

Contractor Warranty pursuant to any obligation to provide further warranties contained within any Contractor Warranty already provided.

- 11.5 The Contractor shall ensure that each sub-contract of a Sub-Contractor shall include and give unrestricted effect to the Schedule of Third Party Rights (Sub-Contracts) contained in Schedule I, with such modifications (if any) as the Contractor or the relevant Sub-Contractor shall propose and the Employer shall approve and that the Particulars forming part of such schedule be duly completed in each case.
- 11.6 The Employer may request at its option that the Contractor shall serve in accordance with the Schedule of Third Party Rights the requisite notice in respect of any Sub-Contractor granting third party rights to any Funder (as an alternative to any Sub-Contractor Warranty) and/or Purchaser and/or Tenant and/or Landlord and/or Phase 2 Beneficiaries within 14 days of such request and shall deliver within such 14 day period a copy of each such notice to the Employer provided that at the time of the Employer's request the relevant Sub-Contractor has been appointed by the Contractor. Where the relevant Sub-Contractor has not been appointed at the time of the Employer's request, the Contractor shall serve such requested notices (and deliver a copies to the Employer) within 14 days following their appointment.
- 11.7 The Contractor shall be relieved of its obligations under this Article 11 to procure Sub-Contractor Warranties from the (i) roofing and (ii) tanking/waterproofing Sub-Contractors if it has procured a Sub-Contractor Product Guarantee in favour of the Employer.

Article 12

INSERT the following text as new Article 12:

"Article 12: Professional Indemnity Insurance

- 12.1 Without prejudice to his obligations under this Contract or otherwise at law the Contractor covenants and undertakes with the Employer that it has maintained and will continue to maintain for so long as the same continues to be available to the Contractor in the insurance market at commercially reasonable rates and terms (but without having regard to the Contractor's claims record) with reputable insurers licensed to carry on business in the United Kingdom from the date hereof and for a period expiring no earlier than twelve (12) years from the date of Practical Completion professional indemnity insurance without unusual or onerous condition of the level and nature detailed in Article 12.2 to provide cover for liability arising from breach of the terms of this Contract and under the general law.
- 12.2 The insurance referred to in Article 12.1 shall be for a minimum of:
- (a) £20 million pounds any one claim and in the annual aggregate with unlimited reinstatements save for claims in respect of pollution, contamination, cladding, fire safety and asbestos;
 - (b) £20 million any one claim and in the annual aggregate in respect of pollution, contamination, cladding and fire safety; and
 - (c) £2 million any one claim and in the annual aggregate in respect of asbestos.

- 12.3 The Contractor will provide the Employer within ten Business Days of the Employer's written request sufficient documentary evidence that such insurance is being properly maintained.
- 12.4 If such insurance ceases to be available at commercially reasonable rates and terms and without unusual or onerous conditions in accordance with Article 12.1 then the Contractor shall promptly inform the Employer in order that the Contractor and the Employer can discuss the means of protecting their respective positions in the absence of such insurance and as an interim measure the Contractor shall take out such appropriate insurance cover as it is able to procure.
- 12.5 If at any time during the time period set out in Article 12.1 the Contractor is not complying with its obligations under this Article 12 the Employer shall be entitled (without prejudice to any other rights it may have) to take out insurance to cover the Contractor's liabilities under this Contract in relation to the Works and to recover as a debt the cost of doing so from the Contractor."

Article 13

INSERT the following text as new Article 13:

"Article 13: Consultants

- 13.1 Forthwith following award of the Contract the Contractor shall (unless it has already done so) appoint by deed for the purposes of the Works the following Contractor's Consultants in a form attached at Schedule C or on such other terms as the Employer shall have approved and shall forthwith supply a complete copy of the Consultant Appointment to the Employer:
- .1 Hodder and Partners Limited (architect);
 - .2 Curtins Consulting Limited (civil, structural and highways engineer);
 - .4 Design Fire Consultants Ltd (fire engineer);
 - .5 Planit I.E. Limited (landscape architect); and
 - .6 Wintech Limited (façade engineer).
- 13.2 The Contractor shall not appoint or engage the services of a replacement or additional member of the Contractor's Consultants without making due enquiry of the relevant consultant's reputation, competence and suitability with respect to the Works and without the approval of the Employer of its selection (such approval not to be unreasonably withheld or delayed). Any replacement or additional member of the Contractor's Consultants shall be appointed on the form attached at Schedule C or on such other terms as the Employer shall have approved and the Contractor shall forthwith supply a complete copy of the relevant Consultant Appointment to the Employer.
- 13.3 The Contractor shall not be permitted to dismiss any Contractor's Consultants or vary the relevant Consultant Appointment in any material way without the prior written consent of the Employer.
- 13.4 The Contractor shall not knowingly:
- a) waive release nor estop itself from enforcing or seeking redress for any obligation or duty on the part of any of the Contractor's Consultants under their respective Consultant Appointments without the consent of the Employer; or

- b) do or omit to do any act or thing which would entitle any of the Contractor's Consultants to treat as terminated any breach of their respective Consultant Appointments."

Article 14

INSERT the following text as new Article 14:

"Article 14: Limitation of Liability

- 14.1 Subject to Article 14.2, the Contractor's total aggregate liability arising out of this Contract and under any Contractor Warranties provided under Article 11, whether for breach of contract, or in tort (including for negligence) or by way of indemnity, breach of statutory duty or otherwise shall not exceed 150% of the Contract Sum .
- 14.2 The following shall be disregarded from the operation of Article 14.1:
 - 14.2.1 death or personal injury suffered by any person as a result of negligence, breach of statutory duty, omission or default by the Contractor or any of the Contractor's Persons;
 - 14.2.2 fraud or fraudulent misrepresentation;
 - 14.2.3 wilful default;
 - 14.2.4 breach of clause 2.7.4 (contract documents);
 - 14.2.5 compensation, costs or any other loss suffered or due to loss of or damage to property which does not comprise the Works;
 - 14.2.6 breach of clause 2.38 (intellectual property);
 - 14.2.7 liability for statutory fines and penalties;
 - 14.2.8 liability arising from breach of statute regarding data protection or failure to comply with the Freedom of Information Act 2000;
 - 14.2.9 liability arising from any Prohibited Act;
 - 14.2.10 claims relating to public or private nuisance; and
 - 14.2.11 any other tortious claims.

INSERT the following text as new Article 15:

"Article 15: Authorised Activities

- 15.1 From the Date of Possession and until 28th February 2022 (or such later date as may be agreed under Article 15.3), the Contractor shall carry out on the site the Authorised Activities only. No other works shall be undertaken or commitments made except with the prior approval of the Employer during this period. The Contractor acknowledges that the carrying out of the Authorised Activities up to and including 28th February 2022 (or such later date as may be agreed under Article 15.3) shall be sufficient to meet its obligations in respect of the completion of the Works by the Completion Date.
- 15.2 If the Employer takes out the Works Insurance Policy referred to in the Conditions and the public liability policy referred to in clause 6.4.1.2 of the Conditions on or before 28th February 2022 (or such later date

as may be agreed under Article 15.3), the Employer shall be entitled to instruct the Contractor to commence the whole of the Works.

- 15.3 If the Employer has not taken out the Works Insurance Policy and the public liability policy referred to in Article 15.2 by the date stated therein, the Employer shall issue an instruction under clause 3.10 unless the Employer and Contractor agree (both acting reasonably) that the scope of the Authorised Activities shall be adjusted, for such further period as may be agreed between them in a way that, will be sufficient to enable the Contractor to meet its obligations in respect of the completion of the Works by the Completion Date.
- 15.4 Notwithstanding any other provision of this Contract, the Employer shall be entitled by written notice to the Contractor to terminate the Contractor's employment under this Contract at any time before the instruction under Article 15.2 is issued. Such termination shall take effect 7 days after the notice has been given or on such later date as is stated in the notice. Upon and from such termination the provisions of clause 8.12 (excluding 8.12.3.5) shall apply. The Employer shall not be liable to the Contractor for any loss of profit, loss of business, loss of contracts or any indirect or consequential economic loss and/or expense arising out of or in connection with such termination, whether such loss is incurred by the Contractor or any sub-contractor engaged at any tier.
- 15.5 Without limiting or affecting its indemnities to the Employer under clauses 6.1, 6.2 and 6.3 of the Conditions, the Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses and which shall indemnify the Employer in like manner to the Contractor (but only to the extent the Contractor may be liable to indemnify the Employer under the terms of this Contract) with a limit of cover of £10,000,000 for any one occurrence or series of occurrences arising out of one event. Such insurance shall be maintained by the Contractor until such time as the Employer has effected the public liability insurance cover referred to in clause 6.4.1.2 of the Conditions and has given an instruction under Article 15.2. As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.12 of the Conditions shall apply."

INSERT the following text as new Article 16:

"Article 16: Local Labour Agreement

- 16.1 The Employer, the Contractor and the Landlord have entered into a contract of even date herewith ("**the Agreement**") whereby the Contractor has agreed to take steps to implement the Manchester Employment in Construction Charter. If the Agreement has not been entered into by the date of this Contract, the Contractor shall enter into the Agreement with the Employer and the Landlord within 14 days of the date of this Contract in the form attached to the Lease (with such amendments as reasonably required by the Employer and the Landlord);
- 16.2 The parties acknowledge that the terms of the Agreement are collateral to this Contract;
- 16.3 In the event that the Contractor is in breach of the Agreement, unless such breach is waived by the Landlord, the Employer will be entitled to recover from the Contractor the cost of training an equivalent

number of persons as the Contractor is required to train under the Agreement and has failed to train;
and

16.4 For the avoidance of doubt this cost shall be calculated as follows:

Cost = value of the Works x 0.005

AND such cost shall either form a debt to be paid by the Contractor to the Employer or shall be deducted by the Employer from any monies due to the Contractor under the terms of the Contract between the Employer and the Contractor."

CONDITIONS

Section 1 Definitions and Interpretation

Definitions

Clause 1.1

In the definition section, INSERT at the end of the definition "**Conditions**" the following text:

"... and all as modified and amended by Amendment 1A appended hereto."

DELETE existing definition of "Consultants"

In the definition of "**Contractor's Persons**" DELETE "and any Statutory Undertaker".

In the definition of "**Employer's Persons**", DELETE the comma after "Contractor's Persons".

INSERT or amend the following additional definitions at the appropriate alphabetical point:

"Authorised Activities" means site establishment (including installation of perimeter scaffolding and hoardings and site welfare and office facilities), site security, principal contractor duties, asbestos and other surveys, soft strip, demolition, asbestos removal, bulk dig, underpinning, general civils works, disconnections, temporary works, installation of tower crane bases described as such in the Employer's Requirements and such other activities forming part of the Works as the Employer and the Contractor from time to time agree to be carried out as Authorised Activities;

"Consultant Appointment" means the deed of appointment of any Contractor's Consultant;

"Consultant Warranty" means a collateral warranty executed as a deed in the form set out in Schedule B in favour of the Employer and/or Funder and/or Purchaser and/or Tenant and/or Landlord and/or Phase 2 Beneficiaries from each and every Contractor's Consultant with such amendments as the Contractor shall request and the Employer may approve;

"Contractor's Consultant" means any consultant initially appointed by the Contractor in respect of the Works;

"Contractor Warranty" means a collateral warranty executed as a deed in the form set out in Schedule A in favour of a Funder and/or Purchaser and/or Tenant and/or Landlord and/or Phase 2 Beneficiaries;

"Coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-COV-2);

"Coronavirus Disease" means COVID-19 (the official designation of the disease which can be caused by Coronavirus) or any other disease officially recognised as caused by Coronavirus or Novel Coronavirus;

"Corporate Policies" the corporate policies of the Employer disclosed to the Contractor and referred to in the Employer's Requirements (as the same may be supplemented or amended from time to time by the Employer and notified to the Contractor).

"Funder" DELETE existing definition and SUBSTITUTE with:

any person, firm, company or bank (whether one or more in number) providing finance to the Employer (whether project finance, long term finance or re-finance) in connection with the whole or any part of the Works or the completed Works or the site or any part or parts thereof or taking a charge over the whole or any part of the Works or the completed Works or the site;

"Funder's Representative" means any one or more person, firm or company nominated by the Funder;

"Guarantee Insurer" means the insurance company or other body which has agreed to provide the Latent Defect Insurance Cover;

"Joint Fire Code" DELETE the words "current at the Base Date" and SUBSTITUTE with "as amended/revised from time to time."

