

DATE **24th November** **2020**

- (1) Thame Town Council [The Employer]**
(2) TigerTurf UK Ltd [The Contractor]

JCT Design and Build Contract 2016 Edition
in relation to
the design, supply and installation of
artificial grass pitches
at
Thame Football Partnership

withers ^{LLP}

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Ref: SDE/AHS/JBA

ARTICLES OF AGREEMENT

DATE 24th November 2020

PARTIES

- (1) **Thame Town Council** whose registered office is at Town Hall, High Street, Thame. OX9 3DP (the '**Employer**' which expression shall include successors in title (including a statutory successor in title) and/or permitted assigns); and
- (2) **TigerTurf UK Ltd** a company incorporated in England and Wales with registered number 04024456, whose registered office is at Ikon Trading Estate, Droitwich Road, Kidderminster, DY10 4EU (the '**Contractor**').

RECITALS

Whereas

- First the Employer wishes the Contractor to provide design and construction services in connection with the Manufacture, supply and installation of 1 x 106m x 70m Community 3G AGP Football Pitch to FIFA Quality at Thame Football Partnership (the '**Works**'). The Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the '**Employer's Requirements**');
- Second in response to the Employer's Requirements the Contractor has supplied to the Employer:
- i. documents showing and describing the Contractor's proposals for the design and construction of the Works (the '**Contractor's Proposals**'); and
 - ii. an analysis of the Contract Sum (the '**Contract Sum Analysis**');
- Third the Contractor has examined the Employer's Requirements and, subject to the Conditions, the Contractor confirms:
- i. that the Contractor's Proposals meet with the Employer's Requirements and there is no discrepancy within and/or between the two documents; and
 - ii. that the Contractor shall be fully responsible in all respects for the design of the Works (whether contained in the Employer's Requirements or the Contractor's Proposals) and design development, selection of goods and materials and satisfaction of performance specifications;
- Fourth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
- Fifth the division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars;
- Sixth this Contract is supplemented by the Framework Agreement referred to in Article 11;
- Seventh the Supplemental Provisions identified in the Contract Particulars apply.

ARTICLES

Article 1. Agreement

The Contractor shall design the Works and carry out and complete the Works in accordance with the Contract Documents.

Article 2. Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of Six Hundred and Seventy Nine Thousand, Five Hundred and Eighty Two Pounds and Eighty Seven Pence (£679,582.87) (the '**Contract Sum**') or other such sum as shall become payable under this Contract.

Article 3. Employer's Agent

For the purposes of this Contract, the Employer's Agent is Robinson Low Francis LLP of 1 Newhall Street, Birmingham, B3 3NH or such other person as the Employer shall nominate in his place. Save to the extent that the Employer may otherwise specify by notice to the Contractor, the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices (including pay less notices), requests or statements and otherwise to act for the Employer under any of the Articles and Conditions. Notwithstanding the appointment of the Employer's Agent, the Employer shall retain authority to issue comments, instructions, requests and notices from time to time for the purposes of this Contract.

Article 4. Employer's Requirements and Contractor's Proposals

The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

Article 5. Principal Designer

The Principal Designer for the purposes of the CDM Regulations is Robinson Low Francis LLP of 1 Newhall Street, Birmingham, B3 3NH or, such replacement as the Employer at any time appoints to fulfil that role.

Article 6. Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or, such replacement as the Employer at any time appoints to fulfil that role.

Article 7. Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

Article 8. Arbitration

Arbitration does not apply.

Article 9. Legal proceedings

Subject to Article 7, the English courts shall have exclusive jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract (including non-contractual claims) save for the enforcement of any judgment or award of the English courts in another jurisdiction.

Article 10. Incorporation and amendment of D&B 2016

This Contract shall incorporate all the provisions of the Joint Contracts Tribunal Design and Build Contract 2016 ('**D&B 2016**') except that:

- (a) The Recitals contained in D&B 2016 shall be replaced in their entirety by these Recitals.
- (b) The Articles of Agreement contained in D&B 2016 shall be replaced in their entirety by these Articles of Agreement.
- (c) The Contract Particulars contained in D&B 2016 shall be replaced in their entirety by the Contract Particulars attached to these Articles of Agreement.
- (d) The Conditions and Schedules contained in D&B 2016 shall be amended as provided in Appendix 1 of these Articles of Agreement.
- (e) The Conditions shall be construed as varied accordingly and if there is any discrepancy between the Conditions and the schedule of amendments contained in Appendix 1 of these Articles of Agreement then the wording of the schedule of amendments shall prevail.
- (f) In the event of any conflict, ambiguity, discrepancy or divergence between documents, the order of priority shall be as follows:
 - (i) Appendix 1 of these Articles of Agreement (Schedule of Amendments)
 - (ii) Articles of Agreement
 - (iii) Conditions
 - (iv) Contract Particulars
 - (v) Recitals
 - (vi) Schedules
 - (vii) Employer's Requirements
 - (viii) Contractor's Proposals; and
 - (ix) Contract Sum Analysis

Article 11. Framework Agreement

The Contractor has entered into FAC-1 Framework Alliance Contract (as the '**Alliance Member**') with the Employer (as the ['Client']['Additional Client']) dated 6th April 2020 (the '**Framework Agreement**'). The Contractor has been appointed to carry out the Works following a Competitive Award pursuant to Clause 5.2 of the Framework Agreement. The Contractor acknowledges and confirms that in carrying out the Works pursuant to this Contract it will have all due regard to the principles of conduct governing the Framework Agreement as set out in the 'Background' and Clause 1.1 of the Framework Agreement.

Article 12. Interface Protocol

Where there are two or more contractors on the Site operating concurrently at any given time clause 3.17 and Appendix 6 of this Contract shall apply.

Article 13. Previous Work

Notwithstanding the date of this Contract, any work (including design, enabling, temporary or other preliminary or permanent work), services or activities carried out by or on behalf of the Contractor prior to the date of this Contract in anticipation of the Employer entering into this Contract with the Contractor shall, on the date of this Contract, be considered to have been carried out under this Contract and shall be subject to the terms of this Contract. Any sums paid by the Employer before the date of this Contract shall be considered to have been paid on account of the Contract Sum under this Contract.

Article 14 Incentive Payment

- 14.1 Subject to Article 14.2, the Employer shall be entitled to retain from the Contract Sum a sum equivalent to 3% of such Contract Sum (the '**Incentive Pot**') until such time as the Contractor has achieved all of the Targets applicable to the Works.
- 14.2 If the Contractor fails to achieve any of the applicable Targets before the date which is 3 months after date of practical completion then the Incentive Pot shall be released to the Employer along with any accrued interest.

Contract Particulars

Note: an Asterisk * indicates text that is to be deleted as appropriate.

Clause etc.	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a contractor for the purposes of the CIS
Fifth Recital	Description of Sections (if any) <i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i>	Section Not Applicable Section Not Applicable Section Not Applicable
Sixth Recital	Framework Agreement <i>(State date, title and parties.)</i>	6 th April 2020, Between The Football Foundation, TigerTurf UK Ltd and Thame Town Council
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions - Part 1 <i>(Where neither entry against one of Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provisions <u>does not</u> apply.)</i>	
	Named Sub-Contractors	Supplemental Provision 1 does not apply
	Valuation of Changes – Contractor's estimates	Supplemental Provision 2 applies
	Loss and expense – Contractor's estimates	Supplemental Provision 3 does not apply
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions - Part 2 <i>(Where neither entry against one of Supplemental Provision 4 to 10 below is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	Supplement Provision 4 applies
	Collaborative working	Supplemental Provision 5 applies
	Health and safety	Supplemental Provision 6 applies
	Cost savings and value improvements	Supplemental Provision 7 applies
	Sustainable development and environmental considerations	Supplemental Provision 8 applies

