

WEST SUSSEX COUNTY COUNCIL (the "Employer")
CAPITAL & ASSET MANAGEMENT DATE: January 2012
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**BCD4 STANDARD BUILDING CONTRACT (Without Quantities)
COMPLETION OF CONTRACT DOCUMENTS AND APPENDICES**

REFERENCE

GENERALLY:

THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.

In order to comply with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009, the form of contract to be used on the Employer's schemes will be the Joint Contracts Tribunal Limited (JCT) 2011 suite and will incorporate the latest published amendments current at the date the tender documents are issued.

In order to provide for the Employer's new payment requirements, the payment provisions will be amended by this directive as detailed below in the 'Employer's Schedule of Contract Amendments (January 2012) (clauses 4.9 - 4.15 inclusive). In accordance with clause 4.13.1, the Contractor's Invoice (and where so required in clause 4.15.2A) MUST contain the relevant project purchase order number, the project name and address, the project number and the Project Officer's name and must be sent via e-mail to ctg.invoicing@westsussex.gov.uk and copied to invoices@westsussex.gov.uk. These amendments comply with the amended Construction Act and as a result, the amended Scheme for Construction Contracts will not apply by default in respect of the payment provisions. The 'Employer's Schedule of Contract Amendments (January 2012)' makes other amendments to the JCT standard form and must be appended to every contract.

Within every contract the following clauses must be inserted within the preambles or preliminaries section.

- i) Before commencing any works on site the contractor must familiarise himself with any guidance documents, files or procedures relating to health and safety which have been issued by and or apply specifically to the particular Employer Service or premises where the works are to be carried out.
- ii) The Employer reserves the right under any contract for its qualified Health and Safety staff to access the site for the purposes of monitoring and recording the contractor's health and safety provisions and the interaction with existing occupants of the Employer's adjacent premises.

COMPLETION OF DOCUMENTS:

Where a deletion is required, the following terms and conditions are applicable to the JCT STANDARD BUILDING CONTRACT WITHOUT QUANTITIES 2011 (SBC/XQ) and should not be used for other types of JCT Standard Building Contract. Guidance should be sought from the Employer if required.

**BCD4 STANDARD BUILDING CONTRACT (Without Quantities)
J.C.T. STANDARD BUILDING CONTRACT WITHOUT QUANTITIES – 2011**

		REFERENCE
1.	Recitals 1-12	
	A Pricing Option A will apply Option B will be deleted	Third Recital
	B Activity Schedule: delete where does not form part of the contract documentation	Third Recital
	C Information Release Schedule: Delete where an information release schedule does not form part of the contract documentation.	Fifth Recital
	D The division of the Works into Sections: Delete Sixth Recital if the Works are not divided into Sections.	Sixth Recital
	E The Ninth to Twelfth Recitals apply only where there is a Contractor's Designed Portion. If there is a CDP, delete the 12 th Recital and substitute text – see Employer's Schedule of Contract Amendments (January 2012). Delete Recitals 9 to 12 if there is no Contractor's Design Portion.	Ninth to Twelfth Recitals
Note: where there is a CDP, the Employer requires the Contractor to accept a single point of responsibility for the design and construction of the CDP.		
2.	Articles 1-10	
	A If only Regulations 7 and 13 of the CDM Regulations apply, delete articles 5&6.	Articles 5&6
	B Article 8 to apply see Contract Particulars	Article 8 CL 9.3 - 9.8 Article 10
	C Insert new Article 10 – see Employer's Schedule of Contract Amendments (January 2012).	
3.	Contract Particulars	
	A Pricing Options: Delete Option B	Third Recital
	B Construction Industry Scheme (CIS): The Employer at Base Date "is a contractor". The words "is not a contractor" will be deleted.	Fourth Recital & CL 4.7
	C Supplemental provisions Paragraph 1 Applies Paragraph 2 Applies Paragraph 3 Applies Paragraph 4 Applies Paragraph 5 Applies Paragraph 6 Applies. The Employer's Nominee will be 'Head of Capital and Asset Management'.	Eight Recital and Schedule 8
	D Arbitration: Article 8 and clauses 9.3 to 9.8 (arbitration) apply – delete the words 'do not apply'.	Article 8 & CL 9.3 to 9.8
	E Base date: Insert a finite date. Normally ten days prior to that which the tenders are due to be returned. DO NOT insert a statement that the base date is to be fixed a number of days prior to the date set for the return of tenders.	CL 1.1
	F Date for Completion of the Works/Sections: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.	CL 1.1