"Landlord" means the Council of the City of Manchester or first purchaser of the Council of the City of Manchester's freehold interest in the site;

"Latent Defects Insurance" means the latent defects insurance policy for the Works provided or to be provided by the Guarantee Insurer or such other provider as may be notified to the Contractor by the Employer from time to time;

"Lease" means the lease entered into or to be entered into between the Employer and the Landlord in relation to the site;

"Novel Coronavirus" means any mutation of Coronavirus classified as such by the World Health Organisation;

"PCSA" means the pre-construction services agreement entered into between the Employer and Contractor and dated 22 October 2021;

"Phase 2 Beneficiaries" means the Landlord, Jackson's Row Developments Limited and the developer of the Phase 2 Works;

"Phase 2 Works" means the proposed works on the phase 2 site carried out by or on behalf of the phase 2 developer;

"Prohibited Act" means any of the following acts that the Contractor has been convicted of committing:

- (a) offering, giving or agreeing to give to any servant of the Employer any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Employer; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Employer;
- (b) entering into this Contract or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Employer; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Employer;

(d) defrauding or attempting to defraud or conspiring to defraud the Employer.

“Prohibited Materials” means any products or materials which:

- (a) do not conform with British Standards or Codes of Practice; or
- (b) are generally known within the industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure; or
- (c) contravene the recommendations of British Council For Offices publication "Good Practice in the Selection of Construction Materials" current at the date of this Contract."

“Purchaser” DELETE existing definition and SUBSTITUTE with:

“any first purchaser or intended first purchasers of (including any subsidiary or associated who may acquire by any means in any part of the Works or site or completed Works) a freehold or by leasehold interest in the whole and/or any part of the Works and/or the completed Works or the site;

“Sub-Contractor” means those sub-contractors (if any) appointed or to be appointed by the Contractor in respect of the following works packages:

- 1 mechanical and electrical;
- 2 cladding/curtain walling;
- 3 roofing;
- 4 lifts/escalators;
- 5 structural steel;
- 6 concrete frame;
- 7 piling;
- 8 precast concrete (including stairs and frame);
- 9 basement tanking and/or waterproofing, and

any other sub-contractor with design responsibility.

“Sub-Contractor Product Guarantee” means in respect of the sub-contracts of the roofing and tanking/waterproofing Sub-Contractors, a product guarantee in the relevant Sub-Contractor's standard form;

“Sub-Contractor Warranty” means a collateral warranty in the form set out in Schedule D in favour of the Employer and/or Funder (which entitlement, for the avoidance of doubt, will be limited to warranties in favour of each of the Shareholders plus any other first Funder) and/or Phase 2 Beneficiaries from each and every Sub-Contractor with such amendments as the Contractor shall request and the Employer may approve;

“Tenant” DELETE existing definition and SUBSTITUTE with:

“any first and second tenant of the whole and/or any part of the Works and/or of the site or of the completed Works or intended first and second tenant thereof.”

“Third Party Agreements” means any and all agreements, covenants, consents, standards, easements, restrictions, reservations and encumbrances (or extracts therefrom) relating to or affecting the Works or the

completed Works or site (including the execution thereof and their design) or any part thereof which have been or shall be disclosed by the Employer from time to time (whether before, on or after the date of this Contract) to the Contractor as Third Party Agreements and listed in Schedule E or as otherwise treated as Third Party Agreements pursuant to clause 2.1.5;

Interpretation

Agreement etc to be read as a whole

1.3 INSERT at the end of Clause 1.3 the following text:

"The Employer and the Contractor respectively acknowledge that this Contract and the documents referred to herein form the entire contract between the Employer and the Contractor to the exclusion of any antecedent or contemporaneous agreements, arrangements, statements or representations under this Contract."

Interpretation

Clause 1.4: Headings, references to persons, legislation etc

INSERT a new paragraph at the end of clause 1.4:

"In the Agreement and these Conditions the words "including" and "includes" shall be construed as being without limitation."

After clause 1.4 INSERT as a new clause 1.4A:

"1.4A For clarity the Parties have agreed that references to "force majeure" in this Contract shall be deemed to exclude weather conditions, strikes or lock-outs or local combination of workmen, public holidays, demonstrations, Specified Perils, Coronavirus, Coronavirus Disease or Novel Coronavirus."

Contracts (Rights of Third Parties) Act 1999

1.6 DELETE clause 1.6 and SUBSTITUTE with:

"1.6 Unless expressly stated in this Contract, nothing in this Contract confers or is intended to confer or purports to confer on any third party any benefit or right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999."

Notices and other communications

In clause 1.7.2, DELETE "clause 1.7.4" and SUBSTITUTE with "clauses 1.7.4 and 1.7.6".

In clause 1.7.3, DELETE "and 1.7.4" and SUBSTITUTE with ", 1.7.4 and 1.7.6".

In clause 1.7.4, at the start of clause 1.7.4 DELETE "Any" and SUBSTITUTE with "Subject to clause 1.7.6, any".

1.7.6 INSERT as a new clause 1.7.6 as follows:

"1.7.6 Until further notice from the Employer, whilst any public health measures taken as a result of Coronavirus or Novel Coronavirus which restrict the ability of the Employer (or the Employer's Agent) and/or the Contractor to serve notices by hand or by post (including Recorded Signed for or Special Delivery post) or to receive the same (for example as a

result of staff working from home) are in force, in addition to any other permitted method of service, notices, applications, statements, certifications and other communications to be given under this Contract shall be sent electronically to the following email addresses:

Employer – email address: Anthony@Relentlessgroup.co.uk, Telephone number: 07920187813;

Contractor – email address: P.Sykes@bandk.co.uk, Telephone number: 07766775124;

Employer's Agent – email address: Richard.Kelly@zerum.co.uk, Telephone number: 07919895445;

provided that, in the case of notices to which clause 1.7.4 applies, the sender shall also telephone or send a text message or leave a voicemail message to the recipient on the relevant telephone number stated above to notify them of the sending of the email not more than 4 hours before and not more than 4 hours after the relevant transmission. Any notice served in accordance with this clause 1.7.6 takes effect as being given and served:

- .1 if sent by e-mail by 4.00 p.m. on a Business Day, on that day;
- .2 but otherwise, on the next Business Day.

A notice to be given in accordance with clause 1.7.4 shall be validly given if it is given in accordance with this clause 1.7.6. The provisions of this clause 1.7.6 shall cease to apply on written notification from the Employer to the Contractor."

Effect of Final Statement

1.8.1.1 DELETE clause 1.8.1.1.

1.8.3 Add to the end of clause 1.8.3:

"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."

Effect of payments other than payment of Final Statement

1.9 In line 1 DELETE "Save as stated in clause 1.8, no" and INSERT "No".

Consents and approvals

1.10 In line 3 DELETE "either Party's consent" and SUBSTITUTE "the Employer's consent".

Clause 1.12: Enquiries and inspections

After clause 1.11, INSERT as a new clause 1.12:

"1.12 The obligations and liabilities of the Contractor under this Contract shall not be released, diminished or in any other way affected by:

- .1 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer, the Employer's Persons or any third party;

- .2 the value of any design, work, materials or goods being included in a certificate or statement for payment or any interim or final payment or (unless and to the extent otherwise expressly provided in the Conditions) the issue of any certificate, statement or notice pursuant to this Contract;
- .3 any application, admission, approval, consent, comment, sanction, acknowledgement, decision, confirmation, statement, certificate, notification or advice made or given by or on behalf of the Employer, the Employer's Persons or any third party or, in any case, the absence thereof; or
- .4 the appointment of, or failure to appoint, any person to inspect or otherwise report in respect of the Works or the design thereof, or by any act or omission of any such person, whether or not such act or omission might give rise to any independent liability of such person to the Employer, the Employer's Persons or any third party."

General Obligations

2.1.2 DELETE clause 2.1.2.

2.1.5 INSERT as a new clause 2.1.5:

- "2.1.5.1 The Contractor acknowledges that the Employer has entered into or intends to enter into the Third Party Agreements and that pursuant thereto the Employer has certain development obligations in respect of the Works. The relevant Third Party Agreements (or extracts therefrom) have been scheduled and are annexed to this Contract at Schedule E and the Contractor acknowledges that it has had the opportunity to review and inspect the same. The Contractor shall not do or omit to do anything in the course of carrying out its obligations under this Contract which would put the Employer in breach of the Third Party Agreements.
- 2.1.5.2 The Contractor shall perform and assume as part of its obligations under this Contract the Employer's obligations, liabilities and risks contained within the Third Party Agreements insofar as they have been scheduled and as annexed to this Contract at Schedule E and relate to the carrying out of the Works (as if the same were expressly referred to in this Contract as obligations, liabilities and risks of the Contractor mutatis mutandis).
- 2.1.5.3 The Contractor acknowledges and agrees that the Employer may after the Base Date enter into agreements relating to the Works or any part thereof after the date of this Contract and that any such agreement which is disclosed to the Contractor will be treated as a Third Party Agreement and deemed to have been scheduled and annexed to this Contract at Schedule E. A Change shall arise if and to the extent that compliance with clauses 2.1.5.1 and 2.1.5.2 would, in respect of such Third Party Agreements referred to in this clause 2.1.5.3, necessitate an alteration or modification to the Works, provided that the Contractor's obligations under this clause 2.1.5.3 shall not increase the standard of care required by the Contractor in the performance of its other obligations under this Contract. Any damages claimed or due from the Contractor under or pursuant to this clause 2.1.5.3 in respect of

any such Third Party Agreement shall be assessed in the same way as if the Third Party Agreements had been disclosed to the Contractor before the date of this Contract.

- 2.1.5.4 The Contractor shall ensure that no act or default or omission on its part or on the part of any Contractor's Consultant or on the part of any Sub-Contractor in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations pursuant to the Third Party Agreements referred to in clauses 2.1.5.1, 2.1.5.2 and 2.1.5.3.
- 2.1.5.5 All parts of the Works (including the design therein) will comply with:-
 - 2.1.5.5.1 the CDM Regulations; and
 - 2.1.5.5.2 the Employer's Requirements and the Contractor's Proposals (and any inadequacy, discrepancy, divergence, mistake, inaccuracy or omission within or between the Employer's Requirements and the Contractor's Proposals being decided in accordance with clause 2.14 herein); and
 - 2.1.5.5.3 any performance specification or requirement included or referred to in the Employer's Requirements and/or the Contractor's Proposals."
- 2.1.5.6 The Contractor shall within 7 days of any request therefor produce to the Employer certified copies material extracts (as reasonably required by the Employer) of each Sub-Contract with each sub-contractor from whom collateral warranties are required pursuant to this article, less any price sensitive information provided always that such Sub-Contract has been entered into at the time of such request."

Net internal floor areas

2.1.6 INSERT as a new clause 2.1.6:

- "2.1.6.1 By reference to the target area drawings referred in respect of the Employer's Requirements (the **Drawings**) the Employer and the Contractor agree that subject to the List of Parts of the Works referred to in the Employer's Requirements, the required aggregate net internal floor area of the parts of the Works shall be as set out in Folder 2, Section 2, Preliminaries & General Conditions of the Employer's Requirements (the **Anticipated Areas**) provided that for the avoidance of doubt the Anticipated Areas shall be recalculated if a Change results in a change to the required aggregate net internal floor area of the parts of the Works and the recalculated Anticipated Areas shall apply for the purposes of this clause.
- 2.1.6.2 Whenever during performance of the Works the Employer may reasonably require the Contractor to so do and, in any event promptly on the date of practical completion thereof, the Contractor and the Employer shall jointly measure the Anticipated Areas of the Works or each relevant Section (as applicable) as detailed in the Employer's Requirements and such measurements shall be in accordance with the arrangements described in the Employer's Requirements.

2.1.6.3 Where at Practical Completion the net internal floor areas are measured in accordance with the Employer's Requirements, are

.1 1% less than, or less than 1% less than, the Anticipated Area there shall be no damages payable;

.2 for the next 4% less than the Anticipated Area (**Damages Tolerance**) the Contractor shall pay or allow to the Employer liquidated damages calculated as follows:-

- £780 per square foot (apportioned pro-rata for part of a square foot) in respect of the office element; and
- £860 per square foot (apportioned pro-rata for part of a square foot) in respect of the retail element,

as each is specified in the Employer's Requirements; such liquidated damages may be deducted or recovered as a debt by the Employer.