	Performance Indicators and monitoring	Supplemental Provision 9 applies
	Notification and negotiation of disputes	Supplemental Provision 10 applies
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee: Cassie Pinnells Contractor's nominee: Paul Langford or such replacement as each Party may notify to the other from time to time
Article 4	Employer's Requirements <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	See Section 2 Employers Requirements
Article 4	Contractor's Proposals <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	See Section 5 Contractors Proposals
Article 4	Contract Sum Analysis <i>(State reference numbers and dates or other identifiers of the relevant documents.)</i>	See Section 4 Contract Sum Analysis
Article 8	Arbitration <i>(If neither entry is deleted, Article 8 and clauses 9.3 and 9.8 does not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it <u>must</u> be stated that Article 8 and clauses 9.3 to 9.8 apply.)</i>	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply
1.1	Base Date	24 th November 2020
1.1	Date for Completion of the Works <i>(where completion by Sections does not apply)</i>	30 th March 2021
	Sections: Dates for Completion of Sections	Section Not Applicable Section Not Applicable Section Not Applicable
1.7	Addresses for service of notices by the Parties	As stated at the commencement of the Agreement or such other address as may be advised from time to time in advance in writing
2.3	Date of Possession of the site <i>(where possession by Sections does not apply)</i>	24 th November 2020
2.4	Sections: Dates of Possession of Sections	Section Not Applicable Section Not Applicable Section Not Applicable

2.4	Deferment of possession of the site (<i>where possession by Sections does not apply</i>)	Clause 2.4 [applies] Maximum period of deferment (if less than 6 weeks) is 6 weeks
	Sections: deferment of possession of Sections	Clause 2.4 [does not apply] Maximum period of deferment (if less than 6 weeks) is [N/A]
2.17.3	Limit of Contractor's liability for loss of use etc.	£5 million for each and every claim up to an overall limit of £10 million in the aggregate
2.29.2	Liquidated damages (<i>where completion by Sections does not apply</i>)	at the rate of £1,750.00 per week pro-rated
	Sections: rate of liquidated damages for each Section	Section Not Applicable Section Not Applicable Section Not Applicable
2.34	Sections: Section Sums	Section Not Applicable Section Not Applicable Section Not Applicable
2.35	Rectification Period (<i>where completion by Sections does not apply</i>) (<i>If no other period is stated, the period is 6 months.</i>)	Twelve Months From the date of practical completion of the Works
	Sections: Rectification Periods (<i>If no other period is stated, the period is 6 months.</i>)	Section Not Applicable Section Not Applicable Section Not Applicable from the date of practical completion of each Section
2.39	Third Party Agreements	[N/A]
4.6	Advance payment (<i>Not applicable where the Employer is a Local or Public Authority</i>)	Clause 4.6 does not apply If applicable: NOT APPLICABLE the advance payment will be £[] / [] per cent of the Contract Sum and will be paid to the Contractor on []; it will be reimbursed to the Employer in the following amount(s) and at the following time(s): []
4.6	Advance Payment Bond (<i>Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.</i>)	An advance payment bond is not required
4.7.1	Method of payment - alternatives (<i>If no Alternative is selected, Alternative B applies.</i>)	periodically in accordance with Alternative B (clause 4.13)

	Alternative A: Stage Payments	The stages are set out in the following document [N/A]
	Stages (insert brief description)	Cumulative value £ N/A £ N/A £ N/A
4.7.2	Interim Payments – Interim Valuation Dates <i>(The dates apply for Alternative; if no dates is stated, the first Interim Valuation Date is one month after the Date of Possession.)</i>	The first Interim Valuation Date is One month after possession of the site and thereafter the same date in each month or the nearest Business Day in that month
4.15.4	Listed Items - uniquely identified <i>(Delete the entry if no bond is required)</i>	[A bond is not required] [For uniquely identified Listed Items a bond in respect of payment for such items is required for £ [insert]]
4.15.5	Listed Items - not uniquely identified <i>(Delete the entry if clause 4.15.5 does not apply.)</i>	A bond is not required [For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for £ [insert]]
4.17	Contractor's Retention Bond <i>(Not applicable where the Employer is Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)</i>	a bond is not required Clause 4.17 does not apply If clause 4.17 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is £ [insert] For the purposes of clause 6.3 of the bond, the expiry date shall be [insert]
4.18.1	Retention Percentage <i>(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)</i>	3 per cent
5.5	Daywork	The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates, are set out in [identify document]
6.4.1.	Contractor's Public Liability insurance: injury to persons or property - the required level of cover is not less than	£10,000,000.00 for any one occurrence or series of occurrences arising out of one event
6.5.1	Insurance - liability of Employer	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £10,000,000.00

6.7 and Schedule 3	Works insurance - Insurance Options applicable	Schedule 3: <ul style="list-style-type: none"> • Insurance Option A applies/ • Insurance Option B applies/ • Insurance Option C applies
	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15 per cent
	Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is <i>(as supplied by the Contactor)</i>	[insert date]
	Where Insurance Option C applies, paragraph C.1 <i>(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)</i>	[applies/ [is replaced by the provisions of the following document(s)] (the 'C.1 Replacement Schedule')
6.10 and Schedule 3	Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required.)</i>	are set out in the following document(s) [Not Required]
6.15	Professional Indemnity insurance Level of cover	Amount of indemnity required <ul style="list-style-type: none"> • Relates to claim or series of claims arising out of one event]/ • is the aggregate amount for any one period of insurance} <p style="margin-left: 40px;">And is £5,000,000.00</p>
	Cover for pollution and contamination claims. <i>(Unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)</i>	is required, with a sub-limit of indemnity of £5,000,000.00
	Expiry of required period of Professional Indemnity insurance is	12 years
6.17	Joint Fire Code If the Joint Fire Code applies, state whether the insurer Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':	The Joint Fire Code applies No
6.20	Joint Fire Code - amendments/ revisions	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor

7.2	<p>Assignment/grant by Employer of rights under clause 7.2 <i>(If neither entry is deleted, clause 7.2 applies.)</i></p> <p>Sections: rights under clause 7.2 <i>(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)</i></p>	<p>See clause 7</p> <p>See clause 7</p>
7.3.1	<p>Performance bond or guarantee from bank or other approved surety <i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)</i></p> <p>The required form of the bond or guarantee is set out in</p> <p>Initial value</p> <p>Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be <i>(If no entry is selected, the date shall be the date of practical completion of the Works.)</i></p> <p>Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is <i>(If no other percentage is stated, it shall be 50 per cent.)</i></p>	<p>is not required</p> <p>[Appendix 2 of the Schedule of Amendments]</p> <p>[x] per cent of the Contract Sum</p> <p>[the date of practical completion of the Works]/ [2 weeks after the date of expiry of the Rectification Period for the Works]/ [the date for issue of the Notice of Completion of Making Good for the Works]</p> <p>[.....] per cent</p>
7.3.2	<p>Guarantee from the Contractor's parent company</p> <p>Parent company's name and registration number</p> <p>The required form of the guarantee is set out in</p>	<p>is required</p> <p>[To be Agreed]</p> <p>[Appendix 3 of the Schedule of Amendments]</p>

7.4	Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor, sub-contractors and sub-consultants of rights in respect of the Works by third party rights or collateral warranties (' Rights Particulars ') are as follows:	The Contractor shall be required to grant third party rights under Appendix 4 of this Contract to any Stakeholder as the Employer may direct. The Contractor shall be required to procure collateral warranties from any Sub-Contractor in favour of any Beneficiary
8.9.2	Period of suspension	2 months
8.11.1.1 to 8.11.1.6	Period of suspension	2 months
9.2.1	Adjudication Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication).</i>	The Adjudicator is [] The Royal Institution of Chartered Surveyors
9.4.1	Arbitration – appointor of Arbitrator (and of any replacement) <i>(If no appointor is selected, the appointor shall be the President or Vice-President of the Royal Institute of British Architects).</i>	Not applicable

Appendix 1

Schedule of Amendments

Section 1 Definitions and Interpretation

Clause 1.1 Add/Amend the following definitions as indicated below:

Additional Client: as defined in the Framework Agreement.

Agreement: after 'Articles of Agreement' in line 1 insert '(including the Appendices)'

Associated Person: a person (including an employee, agent or subsidiary) who performs services for or on the Contractor's behalf.

Beneficiary: means any Stakeholder and/or Interested Party.