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

	REFERENCE
G Date of Possession of the Site/Sections: A finite date in accordance with the latest agreed programme is to be inserted prior to the issue of the tendering documents.	CL 2.4
H Deferment of the date of possession applies: Delete "does not apply". Insert "six weeks".	CL 2.5 and 2.29.3
I Master Programme: complete as appropriate	CL 2.9.1.2
J Contractor's Designed Portion: limit of Contractors liability for loss of use etc. Delete the whole entry of Part 1 of the Contract Particulars relating to clause 2.19.3.	CL 2.19.3
Note: where there is a CDP, clause 2.19.3 is amended and the limit of the Contractor's liability referred to in the Contract Particulars does not apply to the amended clause (and thus, is not required in the Contract Particulars).	
K Liquidated Damages: Insert a rate per week calculated in accordance with the rules set out in Directive BCD.2.	CL 2.32.2
L Rectification Period(s): Normally "Six months", but "Twelve months" may be appropriate for some schemes.	CL 2.38
M Advance Payment: Not applicable where the Employer is a Local Authority. Delete 'applies'	CL 4.8
N Advance Payment Bond: Not applicable where the Employer is a Local Authority. Delete 'is'	CL 4.8
O Interim payments: the due dates for interim payments are at intervals not exceeding one month up to the date of Practical Completion of the Works, or the date within one month thereafter: the first due date is within one month of the Date of Possession.	CL 4.9.1
P Listed items: Clauses 4.17.4 and 4.17.5. to be deleted.	CL 4.17.4 & 4.17.5
Q Contractor's Retention Bond: Not applicable where the Employer is a Local Authority: Delete 'applies'	CL 4.19
R Retention Percentage: For schemes with an estimated contract sum of £500,000 or more insert "three per cent". For schemes with an estimated contract sum below £500,000 insert "five per cent".	CL 4.20.1
S Fluctuations Options: Generally Option A applies. Delete Options B and C	CL 4.21 and Schedule 7
T Percentage Addition: Insert "zero per cent".	
U Formula Rules (only applicable where Option C adopted): Generally: Not applicable. Non-Adjustable Element: insert 10% if adopted	
V Contractor's Insurance – injury to persons or property (See Directive BCD.1.)	CL 6.4.1.2 BCD 1
W Insurance – Liability of Employer: Insurance may be required, delete the words "is not required". Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event. (See Directive BCD.1.)	CL 6.5.1 BCD 1
A provisional sum in respect of matters referred to in clause 6.5.1 is to be inserted in the Bills of Quantities to cover the premium.(see	

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

Directive BCD1) The sum to be omitted in the adjustment of the final account if not expended.

- X Insurance of the Works: Delete references to Options B and C for new buildings or delete references to Options A, B and C for alterations or extensions to existing building and insert new clause: "The Employer will not take out or maintain a separate Joint Names Policy for All Risks Insurance of the Works, or a Joint Names Policy to insure the existing structures and their contents owned by him for which he is responsible against loss or damage by the Specified Perils. The Employer does, however, maintain "Works in Progress" insurance cover." (See Directive BCD.1.)
- Y Percentage to cover professional fees: Insert "16%" where clause Option A applies.
- Z Annual Renewal date of insurance as supplied by the Contractor: Insert "to be supplied by the Contractor prior to the execution of the contract".
- AA Pool Re cover: Pool Re cover is required.
- BB Contractor's Designed Portion (CDP) Professional Indemnity Insurance Level of Cover: Delete the whole entry of Part 1 of the Contract Particulars relating to clause 6.12

Note: Employer's Schedule of Contract Amendments amends clause 6.12 of the Conditions and does not rely on Part 1 of the Contract Particulars to set out the details of any PI insurance required by the Contractor.

- CC Joint Fire Code: All contracts with a value in excess of £5m the Joint Fire Code is to apply, with the additional requirement set out in the Code for a "large project" being applicable at the value threshold level of £20m and over.

Contracts above the £5m value require notification to the insurers; in order that a programme of surveys can be arranged by them during the period of the contract to assess the level of compliance

For contracts below the £5m value level it is not a requirement that the Code is to apply in its entirety. Nevertheless the Consultant is to be aware of the good practice set out in the Code and include those parts of the Code that may have particular relevance to the works as a specified requirement within the contract documents.

- DD Joint Fire Code: The cost of compliance with amendments/ revisions shall be borne by the Employer. Delete 'the Contractor'
- EE Assignment by Employer of rights under Clause 7.2: Delete the whole entry of Part 1 of the Contract Particulars relating to clause 7.2

Note: It is preferable for the Employer to be able to assign the benefit of the contract. JCT Clause 7.1 of the Conditions has been deleted in the Employer's Schedule of Contract Amendments and new clauses are inserted (7.1.1 – 7.1.4). In addition, the Employer's Schedule of Contract Amendments deletes JCT clause 7.2 from the Contract Particulars because it relates and refers to JCT clause 7.2 of the Conditions which has now been deleted (as it conflicts with new clauses 7.1.1 – 7.1.4).

- FF Period of Suspension: Insert "2 months"
- GG Period of Suspension: Insert "2 months"

REFERENCE

**CL 6.7 and
Schedule 3
BCD 1**

**CL 6.7 and
Schedule 3**

**CL 6.10 &
Schedule 3
CL 6.12
BCD 1**

CL 6.14

CL 6.17

CL 7.2

CL 8.9.2

CL 8.11.1.1

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE
to 8.11.1.5**

HH Adjudication – Nominator of Adjudicator – President or Vice President: Royal Institute of British Architects". Delete: Others as listed.

CL 9.2.1

II Arbitration– Appointer of Arbitrator - President or Vice President: Chartered Institute of Arbitrators. Delete: Others as listed.

CL 9.4.14. **EMPLOYER'S SCHEDULE OF CONTRACT AMENDMENTS (January 2012)**

Note: These amendments are in respect of the Standard Building Contract Without Quantities ONLY. Different amendments would be required for the With Quantities and With Approximate Quantities versions to have the same effect.

This Contract shall incorporate all the provisions of the JCT Standard Building Contract Without Quantities 2011 except that the Recitals, Articles, Contract Particulars and Conditions shall be amended by this Schedule of Employer's Contract Amendments (January 2012) and shall be construed as varied accordingly.

The definitions in the JCT Standard Building Contract Without Quantities 2011 edition have the same meaning in this Employer's Schedule of Contract Amendments, unless the meaning given in the JCT Standard Building Contract Without Quantities 2011 edition is different to, or conflicts with, the meaning given in this Employer's Schedule of Contract Amendments, in which case this Employer's Schedule of Contract Amendments shall prevail.

Without prejudice to the above, in case of any difference, discrepancy or conflict between this Employer's Schedule of Contract Amendments and the JCT Standard Building Contract Without Quantities 2011 edition, this Employer's Schedule of Contract Amendments shall prevail.

Note: in addition to strengthening the Employer's position generally, the amendments make provision, where there is a CDP, to create a single point of responsibility for design and construction.

RECITALS**TWELFTH RECITAL**

Only where there is a Contractor's Designed Portion (and the Employer wishes to create a single point of responsibility), delete the existing twelfth recital and replace with:

"The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for any design contained in them."

Note: in order to create a single point of responsibility for design and construction.

ARTICLES**INSERT NEW ARTICLE 10:****12th Recital****Article 10**

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE****“Contractor's Parent Company Guarantee or Performance Bond or Deposit by Way of Security”**

“If the Contract Sum is £250,000 or more, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form included within the Employer's Requirements. The parent company guarantee shall be executed and delivered by [NAME AND COMPANY NUMBER OF CONTRACTOR'S PARENT COMPANY]. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract.”

OR:

“The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form included within the Employer's Requirements. The bond amount shall be no less than 10% of the Contract Sum. The bond shall be executed and delivered by a surety approved by the Employer, acting reasonably. In the event of the Surety becoming bankrupt or insolvent or compounding with his or their creditors, the Contractor shall, upon being required by the Employer to do so, enter into a new bond with a fresh Surety in the same sum. If the Contractor does not procure execution and delivery of the bond, then, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract.”

“The cost of providing the performance bond is to be entered as a separate total in the Contract Sum Analysis, together with the name and address of the proposed Surety. The name and address of a broker or other intermediary will not be accepted.”

NB the Employer is to select either a bond OR a parent company guarantee for inclusion in the Employer's Requirements having regard to the prevailing financial circumstances. If the Employer selects a bond, the Contractor may elect to deposit the bond amount with the Employer's bank in lieu of a bond. In such circumstances, the Contractor shall, no later than the date of this Contract, enter into an Agreement for Deposit by Way of Security with the Employer in the form included within the Employer's Requirements to deposit an amount which shall be no less than 10% of the Contract Sum into the Employer's bank account. If the Contractor does not enter into the Agreement for Deposit by Way of Security, notwithstanding any other term of this Contract, the Employer may deduct £[AMOUNT] from the sums that would otherwise be due to the Contractor under this Contract.

Note: the deposit in lieu of a bond is a new initiative for those companies who have excellent cash flow. The Employer's standard wording is available from Legal Services.

Note: the sum capable of being withheld, must be a genuine pre-estimate of the costs of not receiving the PCG/bond/deposit e.g. taking into account the “cost” of the additional insolvency risk or the cost of procuring some alternative protection (such as a bond if a PCG was not provided). If the Employer seeks to withhold a sum that is disproportionate to the value of the PCG/bond/deposit, the deduction may be unenforceable.

CONDITIONS**SECTION 1 DEFINITIONS AND INTERPRETATION**

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE****CLAUSE 1.1****CL 1.1**

Add these definitions:

"Deleterious Materials: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time 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 reducing, 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, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterious Materials includes, but is not limited to, the following:

- i) High alumina cement concrete.
- ii) Cement containing added calcium chloride as a setting agent.
- iii) Crocidolite.
- iv) Asbestos products.
- v) Woodwool slabs in permanent shuttering form.
- vi) Polyisocyanurate or polyurethane foam.
- vii) Calcium chloride in blockwork or brickwork.
- viii) Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction.
- ix) Cement made with aggregate containing silica and/or;
- x) Calcium silicate bricks and tiles.
- xi) Lead or any products containing lead for use in drinking water systems.
- xii) Urea formaldehyde foam.
- xiii) Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and/or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented."

Note: ensure that Contract Documents are consistent with the Standard Building Contract and these amendments e.g. some draft Contract Documents may introduce conflicting requirements on the Contractor relating to Deleterious Materials.

"Environmental Laws: any law, statute, statutory instrument or legislation of the European Union having effect in the United Kingdom concerning the protection of the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances."

"Hazardous Substances: any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste."

"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided 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)."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Works (and the completed Works)."

Amendments use the definition of Material & