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**TRADE CONTRACT**

**Incorporating the JCT Construction Management Trade Contract, 2016 Edition**

**relating to [project description]**

Dated: 2022

Between:

1. **[EMPLOYER]**
2. **[TRADE CONTRACTOR]**

**IMPORTANT NOTE: This document is for information only and is made available on the basis that neither Atelier Capital Partners Limited or any affiliated company is responsible for the accuracy of its contents or its fitness for the purpose for which you may wish to use it. Should you wish to use it for a particular transaction we recommend that you seek professional advice from a lawyer.**

**This Deed** is made on 2022

**Between:**

1. **[Insert]** (a company incorporated [insert] with company number [insert]) whose registered office is at [insert] ("**the Employer**"); and
2. **[Insert]** (a company incorporated [insert] with company number [insert]) whose registered office is at [insert] ("**the Trade Contractor**").

**Background:**

* 1. The Employer wishes to procure the design and construction of certain works.
  2. The Trade Contractor has agreed to carry out the obligations as required by this agreement.
  3. The Employer and the Trade Contractor have agreed to incorporate and amend the JCT Construction Management Trade Contract, 2016 edition as set out in this agreement.

**Agreed terms:**

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

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| --- | --- |
| "**JCT Articles**" | means the section of the JCT Construction Management Trade Contract, 2016 edition titled "**Articles**"; |
| "**JCT Attestation**" | means the section of the JCT Construction Management Trade Contract, 2016 edition titled "**Attestation**"; |
| "**JCT Contract Particulars**" | means the section of the JCT Construction Management Trade Contract, 2016 edition titled "**Contract** **Particulars**"; |
| "**JCT Conditions**" | means the section of the JCT Construction Management Trade Contract, 2016 edition titled "**Conditions**"; |
| "**JCT Design and Build  Contract, 2016 edition**" | means the JCT Construction Management Trade Contract, 2016 edition published September 2016 by Thomson Reuters (Professional) UK Limited, trading as Sweet & Maxwell, Friars House, 160 Blackfriars Road, London SE1 8EZ (registered in England and Wales, company number: 1679046, registered office and address for service at 2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG), a specimen of which is attached at Appendix B; |
| "**JCT Recitals**" | means the section of the JCT Construction Management Trade Contract, 2016 edition titled "**Recitals**" |
| "**Schedule of Amendments**" | means the parties, background, agreed terms and Appendix A (and Schedules thereto) which amend the JCT Construction Management Trade Contract, 2016 edition. |

* 1. The definitions in the JCT Construction Management Trade Contract, 2016 edition have the same meaning in this agreement as in the JCT Construction Management Trade Contract, 2016 edition unless the meaning given in the JCT Construction Management Trade Contract, 2016 edition is different to or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.
  2. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
  3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  5. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
  6. References to clauses, schedules and appendices are to the clauses, schedules and appendices of this agreement; references to paragraphs are to paragraphs of the relevant schedule or appendix as the context requires.
  7. Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT Construction Management Trade Contract, 2016 edition, the Schedule of Amendments shall prevail.
  8. Where the words ‘include(s)’, ‘including’ or ‘in particular’ are used in this agreement, they are deemed to have the words ‘without limitation’ following them.

1. Incorporation
   1. This agreement incorporates and amends the JCT Construction Management Trade Contract, 2016 edition as follows:
      1. it incorporates the JCT Recitals, which are deleted and replaced in their entirety by the Recitals contained in the Schedule of Amendments;
      2. it incorporates the JCT Articles, which are deleted and replaced in their entirety by the Articles contained in the Schedule of Amendments;
      3. it incorporates the JCT Contract Particulars, which are deleted and replaced in their entirety by the Contract Particulars contained in the Schedule of Amendments; and
      4. it incorporates the JCT Conditions, as amended by the Schedule of Amendments.
   2. This agreement does not incorporate the JCT Attestation. For the avoidance of doubt, this agreement is executed as a deed below.
2. Governing law
   1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This Deed has been entered into and delivered on the date set out at the head of page 1.

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| **Executed** as a deed | ) |  |
| by **the Employer** | ) |  |
| acting by a director | ) |  |
| in the presence of a witness | ) |  |
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| Director signature: |  |  |
| Director name: |  |  |
|  |  |  |
| Witness signature: |  |  |
| Witness name: |  |  |
| Witness address: |  |  |
|  |  |  |
| Witness occupation: |  |  |

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| --- | --- | --- |
| **Executed** as a deed | ) |  |
| by **the Trade Contractor** | ) |  |
| acting by a director | ) |  |
| in the presence of a witness | ) |  |
|  |  |  |
| Director signature: |  |  |
| Director name: |  |  |
|  |  |  |
| Witness signature: |  |  |
| Witness name: |  |  |
| Witness address: |  |  |
|  |  |  |
| Witness occupation: |  |  |

**Appendix A**

**Recitals**

**Recitals**

**Whereas**

**First** the Employer wishes to have the following work carried out[[[1]](#footnote-1)]:

at

(“the Works”), and has had drawings and bills of quantities or specification or work schedules prepared which show and describe the work to be done;

**Second** the Employer has supplied to the Trade Contractor:

Trade Contract Drawings[[[2]](#footnote-2)]

Specification[3]

Bills of Quantities[3]

Work Schedules[3]

which have for identification been signed or initialed by or on behalf of each Party;

**Third** the Works are to be carried out as part of a Project comprising

being procured under the JCT Construction Management documentation by the Employer and the Construction Manager as his agent.

**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 Trade Contract Particulars;

**Fifth** the Trade Contractor has supplied the Construction Manager with:

the priced document(s) identified in the Trade Contract Particulars (“the Priced Document”)

the priced schedule of activities annexed to this Trade Contract (‘the Activity Schedule’)[[[3]](#footnote-3)]

which have each for identification been signed or initialed by or on behalf of each Party;

**Sixth** the Construction Manager has provide the Trade Contractor with a schedule (‘the Information Release Schedule’) which states the information the Construction Manager will release and the time of that release[[[4]](#footnote-4)];

**Seventh** the division of the work comprising the Project into Sections is shown in the Trade Contract Document or in such other documents as are identified in the Trade Contract Particulars[[[5]](#footnote-5)]

**Eighth** Not Used

**Ninth** whether any of Supplemental Provisions 1 to 6 apply is stated in the Trade Contract Particulars;

*The Tenth to Thirteenth Recitals apply only where there is a Trade Contractor’s Designed Portion*

**Tenth** the Works include the design and construction o[f[[6]](#footnote-6)]

(‘the Trade Contractor’s Designed Portion’);

**Eleventh** the Employer has supplied to the Trade Contractor documents showing and describing or otherwise stating his requirements for the design and construction of the Trade Contractor’s Designed Portion (‘the Employer’s Requirements’);

**Twelfth** in response to the Employer’s Requirements the Trade Contractor has supplied to the Employer:

* documents showing and describing the Trade Contractor’s proposals for the design and construction of the Trade Contractor’s Designed Portion (‘the Trade Contractor’s Proposal’); and
* an analysis of the portion of the Trade Contract Sum or Trade Contract Tender Sum (as the case may be) relating to the Trade Contractor’s Designed Portion (‘the TCDP Analysis’)

**Thirteenth** "The Trade Contractor has examined the Employer’s Requirements and is satisfied:

1. as to the feasibility and practicality of the Employer’s Requirements and has agreed to accept full responsibility for any design contained in them; and

2. that the Trade Contractor’s Proposals and the TCDP Analysis will meet the Employer’s Requirements in respect of the Trade Contractor’s Designed Portion."

**Articles**

**Now it is hereby agreed as follows**

**Article 1: Trade Contractor’s obligations**

The Trade Contractor shall carry out and complete the Works in accordance with this Trade Contract. The Trade Contractor accepts full responsibility for the entire design of the Trade Contractor’s Designed Portion, including any design relating to the same which has already been carried out as at the date of this Trade Contract (whether such design is contained in the Employer’s Requirements or the Trade Contractor’s Proposals and whether the design is or has been carried out by the Trade Contractor or some other person) and the Trade Contractor shall complete the design for the Trade Contractor’s Designed Portion and carry out and complete the construction of the Works in accordance with the Trade Contract Documents. The Trade Contractor shall also be responsible for any works which have been carried out prior to the date of this Trade Contract and which will form part of the Works

**Article 2A: Trade Contract Sum and Final Trade Contract Sum**

The Employer shall pay the Trade Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of[[[7]](#footnote-7)]

(£ ) (‘the Trade Contract Sum’) or such other sum as becomes payable on the Adjustment Basis (‘the Final Trade Contract Sum’)

**Article 2B: Trade Contract Tender Sum and Final Trade Contract Sum**

The Employer shall pay the Trade Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of[9]

(£ ) (‘the Trade Contract Sum’) or such other sum as becomes payable on the Adjustment Basis (‘the Final Trade Contract Sum’)

**Article 3: Construction Manager**

For the purposes of this Trade Contract the Construction Manager is

of

or such other person as the Employer nominates in his place. Save to the extent that the Employer may otherwise specify by notice to the Trade Contractor, the Construction Manager shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions. The Employer reserves the right at any time to appoint any architect, quantity surveyor, engineer or other relevant consultant to assist the Employer and the Trade Contractor shall afford all reasonable assistance to such consultants in the performance of their duties

**Article 4: Principal Designer**

The Principal Designer for the purposes of the CDM Regulations is[[[8]](#footnote-8)]

of

or such replacement as the Employer at any time appoints to fulfill that role.

**Article 5: Principal Contractor**

The Principal Contractor for the purposes of the CDM Regulations is the Construction Manager

(or)[10]

of

or such replacement as the Employer at any time appoints to fulfil that role.

**Article 6: Consultant Team Leader**

The Consultant Team Leader is

of

or, if he ceases to be the Consultant Team Leader, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

**Article 7: Adjudication**

If any dispute or difference arises under this Trade Contract, either Party must refer to adjudication in accordance with clause 9.2[[[9]](#footnote-9)]

**Article 8: Arbitration**

* Not applicable

**Article 9” Legal proceedings[**12**]**

Subject to Article 7 and (where it applies) to Article 8, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Trade Contract.

**Article 10: Amendments**

The parties hereby agree that the amendments, modifications and supplements set out in the Schedule of Amendments attached hereto shall be incorporated into this Trade Contract and the provisions of this Trade Contract shall have effect as modified by such schedules and are to be read and construed accordingly.