Conditions: after 'these Conditions' insert '(as amended by the Appendix 1 – Schedule of Amendments)'

Consents: the planning permissions referred to in the Employer's Requirements or any other planning permissions relating to the Works, approval of reserved matters and all details pursuant thereto, building regulation approval, fire officer approval and any other permissions, approvals, certificates and licences that may be necessary pursuant to the Statutory Requirements or otherwise to the carrying out of the Works and if they are destroyed or damaged, the reinstatement of the Works.

Contractor's Design Documents: all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Contractor (including by any of the Sub-Contractors) in the course of or as a result of carrying out the Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them, and includes any health & safety related documents prepared by the Contractor whether as the Principal Designer or otherwise.

Deleterious Materials: any products or materials which:

1. do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
2. are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
3. do not comply with the guidance set out in the 'Good Practice in the Selection of Construction Materials 2011' published by the British Council for Offices; and/or
4. are specifically prohibited by this Contract.

Dispute Board: as defined in the Framework Agreement.

Interface Dispute: where the Contractor and an Other Contractor are operating on the Site concurrently at any given time and there arises a circumstance/circumstances where the Contractor and/or the Other Contractor (or any sub-contractors appointed

by either of them) has suffered or claims to have suffered delay, disruption, loss or damage as a direct or indirect result of:

- (i) any breach by the other contractor of its obligations under Appendix 6; or
- (ii) any breach by the other contractor of its like obligations pursuant to its contract with the Employer in respect of the overall project.

Group Company: any subsidiary or holding company of the Employer or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006.

Other Contractor: any other contractor appointed by the Employer from time to time to carry out works in connection with component elements and/or facilities at the Site.

Required Standard: all the reasonable skill, care and diligence to be expected of a properly qualified and competent architect or other professional designer of the relevant discipline experienced in the design of works of a similar size, scope, value, purpose and complexity as the Works.

Site: the site at Thame Football Partnership, Meadow View Park, Tythrop Way, Thame OX9 3RN

Stakeholder: as defined in the Framework Agreement.

Statutory Agreements: an agreement pursuant to section 38 and/or 278 Highways Act 1980 and/or an agreement pursuant to section 104 Water Industry Act 1991 and/or an agreement pursuant to section 106 Town and Country Planning Act 1990 and/or section III Local Government Act 1972.

Statutory Requirements: insert after 'directive' in line 2, 'including any directly applicable EU legislation,'

Sub-Contractors: those sub-contractors/sub-consultants with material design responsibility engaged or to be engaged (including any replacements) in respect of the Works, and reference to a 'Sub-Contractor' means any one of them.

Targets: as defined in the Framework Agreement.

Third Party Agreements: any and all agreements relating to or affecting the Works or the completed Works (including the execution of the Works and their design) or any part of the Works which have been entered into by the Employer and/or any Group Company before the date of this Contract and disclosed to the Contractor on or before the date of this Contract including any agreements referred to as such in the Employer's Requirements and any agreements for lease or such other agreements entered into pursuant to clause 2.39.3.'

Clause 1.4 At the end of clause 1.4.5 delete 'and'.

At the end of clause 1.4.6 delete '.' and insert '; and'

Add a new clause 1.4.7:

'references to 'include(s)', 'in particular' or 'including' shall be deemed to have the words 'without limitation' following them.'

Clause 1.6 Delete clause 1.6 and replace with:

'Other than any rights as take effect pursuant to section 7 of these Conditions, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.'

Clause 1.8 Delete the words in clause 1.8.1.1 and insert: 'Not used'.

Clause 1.9 Delete 'Save as stated in clause 1.8, no' and replace with 'No'.

Clause 1.11 Amend the clause heading to read: 'Applicable Law'

At the end of the clause add:

'and the courts of England shall have exclusive jurisdiction (including in relation to non-contractual claims) save for the enforcement of any judgment or award of the English courts in another jurisdiction.'

Clause 1.12 Insert the following new clause 1.12:

'Liability period

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

Clause 1.13 Insert the following new clause 1.13:

'Entire Agreement

This Contract is the entire agreement between the Parties and supersedes and replaces any previous arrangements, understandings and/or agreements between the Parties in respect of its subject matter. In entering into this Contract, the Contractor confirms it has placed no reliance upon any statement, representation or warranty made or given by the Employer which is not set out in this Contract.'

Clause 1.14 Insert the following new clause 1.14:

'Severability

If any provision of this Contract is held to be invalid, unlawful or unenforceable to any extent such provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.'

Clause 1.15 Insert the following new clause 1.15:

'Waiver

Failure by the Employer to enforce any provision of this Contract shall not be construed as a waiver of any such provision and does not affect the validity of the whole or any part of the this Contract or create any estoppel or in any other way affect the right of the Employer to enforce any provision in accordance with its terms.'

Clause 1.16 Insert the following new clause 1.16:

'Approvals

Notwithstanding any other provision of this Contract, the term 'approval', when used in the context of any approval to be given by the Employer or the Employer's Agent, shall mean 'acceptance of general principles only', and no such approval or any consent given by the Employer or the Employer's Agent nor any inspection of, or failure to inspect, the Works shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract.'

Clause 1.17 Insert the following new clause 1.17:

'All references to arbitration, fluctuations and fluctuation provisions in this Contract (including the relevant definitions in clause 1.1) shall be deemed to be deleted.'

Section 2 Carrying out the Works

Clause 2.1.1 In line 1 after 'workmanlike manner' insert: ', in accordance with good building practice'

In line 3 after: 'for that purpose shall' insert: 'carry out and'

Clause 2.1.2 Delete this clause, and insert 'Not used'.

Clause 2.1.3 Insert at the start of the clause:

'The Contractor shall be responsible for obtaining all statutory consents to enable the Works to be completed in accordance with the Employer's Requirements'

At the end of the clause before '.' insert 'and when requested to do so by the Employer the Contractor shall provide the Employer with evidence that he has complied with all Statutory Requirements and given all notices required by the Statutory Requirements'

Clause 2.1.5 Insert new clause 2.1.5:

2.1.5.1 The Contractor warrants that it has not used and shall not use and has exercised and shall continue to exercise the standard of skill and care required by clause 2.17.1 to ensure that it has not and shall not specify authorise cause or allow to be used in the works any Deleterious Materials.

2.1.5.2 The Contractor will immediately notify the Employer if it becomes aware of any proposed or actual specification and/or use in the Works of any products and/or materials which do not comply with clause 2.1.5.1.'

Clause 2.1.6 Insert new clause 2.1.6:

'Where the Employer's authorisation or completion of documentation in respect of the Statutory Requirements is required the Contractor shall furnish the relevant documentation to the Employer and permit the Employer a period of 10 Business Days to authorise or complete it.'

Clause 2.2.1 Delete clause 2.2.1 and insert:

'All materials, goods and workmanship used in the execution of the Works shall be of such kinds and of such quality as are necessary to enable the Contractor to comply with his obligations under this Contract.'

Clause 2.2.2 Delete clause 2.2.2 and insert:

'The Contractor shall not make any substitution for any materials goods or workmanship specified or described in the Employer's Requirements or (if not specified or described in the Employer's Requirements) as set out in the Contractor's Proposals or in the specifications revised and returned to the Contractor by the Employer in

accordance with the Contractor's Design Submission Procedure set out in Schedule 1 without the prior consent (not to be unreasonably withheld or delayed) in writing of the Employer.'