2.1.6.4 Without prejudice to the Employer's other remedies available under or in connection this Contract in respect of termination of the Contractor's employment for Contractor default and without prejudice to the Employer's remedies relating to or arising out of the termination of the Contractor's employment under this Contract, the liquidated damages payable under clause 2.1.6 are the Employer's exclusive remedy if and to the extent that the net internal floor areas in respect of the Anticipated Areas measured in accordance with the Employer's Requirements is or are within the Damages Tolerance. In addition, the Employer shall be entitled to claim general damages for breach of contract if and to the extent that the shortfall in the net internal floor areas in respect of the Anticipated Areas exceeds the Damages Tolerance. "

INSERT new clauses 2.1.7 and 2.1.8:

"2.1.7 The Contractor shall satisfy, comply with or discharge all conditions or reserved matters contained or referred to in the planning permission for the Works and the terms of any planning or statutory agreement entered into in relation to the Works which are stated to be the responsibility of the Contractor in the Employer's Requirements. Notwithstanding any other provisions of this Contract, the Contractor shall not be entitled to any extension of time, reimbursement of loss and expense or any other addition to the Contract Sum as a result of complying with this clause whether or not a Change arises in connection therewith.

2.1.8 The Contractor shall notify any Statutory Undertaker of the dates and times when he will reasonably require work to be executed or services to the site to be provided and the Contractor has made an appropriate allowance for the execution of such work. The Contractor shall manage and co-ordinate such works with the Works or (as appropriate) with the remainder of the Works so as to minimise any delay or disruption to the progress of the Works and to minimise additional cost."

2.1.9 INSERT as a new clause 2.1.9:

"2.1.9 The Contractor warrants and undertakes that at all relevant times he has fulfilled and complied with his duties and obligations under the PCSA. The acts or omissions of the Contractor under the PCSA shall be deemed to be the acts or omissions of the Contractor under this Contract and shall be subject to the terms and conditions set out in this Contract."

Materials, goods and workmanship

2.2.1 INSERT after the first sentence of clause 2.2.1 the following text:

"Subject to the foregoing, all materials and goods shall be appropriate for their use and of a satisfactory quality and shall be obtained from suitable manufacturers and suppliers."

2.2.2 INSERT at the end of clause 2.2.2 the following text:

"Subject to the foregoing, all workmanship shall be of a satisfactory quality."

2.2A INSERT as a new clause 2.2.A as follows:

"Coronavirus

2.2A.1 The occurrence of the following events will be treated as a Relevant Event for the purposes of clauses 2.23 to 2.26 if and insofar as each occurrence directly affects the progress of the Works:

- .1 the site is required to be closed to comply with the United Kingdom Government's guidance introduced after the Base Date to the effect that construction sites within Manchester, England must be closed in order to control the spread of Coronavirus or Novel Coronavirus;
- .2 changes in the nature of more onerous obligations or restrictions are made after the Base Date to the 7th Edition of the Construction Leadership Council Site Operating Procedures published on 7 January 2021 (including guidance notes) necessitated by United Kingdom Government guidance or change in Statutory Requirements that are introduced after the Base Date in order to control the spread of Coronavirus or Novel Coronavirus;
- .3 the inability of the Contractor to obtain materials and goods for the Works in the required quantities and/or at the time or times necessary in order not to delay the progress of the Works due to a change in the law of England or the law of the country of origin of such materials and goods that are introduced after the Base Date in order to control the spread of Coronavirus or Novel Coronavirus;
- .4 a material shortage of site operatives amounting to a reduction at the relevant time in the workforce for the execution of the Works as a direct result of illness due to Coronavirus or Novel Coronavirus affecting site operatives and/or the unavailability of site operatives who had planned to work at the site at the relevant time due to compliance with national and/or local lockdown measures prescribed by the United

Kingdom Government and/or any guidance issued by the United Kingdom Government on NHS testing and tracing, self-isolation or other public health-related measures directly relating to the control of Coronavirus or Novel Coronavirus; and

- .5 a material disruption to the operations at a Sub-Contractor's place of manufacture of materials and goods resulting in a delay of delivery to the site of materials and goods for the Works which is a direct result of illness due to the diagnosis of Coronavirus Disease and/or the unavailability of operatives who had planned to work at the place of manufacture at the relevant time due to compliance with self-isolation requirements in accordance with national measures on self-isolation or other public health-related measures directly relating to the control of Coronavirus or Novel Coronavirus and/or compliance by operatives at the relevant time with national and/or local lockdown measures.

2.2A.2 The Contractor shall at all times and at no extra cost to the Employer take all practicable steps to avoid or reduce the occurrence or impact of any of the events referred to in clause 2.2A.1 (including the risk thereof) which shall include, without limitation:

- .1 procuring and using goods and materials for the Works or any Section which, insofar as practicable, are originated or sourced from the United Kingdom;
- .2 obtaining materials and goods for the Works or any Section from an alternative supplier save in the case of any proprietary products specified in the Employer's Requirements;
- .3 making alternative arrangements for the storage, transport or delivery of materials or goods;
- .4 taking all practicable steps to reduce or avoid the unavailability of operatives or the need by the Employer or the Landlord to require the closure of the whole or any part of the site; and
- .5 taking all practicable steps to manage the labour force on site and at the place of manufacture in order to avoid or reduce the risk of the occurrence of an outbreak of Coronavirus Disease, including by implementing best practice such as compliance with government guidelines and deploying test and other appropriate procedures on at least a weekly basis.

The Contractor also agrees to give the Employer's Agent an early warning by notifying him as soon as the Contractor becomes aware of any actual or potential disruption due to any of the events listed in clause 2.2A.1 and the Contractor will meet with the Employer's Agent to discuss a mitigation strategy (the implementation of which will not result in a Change unless and to the extent the Employer's Agent decides to issue an instruction which shall confirm the Change which he has decided to instruct).

2.2A.3 Notwithstanding any other provision of this Contract, the Contractor shall not be entitled to any extension of time or loss and/or expense if the progress of the Works is or is likely to be delayed as a result of, or the Works are otherwise affected by, Coronavirus, Novel

Coronavirus or any Coronavirus Disease which does not fall within the terms of clause 2.2A. The Contractor agrees that clause 2.2A shall be its sole remedy under this Contract in respect of or otherwise relating to Coronavirus, Novel Coronavirus or any Coronavirus Disease. Without limiting the foregoing, neither Coronavirus, Novel Coronavirus nor Coronavirus Disease:

- .1 shall give rise to any other Relevant Event (including as a result of any change in the Statutory Requirements made in relation thereto after the Base Date) or Relevant Matter; or
- .2 shall give rise to any entitlement on the Contractor's part to terminate his employment under this Contract.

2.2A.4 Notwithstanding any other provision of this Contract, the Contractor shall not become entitled to any addition to the Contract Sum or any other payment in respect of any cost or reimbursement of loss and/or expense arising as a result of Coronavirus, Novel Coronavirus nor Coronavirus Disease.

2.2A.5 To the extent that the Contractor relies upon clause 2.2A as entitling the Contractor to an adjustment to the Completion Date, the Contractor acknowledges and agrees that clause 2.2A shall be its sole remedy under the Contract in respect of any delay to completion of the Works and notwithstanding any other provision of this Contract, the Contractor shall not become entitled to any other addition to the Contract Sum or to any other payment in respect of any cost or reimbursement of loss and/or expense arising as a result of Coronavirus, Novel Coronavirus or any Coronavirus Disease."

Prohibited materials

2.2.3A INSERT as a new clause 2.2.3A:

"2.2.3A The Contractor warrants that it has used the level of skill and care set out in clause 2.17.1 to see that it has not used and/or specified for use and will not use and/or specify for use the Prohibited Materials in relation to the Works or any part or parts thereof.

If the Contractor becomes aware that it or any person has specified, approved or used any Prohibited Materials then the Contractor shall immediately notify the Employer".

Possession

2.3 DELETE from line 2 "thereupon" and INSERT "and subject to Article 15,".

Early use by Employer

2.5.1 In line 5 DELETE the words "and/or, where there are Existing Structures,"

2.5.2 DELETE clause 2.5.2.

Work not forming part of the Contract

2.6 DELETE clause 2.6.1 and INSERT:

- “2.6.1 The Contractor acknowledges that, and shall allow, the Employer and any prospective purchaser or tenant of the Works and any contractor or consultant employed or engaged by the Employer or any such purchaser or tenant ("**Independent Contractors**") as may be notified to the Contractor from time to time access to or across the site or the Works during the performance of the Works or any part or parts thereof to carry out works that do not form a part of this Contract ("**Directly Procured Works**"). Neither the performance of Directly Procured Works nor the provision of access relating thereto shall constitute partial possession of the relevant part(s) of the site by the Employer for the purpose of clause 2.30.
- 2.6.2 Unless an access regime is stated in the Employer's Requirements, the Employer will discuss the timing of, the extent and location of and the necessary access for any Directly Procured Works with the Contractor before permitting such works to be carried out and in such discussions the Contractor shall advise the Employer of the information he needs in order to programme and manage the integration of any Directly Procured Works with the carrying out of the Works so as not to avoid or reduce so far as is reasonably delay or disruption caused to the carrying out and completion of the Works or any part thereof. The Employer and the Contractor (both acting reasonably) shall agree an access regime which shall give effect to the discussions referred to in this clause which shall describe and programme the scope of the Directly Procured Works and the extent and location of any relevant matters relating to such access, and the arrangements for the co-ordination of activities on site. The access regime, if any, stated in the Employer's Requirements or agreed between the Parties under this clause (including any revisions thereof) is referred to in this Contract as the ("**Access Regime**"). The Contractor shall allow access in accordance with, and shall comply with, the Access Regime.
- 2.6.3 The Contractor undertakes to co-operate fully with the Employer and, if and to the extent so directed by the Employer, with each such purchaser or tenant and Independent Contractor with regard to the programming of or other arrangements for any Directly Procured Works, the co-ordination of the Directly Procured Works with the carrying out of the Works and the shared use of the Contractor's temporary lifts, hoists and other facilities with any such purchaser or tenant and Independent Contractor with the Contractor's consent.
- 2.6.4 The Employer shall instruct, or cause to be instructed, each such purchaser or tenant and any of the Independent Contractors who are to have access to or across the site or the Works that they are to comply with the Access Regime, all site regulations and with all reasonable directions of the Contractor with regard to any Directly Procured Works or the provision of access relating thereto and with regard to health and safety matters, and the Contractor shall give all necessary directions to such persons in relation thereto.
- 2.6.5 The Contractor shall not, without having previously agreed the same with the Employer in writing, impose or agree to any programming or other arrangement or give any direction in respect of any Directly Procured Works which would or is likely to delay or disrupt the carrying out and completion of the Works. Subject to the Contractor's compliance with the

foregoing and clause 2.6.6, the Employer shall instruct any Directly Procured Works as a Change under the terms of clause 5.

- 2.6.6 The Contractor shall not be entitled to any increase in the Contract Sum or to any other additional sum, nor to any relief from or reduction in any liability, obligation or duty under or arising out of or in connection with this Contract (including any extension of time, relief from liability for liquidated or any other damages or relief from liability to rectify defects) ("Contractor Relief") arising out of the Directly Procured Works except to the extent that:
- .1 the Access Regime is not stated in the Employer's Requirements and the Employer has not agreed the Access Regime with the Contractor in accordance with clause 2.6.2; or
 - .2 the Employer or any such purchaser or tenant or a person employed or engaged as an Independent Contractor has not complied with the Access Regime or with such agreed programming or other arrangements or with any site regulations or with any reasonable direction notwithstanding being properly directed in relation thereto by the Contractor;
- 2.6.7 The Contractor confirms that he has made all necessary allowances in the programme and cost of the Works and each Section for the Directly Procured Works if and to the extent the arrangements for and execution of them are consistent with the timing of, the extent and location of and the access for the Directly Procured Works set out in the Employer's Requirements and the Contractor accordingly shall not have an entitlement to claim an extension of time, additional payment or addition to the Contract Sum in connection therein.
- 2.6.8 The Contractor shall, if so required by the Employer, prepare at no extra cost to the Employer a schedule of condition of each area of the site and install a web-camera monitoring access to each area of the site to which access is provided to the Employer, any of the Third Parties or any Independent Contractors. Such schedule of condition shall be subject to the Employer's approval.
- 2.6.9 Without prejudice to clause 3.16, the Contractor shall act as Principal Contractor for the purposes of the CDM Regulations with regard to any access to or across the site under the control of the Contractor for the purposes of any Directly Procured Works and shall be required to establish, distribute to all relevant personnel and at all times monitor compliance with any Access Regime, all necessary site regulations and his reasonable directions with regard to any Directly Procured Works and to any associated health and safety matters.
- 2.6.10 The Contractor shall immediately notify the Employer in writing if he at any time considers that any person employed or engaged by the Employer or any such purchaser or tenant or any Independent Contractor is failing to comply with any Access Regime or with any site regulations or with any reasonable directions of the Contractor in relation to any Directly Procured Works or if for any reason delay or disruption is being caused to the carrying out and completion of the Works as a result of any Directly Procured Works.

- 2.6.11 Each such purchaser or tenant and each of the Independent Contractors shall, for the purposes of clauses 6.1 to 6.3, be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor.
- 2.6.12 For clarity, this clause 2.6 does not apply to work carried out by a Statutory Undertaker pursuant to its statutory obligations."

Contractor's programme

2.8A INSERT as a new clause 2.8A:

- "2.8A.1 On or before the Date of Possession (or, if there are Sections, on or before the first of the Dates of Possession) the Contractor shall provide to the Employer a programme, which shall include the critical path and the order and timing of the Works. The programme shall be provided in digital native format and in accordance with such other requirements as are stated in the Employer's Requirements.
- 2.8A.2 Within 7 days after it becomes apparent that the progress of the Works is being delayed by any circumstance, or that a change of programme is necessary to avoid or minimise delay, the Contractor shall deliver in duplicate to the Employer's Agent a suitably revised programme.
- 2.8A.3 The programme (and any revisions) shall not be a Contract document and it is agreed that how the Contractor plans to programme the Works and the methods used to meet the Completion Date are the sole responsibility of the Contractor.
- 2.8A.4 The agreement of the Employer to any proposal for the amendment of the programme shall not relieve the Contractor of any liability that he has under the Contract. In particular, the submission by the Contractor of any proposal showing the period for the execution of the Works extending beyond the Date for Completion shall not constitute a notice from the Contractor requesting an extension of time for the completion of the Works and the agreement of the Employer shall not by itself (without the Contract procedure for the granting of an extension of time being followed) constitute or be evidence of or support any extension of time for the completion of the Works.
- 2.8A.5 The Contractor shall provide to the Employer at times to suit the regular progress of the Works but in any event at least on a monthly basis, in a format to be agreed with the Employer prior to commencement of Works on site, a report which shall include but not be limited to reports on progress relating to the Statutory Requirements, the progress of the Works, in the form required by the Employer's Requirements, information outstanding from the Employer, the total value of the Works to date and the anticipated final cost of the Works having made adjustment for all Employers' Instructions and changes in the Employers' Requirements issued under clauses 4 and 12 of the Contract, any anticipated changes which could reasonably be foreseen by the Contractor and any other reporting requirements set out in the Employers' Requirements (the **Report**). The Contractor shall also procure from each of the Contractors Design Team a conformity report on the quality of works and

its compliance with the Employers' Requirements which shall be incorporated in its original and unedited form into the Contractor's monthly report as appended at Schedule H."

Clause 2.9A: Party Wall Awards

2.9A INSERT as a new clause 2.9A:

- "2.9A.1 To the extent not obtained by the date of this Contract, the Employer will be responsible for obtaining the party wall awards required for the execution and completion of the Works and will be responsible for any costs associated with obtaining any party wall awards including any party wall surveyor's fees incurred in the preparation of any such award.
- 2.9A.2 To the extent that the Employer is required to obtain any party wall award after the date of this Contract, the Contractor will undertake appropriate investigations regarding party walls diligently and with all the reasonable skill and care to be expected of an experienced and competent contractor. The Contractor shall provide such technical information and other reasonable assistance as may be required in any party wall award. This shall include any relevant design information, method statements, programme information and survey data to be included in any award which shall be provided to the Employer at least 12 weeks prior to the date required by the Employer in order to secure commencement of any relevant works by the Contractor.
- 2.9A.3 The Contractor shall be responsible for discharging the obligations of the Employer, under any party wall award whether obtained before or after the date of this Contract and shall otherwise comply with the same but subject to clause 2.9.1A. If and to the extent that compliance with any party wall award obtained after the date of this Contract would necessitate an alteration or modification to the Employer's Requirements, the Employer shall instruct an alteration or modification as a Change provided that a Change shall not arise to the extent that the alteration or modification is a result of any negligence, omission, default or breach on the part of, or on behalf of, the Contractor or any of the Contractor's Persons. The Contractor shall be liable for any losses, costs, damages, expenses and other compensation suffered by the Employer of whatsoever nature arising out of a breach by the Contractor or any of the Contractor's Persons of any party wall award that has been obtained.
- 2.9A.4 The Contractor shall ensure that at practical completion of the Works all temporary works shall have been dismantled and removed from the site."

Preparation of Employer's Requirements

2.11 DELETE clause 2.11.

Employer's Requirements – inadequacy

2.12.1 DELETE clause 2.12.1 and SUBSTITUTE with:

"If either Party finds that any design in the Contract Documents contains any defect or inadequacy (other than a defect or inadequacy in the Employer's Requirements which is corrected by the

Contractor's Proposals) it shall so notify the other Party and the Contractor shall inform the Employer in writing of his proposals for removing such defect or inadequacy, and with the Employer's consent the Contractor shall remove such defect in accordance with such proposals, at the Contractor's cost."

2.12.2 DELETE clause 2.12.2.

Notification of discrepancies etc

2.13 DELETE clause 2.13.

Discrepancies in documents

2.14 DELETE clause 2.14 and SUBSTITUTE with:

"2.14.1 If either Party finds any discrepancy in or between any of:

- .1 the Employer's Requirements;
- .2 the Contractor's Proposals;
- .3 any instruction for a Change,

he shall immediately give written notice of the discrepancy to the other Party.

2.14.2 Where such discrepancy is in the Employer's Requirements the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer's consent the discrepancy shall be dealt with in accordance with such proposals, at the Contractor's cost and with no adjustment to the Completion Date.

2.14.3 Where such discrepancy is between the Employer's Requirements and the Contractor's Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer's consent the discrepancy shall be dealt with in accordance with such proposals, at the Contractor's cost and with no adjustment to the Completion Date.

2.14.4 Where the discrepancy results from an instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy.

2.14.5 Nothing in this clause 2.14 or any statements contained with the Employer's Requirements shall relieve the Contractor of the obligation to comply with Statutory Requirements nor of his responsibility for the design of the Works."

Divergences from Statutory Requirements

2.15.2.1 In line 2, after the words "Works, such alteration or modification shall" INSERT the word "not".

At the end of clause 2.15.2.1, INSERT:

"Save where the change in the Statutory Requirements could not have been reasonably foreseen by an experienced contractor at the Base Date"

2.15.2.2 In line 1, DELETE "If" and INSERT "Subject to clause 2.15.2.3, if".

2.15.2.3 DELETE clause 2.15.2.3 and INSERT new clause 2.15.3:

- 2.15.3.1 "Subject to clause 2.15.2.1, at no extra cost to the Employer and without any entitlement to an extension of time, the Contractor shall, subject to clause 2.15.3.2, be responsible for obtaining all building regulations approvals for the Works and shall comply with any change in the Statutory Requirements insofar as it relates to building regulations approvals after the Base Date in relation to the Works.
- 2.15.3.2 If, after the date of the Contract, there is a change of the building regulations which relates to the fire safety of the building or the combustibility of cladding elements of the Works or the insulation within the internal envelope of the Works which necessitates an alteration or modification to the Works, such alteration or modification shall be treated as a Change unless at the date of the Contract:
- .1 details of such alteration or modification were known to the Contractor at that date; or
 - .2 the Contractor could reasonably have been expected to have allowed for the alteration or modification had he exercised the degree of prudence and foresight that would be expected from an experienced and competent contractor in designing the Works."

Design Work – Liabilities and Limitations

2.17 DELETE clause 2.17 and SUBSTITUTE with:

- "2.17.1 The Contractor warrants that there has been exercised and will be exercised in the design of the Works and each and every part of the Works all the skill and care reasonably to be expected of duly qualified and experienced designers undertaking the design of works similar in scope and character to the Works or such part of the Works.
- 2.17.2 Subject always to clause 2.17.1 and without derogating from any other provision in this Contract, the Contractor shall be fully responsible in all respects for the design of the Works and warrants that all design work carried out by or on behalf of the Employer on or before the date of this Contract and forming part of the Employer's Requirements has been carried out and completed to the same level of skill and care stipulated in clause 2.17.1.
- 2.17.3 Subject always to clause 2.17.1 and without prejudice to clause 2.17.1 and 2.17.2 above, the Contractor warrants that in all respects any design work carried out by any of the Contractor's Consultant or Sub-Contractor (including any person employed by the Contractor at the Employer's request), whether or not such design work is carried out before, on or after the date of this Contract has been carried out and completed to the same level of skill and care stipulated in clause 2.17.1."

Materials and goods – on site

2.21 In line 2, DELETE the words "Interim Payment" and SUBSTITUTE with:

"Gross Valuation in respect of which the Interim Payment due has been paid or discharged".

Materials and goods – off site

2.22 In lines 1 and 2, DELETE the words "Interim Payment" and SUBSTITUTE with:

"Gross Valuation in respect of which the Interim Payment due has been paid or discharged".

Fixing Completion Date

2.25.1.2 In line 1, after the word "Section", INSERT the words "has been or".

2.25.7 INSERT new clause 2.25.7 as follows:

"2.25.7 For the avoidance of doubt and notwithstanding anything else contained in this Contract, the Contractor shall not be entitled to any extension of time for any delay caused by a Relevant Event to the extent the delay would have occurred notwithstanding the occurrence of the Relevant Event."

Relevant Events – Employer's instructions

2.26.2.1 DELETE 2.26.2.1

2.26.2.2 DELETE clause 2.26.2.2 and SUBSTITUTE with:

"under any of clauses:

- .1 3.10 (Instructions to postpone any work);
- .2 3.11 (Instructions to expend any Provisional Sums) except as otherwise provided in clause 3.11.2.
- .3 3.12 or 3.13.3 (opening up for inspection or testing) unless: (i) the inspection or test shows that the work, materials or goods are not in accordance with this Contract or was provided for in the Employer's Requirements or the Contractor's Proposal or (ii) (in the case of instructions relating to clause 3.13.3 the instructions were reasonable in all the circumstances (having due regard to the Code of Practice referred to in clause 3.13.3))."

INSERT as a new clause 2.26.2.4

"2.26.2.4 to proceed with a Partial Possession Plan (as defined in clause 2.30) in accordance with the provisions of clause 2.30 (provided at any extension of time will be the same and limited to the PPP Extension (as defined in clause 2.30) agreed for such Partial Possession Plan)".

Relevant Events – suspension by Contractor

2.26.5 In line 1, after the words "under clause 4.11" INSERT the words "or clause 8.10.3".

Relevant Events – prevention etc by Employer

2.26.6 INSERT at the end of clause 2.26.6 the following text:

"or, in the case of any impediment or prevention by the Employer, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract".

Relevant Events – Work by Statutory Undertaker

2.26.7 DELETE clause 2.26.7 and SUBSTITUTE with:

"Subject to clause 2.1.8, the carrying out by a Statutory Undertaker of non-contestable works in pursuance of its statutory obligations in relation to the Works or the failure to carry out such non-contestable works."

Relevant Events

2.26.8 DELETE clause 2.26.8 and SUBSTITUTE with "the Employer's non-compliance with the Partial Possession Plan pursuant to clause 2.30;"

2.26.9 DELETE clause 2.26.9 and SUBSTITUTE with:

"Subject to 2.26.A.2, loss or damage occasioned by any Specified Peril to the Works at the site."

2.26.11 At the end of 2.26.11 INSERT "but only where such events arise out of or in connection with a national labour dispute which directly affects the progress of the Works."

2.26.12 At the end of clause 2.26.12 INSERT "but excluding the exercise of any such statutory power in order to control the spread of Coronavirus, Novel Coronavirus or the Coronavirus Disease."