**Trade Contract Particulars**

***Note: An asterisk \* indicates text that is to be deleted as appropriate***

**Part 1: General**

|  |  |  |
| --- | --- | --- |
| *Clause etc.* | *Subject* |  |
| Fourth Recital and clause 4.5 | Construction Industry Scheme (CIS) | Employer at the Base Date  \* is a ‘contractor’/is not a ‘contractor’ for the purpose of the CIS |
| Fifth Recital | Priced Document  *(Identify the document(s) that comprise the Priced Document.)* | \* the priced Specification/  \* the priced Work Schedules/  \* the priced Bills of Quantities/  \* a Schedule of Rates/  \* a Schedule of Daywork Rates |
| Seventh Recital | Description of Sections (if any)  *(If not shown or described in the Trade Contract Documents, state the reference numbers and dates or other identifiers of documents in which they are shown.)* |  |
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| Eighth Recital | Framework Agreement (if applicable) *(State date, title and parties.)* |  |
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| Ninth Recital and Schedule 8 | Supplemental Provisions  *(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)* |  |
|  | Collaborative working | Supplemental Provision 1  \* applies/does not apply |
|  | Health and safety | Supplemental Provision 2  \* applies/does not apply |
|  | Cost savings and value improvements | Supplemental Provision 3  \* applies/does not apply |
|  | Sustainable development and environmental considerations | Supplemental Provision 4  \* applies/does not apply |
|  | Performance Indicators and monitoring | Supplemental Provision 5  \* applies/does not apply |
|  | Notification and negotiation of disputes | Supplemental Provision 6  \* applies/does not apply |
|  | Where Supplemental Provision 6 applies, the respective nominees of the Parties are | Employer’s nominee |
|  |
| Trade Contractor’s nominee |
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| or such replacement as each Party may notify to the other from time to time |
| Eleventh Recital | Employer’s Requirements  *(state reference numbers and dates or other identifiers of the relevant documents.)* |  |
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| Twelfth Recital | Trade Contractor’s Proposals  *(State reference numbers and dates or other identifiers of the relevant documents.)* |  |
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| Twelfth Recital | TCDP Analysis  *(State reference numbers and dates or other identifiers of the relevant documents.)* |  |
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| Article 8 | Arbitration  *(if neither entry is deleted, Article 8 and clause 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must**be stated that Article 8 and clauses 9.3 to 9.8 apply.)* | Article 8 and clauses 9.3 to 9.8 (Arbitration)  \* apply/do not apply |
| 1.1 | Base Date |  |
|  | | |
| 1.1 | BIM Protocol (where applicable)  *(State title, edition, date or other identifiers of the relevant documents.)* |  |
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| 1.1 | Employer’s Representative  *(State name and address)* |  |
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| 1.7 | Addresses for service of notices by the Parties  *(If none is stated, the address in each case, subject co clause 1.7.3, shall be that shown at the commencement of the Agreement.)* | Employer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Trade Contractor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| 2.8.1.2 | Master programme | Critical paths  \* are/are not required to be shown |
| 2.12.1 | Bills of quantities – the method of measurement used is  *(Unless otherwise stated in the Trade Contract Documents, the form of the document shall be that published at the Base Date.)* | \* the RICS Measurement Rules/  \* the Standard Method of Measurement for Civil Engineering/  \* |
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| 2.18.3 | Trade Contractor’s Designed Portion: limit of Trade Contractor’s liability for loss of use etc.  (if any) | £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2.32.2 | Maximum liability of Trade Contractor for failure to complete on time  *(If no limit is stated, the Trade Contractor's liability is unlimited.* | £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2.36 | Final Release Date |  |
|  | *(where completion by Sections does not apply) (Where no date or period is stated, the date is 12 months after practical completion of the Works.)* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_ or (if later)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ months after practical completion of the Works |
|  | *(where there are Sections)*  *(Where no period is stated, the date is 12 months after practical completion of the Works in the relevant Section.)* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ months after practical completion of the Works in the relevant Section |
| 3.21.1 | Attendance — attendance items to be supplied  free of charge to the Trade Contractor are  *(List here or on a separate sheet.)* |  |
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| 3.21.2 | Attendance — attendance items to be supplied at the Trade Contractor's cost are  *(List here or on a separate sheet.)* |  |
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| 4.6 | Advance payment  *(Not applicable where the Employer is a Local or Public Authority)* | Clause 4.6  \* applies/does not apply  If applicable:  the advance payment will be  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/  \_\_\_\_\_\_\_\_\_\_\_\_ per cent of the  \* Trade Contract Sum/  \* Trade Contract Tender Sum  and will be paid to the Trade Contractor on  it will be reimbursed to the Employer in the following amount(s) and at the following time(s) |
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| 4.6 | Advance Payment Bond  *(Not applicable where the Employer is a Local or Public Authority)*  *(Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)* | An advance payment bond  \* is/is not required |
| 4.7 | Interim Payments: method of payment - alternatives  *(If no alternative is selected, periodic payments apply.)*  Stage payments | \* Periodic payments/  \* Stage payments  The respective stages and payments are  \* as follows/  \* set out in the following document(s) |
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| 4.7 | Interim Payments — Interim Valuation Dates  *(If no date is stated, the Interim Valuation Date is the last day of each month.)* | The Interim Valuation Date in each month is the  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of the month |
| 4.13 and 4.23 | Fluctuations Provision [19]  *(Unless another option or entry is selected, JCT Fluctuations Option A applies.)*  JCT Fluctuations Option A (paragraph A.12) – percentage addition | \* JCT Fluctuations Option A applies/  \* JCT Fluctuations Option B applies/  \* JCT Fluctuations Option C applies1201/  \* no Fluctuations Provision applies/  \* the following Fluctuations Provision applies |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per cent |
| 4.15.4 | Listed Items — uniquely identified  (Delete the entry if no bond is required.) | \* For uniquely identified Listed Items a bond in respect of payment for such items is required for  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 4.15.5 | Listed Items — not uniquely identified  *(Delete the entry if clause 4.15.5 does not apply.)* | \* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 4.17 | Trade Contractor's Retention Bond  *(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)* | Clause 4.17  \* applies/does not apply  If clause 4.17 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  For the purposes of clause 6.3 of the bond, the expiry date shall be  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_per cent |
| 4.18.1 | Retention Percentage  *(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert Nil' or '0')* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_per cent |
| 5.9.1 and 5.9.2 | 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 the following document |
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| 6.4.1 | Trade Contractor’s Public Liability insurance:  injury to persons or property – the required level of cover is not less than | £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  for any one occurrence or series of occurrences arising out of one event |
| 6.6 and Schedule 3 | Insurance of Existing Structures – paragraph 2 of Schedule 3  *(Unless otherwise stated, paragraph 2 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)* | \* applies/  \* is replaced by the provisions of the following documents(s) |
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| (the ‘Paragraph 2 Replacement Schedule’) |
| 6.9 and Schedule 3 | Terrorism Cover – details of the required cover  *(Unless otherwise stated, Pool Re Cover is required.)* | are set out in the following documents(s) |
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| 6.14 | Trade Contractor's Designed Portion (TCDP) Professional Indemnity insurance  Level of cover  *(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)*  *(If no amount is stated, insurance under clause 6.14 shall not be required.)*  *Cover for pollution and contamination claims (If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)*  Expiry of required period of TCDP Professional Indemnity insurance is  *(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Project.)* | Amount of indemnity required  \* relates to claims or series of claims arising out of one event/  \* is the aggregate amount for any one period of insurance  and is  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \* is required, with a sub-limit of indemnity of  £ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/  \* is not required  \* 6 years/  \* 12 years/  \* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ years  (not exceeding 12 years) |
| 6.16 | Joint Fire Code  If the Joint Fire Code applies, state whether the insurer has specified that the works are a ‘Large Project’: | The Joint Fire Code  \* applies/does not apply  \* Yes/No |
| 6.19 | Joint Fire Code – amendments/ revisions  *(The cost shall be borne by the Employer unless otherwise stated.)* | The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by  \* the Employer/the Trade Contractor |
| 7.2.1 | Performance bond or guarantee from bank or other approved surety  *(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)*  The required form of the bond or guarantee is set out in  Initial value  Period of validity — if not specified in the required form, the expiry date of the performance bond or guarantee is to be  *(If no entry is selected, the date shall be the date of practical completion of the Works.)*  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  *(If no other percentage is stated, it shall be 50 per cent.)* | \* is required/is not required  per cent |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_ per cent of the Trade Contract Sum or Tender Sum |
| \* the date of practical completion of the Works/  \* the later of the Final Release Date or the date for issue of the Certificate of Making Good for the Works or last relevant Section |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per cent |
| 7.2.2 | Guarantee from the Trade Contractor's parent company  Parent company's name and registration number  The required form of the guarantee is set out in | \* is required/is not required |
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| 7.3 | Third Party Rights and Collateral Warranties —  details of the requirements for the grant by the Trade Contractor of P&T Rights and/or Funder Rights in respect of the Works, either as third party rights or by collateral warranties (Trade Contract Rights Particulars') are set out in the following document1243  *(State reference number and date or other identifier of the relevant document.)* |  |
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| 8.9.2 | Period of suspension  *(If none is stated, the period is 2 months.)* |  |
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| 8.11.1.1 to 8.11.1.5 | Period of suspension  *(If none is stated, the period is 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)  *(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.)* | The Adjudicator is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \* Royal Institute of British Architects  \* The Royal Institution of Chartered Surveyors  \* constructionadjudicators.com  \* Chartered Institute of Arbitrators |
| 9.4.1 | Arbitration — appointor of Arbitrator (and of any replacement)  *(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British Architects.)* | President or a Vice-President:  \* Royal Institute of British Architects  \* The Royal Institution of Chartered Surveyors  \* Chartered Institute of Arbitrators |
| Schedule 3, paragraph 1 | Percentage to cover professional fees  *(If no other percentage is stated, it shall be 15 per cent.)* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per cent |
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**Part 2: Programme**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1 | The period required for the preparation of all necessary Trade Contractor's drawings etc. (co-ordination, installation, shop or builders' work or other as appropriate) from receipt of the instruction to proceed with such preparation and from receipt of all other relevant drawings and specifications etc., prior to submission to the Construction Manager for comment is | | | | | | | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |  | | | |
| 2 | The period required for the Construction Manager's initial comments upon the drawings etc. from receipt by the Construction Manager to their return to the Trade Contractor is | | | | | | | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |  | | | |
| 3 | The period required for the procurement of materials, fabrication (where appropriate) and delivery to site prior to commencing \*work on site/work in each Section is | | | | | | | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |  | | | |
| (The periods under items 1 to 3 are consecutive so that the period required from the date of receipt under item 1 to delivery to site under item 3 is the sum of the weeks stated under those items i.e. | | | | | | | | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |  | | | |
| 4 | The period of notice to commence work on site required to enable a start to be made to \*the Works/each Section is | | | | | | | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |  | | | |
| 5 | The period required for the carrying out of the Works on site after delivery (see item 3) and after the expiry of the period of notice to commence work (see item 4) is: | | | | | | | |
|  | where completion by Sections does not apply | | | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ weeks | | | |
|  | (or) | | | |  | | | |
|  | Section | | |  | | Weeks | | |
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| 6 | The earliest starting date and the latest starting date for the Works to be carried out on site are: | | | | | | | |
|  |  | | Earliest | | | | | Latest |
|  | where completion by Sections does not apply |  |  | | | |  |  |
|  | (or) | | | |  | | | |
|  | Section |  | Earliest | | | |  | Latest |
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| 7 | Further details or arrangements that may qualify or clarify the above or are otherwise relevant to the carrying out of the Works including the anticipated start and completion dates for the Project or Sections: | | | | | | | |
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| 8 | The site will be closed on the following dates due to holidays | | | | | | | |
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| 9 | The site will be open for the Trade Contractor to carry out the Works from \_\_\_\_\_\_\_ a.m. to \_\_\_\_\_\_\_ p.m. except on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and except on any dates stated in item 8 | | | | | | | |