- Clause 2.3 In line 1 insert 'non-exclusive' before 'possession'.
- Clause 2.6.1 After 'execution of such work' insert:

'and for the avoidance of doubt, the Contractor acknowledges that the management of the carrying out of such work by the Employer or the Employer's Persons has been allowed for in the Contract Sum and the Contractor's programme for completing the Works and shall not constitute a Relevant Event or a Relevant Matter.'
- Clause 2.7.1 Delete clause 2.7.1 and insert:

'The Contract Documents shall be prepared in duplicate and once completed one set shall remain in the custody of the Employer and the other set shall be returned to the Contractor.'
- Clause 2.7.2 In lines 3-4 delete 'one copy, certified on behalf of the Employer, of the Contract Documents, together with'
- Clause 2.7.4 In lines 2-3, delete the words: 'in connection with the maintenance, use, repair, advert, letting or sale of the Works' and insert at the end of the clause: 'for the purposes set out in clause 2.38.2.'
- Clause 2.9 Delete clause 2.9 and insert:

'The Contractor shall be deemed to have satisfied itself as to the extent of the boundaries comprising the site of the Works and notwithstanding any other provision of this Contract no matter arising from the extent of the boundaries of the site of the Works shall give rise to any adjustment of the Contract Sum or any extension of time (whether under clause 2.25 or otherwise) or to any entitlement on the part of the Contractor to loss and expense (whether under clause 4.20 or otherwise) or to any entitlement on the part of the Contractor to determine his employment under this Contract (whether under clauses 8.9 to 8.12 or otherwise).'
- Clause 2.10.1 In lines 2-3 delete the words: 'and such instruction shall be treated as a Change' and insert 'and the Contractor shall comply with such instruction without cost to the Employer'
- Clause 2.11 Delete clause 2.11 and insert:

'The Contractor accepts the responsibility for the Employer's Requirements including any design undertaken by or for the Employer that is contained or referred to in those requirements.'
- Clause 2.12.1 Delete the words in clause 2.12.1 and insert:

'If any inadequacy is found in any design in the Employer's Requirements the Contractor shall immediately notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or (subject to compliance with the Statutory Requirements) shall issue an instruction as to how the inadequacy is to be dealt with. In either case the Contractor shall not be entitled to any adjustment to the Contract Sum nor any extension of time.'
- Clause 2.12.2 Delete the words in this clause and insert: 'Not used'
- Clause 2.13 Delete 'as is referred to in clause 2.12 or any other' and replace with:

'(other than any inadequacy in design)'

Clause 2.14.1 Delete the words in this clause and insert: 'Not used'

Clause 2.14.2 Delete the words in clause 2.14.2 and insert:

'Where there is an inadequacy discrepancy or divergence as referred to in clause 2.13 the Contractor shall immediately notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or (subject to compliance with the Statutory Requirements) shall issue an instruction as to how it is to be dealt with. In either case the Contractor shall not be entitled to any adjustment to the Contract Sum nor any extension of time.'

Clause 2.15.1 In the second sentence delete 'entirely at his own cost' and insert: 'at no additional cost to the Employer' and delete 'and the Employer shall note the amendment on the Contract Documents'

Clause 2.15.2.1 In line 1 after 'Statutory Requirements' add:

'that could not reasonably have been foreseen by a competent contractor at the Base Date'.

Clause 2.15.2.2 In line 3 after 'Base Date' insert: 'that could not reasonably have been foreseen by a competent contractor at the Base Date,' and in line 5 before '.' insert '**provided always** that any amendment to the Contractor's Proposals necessary for conformity with Building Regulations or for conformity with any requirement or decision of a building control officer and/or fire officer shall not be treated as a Change'

Clause 2.17.1 Delete the words in clause 2.17.1 and insert:

'The Contractor warrants and undertakes to the Employer that:

2.17.1.1 he has exercised and will continue to exercise in the design of the Works the Required Standard;

2.17.1.2 he is responsible for the entire design of the Works including any design contained in the Employer's Requirements, all design contained in the Contractor's Proposals and all design which he prepares or has prepared on his behalf by any of his Sub-Contractors;

2.17.1.3 the design of the Works and of each part of the Works will, when completed, comply with any performance-related requirement included or referred to in the Contract Documents;

2.17.1.4 the various elements of the design of the Works will be properly coordinated and integrated, one with another; and

2.17.1.5 the Contractor shall design and construct the Works in compliance with all Consents (including the discharge of any reserved matters in planning consents relating to the Works), Statutory Agreements, Statutory Requirements, relevant codes of practice British Standards or EU equivalents and manufacturers recommendations and the requirements of the insurers of the Employer (insofar as details have been provided to the Contractor at the date of this Contract).

Clause 2.21 In the second sentence delete: 'Interim Payment' and insert: 'Gross Valuation in respect of which the Interim Payment due has been paid or discharged'

- Clause 2.22 In lines 1-2 delete 'Interim Payment' and insert: 'Gross Valuation in respect of which the Interim Payment due has been paid or discharged'
- Clause 2.25.1.2 In line 1 after 'Section' insert: 'has been or'
- Clause 2.25.1.3 At the end of clause 2.25.1.1 delete 'and'. At the end of clause 2.25.1.2 delete the comma and replace with ';'.

Insert the following new clause after 2.25.1.2:

'3 and **provided that** the Contractor has complied with clause 2.25.6;'
- Clause 2.25.6.5 At the end of clause 2.25.6.3 delete 'and'. At the end of clause 2.25.6.4 delete the full stop and replace with ';'.

Insert the following new clauses 2.25.6.5 - 2.25.6.7:

'2.25.6.5 (save in respect of clause 2.26.9 and provided, in that case, that the Contractor has complied fully with any obligation to maintain insurance against Specified Perils under this Contract and complied fully with the terms of any policy in respect of those perils) notwithstanding any other provision of this Contract the Contractor shall not be entitled to an extension of time on account of any circumstance arising by reason of any error, omission, negligence breach of contract breach of statutory duty or default of the Contractor or the Contractor's Persons;

2.25.6.6 in estimating any extension of time, any delay caused by a Relevant Event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account; and

2.25.6.7 the Contractor shall use all reasonable endeavours to mitigate the effects of any delay in the progress of the Works.'
- Clause 2.26 In line 1, first paragraph, before ':' insert '(but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, error, default, breach of contract or breach of statutory duty of the Contractor, or the Contractor's Persons)'
- Clause 2.26.1 Insert at the end of this clause: '(except to the extent that the Contractor has planned, programmed and priced work for the same)'
- Clause 2.26.2.1 Delete the words in clause 2.26.2.1 and insert:

'under clause 2.13 in respect of instructions in regard to any inadequacy, discrepancy or divergence in or between any instruction referred to in clause 2.13.3.'
- Clause 2.26.2.2 After '3.11' insert: '(subject to the terms of clause 3.11)'
- Clause 2.26.2.3 Insert at the end of the clause: 'or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract'
- Clause 2.26.5 At the end of clause 2.26.5 insert: 'or clause 8.10.3'
- Clause 2.26.7 At the end of the clause before the semi-colon insert:

'provided that the Contractor has given reasonable notice to the Statutory Undertaker of the dates on which the work it is to undertake is required to start and be completed'

and has used all reasonable endeavours to secure the agreement of the Statutory Undertaker to such dates'.

- Clause 2.26.8 Delete the words in clause 2.26.8 and insert:
- 'where the Met office records in the area nearest the Site indicate weather conditions that are exceptionally adverse for that time of year;'
- Clause 2.26.11 At the end of the clause before the semi-colon insert:
- 'provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any Sub-Contractor'.
- Clause 2.26.12 In line 2 before ';' insert 'which the Contractor could not have reasonably foreseen at the Base Date'
- Clause 2.29.3 In line 2 after 'pay or repay' insert: 'or allow'
- In line 3 before '.' insert '**provided that** the fixing of such later Completion Date shall not invalidate the Employer's notice as to deduction of liquidated and ascertained damages and the payment or repayment of the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Employer of the later completion date. Interest shall not be payable by the Employer on any amounts payable or repayable under this clause 2.29.3'
- Clause 2.30 In lines 4-5 delete 'The Contractor shall thereupon give to the Employer' and insert: 'The Employer shall thereupon give to the Contractor'
- Clause 2.31 At the end of the clause add:
- 'provided that the Rectification Period for the Relevant Part shall be deemed to be extended and shall run until the issue by the Employer of the Notice of Making Good in respect of the whole of the Works'.
- Clause 2.35A If, within the relevant Rectification Period, the Works or any Section fail any specialist tests undertaken by a specialist testing consultant appointed by the Employer and such failure is due to any failure of the Contractor to comply with his obligations under this Contract, the cost of any necessary specialist re-testing shall be the responsibility of the Contractor.
- Clause 2.38.2 Delete 'Subject to all sums due and payable under this Contract to the Contractor having been paid, the' and insert 'The'.
- After 'irrevocable,' in line 2 insert 'assignable, and perpetual'
- After 'Employer to' in line 6 insert 'grant sub-licences and shall be transferrable and it shall enable the Employer to'.
- Clause 2.38.4 Insert the following new clause:
- 'The Contractor warrants that the use of the Contractor's Design Documents in connection with the Works will not infringe the rights of any third party. The Contractor shall indemnify the Employer against any costs, damages and expense by reason of any such infringement.'
- Clause 2.38.5 Insert the following new clause:

'The Contractor irrevocably waives with immediate effect any rights he may have under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988.'