2.26.13 At the end of 2.26.13 INSERT the following text:

"(including that the Contractor has submitted the relevant applications in the requisite quality and within the required timeframes)

Delay caused by Contractor's default

2.26A INSERT as a new clause 2.26A:

"2.26A.1 The Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence, default, breach of this Contract or breach of statutory duty by or on the part of the Contractor or of any sub-contractor or supplier, or of any of his or their employees or agents save where the relevant event is defined in clause 2.26.9 or as provided for in clause 2.26A.2;

2.26.A.2 Where the delay to completion of the Works is caused by a fire, flood, explosion, escape of water from any water tank apparatus or pipe being risks comprised in the Relevant Event identified in clause 2.26.9 and such delay is attributable to or caused by or results from the Contractor's default, the Contractor shall only be entitled to an extension of time to the extent that the Contractor is able to establish on the balance of probabilities that he had been managing site activities and supervising the performance of sub-contractors and all other Contractor's Persons at all relevant times and in a proper and professional manner and in accordance with the best practices to be expected of a competent and accomplished contractor who is experienced in undertaking projects of a similar scale, scope, complexity and value to the Works in order to prevent the occurrence of such event."

Practical completion

2.27 DELETE the words "When practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.37 and 3.16.5, then:" and SUBSTITUTE with:

"The Contractor shall give the Employer and the Funder and the Funder's Representative and any Purchaser (at the request of the Employer) four weeks' notice of the anticipated date of practical completion of the Works. The Employer subject to being satisfied that the Works are in a sufficient state of readiness will compile a list of outstanding or defective work upon receipt of which the Contractor shall immediately complete and/or remedy. When the outstanding or defective work has been completed or remedied and the Works have reached practical completion as notified by the Employer and the Contractor has complied with clauses 2.37 and 3.16.5 then:"

INSERT at the end of clause 2.27, a new paragraph as follows:

"Where the Employer's Requirements set out pre-conditions to the achievement of practical completion of the Works, practical completion of the Works shall not occur until all such pre-conditions have been satisfied. The Employer (or the Employer's Agent) may at his sole discretion issue the Practical Completion Statement notwithstanding that all such pre-conditions have not been satisfied. The pre-conditions referred to in this clause do not limit or exclude, and are additional to, any other issue or factor which ought properly to be taken into account in determining whether or not practical completion of the Works has been achieved."

Liquidated damages for non-completion

In clause 2.29.2 after "that Section" at the end of line 2 insert: "or in the case of termination of the Contractor's employment under this Contract prior to practical completion of the Works for any reason up to and including the date of such termination".

2.29.2 INSERT at the end of clause 2.29.2:

"; and the Employer's notice under clause 2.29.2 may also suffice as the Employer's notification under clause 2.29.1.2 provided it is given within the period specified for notification under clause 2.29.1.2."

2.29.3 At the end of line 1 after the words "or repay", INSERT the words "or allow".

2.29.5 INSERT as a new clause 2.29.5:

"2.29.5.1 Without prejudice to the Employer's remedies relating to or arising out of termination of the Contractor's employment under this Contract, the liquidated damages payable under this clause 2.29 are the Employer's exclusive remedy for the Contractor's delay in carrying out and completing the Works and for the issue of a Non-Completion Notice.

"2.29.5.2 The aggregate amount of liquidated damages whether payable or recoverable or that may be withheld or deducted under this clause 2.29 shall not exceed 10% of the Contract Sum."

2.29.6 INSERT as a new clause 2.29.6:

"2.29.6 Notwithstanding termination of the Contractor's employment under this Contract, the Employer shall remain entitled to payment of, or to withhold or deduct, liquidated damages due from the Contractor for the period up to and including the date of such termination. Such termination shall be without prejudice to any other rights and remedies of the Employer"

Partial Possession by Employer

- 2.30 On the third line delete from "and the Contractor's consent has been obtained, then" and at the end of the same sentence INSERT:

"Before taking such possession the Parties shall agree a plan (the **Partial Possession Plan**) which shall include those items stipulated in the Employer's Requirements and a requirement that the Contractor shall use reasonable endeavours to handover to the Employer at the point of such possession copies of the documents listed at clause 2.27A to the extent that the same are available at that time. In order to agree the Partial Possession Plan, the Contractor shall provide the Employer with confirmation of any and all costs (the **PPP Costs**) and extensions of time to any Completion Date (the **PPP Extensions**) that will or are likely to arise as a result of entering into the Partial Possession Plan and the Employer in its absolute discretion may decide whether to agree to the PPP Costs and PPP Extensions and whether to proceed with the Partial Possession Plan. If the Employer wishes to proceed with the Partial Possession Plan, the PPP Costs shall be added to the Contract Sum and the Contractor shall be entitled to an extension of time commensurate with the PPP Extension provided always that subject to clauses 2.26.8 and 4.21.6 the Contractor shall not be entitled to any further additional costs and expense or extension to any Completion Date in relation to the Partial Possession Plan"

INSERT at the end of clause 2.30:

"on taking possession the Employer should have due regard to the continuation of the Works on site and shall comply with the Partial Possession Plan. Provided that the Employer complies with the Partial Possession Plan the Contractor shall not be entitled to claim for any additional cost or expense or for any additional time or extension to any Completion Date as a consequence of such Partial Possession having been taken. Where the Employer does not comply with the Partial Possession Plan the Contractor shall be entitled to claim for any additional cost or expense or for any additional time or extension to any Completion Date. Where a Partial Possession Plan has not been agreed the Employer may issue an instruction stating his intention to take Possession which shall be deemed to be an instruction requiring a Change and valued as a Change in accordance with Schedule 2 Part 4 and the Contractor shall comply with the same."

Defects etc – Relevant Part

- 2.32 INSERT at the end of clause 2.32 the following text:

"provided that the Employer shall not be required to issue such notice any earlier than 14 days after the end of the Rectification Period applicable to such Relevant Part".

Defects - rectification

- 2.35.2 In line 3, DELETE the words "after delivery of a schedule of defects or".
- 2.35 In line 1 of the last paragraph after the words "schedule or instructions" INSERT the words "or where stated, within the timescales set out within the Employer's Requirements,"
- 2.35 INSERT at the end of clause 2.35:

"The Contractor shall comply with an instruction issued by the Employer under this clause. Each instruction issued by the Employer shall be written and/or oral and if oral confirmed in writing and each instruction shall categorise each defect in the manner set out in the Employer's Requirements.

In any event the Contractor shall immediately after receipt of the Employer's instruction notify the Employer if in the Contractor's view the defect is not one for which the Contractor is responsible

The provisions of this clause 2.35 are without prejudice to any other rights or remedies which may be available to the Employer".

Defects requiring urgent attention

2.35A INSERT as a new clause 2.35A:

"2.35A The Contractor shall attend to the defects within the timescales set out in the Employer's Requirements. In cases of urgency the Employer may require any defects notified under clause 2.35 to be made good within such period of time specified by the Employer as the circumstances require and the Contractor shall regularly and diligently progress the rectification of such defects within the relevant period of time."

Defects etc at Practical Completion

2.35B INSERT as a new clause 2.35B:

"2.35B The foregoing provisions of this clause 2.35 apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at practical completion."

The Contractor's Failure to Comply with Instructions

2.35C INSERT as new clause 2.35C

"2.35C If the Contractor fails to comply with the Employer's instructions in accordance with those periods of time set out in clauses 2.35 and 2.35A (as appropriate or the Employer considers that the Contractor is not regularly and diligently attending to such defects) or if the Employer shall "otherwise instruct" in accordance with 2.35.2 then the Employer may:

2.35C.1 instruct others to rectify the defect identified by the Employer's instruction under clause 2.35 and

2.35C.2 the Employer may deduct and/or recover from the Contractor as a debt any reasonable costs, damages, losses, liabilities arising out of or in connection with the instructing of others to rectify such defects."

Adoption of Works

2.35D INSERT as a new clause 2.35D:

"2.35D Following practical completion of the Works or any Section, the Employer may instruct the Contractor to make good any loss or damage caused during the relevant Rectification Period to any utilities (including any electricity, gas, water, sewerage or telecommunications network or apparatus) forming part of the Works which are to be

or may be adopted by a utility company or any other licensed entity operating or maintaining such utilities. Such instruction shall be valued and paid for as if such instruction was a Change insofar as such damage is not caused by a defect in the relevant part of the Works or does not result from any negligence, omission, default or breach on the part of, or on behalf of, the Contractor. If the Employer issues an instruction under this clause 2.35D, the Contractor shall carry out the necessary work in such time as is reasonably appropriate having regard to the need for the Employer to comply with his obligations under the relevant Third Party Agreements."

Notice of Completion of Making Good

2.36 INSERT at the end of clause 2.36:

"provided that the Employer shall not be required to issue any notice to that effect any earlier than 14 days after the end of the relevant Rectification Period."

Copyright and use

2.38 DELETE clause 2.38 and SUBSTITUTE with:

"2.38.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Contractor in connection with the Works (together referred to in this clause 2.38.1 as "the Documents") shall remain vested in the Contractor but the Contractor hereby grants to the Employer and its appointees an irrevocable non-exclusive and royalty-free licence to copy, use and adapt the Documents and to reproduce the designs and contents of them for any purpose relating to the Works including the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, extension and repair of the Works. The Employer and its appointees shall be entitled to assign the licence or grant sub-licences to any persons without the consent of the Contractor being required. The Contractor shall not be liable for any such use by the Employer or its appointees of any of the Documents for any purpose other than that for which the Documents were prepared or provided by the Contractor.

2.38.2 As contemplated by the Copyright Act 1956 and/or the Copyright, Designs and Patents Act 1988:

- (a) to the extent that the Contractor is author of the Documents the Contractor waives;
and
- (b) to the extent that the Documents are prepared by others on behalf of the Contractor, the Contractor shall procure that such authors waive;

the rights as against the Employer, its successors in title, assignees and licensees to the extent that the exercise of such rights would prevent or impede the reproduction, use adaptation of the Documents and the designs contained in them for the purposes referred to in clause 2.38.1 hereto.

2.38.3 The Contractor warrants that the Documents (except to the extent that duly authorised sub-contractors have been used to prepare the same) are the Contractor's own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

2.38.4 The Contractor shall, upon the written request of the Employer (but subject to reimbursement of the Contractor's reasonable photocopying charges) provide to the Employer and its appointees a copy of the Documents and such other information in relation to the Works as the Contractor can reasonably supply. The Contractor shall at any time on request allow the Employer and its appointees access to the Documents."

2.41 After clause 2.41 INSERT new clause 2.42:

"2.42 Latent Defects

2.41 The Contractor shall ensure that the Works comply with the technical requirements of the Guarantee Insurer and, in making good any defect, the Contractor shall do so in accordance with the requirements of the Guarantee Insurer.

2.42 The Contractor shall, prior to practical completion of the Works, provide to the Employer all necessary documentation, test certificates or other assistance and co-operation required by the Employer in order to secure the latent defects insurance cover for the Works or the relevant part of it."

Corporate Policies

2.39 INSERT as a new clause 2.39

"2.39.1 The Contractor warrants that in the performance of its obligations under this Contract, he has complied and will continue to comply with the Corporate Policies."

Project meetings

3.2A INSERT as a new clause 3.2A:

"3.2A The Contractor shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals and representatives of the Employer and of the Employer's other consultants (and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings."

Consent to sub-contracting

DELETE clause 3.3.2 and SUBSTITUTE with:

"3.3.2.1 All works or services undertaken or provided by a Statutory Undertaker (undertaking contestable works) or any utility company which fall within the scope of the Works or the design thereof shall be sub-contracted by the Contractor and clause 3.3 shall apply thereto.

3.3.2.2 No sub-contracting by the Contractor or obligation on the part of the Contractor to sub-contract under this Contract, and no consent in relation thereto, shall in any way affect

the Contractor's obligations and liabilities under this Contract. The Contractor shall remain fully responsible for such obligations and liabilities notwithstanding such sub-contracting, any obligation to sub-contract or consent to effect such sub-contracting.

- 3.3.2.3 The Contractor shall within 7 days of any request therefor produce to the Employer certified copies of material extracts (as reasonably required by the Employer) of each Sub-Contract with each sub-contractor from whom collateral warranties are required pursuant to Article 11, less any price sensitive information provided always that such Sub-Contract has been entered into at the time of such request."

Conditions of sub-contracting

- 3.4 In line 2, after the words "Design and Build Sub-Contract" INSERT the following words:

"or such other form as the Employer may approve".

Instructions requiring a Change

- 3.9.1. DELETE all of the text following the words "subject to clause 3.9.4" in line 1 to the end of clause 3.9.1".