**Conditions**

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| **SECTION 1: Definitions and Interpretation** |
| Clause 1.1 |
| In the definition of “Agreement”: |
| **Delete** entire text and **replace** with “the agreement to which the Schedule of Amendments is annexed” |
| In the definition of “Article”: |
| Before the “.” **insert** “, as amended by the Schedule of Amendments” |
| After the definition of “Article” **insert** new definition of “**Authorised Persons**”: |
| “any person authorised by the Employer or the Construction Manager which may, for the avoidance of doubt, include representatives of any Purchaser, Tenant, Other Interested Third Party or Funder and their technical advisers.” |
| After the definition of“Certificate of Making Good” **insert** new definition of “**Codes of Practice**” |
| “means any standard or code of practice or guidance note produced or published by any relevant local, national or international body including but not limited to the Health and Safety Commission any relevant local authority or statutory undertaker.” |
| In the definition of “**Conditions**”: |
| **Insert** at the end of the definition “; each as amended by the Schedule of Amendments” |
| After the definition of “Confirmed Acceptance” **insert** new definition of “**Consents**”: |
| “all permissions, consents, approvals, licences, certificates, orders and permits in valid form as may be necessary to lawfully commence, carry out and complete the Works including (but not limited to):   1. planning permissions; and 2. the consents of all parties having interests or rights in or over the Works who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out or progress of the Works and if they are destroyed or damaged the reinstatement of the Works or their use and employment.” |
|  |
| After the definition of “**Defined Provisional Sum**” ” **insert** new definition of “**Deleterious Materials**”: |
| “materials or equipment that are generally accepted in the construction industry at the time for specification or approval or use (as the case may be) as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or possibly reducing the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British Standard, Code of Practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément or European equivalent and having regard to the guidance ‘*Good Practice in Selection of Construction Materials’* current at the time for specification or approval or use (as the case may be).” |
| In the definition of “**Employer**”: |
| At the end of the sentence **insert** “together with his successors and permitted assigns” |
| After the definition of “Fluctuations Provision” **insert** new definition of “**Force Majeure**”: |
| “means an exceptional event or circumstance:   1. which is beyond the Party's control; and 2. which such Party could not reasonably have provided against before entering into the Trade Contract; and 3. which, having arisen, such Party could not reasonably have avoided or overcome; and 4. and which is not substantially attributable to the other Party.   Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below so long as conditions (a) to (d) above are satisfied:   1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies; 2. rebellion, terrorism, revolution, insurrection, military or usurped power or civil war; 3. riot, commotion, disorder, strike (other than fuel strike or shortage), or lockout by persons other than the Trade Contractor's Persons and other employees of the Trade Contractor and sub-contractors; 4. munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Trade Contractor's use of such munitions, explosives, radiation or radio-activity; and 5. natural catastrophes such as earthquake or volcanic activity.” |
| In the definition of “**Funder**”: |
| **Delete** entire text and **replace with** “any person, firm, company or bank who has provided or is to provide finance in connection with the site or the Works or any part or parts thereof, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.” |
| After the definition of “**Funder**” **insert** new definition of “**Good Building Practice**”: |
| “means all BSI Group and other appropriate standards and codes of practice and proven up-to-date practices that are in force at the date of this Trade Contract, applicable to the UK construction industry and relevant to the Works.” |
| **Delete** the definition of “Funder Rights” in its entirety. |
| After the definition of “Gross Valuation” **insert** new definition of “**Hazardous Substances**”: |
| “any substance (including organisms and whether in solid or liquid form or in the form of gas or vapour and whether alone or in combination with any other substances) which has the potential to cause (a) harm to or other interference with the health of living organisms or the systems of which they form part (b) pollution of controlled waters and/or (c) harm to or other interference with property.” |
| After the definition of “Local or Public Authority” **insert** new definition of “**Materials**”: |
| “means (where relevant) the Trade Contractor’s Design Documents, all drawings, models, plans, details, specifications, photographs, brochures, reports, surveys, notes of meetings, CAD materials, calculations, schedules, programmes, surveys, levels, setting out dimensions, samples, bills of quantities, budgets and any othermaterials (in printed, electronic or any other format whatsoever) prepared or provided or to be prepared or provided by the Trade Contractor or on the Trade Contractor’s behalf in connection with the Works (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).” |
| After the new definition of “Other Interested Third Party” **insert** new definition of “**Outstanding Works List**”: |
| “means an outstanding works list issued in accordance with clause 2.31.3A which shall be attached to the Practical Completion of Works Certificate as the case may be.” |
|  |
| After the definition of “PC Regulations” **insert** new definition of “**Practical Completion**”: |
| **Insert** “means:   1. the whole of the Works (or a section if the sectional completion provisions are applicable) have been completed to the standards specified in the Trade Contract Documents including the aesthetic elements (which expression shall include, the appearance and finish of the Works) of the standards in the specification; and 2. there are no apparent deficiencies or defects in the Works and there are no incomplete works the condition or completion of which would prevent immediate use and occupation; and 3. all inspections have been completed and all defects notified by the Construction Manager removed or remedied; and 4. any tests on Completion have been carried out in accordance with the Trade Contract Documents and such tests have satisfied the requirements of the Trade Contract; and 5. where applicable, the Health and Safety File, all collateral warranties, sub-contracts, test certificates and documents required under this Trade Contractor have all been provided to the Employer and/or Construction Manager.   the site has been substantially cleared of all temporary buildings, builders’ plant and equipment, unused materials and rubbish” |
| After the new definition of “Practical Completion” **insert** new definition of “**Practical Completion of Works Certificate**” |
| “the certificate issued by the Construction Manager pursuant to clause 2.31.” |
| **Delete** the definition of “Purchaser” and replace with: |
| “any person, company, or other entity which has entered into an agreement to purchase or otherwise purchases or acquires an interest in the Works or any part or parts thereof.” |
| After the definition of “Recitals” **insert** new definition of “**Rectification Period**” |
| “means the period between the date of Practical Completion (as set out in the Practical Completion of Works Certificate) and the Final Release Date” |
| After the definition of “RICS Measurement Rules” **insert** new definition of **“Schedule of Amendments”:** |
| “means this Schedule of Amendments which is attached to this Agreement at Appendix A.” |
| After the definition of “Specified Perils” **insert** new definition of “**Standard of Care**”: |
| “all the skill, care and diligence reasonably to be expected of a professionally qualified, experienced and competent contractor and architect (or other appropriate professional designer) experienced in undertaking works and the design of works similar in size, scope, value, character and complexity as the Works.” |
| Delete the definition of “**Tenant**” and **insert**: |
| “any person, company or other entity who has agreed to take a lease or an under-lease of the Works or part or parts thereof and any under-tenant or other person deriving title of the whole or any part or parts of the Works.” |
| In the definition of “**Trade Contractor’s Persons**”: |
| After “employees and agents” insert “(including, for the avoidance of doubt, any supplier and any sub-contractor and sub-sub-contractor(s))” |
| In the definition of **“Works”** |
| After “including” **insert** “all works and services carried out or required to be carried out by the Trade Contractor or any sub-consultant, sub-contractor or supplier of the Trade Contractor prior to the date of execution of this Trade Contract and” |
| **Clause 1.3 – Agreement etc. to be read as a whole** |
| After “as a whole” **insert** “and represent the entire agreement between the Parties (pursuant to clause 1.3A)”  After “Trade Contract Documents or” **insert** “any previous discussions or agreements between the parties or”  **Delete** “Framework Agreement” and **replace** with “framework agreement” |
| **Insert** new clause 1.3A |
| “Nothing contained in any pre-construction services agreement, letter of intent or any other agreement between the Parties in relation to the Works and/or site shall override or modify this Trade Contract and this Trade Contract represents the entire agreement of the parties. To the extent that the Parties have entered into any letter of intent, pre-construction services agreement or any other agreement in relation to the Works and/or the Site, any works and services performed thereunder shall be deemed to have been performed pursuant to and subject to the terms of this Trade Contract and any sums paid pursuant to such agreements are to be treated as having been paid as part of the Final Trade Contract Sum. To the extent that there is any discrepancy between (i) the Trade Contract Documents; and (ii) any purchase order, letter of intent, pre-construction services agreement or any other agreement in relation to the Works and/or Site, the Trade Contract Documents shall prevail.” |
| **Insert** new clause 1.3B with the heading “**Priority of documents**”: |
| “Subject to clause 1.3 where there is a discrepancy, ambiguity or conflict between the Trade Contract Documents, the priority of the documents will be as follows:   1. first: this Schedule of Amendments; 2. second: the Conditions; 3. third: the Employer’s Requirements; 4. fourth: the Trade Contractor’s Proposals; 5. fifth: the TCDP Analysis; and 6. sixth: the BIM Protocol (if applicable).   where there is a discrepancy, ambiguity or conflict between the Schedule of Amendments and the remainder of the Trade Contract Documents, the Schedule of Amendments will take priority.” |
| **Clause 1.4 – Headings, references to persons, legislation etc.** |
| Clause 1.4.4: |
| After “other body corporate;” **insert** “or unincorporated associates (whether or not any of them have a separate legal personality);” |
| Clause 1.4.5: |
| **Delete** “and” at the end of the clause. |
| Clause 1.4.6: |
| **Delete** “.” at the end of the clause and **replace** with “;” |
| **Insert** new clause 1.4.7: |
| “reference to any agreement or document is to that agreement or document as may from time to time be amended or varied in accordance with the terms of such agreement or documents or, as the case may be, the agreement of the Parties; and” |
| **Insert** new clause 1.4.8: |
| “where a Party comprises two or more persons any obligations on the party of that Party contained or implied in this Trade Contract are deemed to be joint and several obligations on the part of those persons and references to that Party include references to each and any of those persons.” |
| **Insert** new clause 1.4.9: |
| “Notwithstanding any other provision of this Trade Contract, the term “approval” when used in the context of any approval to be given by or on behalf of the Employer (and/.or the Construction Manager) shall have the meaning “acceptance of general principles only” and no such approval shall diminish or relieve the Trade Contractor from any of his obligations or liabilities under this Trade Contract.” |
| **Clause 1.6 – Contracts (Rights of Third Parties) Act 1999** |
| **Delete** entire text and **replace** with “A person who is not a party to this Trade Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Trade Contract. This clause does not affect the rights of any third parties which may take effect pursuant to section 7 of the Conditions or any right or remedy of any person which exists or is available otherwise than pursuant to that Act.” |
| **Clause 1.7 – Notices and other communications** |
| Clause 1.7.3: |
| After “served if delivered” **insert** “by email to such email address(s) as set out at clause 1.7 of the Trade Contract Particulars or” |
| Clause 1.7.4: |
| After “shall be delivered” **insert** “by email (if an active email address is provided in the Trade Contract Particulars) or” |
| **Clause 1.8 – Effect of Final Certificate** |
| Clause 1.8.1.1 |
| **Delete** entire text and **insert** “Not used” |
| **Clause 1.9 – Effect of certificates other than payment of Final Certificate** |
| In line 1 **delete** “Save as stated in clause 1.8 no” and **insert** “No” |
| **Insert new clause 1.9A with the heading** **“Effect of payments, statement, accounts and notices”:** |
| “Save as stated in clause 1.8 and notwithstanding any other provision of this Trade Contract, no payment, statement, account or notice, whether expressed to be final or otherwise, shall of itself or at all be conclusive evidence that any design, works, materials or goods to which it relates are in accordance with this Trade Contract, and the obligations of the Trade Contractor under Section 2 shall not be affected by any payment, statement, account or notice.” |
| **Clause 1.10 – Consents and approvals** |
| **Delete** and **replace with:** “Where consent of approval of the Trade Contractor is expressly required under these Conditions and is requested by the Employer and/or by the Construction Manager, such consent or approval shall not be unreasonably delayed or withheld.” |
| **Clause 1.11 – Applicable law** |
| After “law of England” **insert** “and Wales” |
| **Insert new clause 1.12 with the heading “Severance”:** |
| “If any court or competent authority finds that any provision of this Trade Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Trade Contract shall not be affected. Further, if any invalid, unenforceable or illegal provision of this Trade Contract would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties’ original commercial intention.” |
| **Insert new clause 1.13 with the heading** **“Commencement**”: |
| “The Trade Contractor’s obligations under this Trade Contract shall apply from the date the Trade Contractor and/or any Trade Contractor’s Persons first commenced the design (where appropriate) and/or construction of the Works.” |
| **Insert new clause 1.14 with the heading “No limitation of liability**”: |
| “The obligations and liabilities of the Trade Contractor under this Trade Contract shall not be released, diminished or in any way affected by:   1. any enquiry or inspection into any relevant matter which may be made or carried out by the Construction Manager and/or on behalf of the Employer or any Employer’s Persons; 2. any test, review, notice, permission, payment, certificate or other approval made or given by the Construction Manager and/or on behalf of the Employer under the Trade Contract or any failure to make or give the same; 3. save as stated in clause 1.8, the Construction Manager and/or the Employer including the value of any design, work, materials or goods in any certificate or statement or any interim or final payment or issuing a Practical Completion of Works Certificate or Certificate of Making Good; 4. any admission, approval, consent, comment, sanction, acknowledgement, confirmation or advice made or given by or on behalf of the Construction Manager and/or the Employer; or 5. the appointment by the Construction Manager and/or the Employer of, or failure by the Construction Manager and/or the Employer to appoint, any clerk or works to inspect or otherwise report in respect of the Works, or by any act or omission of any clerk of works, whether or not such act or omission might give rise to an independent liability of such clerk of works to the Employer and/or the Construction Manager.” |
| **Insert new clause 1.15 with the heading “Practical Completion”:** |
| “All references in these Conditions to “practical completion” shall be deleted and substituted with ‘Practical Completion’.” |
| **Insert new clause 1.16 with the heading “Non-waiver”** |
| “No failure, delay or omission by either Party in exercising any right, power or remedy provided by law or under this Trade Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Trade Contract shall prevent any future exercise of it or the exercise of any other right, power or remedy.” |
| **SECTION 2: Carrying out the Works** |
| **Trade Contractor’s Obligations** |
| **Clause 2.1 - General obligations** |
| Renumber existing Clause 2.1 as Clause 2.1.1 and: |
| After “complete the Works” **insert** “with due diligence and with due skill and care”  **Delete** “proper” and **replace** with “good”  After “workmanlike manner” **insert** “and in accordance with Good Building Practice using new, good quality and suitable materials”  After “and in compliance with” **insert** “the programme, the Consents,”  After “and Statutory Requirements” **insert** “without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on or affecting the site”  After “by the Statutory Requirements.” **insert** “When requested to do so by the Construction Manager, the Trade Contractor shall provide the Construction Manager with evidence forthwith that he has complied with all such Statutory Requirements and given all such notices.”  At the end of the clause **insert** “The Trade Contractor shall proceed regularly and diligently with the performance of its obligations under the Trade Contract.” |
| **Insert** new clause 2.1.1A: |
| “The Trade Contractor warrants and undertakes to the Employer that the Works or each Section will be designed (where relevant) and constructed so that on and following Practical Completion of the Works or of any Section it will comply with the Statutory Requirements and all specifications or requirements included in the Employer’s Requirements and the Trade Contractor’s Proposals or any change to them and the Works or a Section as the case may be will be consistent with their intended use and without infringement of any rights, reservations, covenants, restrictions, stipulations or any other encumbrances binding on or affecting the site (save as may have been agreed in writing with the Employer and/or the Construction Manager).” |
| **Insert** new clause 2.1.1B: |
| “The Trade Contractor warrants and undertakes to the Employer that, to the extent relevant, any references to the design which the Trade Contractor has prepared or shall prepare or issue for the Works shall include a reference to any design which the Trade Contractor has caused or shall cause to be prepared or issued by others, together with any design included in the Employer’s Requirements.” |
| **Insert new clause 2.1.2 with the heading** “**Hazardous Substances**”: |
| **“**2.1.2.1 Without prejudice to its other obligations pursuant to this Trade Contract, the Trade Contractor shall exercise the Standard of Care (and procure the same for any Trade Contractor’s Persons) so as to minimise the risk of the migration of Hazardous Substances whether onto, off of or within the site and whether before or after Practical Completion of the Works.  2.1.2.2 Without prejudice to the generality of clause 2.1.5.1, the Contractor shall not transport to, use, generate, dispose of or install at the site any Hazardous Substances except in accordance with applicable Statutory Requirements and common law requirements. In performing the Works the Trade Contractor shall (and shall procure the same with the Trade Contractor’s Persons) not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except as may be permitted by applicable Statutory Requirements and common law requirements and the Trade Contractor shall not damage or otherwise compromise any remediation of the site undertaken prior to commencement of the Works. In the event that the Trade Contractor engages in any of the activities prohibited in this clause 2.1.5, the Trade Contractor hereby indemnifies the Employer against any expense, liability, loss, claim or proceedings whatsoever arising out of, incidental to or resulting from any such activities. It is the Trade Contractor’s responsibility to comply with this clause 2.1.5 based on the Statutory Requirements and common law requirements in effect at the time its services are rendered and to comply with any amendments to those Statutory Requirements and common law requirements for all services rendered prior to Practical Completion of the Works but after the effective date of any such amendments.” |
| **Insert new clause 2.1.3 with the heading “Ground conditions, the site and the Works”:** |
| “2.1.3.1 The Trade Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself (and to have included in the Trade Contractor’s Proposals) and have full knowledge of before commencement of the Works and to have made all reasonable allowances for the:   1. site conditions and ground, sub-surface conditions, subsoil and obstructions (whether adverse or not); 2. presence (or absence) of any Hazardous Substances, obstructions and matters (whether natural or artificial), flora and fauna, in, on under or adjacent to the site including the nature and construction of any existing buildings to be demolished or retained; 3. the existence and location of all existing services, utilities and drainage/sewers; 4. form, extent and nature of the site and area surrounding site; 5. means of communication with and restrictions of access to the site (in addition to those set out in the Employer’s Requirements if any); 6. accommodation he may require; 7. extent, nature and difficulty of the Works and materials, plant, labour and equipment necessary for the carrying out and completion of the Works; 8. all items shown upon and reasonably inferred from the Employer’s Requirements and Trade Contractor’s Proposals; and 9. in general to have obtained for himself all necessary information as to conditions, risks, contingencies and all other circumstances influencing or affecting the design and/or construction of the Works and to have satisfied himself as to the suitability or otherwise of the same for the carrying out of the Works.   2.1.3.2 The Trade Contractor shall not be entitled to any extension of time, reimbursement of loss and/or expense or to any additional payment on the grounds of failure to discover or foresee any such items identified in clause 2.1.6.1 whether the same ought reasonably to have been discovered or foreseen or on the grounds of any lack of knowledge, any misunderstanding or misinterpretation of any information provided by the Construction Manager and/or on behalf of the Employer or of the items in clause 2.1.6.1. Nor shall the Trade Contractor be released from any of the risks accepted or obligations undertaken by him arising out of or in connection with the Trade Contract.  2.1.3.3 Any information provided by the Construction Manager and/or on behalf of the Employer in relation to any of the items in clause 2.1.6.1 (including, for the avoidance of doubt, any information in the Employer’s Requirements) is provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness. The Trade Contractor may at his own risk and expense rely upon and use any survey, report or other document prepared by the Construction Manager and/or on behalf of the Employer..” |
| **Insert new clause 2.1.4 with the heading** “**Statutory Undertakers**”: |
| “The Trade Contractor shall, to the extent relevant, notify the Construction Manager of the dates and times when he will require the services on the site of any local authorities and Statutory Undertakers and shall be responsible for the co-ordination and integration of the design and execution of their works with the design and execution of the particular Works.” |
| **Insert new clause 2.1.5 with the heading “Prevention of Nuisance”** |
| “The Trade Contractor shall at all times prevent any trespass, public or private nuisance (including without limitation, any such nuisance causes 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. The Trade Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, save only where such trespass, nuisance or interference is the consequence of a Variation in the Employer’s Requirements or other instruction of the Employer and/or the Construction Manager (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Trade Contractor or any Trade Contractor’s Persons) and has not been avoided despite the Trade Contractor using all reasonable and practical means to avoid the same. The Trade Contractor shall assist the Employer in defending any action or proceedings in relation to any such trespass, nuisance or interference. For the avoidance of doubt, the Employer and/or the Construction Manager may issue to the Trade Contractor such instructions as he considers necessary if any injunction is granted or threatened or a Court order is made in consequence of any such trespass, nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Variation in the Employer’s Requirements.” |
| **Insert new clause 2.1.6 with the heading “Conduct of the Works”** |
| “The Trade Contractor shall procure that during the execution of the Works:  2.1.6.1 the Site is kept reasonably tidy and properly cleared of surplus materials, rubble, rubbish and waste and no goods or materials are deposited on the Site which are not required within a reasonable time for the carrying out of the Works;  2.1.6.2 proper provision is made for the support, protection and use of any land, walls, buildings, roads and footpaths upon, adjacent or near to the Site which might be affected by the Works;  2.1.6.3 all reasonable steps are taken to divert or otherwise protect all services passing through, under or above the Site or adjacent to the Site;  2.1.6.4 all adjoining and nearby roads are kept clean to the reasonable satisfaction of the competent authorities;  2.1.6.5 efficient and well maintained plant and equipment are replaced and defective workmanship remedied;  2.1.6.6 there will be no release or discharge into any environmental medium (namely air, water (including without limitation, ground water, pipes and sewers) and land) any Hazardous Substance that is, or in suchquantities or concentrations a are, capable of causing harm to the health of man or any other living organisms supported by the environment except in accordance with all environmental laws.  Without prejudice to the Employer’s rights and remedies, the Trade Contractor will rectify any failure to comply with the obligations contained in clause 2.1.10 at the Trade Contractor’s cost. |
| **Clause 2.2.1 – Trade Contractor’s Designed Portion** |
| In the first line **delete** the word “complete” and **insert** “carry out and complete and be responsible for.”  **Delete** the word “any” in the second line after the words “selection of” and replace with “and”.  **Delete** the words “so far as not described or stated in the Employer’s Requirements or the Trade Contractor’s Proposals.”  At the end of the clause **insert**: “and in carrying out and completing such design shall exercise (and the Trade Contractor hereby warrants that it has exercised) the Standard of Care. Where any further design work is needed as a result of a Variation being instructed or sanctioned pursuant to Section 3, such design work shall also be carried out and completed to the same Standard of Care, in accordance with the Trade Contract Documents and to the reasonable satisfaction of the Construction Manager.” |
| **Clause 2.3 – Materials, goods and workmanship:** |
| Clause 2.3.1: |
| After “materials and goods” **insert** “and workmanship used in the execution of”  **Delete** “for”  After “so far as procurable, be” **insert** “of new and satisfactory quality and”  After “without the Construction Manager’s consent” **insert** “which shall not be unreasonably delayed or withheld but,”  At the end of the clause **insert** “The Construction Manager may refuse such consent when the substituted materials or goods are of a lesser kind or standard or of a different appearance than the types or standards described in the Employer’s Requirements or the Trade Contractor’s Proposals.” |
| Clause 2.3.2: |
| After “Trade Contractor’s Proposals.” **insert** “Without prejudice to the foregoing, all workmanship shall be of satisfactory quality.” |
| **Insert** new clause 2.3.6: |
| “The Trade Contractor shall not specify or approve for use, use or permit to be used in connection with the Works any products or materials which, at the time of specification or use (as the case may be) are Deleterious Materials. The Trade Contractor shall immediately notify the Construction Manager if he becomes aware of any such use.” |