Clause 2.38.6 Insert the following new clause:

'Without affecting any other obligations of the Contractor in respect of the provision of copies of the Contractor's Design Documents the Contractor shall supply to the Employer within 5 Business Days of its request further copies of the Contractor's Design Documents upon payment of the Contractor's reasonable copying charges.'

Clause 2.39 Add a new clause 2.39 as follows:

'Third Party Agreements

2.39.1 The Contractor is deemed to have read the Third Party Agreements or relevant extracts provided to the Contractor, and is fully aware of the obligations, risks and liabilities assumed by the Employer under them.

2.39.2 The Contractor shall perform and assume, as part of its obligations under this Contract, the Employer's obligations, liabilities and risks contained within the Third Party Agreements that relate to the carrying out of the Works as if they were expressly referred to in this Contract as obligations, liabilities and risks of the Contractor. The Contractor shall further, perform its obligations in accordance with the requirements of this Contract so that no act or omission by the Contractor or any of the Contractor's Persons or any of its sub-contractors and sub-consultants in relation thereto shall (save as expressly instructed by the Employer) constitute, cause or contribute to any breach by the Employer of any of its respective obligations under the Third Party Agreements.'

Clause 2.40 Insert a new clause 2.40 as follows:

'Nuisance

Without prejudice to the generality of clause 6.2 the Contractor shall at all times prevent any public or private nuisance (including any 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 of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clauses 2.35 to 2.36. The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim and/or proceedings whatsoever and howsoever resulting from any such nuisance or interference, save only where such nuisance or interference is the consequence of a Change or instruction of the Employer's Agent (which is not itself in any way consequent upon or necessitated by any negligence, error, omission, default, breach of contract or breach of statutory duty of the Contractor, or the Contractor's Persons) and which could not have been avoided by the Contractor using all reasonable and practical means.'

Clause 2.41 Insert new clause 2.41 as follows:

'In order to avoid or reduce the occurrence of any delay or disruption to the progress of the Works or the design of it, the Contractor shall liaise with the Employer and/or the Employer's Agent throughout the Contractor's performance of its obligations under this Contract and at all times use all reasonable endeavours to give the Employer and/or the Employer's Agent early warning of the anticipated occurrence of Relevant Events

or Relevant Matters which an experienced contractor, acting competently and diligently, could have foreseen.'

Clause 2.42 Insert new clause 2.42 as follows:

'Without prejudice to the Contractor's obligations under clause 2.40 if the carrying out of the Works or of any obligation pursuant to clauses 2.35 to 2.36 is likely to necessitate any interference with the rights of adjoining or neighbouring landowners tenants or occupiers then the Contractor shall notify the Employer that such is the case. The Contractor shall at all times with the prior approval of the Employer, and shall without cost to the Employer obtain the prior written agreement of such landowner tenants and/or occupiers and such agreement shall be subject to the final approval of the Employer before execution. The Contractor shall notify the Employer prior to communicating and/or liaising with neighbouring landowners tenants or occupiers at all times. The Contractor shall comply in every respect with any conditions contained in such agreement.'

Clause 2.43 Insert new clause 2.43 as follows:

Without prejudice to the obligations of the Contractor under clause 2.40 and 2.42, the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over sailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.'

Clause 2.44 Insert new clause 2.44 as follows:

'The Contractor shall not have or make any claim whether in contract or by way of negligent or innocent misrepresentation or otherwise, in respect of information provided or statements made by or on behalf of the Employer in respect of such risks contingencies or circumstances relating to the Site provided that nothing in this clause shall operate to exclude or limit liability for fraud.'

Clause 2.45 Insert new clause 2.45:

'The risk of encountering adverse physical conditions and artificial obstructions during the course of execution of the Works shall be borne by the Contractor and the Contractor shall use his best endeavours to adjust the order and sequence in which he proposes to execute the Works in such a manner as to minimise the effects of delay in, or if possible to avoid altogether any delay in, the progress by the Contractor of the Works. If the Contractor shall have demonstrated to the reasonable satisfaction of the Employer that he has used his best endeavours and delay cannot be avoided by the Contractor the Contractor shall be entitled to make a claim for extension of time under Clause 2.24 but shall not be entitled to claim additional payment or any additional cost incurred.'

Clause 2.46 Insert new clause 2.46:

'Subject to Clause 2.45, 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 or commencing the Works (whichever is the earlier) as to the nature of the ground, the sub-surface conditions and sub-soil, the form and 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 restrictions of access to the Site,

the accommodation he may require, and 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 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 for have affected the execution of the Works.'

Clause 2.47 Insert new clause 2.47:

'Without limitation to Clause 2.46, in the inspection of the Site the Contractor will be deemed to have determined the position of any obstructions and all underground and over-ground services and drainage and the Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any diversions of the underground and over-ground services and/or drainage and the costs of the Contractor's operations in the vicinity of any such services (unless otherwise provided for in the Employer's Requirements). Liaison with and obtaining the agreement of any public or Statutory Authority in this respect is the sole responsibility of the Contractor (unless otherwise provided for in the Employer's Requirements).'

Clause 2.48 Insert new clause 2.48 as follows:

'2.48.1 Without prejudice to the requirements of clauses 2.45 to 2.47 inclusive, the Employer gives no warranty or representation as to:

2.48.1.1 subject always to clause 2.44, the condition of the Site or any adjoining property or any services in or under the Site; or

2.48.1.2 the accuracy or sufficiency of any surveys, tests or investigations and/or any soils or survey data contained in any document made available to the Contractor by the Employer or on the Employer's behalf or any recommendations or conclusions made or reached in any such document.

2.48.2 The Contractor shall ensure that all necessary tests, surveys and investigations are carried out and that the design takes their requirements into account.'

Section 3 Control of the Works

Clause 3.4 In line 2 after 'Design and Build Sub-Contract' insert:

'or such other form of sub-contract approved by the Employer and the Contractor shall provide a copy of that different form of sub-contract to the Employer'.

Clause 3.4.1 In line 1 before 'the sub-contractor's employment' insert: 'subject to clause 8.7.2.3'

Clause 3.4.2.8 Insert new clause 3.4.2.8:

'for provisions which comply with the requirements of clause 8.6.4;'

Clause 3.5 Delete ', save that where an instruction requires a Change of the type referred to in clause 5.1.2 the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Employer'.

Clause 3.6 In line 5 delete 'and an appropriate deduction shall be made from the Contract Sum' and insert: 'which amount may be deducted by him from any sums due or to become

due to the Contractor under this Contract or may be recoverable from the Contractor by the Employer as a debt'

Clause 3.9.1 Delete from ', subject to clause 3.9.4' to the end of the clause.

Clause 3.9.2 Delete the words in this clause and insert: 'Not used'.

Clause 3.13.1 In line 1 after 'removal from the site' insert 'or rectification'

Clause 3.17 Insert new clause 3.17:

'Interface

Where the programme for the Works requires the Contractor and an Other Contractor to be on the site of the Works concurrently at any given time, the Contractor undertakes to the Employer that it shall co-operate and liaise with the Other Contractor in respect of the Works and the project as a whole and the Contractor shall comply with all of its requirements in Appendix 6 of this Contract.'

Section 4 Payment

Clause 4.2.2 In line 3 after 4.13.3 add: 'and any other provision in this Contract which allows for deductions'

Clause 4.2.3 Delete the words in this clause and insert: 'Not used.'