Instructions on Provisional Sums

- 3.11 Renumber clause 3.11 as clause 3.11.1 and INSERT as new clause 3.11.2:

"3.11.2 The Contractor agrees that all Provisional Sums are or shall be deemed to be defined unless otherwise expressly stated in the Employer's Requirements. In respect of each Provisional Sum which is stated or deemed to be defined, the Contractor confirms that the Employer's Requirements and the Contractor's Proposals contain sufficient information so that the Contractor has planned, programmed and priced the Works or each Section to take into account all work covered by the defined Provisional Sum in question. Accordingly: (i) the Contractor shall not be entitled to any extension of time or reimbursement of loss and/or expense by reason or in consequence of any instruction to expend a defined Provisional Sum; (ii) any preliminaries, overhead and profit in relation to the work comprised in any defined Provisional Sum shall be deemed to be included in the fixed allowances comprised in the Contract Sum and no adjustment shall be made to the preliminaries costs or the fixed price representing the Contractor's overhead and profit identified in each case in the Contract Sum Analysis and (iii) a change in conditions as referred to in clause 5.6 shall not arise by reason of or in consequence of any instruction to expend a defined Provisional Sum; except only where and to the extent that any such instruction or work constitutes a material alteration to the overall scope or quality of the defined Provisional Sum in question as described in the Employer's Requirements, or the Employer fails to issue any such instruction to the Contractor by any applicable latest instruction date stipulated in the Employer's Requirements (unless due to any act, omission or default of the Contractor or of any person for whom the Contractor is responsible in which case a later date shall be fixed by the Employer on a fair and reasonable basis as the latest instruction date or unless the Contractor failed to apply in writing for the relevant instruction not less than 14 days before he reasonably considers it was required)."

Work not in accordance with the Contract

3.13.1 After the words "removal from site" INSERT the words "or rectification".

3.13.3 At the end of clause 3.13.3 DELETE the words:

"but clauses 2.25 and 2.26.2.3 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract" and SUBSTITUTE with "and clauses 2.25 and 2.26.2.3 shall not apply".

CDM Regulations – Undertakings to Comply

3.16.6 INSERT at clause 3.16.6:

"The Contractor is the Principal Contractor and the Principal Designer in respect of the Works"

Items included in adjustments

4.2.3 DELETE clause 4.2.3.

Interim Payments

4.7.1 INSERT on the first line after "the Contractor" the words "or by the Contractor to the Employer as the case may be,"

4.7.5 INSERT in the second line after "due to the Contractor" the words "or to the Employer as the case may be".

Interim and Final Payments – final date and amount

4.9.1 In line 1, DELETE "14" and INSERT "21".

4.9.6 At the end of the clause, INSERT a second sentence as follows:

"The Parties agree that clause 4.9.6 constitute a substantial remedy for the late payment of any sum payable under this Contract in accordance with the provisions of section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Contractor's right to interest under this shall be without prejudice to the Employer's right to set off or otherwise recover any liability of the Contractor to the Employer arising in respect of the Works."

Pay Less Notices, and other general provisions

4.10.4 DELETE from the start of sub-clause 4.10.4 "The Employer's fiduciary" to "prevent him exercising" (inclusive) and INSERT:

"The Employer may exercise".

Contractor's right of suspension

4.11.1 After "7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of" INSERT:

"any or all of".

4.11.3 In line 2, delete "or on request". At the end, INSERT:

"The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer. Any such application for costs resulting from suspension shall form part of an Interim Application under clause 4.7."

Gross Valuation – Alternative B

4.13.1.2 In line 1, after "Site Materials, INSERT:

"that are delivered to the site."

In line 2, after "prematurely", INSERT:

"and upon the Contractor providing the Employer with reasonable proof that the property in such unfixed materials or goods is vested in him and that no sub-contractor or supplier of any tier has validly retained title to the same."

4.13.2.2 in line 1 after "clause 4.11.2" INSERT "and for the cost of a required bond as referred to in clause 4.15A".

Listed Items

4.15.2.1 after "vested in Contractor" INSERT "(and, in addition, the Contractor shall have delivered to the Employer a vesting agreement duly executed by the Contractor and the relevant sub-contractor in the form set out in Schedule G, or such substantially similar form as approved by the Employer)".

DELETE clause 4.15.2.2 and INSERT:

"4.15.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a Joint Names Policy in respect of such risks as shall be required by the Employer (or, in the absence thereof, Specified Perils) and in respect of loss or damage whilst in transit until it is covered by the All Risks Insurance;"

4.15.4 In the first to third lines of clause 4.15.4 DELETE ", if it is stated in the Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6 (the required bond)" and INSERT

"has procured that the relevant sub-contractor for the same has provided a bond in the Employer's favour in the form set out in Schedule F (or such substantially similar form as approved by the Employer) from a bank who shall have been previously approved by the Employer at its absolute discretion; such bond shall be."

At the end of clause 4.15 INSERT a new hanging paragraph:

"the amount specified in the Contract Particulars for the required bond under clause 4.15.4 shall be an amount net of Retention. That amount shall be the amount paid by the Contractor to the Sub-Contractor under the sub-contract in respect of the Listed Items. The Contractor shall not deduct a retention in respect of the Gross Valuation of these Listed Items at a percentage greater than the Retention Percentage".

After clause 4.15 INSERT:

"4.15A The net cost of the required bond referred to in clause 4.15.4 shall be added to the Contract Sum without any adjustment to the cost of preliminaries, main contractor risk and other allowances or for overheads and profits. Such net cost will be included in the first Interim Payment to be made after the required bond has been executed and delivered to the Employer."

Retention – Rules on treatment of Retention

4.16 DELETE clause 4.16 and INSERT:

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

4.16.2 The Employer shall have no obligation to place the Retention or any part thereof in a separate banking account nor shall the Employer be required to identify any Retention as being held by the Employer on trust and the Employer shall be entitled to the full beneficial interest in any interest accruing on such Retention and shall be under no duty to account for any such interest to the Contractor."

Matters materially affecting regular progress

INSERT as a new clause 4.20.5 as follows:

"4.20.5 The Contractor shall not be entitled to any loss and/or expense in relation to a delay or disruption in the regular progress of the Works or any Section caused by a Relevant Matter which would have been incurred notwithstanding such Relevant Matter because of another cause of delay or disruption which was not caused by a Relevant Matter."

Loss and expense: Relevant Matters

4.21.2.2 INSERT at the end of clause 4.21.2.2 the following text:

"or unless the inspection or test was required as a reasonable consequence of previously detected work not in accordance with this Contract".

4.21.3 INSERT at the end of clause 4.21.3 the following text:

"provided that the Contractor shall not be entitled to claim loss and expense incurred for the first 2 months of prolongation to the programme as a result of any instruction issued pursuant to clause 3.15.2"

4.21.4 INSERT at the end of clause 4.21.4 the following text:

"4.21.4 "(including that the Contractor has submitted the relevant applications in the requisite quality and within the required timeframes)

4.21.5 INSERT at the end of clause 4.21.5 the following words:

“or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract”.

4.21.6 INSERT as a new clause 4.21.6:

"4.21.6 the Employer's non-compliance with the Partial Possession Plan pursuant to clause 2.30"

Loss and expense caused by Contractors' default

4.21A INSERT as a new clause 4.21A:

"Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under clause 4.20 in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents."

Definition of Changes

5.1.1.4 INSERT as a new clause 5.1.1.4 as follows:

"an instruction pursuant to Article 14: Value Engineering Incentive;"

Change of Conditions for other work

5.6 INSERT at end of clause before the full stop "provided always that the substantial change in the conditions does not arise by any error, omission, negligence or default of the Contractor or the Contractor's Persons and the Contractor has used all reasonable endeavours to mitigate the change and the consequences of the same."

Contractor's liability – personal injury or death

6.1 In line 3, after the word "Works", INSERT the following words:

"or in the performance of the Contractor's obligations under clause 2.35 (defects rectification)".

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

6.2 In line 4, after the word "Works", INSERT the following words:

"or in the performance of the Contractor's obligations under clause 2.35 (defects rectification)".

Loss or damage to Existing Structures or their contents

6.3.4 In line 2, after the words "Site Materials", INSERT "or (after the instruction referred to in Article 15.2 has been given) the retained structures".

Trespass and Nuisance

6.3A INSERT as a new clause 6.3A:

"6.3A The Contractor shall at all times prevent any trespass (including the oversailing of tower crane jibs), public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or any Section and

shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from third party claims and proceedings made against the Employer whatsoever resulting from any such trespass, nuisance or interference, save only where such trespass, nuisance or interference is the consequence of the Employer taking possession of any part or parts of the Works or a Section pursuant to clause 2.30 subject always to the Contractor complying with all requirements set out in the Partial Possession Plan relating to the Employer's use and reasonable enjoyment of such parts of the Works or a Section as are subject to partial possession at any time or a change in the Employer's Requirements or other instruction of the Employer (which is itself not the result of any negligence, default or breach of contract by or on behalf of the Contractor or any sub-contractor or supplier) and has not been avoided despite the Contractor using all reasonable and practical means to avoid the same. For the avoidance of doubt the Employer may issue to the Contractor such instructions as he considers necessary and no such instruction shall be construed as a change in the Employer's Requirements.

Contractor's insurance of its liability

6.4.1 DELETE clause 6.4.1 and substitute:

"6.4.1.1 Without prejudice to its obligations to indemnify the Employer under clauses 6.1, 6.2 and 6.3, the Contractor shall take out and maintain insurance with a limit of indemnity of not less than that set out in the Contract Particulars in respect of claims for personal injury to or death of any employee of the Contractor arising out of and in the course of such person's employment which shall comply with all relevant legislation.

6.4.1.2 Without prejudice to the Contractor's obligations to indemnify the Employer under clauses 6.1, 6.2 and 6.3, the Employer shall from the date of the instruction given under Article 15.2 take out and maintain a policy against liabilities for death of or injury to any person (other than any person in the direct employment of the Employer or the Contractor or any of the Contractor's sub-contractors) or loss of or damage to any property (other than the Works, retained structures at the site, work executed, Site Materials and the Contractor's Plant and Equipment) arising out of the carrying out of the Works substantially in accordance with the details set out in the Employer's Requirements, for a sum not less than that stated in the Contract Particulars for any one occurrence or series of occurrences arising out of one event (subject to any excess or deductibles applicable thereto). The Employer shall not be responsible for any amounts in excess of the sum insured or any retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance (including the amount of any excess or deductible). Such policy shall include the Employer, the Contractor and such other parties as are identified in the relevant details set out in the Employer's Requirements as composite insured and under which the insured have no right of recourse against any person named as an insured or pursuant to clause 6.9, recognised as an insured thereunder".

Insurance Options and period

6.7.2 In clause 6.7.2 after "shall maintain that policy" in line 2 INSERT "from the date of instruction given under Article 15.2".

Joint Names Policy

6.8 In the definition of Joint Names Policy, after the word "Contractor", INSERT the following words:
"and the Funder (as first loss payee), the Landlord and any one or more other third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or mortgage or charge over the site or the Works".

DELETE the definition of All Risks Insurance, and INSERT the words " the construction material damage insurance cover consistent with the insurance summary in the Employer's Requirements ".

Terrorism Cover – non-availability – Employer's option

6.11.5 In clause 6.11.5 after "as appropriate apply" in line 3 INSERT ", subject to clause 6.11.6 and unless otherwise instructed by the Employer".

After clause 6.11.5 insert new clauses 6.11.6 and 6.11.7:

"6.11.6 The Employer may, at its sole discretion, by written notice served on the Contractor in accordance with clause 1.7.4 at any time within 3 months of the occurrence of any loss or damage to work executed and/or Site Materials caused by any uninsured terrorism risk or risks or by the occurrence of any uninsured risk as contemplated in clause 6.10 forthwith terminate the employment of the Contractor under this Contract. Such termination shall take effect on receipt of the relevant notice and upon such termination the provisions of clauses 8.12 (excluding 8.12.3.5) shall apply.

6.11.7 Any loss or damage shall be at the Contractor's risk if and to the extent that Terrorism Cover becomes unavailable, or that such cover is avoided, or that any claim in respect of such cover is rejected by the insurers, because (in each case) of any failure by the Contractor or any of the Contractor's Persons to comply with the requirements of the insurers with regard to site security."

6.11A Insurance of the Contractor's Plant and Equipment

After clause 6.11 INSERT new clause 6.11A:

"6.11A.1 The Contractor shall take full responsibility for the risk in and care of the Contractor's and its sub-contractors' plant and equipment for the purposes of carrying out and completing the Works and any of its other obligations under this Contract.

6.11A.2 This clause 6.11A is without prejudice to any other obligation of the Contractor under this Contract or otherwise at law."

