provisions of this paragraph 12 shall not be treated as a breach of this Contract nor as a waiver of any breach on the part of the Employer giving rise to the right of determination nor otherwise prevent the Contractor from exercising his rights after the expiration of the notice unless the right of determination has ceased under the provisions of paragraph 12.4.
- 12.3 In the event of the Third Party giving notice to the Contractor of the occurrence of an event which entitles the Third Party (under the terms of any agreement with the Employer) to be substituted as the employer under this Contract or the service of a Contractor's Notice the Contractor will if so required by notice in writing given to it by the Third Party within 21 days of receipt of the said notice or the Contractor's Notice accept the instructions of the Third Party or its appointee to the exclusion of the Employer to continue to perform its duties and responsibilities under this Contract.
- 12.4 Provided always that any notice given by the Third Party under paragraph 12.3 must be executed as a Deed and must contain an undertaking by the Third Party to comply with its obligations under this paragraph including an undertaking that in the event of the Third Party's right to be substituted for the Employer being exercised the Third Party or its appointee accepts liability for payment of the monies payable to the Contractor under this Contract including payment of any monies properly due to the Contractor under the terms of this Contract and outstanding at the date of such notice. Upon receipt of such notice by the Contractor this Contract shall continue in full force and effect as if any right of determination on the part of the Contractor had not arisen and in all respects as if this Contract had been made between the Contractor and the Third Party (to the exclusion of the Employer) ab initio (provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor in respect of any duty on the part of the Contractor under or in connection with this Contract happening prior to the date of service of notice by the Third Party under paragraph 12.3.
- 12.5 Upon payment by the Third Party of an amount equal to the fees and disbursements owed by the Employer to the Contractor at the date of the Third Party's notice under paragraph 12.3 the Contractor shall assign to the Third Party all the Contractor's rights against the Employer in respect of such unpaid fees and disbursements and shall pay to the Third Party any of the same subsequently received by him from the Employer.
- 12.6 The Third Party shall be liable to guarantee to the Contractor the performance of the obligations of any appointee of the Third Party nominated under paragraph 12.3.

12.7 No Third Party shall be under any liability to the Contractor whatsoever in connection with the Works unless and until the Third Party serves written notice upon the Contractor in accordance with paragraph 12.3.

SCHEDULE 5

Sub-Contractor Collateral Warranties