Clause 4.9.1 In line 1 delete '14 days' and insert: '28 days'

Insert at the end of this clause:

'or the receipt by the Employer of a VAT invoice from the Contractor, whichever shall be the later'

Clause 4.9.6 At the end of the clause insert 'The Contractor confirms that the interest paid pursuant to this clause is a substantial remedy for late payment in compliance with section 9 The Late Payment of Commercial Debts (Interest) Act 1998.'

Clause 4.10.4 Delete the words in clause 4.10.4 and substitute the following:

'Any right of the Employer to deduct or set off any amount (whether arising under any provision of this Contract or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies include or consist of any Retention.'

Clause 4.11.1 In line 4 before: 'his obligations' insert: 'any or all of'

Clause 4.11.3 Delete 'or on request' in line 2.

Clause 4.12.1.4 In line 4 before 'and they are not on the Works prematurely' insert ', the Contractor has complied with clause 2.21'

Clause 4.15.2 Delete 'reasonable' in line 1.

Clause 4.15.2.1 Delete 'and'

Clause 4.15.2.2 At the end of the clause add '; and'

Clause 4.15.2.3 Add a new clause 4.15.2.3:

'such Listed Items are complete and ready for incorporation in the Works'.

- Clause 4.16 Delete and replace with:
- 'With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.7.2.1 the Employer shall be:
- 4.16.1 under no fiduciary obligation to the Contractor or any third party;
- 4.16.2 under no obligation to set aside in a separate bank account any amount representing the Retention; and
- 4.16.3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Contractor for any such interest.'
- Clause 4.17.3 In line 2 delete 'and 4.16' and insert ', 4.16 and 4.18'
- In line 3 after 'issued after the date of failure' insert '**provided that** the Retention Percentage shall be calculated in relation to the amount of all the Interim Payments made rather than the total amount included under clause 4.13.1 or 4.14.1 in any Interim Payment'
- Clause 4.18 In line 1 delete 'During' and insert 'Subject to clause 4.17.3 where applicable, during'
- Clause 4.18.2.1 In line 2 before ';' insert 'or for which the drawings and other information referred to in clause 2.37 have not been provided to the Employer'
- Clause 4.18.3 In line 2 after 'practical completion' insert 'and for which the drawings and other information referred to in clause 2.37 have been provided to the Employer'
- Clause 4.19.1 In line 1 delete 'If' and insert: 'Subject to clause 4.19.4 and clause 2.41.2, if'.
- At the end of the last sentence in the clause insert: 'provided that he has made reasonable and proper efforts to avoid or reduce such loss and expense'
- Clause 4.19.3 Insert new clause 4.19.3:
- 'Any direct loss and/or expense resulting from any delay in the regular progress of the Works or any part of the Works where such delay is caused by a matter or matters referred to in clause 4.19 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.'
- Clause 4.19.4 Insert new clause 4.19.4:
- 'Notwithstanding any other provision of this clause 4.19 and clause 4.21, the Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount which is recovered by the Employer under any policy of insurance maintained in accordance with this Contract) in respect of any costs, loss or expense incurred in any way by any negligence, error, omission, default, breach of contract or breach of statutory duty of the Contractor, or the Contractor's Persons or of any of their employees or agents.'
- Clause 4.20.1 Insert at the end of this clause '(except to the extent that the Contractor has planned, programmed and priced work for the same)'
- Clause 4.21.2.2 In line 2 after 'or test' insert 'or series of inspections or tests'
- At the end of clause before ';' insert 'or unless the inspection or test was reasonably required as a result of a previous inspection or test or series thereof'

Clause 4.21.3 Delete the words in this clause and insert: 'Not used'.

Clause 4.21.4 Delete the words in this clause and insert: 'Not used.'

Section 5 Changes

Clause 5.1.2.3 Delete 'or' from the end of the clause

Clause 5.1.2.4 Delete '.' from the end of the clause and insert ';'.

Clause 5.1.2.6 Insert new clause 5.1.2.6:

'without prejudice to the rest of this clause 5.1, an instruction from the Employer pursuant to clause 2.39.3, or'

Clause 5.6 Insert at the end of this clause:

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

Clause 5.8 Insert new clause 5.8:

'The Contractor agrees that the fixed price included in the Contract Sum for preliminaries and for special and general attendances shall not be subject to adjustment (and no claim on account thereof shall be made against the Employer whether under this Contract or otherwise) following an instruction to expend a Provisional Sum, except where the Provisional Sum in question is omitted in whole or in part or there is a material alteration to the overall nature and/or scope of the Works.'

Clause 5.9 Insert new clause 5.9:

'The Contractor shall not be entitled to claim any extra payment from the Employer (including loss and/or expense under clause 4.20) where and to the extent that the circumstances giving rise to a Change or the expenditure of a Provisional Sum shall be on account of any circumstance arising by reason of any error, omission, negligence breach of contract breach of statutory duty or default of the Contractor or the Contractor's Persons.'

Clause 5.10 Insert new clause 5.10:

'Subject to clause 5.8, valuations of additional or substituted work shall not change the amount included in the Contract Sum under the heading Preliminaries unless it can be shown that the change directly affects the assumptions made or which ought reasonably to have been made by the Contractor in preparing his tender.'

Clause 5.11 Insert new clause 5.11:

'The allowance for profit and overheads within the Contract Sum Analysis shall be adjusted pro rata to the value of any additional or substituted work.'

Section 6 Injury to Persons and Property

Clause 6.1 After 'Works' in line 3 insert:

'or any obligation pursuant to clause 2.35 or out of the presence on site of any person or persons for any other reason'

Clause 6.2 After 'Works' in line 4 insert:

'or any obligation pursuant to clause 2.35'

In line 5 delete 'or any Contractor's Person' and insert: 'or out of the presence on site of any person or persons for any reason whatsoever'

- Clause 6.4.1 After 'effect and maintain insurance' insert:
'(with reputable insurers based in the UK and approved by the Employer (such approval not to be unreasonably withheld or delayed) and with the name of the Employer shown as an additional insured)'
- Clause 6.4.1.2 After 'clause 6.4.1' in line 5 insert 'and unlimited for the number of occurrences during the period of insurance.'
- Clause 6.4.4 Insert new clause 6.4.4:
'The Contractor shall not do or permit or suffer to be done upon the Site or any part of the Site any act or thing which may vitiate any policy or policies of insurance effected by the Contractor or (insofar as they have been notified to the Contractor) any policy or policies of insurance effected by the Contractor or (insofar as they have been notified to the Contractor) any policy or policies of insurance effected by the Employer.'
- Clause 6.4.5 Insert new clause 6.4.5:
'The Contractor shall not permit any variation of insurance cover effected pursuant to clause 6.4.1 without the prior written approval of the Employer and shall immediately notify the Employer of any endorsements or other amendments to the relevant policies received from the insurers.'
- Clause 6.7.1 Insert at the end of the clause: 'Option A, B or C whichever is applicable shall not affect the responsibility of the Contractor under this Contract for any loss or damage not covered by any Joint Names Policy.'
- Clause 6.15 Delete clause 6.15 and insert:
- 6.15.1 The Contractor shall effect and maintain professional indemnity insurance in the sum and on the basis set out in the Contract Particulars without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU.
- 6.15.2 The Contractor undertakes to provide to the Employer on demand from time to time such evidence as the Employer may reasonably require to satisfy himself that the insurance required by clause 6.15.1 is being maintained.
- 6.15.3 The Contractor shall inform the Employer if the insurance required by clause 6.15.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Employer the best means of protecting the Contractor and the Employer's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 6.15.4 The Contractor shall not, without first notifying the Employer:
- .1 settle or compromise any claim with the insurer that relates to a claim by the Employer against the Contractor; or
- .2 by any act or omission lose or affect the Contractor's right to make, or

proceed with, that claim against the insurers.

6.15.5 The above obligations shall continue notwithstanding termination of this Contract or determination of the Contractor's employment under this Contract in either case for any reason whatsoever.'

Clause 6.16 Delete the words in this clause and insert: 'Not used.'