Evidence of insurance

6.12.1 In clause 6.12.1 delete from line 2 "and 6.10" and SUBSTITUTE ", 6.10 and 6.11A".

Loss or damage – insurance claims and reinstatement

- 6.13.1 After "Materials" in line 2 of clause 6.13.1 INSERT "or retained structures at the site".
- 6.13.2 After "Materials" in line 2 of clause 6.13.2 INSERT "or retained structures at the site".
- 6.13.3 In line 2 of clause 6.13.3 DELETE "shall authorise" and INSERT "hereby authorises" and at the end before the full stop insert "(whether or not the Employer shall require the relevant loss or damage to be reinstated, restored, replaced or repaired)".
- 6.13.4 After "Materials" in line 1 of clause 6.13.4 INSERT "or retained structures at the site" and after "Materials" in line 5 of clause 6.13.4 INSERT " or retained structures at the site,".
- 6.13.6 At the end of clause 6.13.6 after "Change", INSERT "", save that the Valuation of the Change shall be subject to clause 6.21 and the Contractor shall not be entitled to make any claim, whether pursuant to clauses 4.19 to 4.23 or otherwise, for the reimbursement of any loss or expense suffered or incurred in consequence of such loss or damage or the restoration, replacement or repair thereof or (when required) the removal and disposal of debris".

Loss or damage to Existing Structures – right of termination

- 6.14 DELETE clause 6.14.

Professional indemnity insurance

- 6.15 DELETE clause 6.15.
- 6.16 DELETE clause 6.16.

After clause 6.20 INSERT new clause 6.21

"6.21: Project Insurances

- 6.21.1 The Contractor shall be deemed to have satisfied itself and shall cause any sub-contractor to satisfy itself with regard to the extent of cover provided under the insurance policies arranged by the Employer (the "**Project Insurances**"). The Employer shall not be responsible for any costs, expenses or liabilities on the part of the Contractor or any sub-contractor in excess of the amount insured under the Project Insurances or for any costs, expenses or liabilities to which any policy excess or other exclusions or limitations of cover applies. The Employer's provision of such insurance shall not create any limitation on and shall be without prejudice to the Contractor's liability under this Contract or in tort or otherwise.
- 6.21.2 The Contractor shall be responsible for paying the excess or deductible specified in the relevant insurance policy for any claim under the Project Insurances, except to the extent a deductible under the Project Insurances to be effected and maintained by the Employer is in excess of the relevant following deductible amounts:
1. in the case of losses caused as a result of an escape of water from any water tank, apparatus or pipe, £100,000 for each and every loss;
 2. in the case of losses to the permanent Works arising out of the Contractor's fault error or omission in design, plan, specification or workmanship of the permanent Works, £150,000 for each occurrence;

3. in the case of losses in respect of retained structures, £100,000 for each and every loss; and
4. in the case of other losses, £25,000 for each and every loss,

in which case the Employer shall bear the deductible in question to the extent it exceeds the relevant amount stated in this clause 6.21.2.

6.21.3 The Contractor shall carry out its obligations under this Contract and ensure that all sub-contractors carry out their respective obligations in such a manner so that all the terms and conditions of the Project Insurances are at all times fully complied with and fulfilled and so that no circumstance or event shall occur which may render such insurance void or unenforceable in whole or in part.

6.21.4 Without prejudice to the generality of the foregoing, the Contractor shall liaise and co-operate with the insurers under the Project Insurances, and such co-operation shall include the provision of copies of such information as such insurers may from time to time request, working with the insurers to assist them with the collation of information for claims and providing the insurers or their representatives with access to inspect work executed or materials, whether on or off the site."

Assignment, Third Party Rights and Collateral Warranties

7 DELETE Section 7 in its entirety and SUBSTITUTE:

"7.1 The Employer may at any time assign (including by way of security and by way of re-assignment on redemption of such security) and/or charge the benefit of this Contract and shall give written notice of such assignment to the Contractor. The Contractor shall not assign and/or charge the benefit of this Contract or any right of action arising from the same without the prior written consent of the Employer.

7.2 The Contractor shall not be entitled to contend that any person to whom this Contract is assigned shall be precluded from recovering under this Contract any loss incurred (whenever happening) by reason that such person is an assignee and not a named promisee hereunder."

Third Party Guarantees and Warranties

7.3 ADD new clause 7.3 and 7.4:

"7.3 Subject to clause 7.4, the Contractor shall procure that all benefit right and title to the guarantees and warranties obtainable from manufacturers and suppliers of the plant and materials will be issued directly by the manufacturers and suppliers to the Employer when the Operation and Maintenance Manuals are provided under this Contract. Guarantees are required for the items or kit as specified in the Employer's Requirements.

7.4 The Contractor shall not be obliged to procure any guarantees pursuant to clause 7.3 where either (i) such guarantees are not generally available in the market or (ii) the issuer of such any such guarantee is or becomes Insolvent prior to the Operation and Maintenance Manuals being provided under this Contract . For the avoidance of doubt the guarantees shall be on the terms provided by the issuers."

Clause 8.1: Meaning of insolvency

8.1.1.2 In line 3 of clause 8.1.1.2 insert the following before the semicolon:

“or on the commencement of a moratorium for the company within the meaning of Part A1 of that Act”.

8.1.2.1 In line 2 of clause 8.1.2.1 insert the following before the semicolon:

“or when it enters administration within the meaning of Schedule B1 to that Act as applied by the Insolvent Partnerships Order 1994.”

8.1.4.1 In line 1 of clause 8.1.4.1 delete “he enters into” and insert:

“he, or any other person, makes an application for an order convening a meeting of his creditors or members to consider, or he enters into,”.

Termination – failure to rectify work

8.4.1.3 In line 2, after the word “remove”, INSERT the words “or rectify”.

Termination – insolvency of Contractor

8.5.3.3 In line 1, after the words “the Employer may” INSERT the words “,at the Contractor’s expense”

Termination – Contractor to vacate site

8.5A INSERT as a new clause 8.5A:

"8.5A Upon the termination of the Contractor’s employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the site."

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

8.6 In line 4 DELETE “an offence under the Bribery Act 2010 ...” to “...Local Government Act 1972” and SUBSTITUTE with “a Prohibited Act”.

Reaching or exceeding the Liquidated Damages Cap

8.6A INSERT as a new clause 8.6.A:

“If the amount of liquidated damages for which the Contractor would become liable under clause 2.29 but for clause 2.29.5.2 exceeds 10% of the Contract Sum, the Employer shall at any time thereafter until the date on which the Contractor achieves practical completion of the whole of the Works be entitled by notice given to the Contractor to terminate forthwith the employment of the Contractor under this Contract and upon such termination clauses 8.7 and 8.8 shall apply as if the Contractor's employment had been terminated under clause 8.4, 8.5 or 8.6. Such termination shall be without prejudice to any other rights and remedies of the Employer.”

Consequences of termination

8.7 At the end of the first line of clause 8.7 INSERT "or 8.6A".

8.7.2.3 At the end of line 4 after "this Contract" INSERT "(including each Consultant Appointment)."

8.7.3A INSERT as a new clause 8.7.3A:

“any provisions of this Contract which require any release of Retention to the Contractor shall cease to apply;”

8.7.4 INSERT at the end of clause 8.7.4:

“provided that 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 8.7.4 the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under clause 8.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract.”

Termination – default by Employer

8.9.2 In the last 2 lines of clause 8.9.2, after the words “Contractor’s Persons”, INSERT the following words:

“or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the exercise of the rights of the Employer under this Contract”.

8.9.3 In lines 1 and 3 of clause 8.9.3 DELETE “14 days” and SUBSTITUTE with “28 days” and DELETE “21 days” and SUBSTITUTE with “10 days”

Insolvency of Employer

8.10.1 In line 1, after the words “notice to the Employer”, INSERT:

“or the Employer may by notice to the Contractor”.

8.10.3 At the end of clause 8.10.3 INSERT:

“and an extension of time for completion shall be given under clause 2.25 equal to the period of suspension”.

Consequences of Termination under clause 8.9 to 8.11 etc

8.12.1 INSERT at the end of clause 8.12.1:

“and any provisions of this Contract which require any release of Retention to the Contractor shall cease to apply;”

Adjudication

9.2 At the end of clause 9.2 INSERT:

“Provided that at the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing.”

Good faith negotiations

9.9 INSERT as a new clause 9.9:

“In the event of any dispute or difference arising out of or in connection with this Contract (subject to Article 7) either party shall serve notice upon the other party setting out brief details of the dispute or difference that has arisen (the ‘Notice of Dispute’) and the parties shall first use their reasonable endeavours to settle such dispute or difference by good faith negotiations. If the parties do not reach

such a settlement within a period of 60 days from the service of the Notice of Dispute, or such other period as the Parties may agree, then upon notice by either party to the other the dispute or difference shall be resolved in accordance with the provisions of this Contract."

Schedule 2 Part 1 – Supplemental Provisions

Sustainable Development and Environmental Consideration

- 8.1 In line 1, DELETE the words "is encouraged to" and SUBSTITUTE with:
"shall (wherever possible)"

Schedule 5 - Third Party Rights

DELETE Schedule 5 in its entirety.

Schedule 7 - Fluctuations

DELETE Schedule 7 in its entirety.

Schedule 10 – Site Conditions

INSERT as a new Schedule 10 the following:

"Schedule 10: Site Conditions

Inspection of the Site

- 10.1 The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before the date of the Contract as to the former nature of the site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and the restrictions of access to the site, and the accommodation it may require. The Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by it under the Contract on the grounds that it did not or could not have seen any matter which might affect or have affected the execution of the work.

Ground Conditions

- 10.2 The Contractor shall not have or make any claim whatever, whether for time and/or for money and whether in contract, tort or by way of misrepresentation or otherwise in respect of information and/or reports and/or results of investigations provided or statements made by or on behalf of the Employer in respect of such risks, contingencies or circumstances relating thereto.
- 10.3 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Contract as to the matters set out below and any information and/or reports and/or results of investigations in connection therewith which may have been provided by or on behalf of the Employer being provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness:

- 10.3.1 the nature of the ground, the sub-surface conditions, sub-soil, stratigraphy, hydrological conditions, made ground and underground strata;
- 10.3.2 adverse physical conditions - whether transient or intransient, pre-existing or occurring after the commencement of the Works but before the Completion Date (howsoever occurring and including as a result of stresses applied to the Site of the Works and adjoining sites which may have an effect on the Site, whether by the Employer, the Employer's Persons, the Contractor or a third party) - whether or not such conditions could have been foreseen by a reasonably experienced contractor, including adverse physical conditions caused by weather ~~unless it is caused directly and entirely by exceptionally adverse weather as the dominant and effective cause, in which case it may if the exceptionally adverse weather is proven as a Relevant Event under clause 2.20.3 qualify for an adjustment in the Completion Date;~~
- 10.3.3 all artificial obstructions - whether transient or intransient, pre-existing or occurring after the commencement of the Works but before the Completion Date (howsoever occurring and including as a result of stresses applied to the site of the Works and adjoining sites which may have an effect on the site, whether by the Employer, the Employer's Persons, the Contractor or a third party) - whether or not such conditions could have been foreseen by a reasonably experienced contractor - including (without limiting the scope and extent of the foregoing and with no intention to give rise to a restrictive interpretation that this clause relates to similar matters or categories of matter set out in this sub-clause or in any clause in this Contract;
- 10.3.4 temporary dewatering during the design and construction of the Works;
- 10.3.5 permanent water control, in accordance with the Employer's Requirements, following the design and construction of the Works;
- 10.3.6 the release of contaminants along temporary or permanent or transient pathways;
- 10.3.7 any listed buildings and how they may affect the design and construction of the Works;
- 10.3.8 any requirements of English Heritage;
- 10.3.9 The nature, extent, depth, locations of all existing services and drainage ("the Existing Services") (whether the Existing Services and third party drains and/or services) are defined or undefined, and whether or not the Existing Services have been identified as to nature, extent, location and depth, both live and disused and the Contractor shall (other than in relation to the existing services identified in Appendix 9) bear the responsibility for the interface and effect of the Works in respect of the Existing Services on (i) any other risk which is the Contractor's responsibility for managing as to time, cost and generally under these Conditions of Contract and (ii) third party existing drains and/or services;
- 10.3.10 the form and nature of the site including (but not limited to) its topography;
- 10.3.11 the extent, nature and difficulty of the work and materials necessary for the completion of the Works;

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Herbert Smith Freshills LLP

~~10.3.12 any historic or archaeological matters;~~

10.3.13 the means of communication with and restrictions of access to the site;