| **Insert** new clause 2.3.7: |
| “Where the Works include a Trade Contractor’s Design Portion, the following provisions shall apply:  2.3.7.1 exercising the Standard of Care, the Trade Contractor shall only use select and approved materials for use in the Works and shall not use any Deleterious Materials.  2.3.7.2 The Trade Contractor warrants and undertakes to the Employer that the Trade Contractor:  1. has not used or specified or approved and will not use or specify or approve for use; and  2. has exercised and will exercise the Standard of Care to see that there are not used; and  3. is not aware and has no reason in suspect or believe, that there have been or will be used in connection with the Works  any materials or processes which are not in accordance with British Standards and Codes of Practice or which a competent design and build contractor experienced in carrying out projects of the size, scope, nature, complexity and value of the Works, and exercising the Standard of Care, ought to know are deleterious to health and safety or to the durability of the Works in the particular circumstances in which they are used.  The Trade Contractor will promptly notify the Construction Manager in writing if it becomes aware or has reason to suspect that any of such materials or processes have been or will be used, specified or approved.” |
| **Commencement, Progress and Occupation** |
| **Supply of Documents, Setting Out etc.** |
| **Clause 2.7 – Trade Contract Documents** |
| **Insert** new clause 2.7.6 |
| “If the employment of the Trade Contractor under this Trade Contract is terminated for any reason, the Trade Contractor will forthwith deliver to the Employer and/or the Construction Manager (as may be required) two copies of the Trade Contractor’s Design Documents.” |
| Clause 2.8.1.2 |
| After “the Trade Contractor shall” **insert** “at least 10 Business Days before commencement of the Works and”  **Insert** at the end of clause 2.8.1.2 “Without prejudice to clause 2.8.2, the Trade Contractor shall thereafter revise the master programme as appropriate from time to time, if and whenever there is any material delay to the execution of the Works so as to minimise or avoid any anticipated delay or disruption to the carrying out of the Works. The Trade Contractor shall provide the Construction Manager with a copy of any revised programme within 3 Business Days of such revision.” |
| **Insert** new clause 2.8.1.3 |
| “At the end of each month, the Trade Contractor shall report to the Construction Manager in writing comparing the progress of the Works with the programme current at that time, and promptly advise the Construction Manager of any delay or disruption to the Works, setting out the measures he is taking or proposes to take to minimise or make good such delay or disruption.” |
| **Errors, Discrepancies and Divergences** |
| Clause 2.12.2 |
| **Delete** entire text and **insert** “Not used.” |
| Clause 2.13.2 |
| **Delete** entire text and **insert** “If either Party finds an inadequacy in the design of the Works as set out in the Trade Contract Documents (other than an inadequacy in the Employer’s Requirements which is corrected by the Trade Contractor’s Proposals), it shall notify the other party of the inadequacy or defect and the Trade Contractor shall inform the Employer and the Construction Manager in writing of this proposals for dealing with the inadequacy or defect and, with the Employer’s consent (which shall not be unreasonably withheld or delayed), the Trade Contractor shall remove the defect in accordance with his proposals and at his own cost.” |
| Clause 2.13.3 |
| **Delete** entire text and **insert** “Not used.” |
| Clause 2.14.4 |
| After “the TCPD Documents” **insert** “including any Variation issued in accordance with clause 3.8)  In line 8 after “who” **insert** “subject to clause 2.15” |
| **Clause 2.15 – Discrepancies in TCDP-related documents** |
| Clause 2.15.1 |
| **Delete** entire text and **insert** “The Trade Contractor shall be fully responsible for any mistake or inaccuracy in the design of the Works and for any discrepancy in or divergence between the Employer’s Requirements and/or the Trade Contractor’s Proposals and/or any drawings or documents issued by him under clause 2.7.” |
| Clause 2.15.2 |
| **Delete** existing clause and **insert** “  Where there is a discrepancy, divergence, mistake, inadequacy or omission within the Trade Contract Documents and/or the Materials (including any non-compliance with the Statutory Requirements), the Trade Contractor shall immediately notify the Construction Manager (with appropriate details) of such discrepancy, divergence, mistake, inadequacy or omission and of its proposed amendments to correct or remove it (as the case may be). The Construction Manager shall decide between the items and issue instructions in that regard or otherwise may accept the Trade Contractor’s proposed amendments or decide how the discrepancy, mistake, inadequacy, omission or divergence shall be dealt with.  The Trade Contractor shall be obliged to comply with the decision or acceptance or instructions by the Construction Manager without any adjustment to the Final Trade Contract Sum or extension of time for completion and without entitlement to loss/expense (for the avoidance of doubt, this includes where any Variation is caused by the progress of the Works having been delayed, affected or suspended by any such discrepancy, divergence, mistake, inadequacy or omission).  The Trade Contractor shall not be entitled to an extension of time under clauses 2.27 nor to recover direct loss and/or expense under clause 4.19 or 4.20 where and to the extent that the cause of the Works having been delayed, affected or suspended is any mistake, inaccuracy, discrepancy or divergence as referred to in clause 2.15.1 or any failure by the Trade Contractor to submit any Trade Contractor’s Design Documents in accordance with clause 2.7.” |
| **Clause 2.16 – Divergences from Statutory Requirements** |
| Clause 2.16.2.1: |
| After “change in Statutory Requirements” **insert**  “affecting the Works (and/or the Trade Contractor’s Proposals and/or the Employer’s Requirements), that was not foreseen by the Trade Contractor at the Base Date and could not reasonably have been foreseen by a competent trade contractor at the Base Date”  At the end of the sentence **insert** “If the change in the Statutory Requirements could reasonably have been foreseen the alteration or modifications shall not be a Variation and shall be complied with by the Trade Contractor entirely at its own cost and the Trade Contractor shall not be entitled to any extension of time for any delay he suffers or loss and expense as a result of complying with such alteration or modification.” |
| Clause 2.16.2.2 |
| In line 2 of existing clause 2.16.2.2 **delete** “they shall be treated as a Variation” and replace with “the Trade Contractor shall entirely at his own cost complete the Works in accordance with any amendments thereto” |
| **Insert** new clause 2.16.2.3 |
| “If at any time during the execution of the Works there is a change in the Statutory Requirements affecting the Works which necessitates an alteration or modification to the Works, such alteration or modification shall not be treated as if it were a variation and shall be complied with by the Trade Contractor entirely at his own cost. For the avoidance of doubt, the Trade Contractor shall not be entitled to any extension of time for any delay he suffers as a result of complying with any new instructions of the Employer issued in consequence of such a change in the Statutory Requirements which necessitates an alteration or modification to the Works.” |
| Clause 2.16.3 |
| **Delete** existing clause and **insert**: “If at any time during the execution of the Works any amendments to the Trade Contractor’s Proposals become necessary to conform with the terms of any Consents, such amendment shall not be treated as if it were a Variation and shall be complied with by the Trade Contractor entirely at his own cost. For the avoidance of doubt, the Trade Contractor shall not be entitled to any extension of time for any delay he suffers as a result of complying with any new instructions of the Construction Manager issued in consequence thereof.” |
| **Clause 2.18 – TCDP Design Works – liabilities and limitation** |
| **Delete** entire clause 2.18 and **insert** “Without prejudice to any warranties implied by common law or statute, with respect to the design of the whole of the Works (including any further design required to be carried out by the Trade Contractor as the result of a Variation) the Trade Contractor warrants and undertakes to the Employer that:  2.18.1 without derogating from any other provision in this Trade Contract, the Trade Contractor shall be fully responsible in all respects for the entire design of the Trade Contractor’s Design Portion including all design contained in the Trade Contractor’s Proposals and/or all relevant design work from part of the Trade Contractor’s Design Portion proposed by or on behalf of the Employer on or before the date of this Trade Contract forming part of the Employer’s Requirements;  2.18.2 without derogating from any other provision in this Trade Contract, the Trade Contractor warrants to the Employer that it has exercised and will continue to exercise the Standard of Care when designing the Trade Contractor’s Design Portion and selecting goods, materials, plant and equipment for incorporation in the Works;  2.18.3 the various elements of the design of the Trade Contractor’s Design Portion shall be properly co-ordinated one with another and with the Works;  2.18.4 the design of the Trade Contractor’s Design Portion and of each part of the Trade Contractor’s Design Portion will, when completed, comply with any performance-related requirement included or referred to in the Trade Contract Documents;  2.18.5 such design of the Trade Contractor’s Design Portion and the Works shall, when completed, comply with the Employer’s Requirements and the Statutory Requirements and shall satisfy any performance specification or requirement included or referred to in the Employer’s Requirements and/or the Trade Contract Documents (as appropriate);  2.18.6 in the design of the Trade Contractor’s Design Portion and construction of the Works, he shall take all proper account of the geological and geotechnical conditions affecting the site;  2.18.7 he shall not recommend or select for use in or incorporate into the Trade Contractor’s Design Portion any Deleterious Materials or any building practices, techniques which are stated in the Employer’s Requirements to be prohibited or which are generally known at the time of specification to be deleterious or hazardous to health and safety or durability of the completed Works in the particular circumstances in which they are to be used and having regard to the guidance *‘Good Practice in Selection of Construction Materials’* current at the date of specification or approval or use (as the case may be) or are otherwise not in accordance with British Standards, Codes of Practice or good building practice or techniques; and  2.18.8 he shall execute the design of the Trade Contractor’s Design Portion and construction of the Works in accordance with Good Building Practice.” |
| **Clause 2.18A – Site Conditions** |
| **Insert new clause 2.18A.1** |
| “Without prejudice to clause 2.1.6 the Trade Contractor shall be deemed to have inspected and examined the site, its surroundings and all existing structures thereon and generally to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the carrying out of the Works and/or the Trade Contract Sum in relation thereto. The Trade Contractor shall not have or make any claim, whether in contract or by way of negligence or innocent misrepresentation or otherwise, in respect of information provided or statements made by or on behalf of the Employer and/or the Construction Manager in respect of such risks, contingencies or other circumstances relating thereto.” |
| **Insert new clause 2.18A.2** |
| “Without prejudice to the generality of the obligations under clause 2.18A.1 and clause 2.1.6:   1. Where the Employer’s Requirements contain any ground report or reports, these are included for information purposes only and the Employer shall have no responsibility for and give no warranty as to the accuracy of information contained within such report or reports and the Trade Contractor shall remain fully responsible for ascertaining the ground conditions the information contained within such report or reports does not remove the responsibility of the ground conditions and to design the Works accordingly and the Trade Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any ground works or related works; 2. the Trade Contractor will be deemed to have determined the position of all underground and over-ground services and drainage and the Trade Contract Sum shall be deemed to be inclusive of all costs which may be incurred in carrying out any ground works or related works;   Neither works nor facilities required as shown or described in or reasonably implied from the Employer’s Requirements nor any site conditions or adverse physical conditions as referred to above shall give rise to a Variation in the Employer’s Requirements or to any entitlement to an extension of time or any addition to the Trade Contract Sum. |
| **Unfixed Materials and Goods – property, risk etc.** |
| **Clause 2.24 – Materials and goods – off site** |
| **Insert** new clause 2.24A: |
| “The Trade Contractor shall ensure that the Listed Items are either set apart or have been clearly and visibly marked individually or inset by letters or figures or by reference to a pre-determined code at the premises where they have been manufactured or assembled or stored. The Trade Contractor shall ensure that the Listed Items are identified as being the property of the Employer.” |
| **Clause 2.28 – Relevant Events** |
| After “referred to in clauses 2.26 and 2.27” **insert** “(but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Trade Contractor or any of the Trade Contractor’s Persons)” |
| Clause 2.28.2.1: |
| In line 1 **delete** “2.14” |
| Clause 2.28.2.2: |
| After “of any work, materials or goods” **insert** “(including making good)”  **Delete** “or 3.16.4 (including making good)”  After “accordance with this Trade Contract” in line 3 **insert** “or (in the case of instructions relating to clause 3.16.4 and whatever the results of the opening up for inspection or tests) unless the instructions were reasonable in all the circumstances (having due regard to the Code of Practice referred to in clause 3.16.4) or” |
| Clause 2.28.6: |
| At the end of the clause **insert** “or, in the case of an impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer and/or the Construction Manager under this Trade Contract” |