Clause 6.16A Insert new clause 6.16A:

Sub-Contractors' professional indemnity insurance

'The Contractor shall procure that the Sub-Contractors shall maintain professional indemnity insurance in accordance with the required form of sub-contractors deeds of collateral warranties approved by the Employer, or at such levels as approved by the Employer in advance. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of the relevant Sub-Contractor), the Contractor shall procure and shall send to the Employer evidence that the relevant Sub-Contractor insurance referred to in this clause is in force, including, if required by the Employer, an original letter from the relevant Sub-Contractor's insurers or brokers confirming:

.1 the Sub-Contractor's then current insurance, as referred to in this clause; and

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

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

Clause 7.1 Delete and replace with:

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

7.1.2 Without prejudice to clause 7.1.1 the Employer may charge or assign by way of security the benefit of this Contract to any Funder (and the Funder may reassign the benefit of this Contract on the redemption of that security).

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

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

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

Clause 7.2 Delete the words in this clause and insert: 'Not used.'

Clause 7.3.3 Delete the words in this clause and insert:

'If the Contractor does not comply with clauses 7.3.1 or 7.3.2, the Employer may deduct **£50,000.00** from the Contract Sum or the sum that would otherwise be due to the Contractor, until the Contractor complies with these clauses.'

Clause 7.4 In line after 'the Contractor' insert: ', sub-consultants,'

Clause 7A Delete the sub-heading and words in this clause and insert:

'Rights for Beneficiaries

- .1 Where the Rights Particulars state that the Contractor shall confer third party rights on a Beneficiary under Appendix 4 of this Contract, those rights shall vest in that Beneficiary on the date of receipt by the Contractor of the Employer's notice to that effect, state the name of the Beneficiary and the nature of his interest in the Works.
- .2 Where third party rights under Appendix 4 of this Contract have vested in a Beneficiary, the Employer and the Contractor shall not be entitled without the consent of the Beneficiary to amend or vary the express provisions of this clause 7A or Appendix 4 but, subject thereto, the rights of the Employer or and/or the Contractor:
 - .1 to terminate the Contractor's employment under this Contract (whether under section 8 or otherwise), or to agree to rescind this Contract;
 - .2 to agree to amend or otherwise vary or to waive any terms of this Contract;
 - .3 to agree to settle any dispute or other matter arising out of or in connection with this Contract, in each case in or on such terms as they shall in their absolute discretion think fit,shall not be subject to the consent of any Beneficiary.

Clause 7E Delete and replace with:

'Collateral Warranties: Sub-Contractors

Where the Rights Particulars requires the Sub-Contractor to provide collateral warranties in favour of the Beneficiaries, the Contractor shall within 21 days from the Employer's request deliver the collateral warranty validly executed by the Sub-Contractor (and where applicable the Contractor) accompanied by a copy of the relevant completed sub-contract. The form of warranty shall be that set out in Appendix 5 of this Contract subject only to any reasonable amendments as the relevant beneficiary may agree.'

Section 8 Termination

Clause 8.4.1.3 After 'remove' in line 2 insert:

'or rectify'

Clause 8.4.1.6 Insert new clause 8.4.1.6:

'fails to provide a performance bond and/or a parent company guarantee as required by clause 7.3'

Clause 8.5.3.3 After 'the Employer may' in line 1 insert:

', at the Contractor's expense'

Clause 8.5.4 Insert new clause 8.5.4:

'Ownership in all existing Contractor's Design Documents and other physical embodiments of designs relating to the Works shall transfer from the Contractor to the Employer immediately prior to the Contractor becoming Insolvent.'

Clause 8.7 Delete at the end of line 1, '8.6' and replace with '8.6A'

Clause 8.7.2 After 'the Contractor shall' in line 1 insert:

'at the Contractor's expense'

Clause 8.7.2.2 After 'prepared' in line 1 insert:

'and all other documents which the Employer considers are necessary to carry out and complete the Works'.

Clause 8.7.4 Insert at the end of the clause '**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 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.'

Clause 8.7.6 Insert new clause 8.7.6:

'Notwithstanding that the validity of any such termination may be disputed by the Contractor the Contractor shall vacate the site and shall immediately deliver possession of the site and the Works to the Employer.'

Clause 8.7.7 Insert new clause 8.7.7:

'The Contractor shall deliver to the Employer copies of the Contractor's Design Documents, plans, drawings, documents, schedules, specifications and the like relating to the Works in its possession and/or control within 7 days.'

Clause 8.9.1.2 Delete the words in this clause and insert: 'Not used.'

Clause 8.10.1 In line 1 after 'notice to the Employer' insert: 'or the Employer may by notice to the Contractor'.

Clause 8.10.3 Insert at the end of the clause: 'and an extension of time for completion shall be given under clause 2.25 equal to the period of suspension.'

Clause 8.13 Insert new clause 8.13:

'Notwithstanding any other provision of this Contract and subject always to clause 14.5 of the Framework Agreement, this Contract terminates upon termination of the Framework Agreement pursuant to clause 14 of the Framework Agreement

Section 9 Settlement of Disputes

Clause 9.1A Insert new clause 9.1A:

.1 As soon as a Party is aware of any dispute or difference in connection with this Contract it shall give notice to the other and convene a meeting at which both Parties shall make constructive proposals in seeking to achieve an agreed solution.

.2 If any dispute or difference is not resolved in accordance with Clause 9.1A.1, then the Parties may refer it to conciliation in accordance with the procedure stated in

the Framework Agreement and Part 1 of Appendix 4 of the Framework Agreement or to a Dispute Board (if appointed pursuant to the Framework Agreement) or to mediation in accordance with Clause 9.1 or to any other dispute resolution as agreed.'

Clause 9.2 Delete and insert:

'If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, such a referral shall be made in accordance with the procedure stated in the Framework Agreement and Part 2 of Appendix 4 of the Framework Agreement.'

Clause 9.3 Delete and insert:

'Any difference or dispute that it not resolved in accordance with Clauses 9.1A, 9.1 or 9.2 may be referred by either Party to the courts stated in the Framework Agreement or, if the Framework Agreement so provides, to one or three arbitrators as stated in the Framework Agreement who in the absence of other agreement shall be appointed by the body stated in the Framework Agreement and who shall conduct such arbitration in the location and in accordance with the rules stated in the Framework Agreement and Part 3 of Appendix 4 of the Framework Agreement.'

Clause 9.4 Delete and insert 'Not used'

Schedule 7 Fluctuations Options

Delete this schedule and insert 'Not used'.

Appendix 2
Performance Bond

Appendix 3
Parent Company Guarantee

Appendix 4 Third Party Rights

1. The Contractor warrants to the Beneficiary that:
 - 1.1 it has performed and complied, and shall continue to comply, with its obligations under the Contract, including its obligations to carry out and fulfil, in all respects, the duties of a designer under the CDM Regulations;
 - 1.2 it has complied with any Act of Parliament, regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has jurisdiction over the Works; and
 - 1.3 it has exercised and shall continue to exercise the standard of skill and care required by Clause 2.17 of the Contract:
 - (a) when performing any design for the Works;
 - (b) when complying with Clause 2.1.5 of the Contract in respect of the specification or use of materials; and
 - (c) shall ensure that the Works comply with all planning agreements, permissions and conditions, where applicable.
2. The Contractor shall have no greater liability (excluding rights of set off and counterclaim) under this schedule than it would have done if, in lieu of this schedule the Beneficiary had been named as employer jointly with the Employer in the Contract. The Contractor shall be entitled to raise the same defences to any claim against the Beneficiary under this schedule, as it would have available under the Contract.
3. The Contractor's duties or liabilities under this schedule shall not be negated or diminished by any approval or inspection of the Site and/or the Works by or on behalf of the Beneficiary.
4. The Contractor grants to the Beneficiary a licence on the same terms as Clause 2.38 of the Contract and the licence granted shall carry the right to grant sub-licences and shall be transferable to third parties provided that the Contractor shall not be liable to the Beneficiary or any sub-licensee or permitted assignee of the Beneficiary for any use of the Contractor's Design Documents for any purpose other than that for which the same were prepared by or for the Contractor.
5. The Contractor shall comply with Clause 6.15 of the Contract, and shall provide the Beneficiary documentary evidence that the professional indemnity insurance is in place, following a request from the Beneficiary (acting reasonably).
6. The Beneficiary may not commence any legal action against the Contractor under this schedule after 12 years from the completion of the Works.
7. The Beneficiary may assign the benefit of this schedule (without the Contractor's consent) on two occasions to any person with an interest in the Site and/or the Works. Further assignments are subject to the Contractor's consent (not to be unreasonably withheld or delayed).
8. Where the Beneficiary is [REDACTED]¹ paragraphs 8.1 to 11 shall apply:
 - 8.1 The Contractor shall not exercise, or seek to exercise, any right to:
 - (a) terminate its employment under the Contract; or

¹ To be confirmed which parties are to have the right to step in

(b) discontinue the performance of the Services;

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 21 days' written notice of its intention to do so and the basis for this. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

8.2 If the Contract allows the Contractor a shorter notice period for the exercise of a right referred to in paragraph 8.1, the notice period in the Contract shall be extended to take account of the notice period required under paragraph 8.1.