10.3.14 the accommodation the Contractor may require;

10.3.15 all risks in relation to observing the covenants and easements in the legal title to the site of the Works and in dealing and complying with arrangements and agreements with neighbouring property owners and occupiers for all issues including matters required by the Party Wall Act 1996;

10.3.16 All risks of costs and time associated with any unexploded ordnance and adopting as his own the BACTEC Ordnance Assessment ref 9036TA included in the Employer's Requirements;

10.3.17 in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works;

The Contractor shall be deemed to have made all necessary allowances in the Contract Sum and the Date for Completion of the Works as to the matters set out in clause 10.3. The Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works. The Contract Sum and Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

SCHEDULE A
Form of Contractor Warranty

Dated

20[•]

[CONTRACTOR]

[BENEFICIARY]

[EMPLOYER]

**CONTRACTOR'S DEED OF
WARRANTY
concerning the development of TBC**

(design & build)

Contents

		Page
	Project Data	1
	Clause	
1	CONSTRUCTION OBLIGATIONS	53
2	PROFESSIONAL INDEMNITY INSURANCE	53
3	[SUBSTITUTION PROVISIONS	53
4	[DEEDS OF WARRANTY	56
5	ASSIGNMENT	57
6	COPYRIGHT	57
7	EXTRANEIOUS RIGHTS	58
8	RIGHTS, DEFENCES AND EXCLUSIONS	58
9	LIABILITY	58
10	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	59
11	EXPIRY OF WARRANTY	59
12	SERVICE OF NOTICE	59
13	GOVERNING LAW AND INTERPRETATION	59

Project Data

Date of this Deed	◆
Employer	◆ (No. ◆) whose registered office is at ◆
Contractor	◆ (No. ◆), registered office ◆.
Beneficiary	◆ (No. ◆), registered office ◆.
Development	The development of ◆ .
Site	◆
Date of Construction Contract	◆
Form of Construction Contract	Design and Build 2016 as amended by Special Conditions incorporated therein.
Beneficiary's interest	◆
Clause 2: (Professional indemnity insurance)	(a) Limit of indemnity: not less than £◆ for [each and every claim].

Parties

The Contractor

The Beneficiary

[The Employer]

Whereas the Employer and the Contractor have entered into a construction contract (**Construction Contract**), under which the Contractor has agreed to carry out and complete the design and construction of the works [insert proper detailed description of the works here] (**Works**) required for the purposes of the Development (which expression includes the Site and the Works or either of them as the case requires).

It is agreed in consideration of the sum of £10.00 paid by the Beneficiary, receipt of which the Contractor acknowledges, as follows:

1 Construction obligations

- 1.1 The Contractor warrants to the Beneficiary that the Contractor has carried out and completed or will carry out and complete the Works with all due diligence, in accordance with and subject to the terms of the Construction Contract, and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Construction Contract and (without qualification to or derogation from the foregoing) has exercised and will continue to exercise all reasonable skill and care and diligence to be expected of a properly qualified design and build contractor carrying out work of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the Works.
- 1.2 Without derogation from clause 1.1, to the extent that under the Construction Contract the Contractor takes responsibility for the design of the Works and for the selection of goods, materials, plant or equipment for incorporation in the Works the Contractor warrants that the same have been or will be designed or selected with all reasonable, care and diligence to be expected of a properly qualified designer of the appropriate disciplines for such design experienced in carrying out work of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the Works.

2 Professional indemnity insurance

- 2.1 The Contractor warrants to the Beneficiary that there is in force a policy of professional indemnity insurance covering the liabilities of the Contractor under the Construction Contract and under this Deed for negligence, conforming to the relevant requirements specified in the Project Data. The Contractor agrees to maintain such insurance at all times until 12 years after the Practical Completion of the Works under the Construction Contract (or if sooner until 12 years after the termination of the employment of the Contractor under the Construction Contract), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- 2.2 If for any period such insurance is not available on commercially reasonable terms, the Contractor shall forthwith inform the Beneficiary, 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.
- 2.3 Whenever reasonably required to do so by the Beneficiary, the Contractor shall provide to the Beneficiary documentary evidence that the insurance required under this Deed is being maintained.

3 [Substitution provisions]

[Version A – applicable where Beneficiary is the Mortgagee]

- Herbert Smith Freehills*
- 3.1 The provisions of this clause 3 only apply in the case of a Beneficiary who is a Mortgagee. The Contractor agrees that where an event has occurred and still subsists which, under the terms of the financing agreement between the Developer and the Mortgagee, entitles the Mortgagee to exercise its security or to exercise the rights granted to the Mortgagee under this clause 3, the Contractor will, if so required by notice in writing given by the Mortgagee, accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer in respect of the carrying on and completion of the Development upon the terms and conditions of the Construction Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Beneficiary under this clause 3.1 as conclusive evidence for the purposes of the Construction Contract of the termination of the occurrence of an event referred to in this clause 3.1.
- 3.2 The Contractor shall not:
- (a) terminate its employment;
 - (b) treat its employment as having been terminated; or
 - (c) subject to clause 3.2, suspend the carrying out of the Works,
- under the Construction Contract (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Contractor's intention to Discontinue, specifying the grounds for the discontinuance.
- 3.3 If the Beneficiary gives the Contractor notice requiring it to accept the instructions of the Beneficiary or its appointee under the Construction Contract, to the exclusion of the Employer (**Step-in Notice**), the Contractor:
- (a) shall not Discontinue; and
 - (b) shall comply with the Step-in Notice.
- 3.4 A Step-in Notice may be served, whether or not the Contractor has previously served notice under clause 3.2, but not after the (relevant) notice period under clause 3.2 has expired.
- 3.5 As against the Employer and the Beneficiary, the Contractor shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve the Step-in Notice.
- 3.6 As from the date of service of a Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Construction Contract, provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor or that the Contractor may have against the Employer in respect of any breach of duty of the Contractor under or in connection with the Construction Contract happening before the Step-in Date.
- 3.7 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable to the Contractor under the Construction Contract.
- 3.8 Service of a Step-in Notice does not affect the right of the Contractor to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.
- 3.9 If the employment of the Contractor under the Construction Contract is terminated before service of any relevant Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new construction contract with the Beneficiary or its appointee on the same terms as the Construction Contract but with such factual revisions as the Beneficiary shall reasonably require to reflect altered

circumstances. Upon the execution of such new agreement, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable (excluding cancellation fees) to the Contractor under the Construction Contract.

- 3.10 The Beneficiary shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor (by virtue of this clause 3) from any appointee of the Beneficiary nominated under clause 3.3 or 3.9.
- 3.11 The Employer agrees to the provisions of this clause 3.]

[Version B – applicable where Beneficiary is the Council of the City of Manchester]

- 3.1 [The provisions of this clause 3 only apply in the case of a Beneficiary who is Council of the City of Manchester. The Contractor agrees that where an event has occurred and still subsists which, under the terms of the Lease entitles the Beneficiary to terminate the Lease and to exercise the rights granted to the Beneficiary under this clause 3, the Beneficiary shall be entitled to give the Contractor a notice requiring the Contractor to accept the instructions of the Beneficiary or its appointee under the Construction Contract to the exclusion of the Employer (**Lease Step-in Notice**) in respect of the carrying on and completion of the Development upon the terms and conditions of the Construction Contract and the Contractor shall comply with the Lease Step-in Notice. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Beneficiary under this clause 3.1 as conclusive evidence for the purposes of the occurrence of an event referred to in this paragraph 3.1.
- 3.2 The Contractor shall not:
- (a) terminate its employment;
 - (b) treat its employment as having been terminated; or
 - (c) subject to clause 3.2, suspend the carrying out of the Works,
- under the Construction Contract (**Discontinue**) without giving the Beneficiary not less than 28 days' notice of the Contractor's intention to Discontinue, specifying the grounds for the discontinuance.
- 3.3 If, following receipt of Contractor's notice given in accordance with clause 3.2, the Beneficiary gives the Contractor notice requiring it to accept the instructions of the Beneficiary or its appointee under the Construction Contract, to the exclusion of the Employer (**Step-in Notice**), the Contractor:
- (a) shall not Discontinue; and
 - (b) shall comply with the Step-in Notice.
- 3.4 A Lease Step-in Notice or a Step-in Notice may be served, whether or not the Contractor has previously served notice under clause 0, but not after the (relevant) notice period under clause 0 has expired.
- 3.5 Subject to clause 3.6, if:
- (a) the Contractor enters into a collateral warranty with a Mortgagee, or grants third party rights to a Mortgagee; and
 - (b) that warranty or those third party rights include similar step-in rights to those in this clause 3 (**Mortgagee Step-in Notice**), then:

- (i) in the event that the Mortgagee serves a Mortgagee Step-in Notice and the Beneficiary both serve Step-In Notices, the Mortgagee's Step-In Notice shall prevail; and
- (ii) once the Mortgagee's Step-In Notice has been notified to the Contractor, the Contractor shall no longer be bound by this clause 3 and the Beneficiary may no longer exercise its rights under this clause 3.

- 3.6 In the event that the Mortgagee serves a Mortgagee Step-in Notice in accordance with the rights envisaged by clause 3.5(b) and the Beneficiary serves a Lease Step-in Notice, the Beneficiary's Lease Step-in Notice shall prevail and the Contractor shall not comply with any Mortgagee Step-in Notice.
- 3.7 As against the Employer and the Beneficiary, the Contractor shall be entitled and obliged to rely upon and to comply with any Step-in Notice, and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve the Step-in Notice.
- 3.8 As from the date of service of a Step-in Notice or the Lease Step-in Notice (**Step-in Date**), the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Construction Contract, provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor or that the Contractor may have against the Employer in respect of any breach of duty of the Contractor under or in connection with the Construction Contract happening before the Step-in Date.
- 3.9 Within 21 days after the Step-in Date, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable to the Contractor under the Construction Contract.
- 3.10 Service of a Step-in Notice does not affect the right of the Contractor to Discontinue on account of any breach of duty of the Beneficiary or its appointee after the Step-in Date.
- 3.11 If the employment of the Contractor under the Construction Contract is terminated before service of any relevant Step-in Notice, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new construction contract with the Beneficiary or its appointee on the same terms as the Construction Contract but with such factual revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Upon the execution of such new agreement, the Beneficiary shall pay to the Contractor an amount equal to the sum (if any) due and payable (excluding cancellation fees) to the Contractor under the Construction Contract.
- 3.12 The Beneficiary shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor (by virtue of this clause 3) from any appointee of the Beneficiary nominated under clause 3.3 or 3.9.
- 3.13 The Employer agrees to the provisions of this clause 3.]

4 [Deeds of warranty]

- 4.1 The Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of any party in whose favour a deed of warranty can be required from the Contractor under the terms of the Construction Contract in the terms of this Deed, mutatis mutandis, but excluding the terms of clause 3 ([Substitution provisions) and of this clause 4.

[Clause 4 shall be included in warranties in favour of any Group Company of the Employer and any Mortgagee.]

5 Assignment

- 5.1 The Beneficiary's rights under this Deed may be charged to any person providing finance to the Beneficiary in connection with the Development and/or may be assigned:
- (a) to any person providing finance in connection with the Development and by way of re-assignment on redemption;
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 5.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 5.3 The Contractor is to be notified following any assignment under clause 5.1 and/or 5.2 within 20 days of the legal completion of such assignment, provided always that any failure to comply with the provisions of this clause 5.3 shall not invalidate any assignment.
- 5.4 In this Deed references to the Beneficiary include where the context admits its permitted assignees, (but not so as to permit more than two assignments under clause 5.1(c)).
- 5.5 This clause 5 sets out the only permissible assignments of the benefit of this Deed.

6 Copyright

- 6.1 The Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, designs, charts, calculations, specifications, plans, software and/or other documents or materials in any medium (excluding internal memoranda and documents, working papers and templates) produced by or on behalf of the Contractor for the purposes of the Works and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence and to transfer it to third parties and shall subsist notwithstanding the determination (for any reason) of the Contractor's employment under the Contract but copyright in the Documents shall remain vested in the Contractor.
- 6.2 The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.
- 6.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Contractor with full and proper copies of all the Documents.
- 6.4 The Contractor warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.
- 6.5 Insofar as the Contractor is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Documents and/or of the Works, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of them.
- 6.6 The Contractor shall procure for the Beneficiary a waiver corresponding to that in Clause 6.5 from any sub-contractor employed by the Contractor who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Documents and/or of the Works.