| Clause 2.28.8: |
| **Delete** entire text and **insert** “Not used”. |
| Clause 2.28.11: |
| At the end of the clause **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, has not been caused by the Trade Contractor and is not restricted to the employees of the Trade Contractor or any sub-contractor and does not arise out of or in connection with fuel shortage” |
| Clause 2.28.12: |
| At the end of the clause **insert** “by restricting the availability or use of labour which is essential to the proper carrying out of the Works or preventing the Trade Contractor from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works, provided that such exercise could not have been foreseen by a competent trade contractor at the Base Date” |
| Clause 2.28.13: |
| **Delete** entire text and **insert** “Force Majeure;” |
| **Practical Completion, Lateness and Damages** |
| **Clause 2.31 – Practical Completion and certificates** |
| Clause 2.31.2 |
| **Delete** entire text and **insert** “The Trade Contractor shall give the Employer and the Construction Manager not less than 14 days’ notice of the date upon which the Trade Contractor considers that the Works or a Section shall reach Practical Completion and a date or dates when the Works or such Section are to be inspected. The Employer shall be entitled (but not obliged) to inspect the Works or Section as the case may be and the Authorised Persons shall be entitled to attend any inspection of the Works or Section on the date or dates stated in such notice and, if requested, the Trade Contractor shall accompany the Employer and any Authorised Persons upon any inspections.” |
| **Insert** new clause 2.31.2A |
| **Insert** “Within 7 days of any inspection made pursuant to clause 2.31.2, the Construction Manager shall (acting reasonably) provide particulars in writing to the Trade Contractor of any items of work which, in his opinion, need to be completed before the Works or Section can be considered to have reached Practical Completion and the Trade Contractor shall forthwith attend to any such items of work as shall have been fairly and reasonably mentioned by the Construction Manager and, if necessary, give the Employer and the Construction Manager a further notice, in accordance with clause 2.31.2, so that the procedures set out in clause 2.31.2 and this clause are repeated as often as may be necessary. If the Trade Contractor fails to remedy any defect, shrinkage or other fault or complete any outstanding item of work which is the subject of an instruction issued in accordance with this clause, the Employer shall be entitled to employ or pay others to remedy the outstanding items and the reasonable and proper costs thereof shall be payable by the Trade Contractor to the Employer as a debt.” |
| **Insert** new clause 2.31.2B |
| **Insert** “Where the Employer decides that insignificant defects or omissions which are apparent at Practical Completion may be made good after Practical Completion, the Employer shall be entitled to issue instructions to the Trade Contractor for the purposes of making good such defects or omissions and the Trade Contractor shall comply with any such instructions within a reasonable time after receipt of the same, but in any event within 10 Business Days of the date of Practical Completion; if the Employer decides that any defects or omissions which are apparent at Practical Completion are not to be made good an appropriate deduction in respect thereof shall be made from the Trade Contract Sum.” |
| **Insert** new clause 2.31.3A: |
| “Without prejudice to clause 2.31.2B, upon the issue of the Practical Completion of Works Certificate (of the whole of the Works or a Section as the case may be), the Construction Manager may issue a Outstanding Works List setting out minor defects and/or minor items or work and/or final commissioning and adjustment remains to be completed, which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the completed Works and which the Employer has agreed may be completed after Practical Completion has occurred (but, for the avoidance of doubt, this provision does not require the Employer to so agree). The items in the Outstanding Works List shall be completed within any applicable timescales detailed in the Trade Contract Documents or as confirmed by the Employer and/or the Construction Manager in writing or in any event, as soon as reasonably practicable following issue of the Practical Completion of Works Certificate (of the whole of the Works or a Section as the case may be unless items on the Outstanding Works List are likely to cause unreasonable inconvenience to the Employer or to any person who shall be in lawful occupation of or using the whole or any part of the Works or any Section or that such items are or item is likely, directly or indirectly, to cause any damage or further damage to the Works whereupon the Trade Contractor shall complete the items in the Outstanding Works List (or such items that are deemed by the Employer as likely to cause such inconvenience and/or damage as above) within 48 hours of receipt of the Outstanding Works List.” |
| **Insert** new clause 2.31.3B: |
| “All items specified on the Outstanding Works List pursuant to clause 2.27.3A shall be deemed to be defects appearing during the relevant Rectification Period save that, for the avoidance of doubt, the Employer shall retain the right to make an appropriate deduction from any payment due or to become due to the Trade Contractor on or after Practical Completion to reflect that the items on the Outstanding Works List have not been completed.” |
| **Defects** |
| **Clause 2.36 – Schedule of defects and instructions** |
| Clause 2.36.1.1: |
| At the end of the clause **insert** “. The Construction Manager shall be entitled to review the schedule of defects for the Works or any part at any time and deliver to the Trade Contractor as an instruction of the Construction Manager a revised schedule of defects for the Works or any part of it, the final such revised schedule of defects to be delivered not later than 14 days after the Final Release Date; and” |
| Clause 2.36.1.2: |
| **Delete** “, provided no instructions under this clause 2.36.1.2shall be issued after delivery of that schedule or more than 14 days after the Final Release Date” |
| Clause 2.36.2  After “Within” in line 1 **insert** “any time-period notified to the Trade Contractor by the Employer or the Construction Manager (as the case may be) or in the event that no specific time-period is notified, within”  After “reasonable time” **insert** “(in any event no later than 5 working days from receipt of such schedule or instructions)  **Delete** “If he does so otherwise instruct….not made good” and **replace** with “If the Trade Contractor fails to remedy any defect, shrinkage or other fault or complete any outstanding item of work within any such applicable time-period, the Employer shall be entitled to employ or pay others to remedy the outstanding items and the reasonable and proper costs thereof shall be payable by the Trade Contractor to the Employer as a debt.” |
| **Insert** new clause 2.36A: |
| “The Trade Contractor shall forthwith and at no cost to the Employer make good any loss or damage caused in complying with its obligations under this clause 2.36. Such making good shall be carried out in accordance with this Trade Contract and to the reasonable satisfaction of the Construction Manager.” |
| **Insert** new clause 2.36B**:** |
| “Without prejudice to the Trade Contractor’s obligations pursuant to clause 2.36, if the Trade Contractor fails to make good such defects, shrinkages or other faults in accordance with clause 2.36 (including in accordance with the relevant timescales), the Employer shall be entitled to employ others to carry out the remedial or other works and all costs and losses incurred in connection with such employment and the failure of the Trade Contractor may be deducted by him from any monies due or to become due to the Trade Contractor under this Trade Contract or any other contract or may be recovered from the Trade Contractor by the Employer as a debt.” |
| **Insert** new clause 2.36C: |
| “The foregoing provisions of this clause 2.36 apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at Practical Completion and/or contained in any Outstanding Works List.” |
| **Insert** new clause 2.36D: |
| “The Trade Contractor shall give the Construction Manager not less than 7 Business Days’ notice of the date upon which the Trade Contractor considers that all defects, shrinkages or other faults have been made good and a date or dates then the Works shall be inspected (such notice shall include copies of any paperwork and other information (if any) relevant to the inspection in question). The provisions of clause 2.31 shall apply in respect of such inspection and the parties which may attend and subsequently make representations.” |
| **Clause 2.38 –Certificate of Making Good** |
| After “or a Section which under clause 2.36” **insert** “and any loss or damage caused by the Trade Contractor complying with clause 2.36”  At the end of the clause **insert** “provided that the Construction Manager shall not be required to issue any notice to that effect any earlier than 14 days after the Final Release Date” |
| **Clause 2.39 – As-built Drawings** |
| **Insert** new clause 2.39A |
| **Insert** “Notwithstanding any provision to the contrary in this Trade Contract, the Trade Contractor shall not be entitled to any payment of the Retention that would (but for this provision) become due and payable under this Trade Contract until the provisions of this clause 2.39 have been complied with.” |
| **Insert** new clause 2.39B |
| “If, during the course of the Rectification Period errors are discovered in the documents, drawings and information supplied by the Trade-Contractor in accordance with clause 2.39 or, if as a result of any revision or remedial work carried out during the course of the Rectification Period, the said documents, drawings and information no longer show or describe the Works as required by clause 2.39, then the Trade Contractor shall, as soon as reasonably practicable, amend the said documents, drawings and information so that they comply with the requirements of clause 2.39.” |
| **Clause 2.40 – Copyright and use** |
| **Delete** entire text and **insert**  “2.40.1 Copyright in the Materials shall unless otherwise agreed remain vested in the Trade Contractor.  2.40.2 The Trade Contractor grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy and use the Materials and reproduce the designs contained in them for any purpose relating to the Project including, without limitation, the construction, completion, extension, mortgaging, maintenance, letting, promotion, advertisement, operation, reinstatement and repair of the Project such licence to subsist notwithstanding that the Trade Contractor has completed the Works or the Trade Contract has terminated. The licence shall be assignable and shall include the right of the Employer to grant sub-licences.  2.40.3 The Trade Contractor hereby waives in favour of the Employer and its successors and assignees all moral rights which he is deemed to possess as author of any of the Materials under the Copyright, Designs and Patents Act 1988.  2.40.4 The Trade Contractor shall not be liable for any use of the Materials for any purpose other than that for which the same were prepared by the Trade Contractor or on its behalf.  2.40.5 Insofar as ownership of copyright and any other intellectual property right in any of the Materials prepared or provided by the Trade Contractor in connection with the Project is vested in any person other than the Trade Contractor, including, without limitation, any sub-contractor or sub-consultant, the Trade Contractor shall procure for the Employer the benefit of such licence as is referred to in clause 2.40.2 for the purposes referred to therein.  2.40.6 The Trade Contractor shall if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Employer or any third party the rights referred to in this clause 2.40.  2.40.7 The Trade Contractor shall provide to the Employer a copy of any of the Materials as soon as reasonably practicable after receipt by the Trade Contractor of a written request from the Employer to do so.  2.40.8 The Trade Contractor warrants that the use by the Employer of any of the Materials for any purpose provided for in clause 2.40.2 shall not infringe the rights to any third party in relation to the Materials.” |
| **SECTION 3: Control of the Works** |
| **Insert** new clause 3.1A: |
| “The Trade Contractor shall permit any Authorised Persons to exercise any rights relating to the Works or the site as described or referred to in the Employer’s Requirements.” |
| **Clause 3.2 – Access for Employer and Construction Manager** |
| In line 1 **delete** “person authorised by either of them” and **insert** “Authorised Person”  In line 3 after “Trade Contract” **insert** “for the purpose of inspecting and examining the progress and quality of the Works or any such work”  In line 6 **delete** “and any person authorised by either of them” and **insert** “any Authorised Person”  **Delete** the final sentence of clause 3.2. |
| **Insert** new clause 3.2A: |
| **Insert** “The Trade Contractor shall where reasonably required by the Employer and/or the Construction Manager, convene project meetings and site meetings at any time and permit the Construction Manager and any Authorised Person to attend such meetings.” |
| **Insert** new clause 3.2B: |
| **Insert** “The Trade Contractor shall keep the Employer and the Construction Manager informed about the progress of the Works and shall promptly provide to the Employer and/or the Construction Manager (as may be required) copies of the minutes of all project and site meetings referred to in clause 3.2A.” |
| **Sub-Contracting** |
| **Consent to sub-contracting** |
| Clause 3.6.1.1: |
| **Delete** entire text and **replace** with “The Trade Contractor shall not sub-contract the whole of the Works or the whole of the design of the Works.” |
| Clause 3.6.1.2 |
| **Delete** “without the Employer’s consent”  After “sub-contract” in line 1 **insert** “any part of the Works or any part of”  After “design for the Works or any part of them” **insert “**without the Employer’s prior written consent and approval of the form of sub-contract pursuant to clause 3.7”  After “under any other provision of this Trade Contract.” **insert “**The Trade Contractor shall ensure that the Employer and the Construction Manager remains fully appraised of the progress of such sub-contracted tasks and shall take due consideration of any concerns raised by the Employer and/or the Construction Manager (as the case may be) in respect of the quality rate or progress or direction of the task sub-contracted.” |
| **Insert** new clause 3.6.3: |