8.3 The Contractor's right to terminate its employment under the Contract, or to discontinue performance of the Services, shall cease if, within the period referred to in paragraph 8.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

(a) requiring the Contractor not to terminate its employment or not to discontinue the performance of the Services under this Contract;

(b) acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under this Contract; and

(c) undertaking that the Beneficiary or its nominee will pay to the Contractor:

(i) any sums due and payable to the Contractor under this Contract in future; and

(ii) any sums then due and payable to the Contractor under this Contract that are unpaid.

8.4 If the Beneficiary (or its nominee) serves notice on the Contractor under paragraph 8.3, then, from the date of service of the notice, this Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

8.5 In complying with this paragraph 8, the Contractor:

(a) does not waive any breach of this Contract or default under this Contract by the Employer; and

(b) may exercise its right to terminate its employment under this Contract, or discontinue the performance of the Services, after the expiry of the notice period referred to in paragraph 8.1, unless the Contractor's right to terminate or discontinue has ceased under paragraph 8.3.

9.

9.1 Without affecting paragraph 8.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

(a) confirms that the Beneficiary wishes to step-in to the Contract; and

(b) complies with the requirements under paragraphs 8.3(b) and 8.3(c);

then, from the date of service of the notice, the Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (or its nominee) to the exclusion of the Employer.

9.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give notice under paragraph 9.1. The Contractor shall not enquire whether the Beneficiary is entitled to give that notice.

9.3 In complying with this paragraph 9, the Contractor does not waive any breach of the Contract or default under the Contract by the Employer.

10. The Contractor shall not incur any liability to the Employer by acting in accordance with paragraph 8 or paragraph 9.
11. If a Beneficiary's notice under paragraph 8 or paragraph 9 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.
12. Unless the Beneficiary has stepped-in under paragraph 8 or paragraph 9, the Beneficiary may not give instructions to the Contractor under this Appendix 4.
13. Any notice to be given by the Contractor or the Beneficiary (as applicable) under this schedule shall be deemed to be duly given if it is delivered by hand or sent by recorded delivery to the Beneficiary at its registered office and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is addressed to the managing director/senior partner and delivered by hand at or sent by recorded delivery to the Contractor's place of business, and in the case of any such notices sent by recorded delivery, the same shall be deemed to have been received 48 hours after being posted.
14. This schedule shall be read and construed in accordance with the laws of England. The Contractor and the Beneficiary irrevocably agree that the courts of England shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this schedule or its subject matter or formation (including non-contractual disputes or claims).

Appendix 5
Sub-Contractor Warranty

Appendix 6 Interface Protocol

1.1

- (a) The Contractor performing its obligations pursuant to the Contract and in carrying out the Works:
- (i) acknowledges that the Other Contractor and its sub-contractors will undertake works at the Site during the course of the Works and that in carrying out its works the Contractor shall not hinder the work of the Other Contractor and its sub-contractors, and shall act in good faith towards the same;
 - (ii) acknowledges the role of the Employer's Agent in facilitating the co-operation and integration of the works on Site and in relation to these interface obligations;
 - (iii) shall, in performing its obligations under the Contract, do so in light of this Appendix 6, the Programme, and in such a way as to enable the Other Contractor to comply with its contract in so far as the relevant obligations have been communicated to the Contractor by the Employer's Agent or the Other Contractor, and/or the Contractor is aware of the role, responsibility and obligations of the Other Contractor under its contract from the contractual meetings attended by the Contractor and the Other Contractor or from such other meetings convened pursuant to this Appendix 6;
 - (iv) shall co-operate, liaise and work with the Employer's Agent and the Other Contractor in order to deliver a successful outcome to the project and, so as to achieve this, the Contractor and the Other Contractor shall provide to each other all necessary information and assistance in a timely manner, co-ordinate their activities, construction, traffic management, distribution of men and material and welfare on the Site;
 - (v) shall fully co-operate and liaise directly with the Employer's Agent with the view to averting or minimising disruption to the works and/or any of the services and/or works undertaken or to be undertaken by others for the project;
 - (vi) the Contractor shall provide early warning of any issues to the Employer's Agent, and the Contractor shall provide notice of any potential disruption or delay or any actual delay to the progress of the works that affect the works of the Other Contractor, and shall notify the Employer's Agent immediately;
 - (vii) no matter arising from any of the restrictions/issues and/or obligations as referred to in this Appendix 6 whether arising directly and/or indirectly as a result of any such matter, nor any instructions that the Employer's Agent acting reasonably may issue consequent upon any such matters, shall give rise to: any adjustment of the Contract Sum and/or any entitlement on the part of the Contractor to loss and/or expense; nor any entitlement to an extension of time; the Contractor being deemed to have allowed for and shall allow, for the purposes of the Contract, for all such matters within the Contract Sum and Programme from time to time;
 - (viii) the Contractor agrees to indemnify the Employer against any losses or damages Incurred as a result of breach of this Appendix 6 and/or as a result of any damage caused by it to the works of the Other Contractor. For the avoidance of doubt, such indemnity shall cover any acceleration costs incurred by the Employer in mitigating the effect of any delay to the programme, kept updated by the Employer's Agent from time to time for the project.

1.2 Coordinating the interface

- (a) The Contractor shall agree the following with the Other Contractor and the Employer's Agent:
 - (i) [Weekly minuted coordination meetings;
 - (ii) Sharing of welfare facilities;
 - (iii) Sharing of erected external scaffolding /crane/ hoist during erected period;
 - (iv) Planning of deliveries to site and coordination of vehicle stacking around site locale;
 - (v) Planning of materials storage around site and use of hoist;
 - (vi) Planning of waste removal and skip locations;
 - (vii) Planning of access around site and permitted areas; and
 - (viii) Health and Safety responsibilities on each section and whole site]

1.3 Access

- (a) The Employer's Agent, the Contractor and the Other Contractor (acting reasonably) shall agree an access regime which shall describe the extent and location of and other relevant matters relating to (without limitation) any works, outstanding works to be completed, access, delivery of materials or use (including programme and arrangements for the co-ordination of activities on site of the project) before and/or during work to be undertaken by the Contractor. Such access regime once agreed between the parties (including any revisions to this) is the **'Access Regime'** for the project.
- (b) The Contractor shall:
 - (i) prepare and agree with the Employer's Agent (both acting reasonably) a schedule of condition for the areas to which such access or use will be given to the Employer's Agent and/or the Other Contractor;
 - (ii) ensure that its subcontractors and/or employees comply with the Access Regime, and shall promptly notify the Employer's Agent if at any time it considers that the Other Contractor or anyone else fails to comply with the Access Regime; and
 - (iii) shall not agree or impose an Access Regime without notifying the Employer's Agent which would or is likely to delay or disrupt the carrying out and completion of the Works, or the works of the Other Contractor and/or any other subcontractor of the Employer.

1.4 Dispute resolution

- (a) In the event of an Interface Dispute under this Appendix 6 the Contractor shall use all reasonable endeavours to resolve the dispute through discussions and negotiations with the Other Contractor.
- (b) If the Contractor and the Other Contractor are unable to reach agreement pursuant to paragraph 1.4(a) in relation to an Interface Dispute, the problem solving and dispute resolution provisions of the Contract shall apply.