| “The Trade Contractor shall procure that no part of the Works or design of the Works is further sub-contracted by a sub-contractor without the prior written consent of the Employer (which consent shall not be unreasonably withheld or delayed).” |
| **Clause 3.7 – Conditions of sub-contracting** |
| **Clause 3.7.1** |
| **Delete** entire text and **insert** “the Trade Contractor shall include appropriate provisions in the sub-contract or supply contract to ensure that if so required by the Employer within 14 days of the date of termination of the employment of the Trade Contractor, the Trade Contractor may assign to the Employer, without payment, the benefit of the future performance of any sub-contract or supply contract for the purposes of this Trade Contract, subject to the Employer paying any supplier or sub-contractor for any materials or goods delivered or works executed for the purposes of this Trade Contract after any such assignation.” |
| **SECTION 4: Payment** |
| **Payments, Certificates and Notices – general provisions** |
|  |
| **Retention** |
| **Clause 4.16 - Rules on treatment of Retention** |
| **Delete** entire text and **insert** “With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.14, the Employer shall be:   1. under no fiduciary obligation to the Trade Contractor or any third party; 2. under no obligation to set aside in a separate bank account or in any other matter whatsoever, any amount representing the Retention; and 3. entitled to the full and unencumbered beneficial interest in any interest accruing on the Retention and shall be under no obligation to account to the Trade Contractor for any such interest.   The relationship of the Employer and Trade Contractor with regard to the Retention shall be solely that of debtor and unsecured creditor and the Employer shall have no obligation to invest the Retention or any part thereof. For the avoidance of doubt, no sub-contractor shall have any proprietary right or other interest (whether at law or equity) in or over the Retention Percentage except as unsecured creditor.” |
| **SECTION 6: Injury, Damage and Insurance** |
| **Insurance against Personal Injury and Property Damage** |
| **Clause 6.4 – Trade Contractor’s insurance of his liability** |
| Clause 6.4.1: |
| After “clause 6.1 and 6.2” **insert** “and clause 6.3A”  In line 2 **delete** “and maintain” and **insert** “prior to works of any description being commenced on site and shall maintain until the date of issue of the Certificate of Making Good” |
| Clause 6.4.1.2: |
| After “Employer” (both times it is used) **insert** “and any Funder” |
| **Clause 6.5 – Excepted Risks** |
| After “clause 6.1, 6.2” **insert** “, 6.3A, and” |
| **Insurance of the Works** |
| **Clause 6.7 – Related definitions** |
| In line 2 of the definition of “All Risks Insurance” after “Site Materials” **insert** “and also the increased cost of construction of the incomplete Works”  In line 3 **delete** “reasonable”  In line 2 of the definition of “Joint Names Policy” after “the Trade Contractor **insert** “and any Funder, Purchaser and other third persons whose names have been specified in writing by the Employer and/or the Construction Manager to the Trade Contractor being persons having or acquiring an interest in or mortgage or charge over the Site or the Works” and at the end of the definition but before the full stop **insert** “(and names the Funder as first loss payee)”. |
| **Evidence of Insurance** |
| Clause 6.11.1 |
| After “Party may reasonably require” **insert** “, including evidence that the premiums for that insurance have been paid in full at the date of the Party’s request” |
| **Loss or damage – insurance claims and reinstatement** |
| Clause 6.12.2: |
| **Delete** entire text and **replace** with “Where the Trade Contractor is obliged to take out such insurance or cover under any of clauses 6.4, 6.5, 6.7 and 6.10 and the Trade Contractor fails to supply the relevant evidence within 14 days of a written request by the Employer or the Construction Manager, the Employer may assume that there has been a failure to insure and may effect such insurance cover as he deems to be requisite (but not exceeding that which the Trade Contractor is obliged to maintain) and recover the cost from the Trade Contractor on demand or deduct the costs from any monies due or which may become due to the Trade Contractor.” |
| **TCDP Professional Indemnity Insurance** |
| **Clause 6.14 – Obligation to insure:** |
| **Delete** entire text and **replace** with:  “6.14.1 The Trade Contractor shall maintain current professional indemnity insurance covering (inter alia) all its liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than that stated in the Trade Contract Particulars for any one occurrence or series of occurrences arising out of any one event from the date of commencement of the Works and up to 12 (twelve) years after the date of Practical Completion of the Works. The said terms and conditions shall not include any term or condition to the effect that the Trade Contractor must discharge any liability being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights against Insurers) Act 2010, or any amendment or re-enactment thereof. The Trade Contractor shall not, without prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Trade Contractor may have against the insurers which relates to a claim by the Employer against the Trade Contractor, or by any act or omission loss or prejudice the Trade Contractor’s right to make or proceed with such a claim against the insurers.  6.14.2 The Trade Contractor shall immediately inform the Employer if such insurance at clause 6.14.1 ceases to be available at commercially reasonable rates and the Trade Contractor as soon as reasonably practicable shall take out such level of insurance as is available at commercially reasonable rates. Then, the Trade Contractor and the Employer can discuss means of best protecting the respective positions of the Employer and the Trade Contractor in respect of the Works in the absence of such insurance. The Trade Contractor shall fully co-operate with any measures reasonably required by the Employer to obtain adequate insurance for the Works including completing any proposals for insurance and associated documents and obtaining insurance at rates above commercially reasonable rates, if the Employer reimburses the Trade Contractor for the net cost of that insurance above commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Trade Contractor’s own claims record or other acts, omissions, matters or things particular to the Trade Contractor shall be deemed within commercially reasonable rates for the purposes of this clause 6.14.2.  6.14.3 As and when reasonably required to do so by the Employer, the Trade Contractor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained including evidence that the premiums for that insurance have been paid in full at the date of the Employer’s request. If the Trade Contractor fails to supply the relevant evidence within 14 days of a written request, the Employer may effect such insurance cover as he deemed to be requisite (but not exceeding that which the Trade Contractor is obliged to maintain pursuant to clause 6.14.1) and recover the cost from the Trade Contractor on demand or deduct the costs from any monies due or which may become due to the Trade Contractor.  6.14.4 The Trade Contractor shall ensure that all insurance policies taken out and maintained in accordance with the terms of this Trade Contract include a clause generally known within the construction industry as an ‘indemnity to principals’ clause.” |
| **Clause 6.15 – Increased cost and non-availability** |
| **Delete** entire text and **insert** “Not used.” |
| **SECTION 7: Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties** |
| **Clause 7.1 - Assignment** |
| **Delete** entire text and **replace** with“The Trade Contractor may not assign or charge the benefit of this Trade Contract or any right arising under it without the prior written consent of the Employer. The Employer may, without the consent of the Trade Contractor, assign the benefit of all or any of the Trade Contractor’s obligations under this Trade Contract and/or any benefit arising under or out of this Trade Contract. The Employer shall also be entitled to carry out such assignment without the consent of the Trade Contractor where it is by way of security. The Employer shall give notice of any such assignment to the Trade Contractor but failure to give such notice shall not affect the validity or effectiveness of such assignment.” |
| **Insert** new clause 7.1A: |
| “The Trade Contractor undertakes to the Employer not to contend in any proceedings under this Trade Contract that any person to whom the Employer assigns or has assigned its rights under this Trade Contract or any of them in accordance with the foregoing provisions of this clause is o be precluded from recovering any loss resulting from any breach of this Trade Contract (whenever happening) by reason that such person is an assignee and not the original party to this Trade Contract or by reason that the Employer or any assignee of the Employer escaped loss resulting from such breach by reason of the disposal of its interest in the same.” |
| **Clause 7.5 – Execution of Collateral Warranties:** |
| **Delete** entire text and **replace** with “Any collateral warranty to be entered into or procured pursuant to this section 7 shall be executed as a deed.” |
| **Insert new clause 7.6 with the heading “Failure to provide Collateral Warranties or Third Party Rights”:** |
| “7.7.1 If the Contractor is in breach of any of his obligations under clauses 7A to D and notwithstanding any other provision of this Contract no sums shall become due to the Contractor and the Employer shall not be liable to make any payment under this Contract until such time as such breach has been remedied by the provision of such agreement or agreements or third party rights.  7.7.2 If the Contractor is in breach of his obligations under clause 7E and notwithstanding any other provision of this Contract the Employer shall be entitled to deduct and retain any amount which otherwise would be due in respect of design and/or works carried out by the relevant sub-contractor whose Collateral Warranties are outstanding. The amount to be deducted shall be ascertained by the Employer’s Agent acting reasonably and based on the information available to him.” |
| Insert new clause 7.8 with the heading “Third Party Guarantees and Warranties” |
| **“**The Trade Contractor shall procure that all benefits rights and title to 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. If so required pursuant to the provisions of the Trade Contract Documents, the Trade Contractor shall procure manufactures and/or suppliers guarantees underwritten by a policy of insurance in such amount of cover and for such period as specified in the Trade Contract Documents.” |
| **Clause 7B – Rights for a Funder:** |
| **Delete** entire text and **insert** “Not used.” |
| **Collateral Warranties from Trade Contractor** |
| **Clause 7D – Trade Contractor’s Warranty – Funder** |
| **Delete** entire text and **replace** with “Within 7 Business Days of a request from the Employer, the Trade Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Funder in the relevant form contained in [Appendix[ ]].”**[[10]](#footnote-10)** |
| **Insert new clause 7D.1 with the heading “Priority under collateral warranties from the Trade Contractor in the event of step-in”:** |
| “Under any collateral warranty supplied in accordance with clause 7C and/or 7D, where step-in rights are being granted to the beneficiary of the collateral warranty, the Employer and the Trade Contractor agree that the Funder shall have priority in the event of step-in.” |
| Insert new clause 7E |
| **Clause 7E – Sub-Contractors’ Warranties** |
| “The Trade Contractor shall procure that every sub-contractor with design responsibility and/or carrying out material works (or otherwise any sub-contractor notified by the Employer in writing) shall, within 10 Business Days of receipt of a notice by the Employer, provide any Funder a collateral warranty in the relevant form attached at [Appendix []];[[11]](#footnote-11) |
| **Insert new clause 7E.2 with the heading “Priority under collateral warranties from the sub-contractor in the event of step-in”:** |
| “Under any collateral warranty supplied in accordance with clause 7E, where step-in rights are being granted to the beneficiary of the collateral warranty, the Employer and the Trade Contractor agree that the Funder shall have priority in the event of step-in.” |
| **SECTION 8: Termination** |
| **Clause 8.1 - Meaning of Insolvency** |
| **Delete** “.” From the end of clause 8.1.4.2 and **insert** “; or” |
| **Insert** new clause 8.1.4.3: |
| “8.1.4.3 in relation to the Trade Contractor: |
| 8.1.4.3.1 he gives notice of an intention to appoint an administrator and/ or enter into administration; |
| 8.1.4.3.2 an application is made for the appointment of an administrative receiver or manager or receiver (as referred to in clause 8.1.1.2) or a proposal is made which could result in such an application; |
| 8.1.4.3.3 a meeting of his creditors is called (whether or not that meeting takes place) for the purpose of considering that he be wound-up voluntarily (other than a voluntary winding-up whilst solvent for the purposes of and followed by a solvent reconstruction or amalgamation) or a resolution is passed that he be wound up or a petition for his winding up is presented to the Court; or |
| 8.1.4.3.4 he gives notice that he has or intends to cease trading.” |
| **Clause 8.5 – Insolvency of Trade Contractor** |
| Clause 8.5.1: |
| At the end of the clause **insert** “and the Trade Contractor becoming Insolvent shall be deemed to be a breach of this Contract.” |
| Clause 8.5.3.2: |
| **Delete** entire text and **insert** “Not used.” |
| Clause 8.5.3.3: |
| After "the Employer may" **insert** ", at the Trade Contractor's expense," |
| **SECTION 9: Settlement of Disputes** |
| **Clause 9.2 – Adjudication** |
| Clause 9.2.2.2: |
| At the end of the clause **insert** “Copies of the Adjudicator’s instructions to any such expert and any written advice or report received from such an expert shall be supplied to the Parties as soon as practicable.” |
| Clause 9.2: |
| At the end of clause 9.2 **insert** “Provided that:   1. the Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determined any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him; and 2. at the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing.” |
| **Clause 9.3 - Arbitration** |
| **Delete** entire text of clauses 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8 and **insert** “Not used.” |
| **SCHEDULE 8:**  **Supplemental Provisions** |
| **Part 2: Third Party Rights for a Funder** |
| **Delete** entire text and **insert** “Not used.” |

**Appendices[[12]](#footnote-12)**

|  |  |
| --- | --- |
| **Type of document** | **Appendix** |
| Pro-forma Collateral Warranty from member of the Professional Team in favour of Funder | [ ] |
|  | [ ] |
| [Employer’s Requirements] | [ ] |
| [Contractor’s Proposals] | [ ] |
| [Contract Sum Analysis] | [ ] |

1. State nature and location of intended works. [↑](#footnote-ref-1)
2. Delete as appropriate [↑](#footnote-ref-2)
3. Delete this line if a priced Activity Schedule is not provided [↑](#footnote-ref-3)
4. Delete the Sixth Recital if an Information Release Schedule is not provided [↑](#footnote-ref-4)
5. Delete the Seventh Recital if the Project is not divided into Sections. [↑](#footnote-ref-5)
6. State nature of work in the Trade Contractor’s Designed Portion, or delete these four Recitals if not applicable. If the space here is insufficient a separate list should be prepared, signed or initialed by or on behalf of each Party and identified here, either as a specified Annex to this Trade Contract or by its reference number, date or other identifier [↑](#footnote-ref-6)
7. Complete Article 2A or 2B as applicable, and delete the Article not required. Article 2B is for use where the Works are to be completed remeasured and valued. [↑](#footnote-ref-7)
8. Insert the name of the Principal Contractor in Article 5 if that is to be a person other than the Construction Manger. Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term ‘contractor’ is broadly defined by the regulations and treats the contractor’s sub-contractors as separate contracts. [↑](#footnote-ref-8)
9. As to adjudication in cases where the Employer is residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Construction Management Guide. [↑](#footnote-ref-9)
10. Append Atelier form of warranty and update Appendix reference. [↑](#footnote-ref-10)
11. Append Atelier form of warranty and update Appendix reference. [↑](#footnote-ref-11)
12. Employer to insert/add additional applicable appendices as relevant [↑](#footnote-ref-12)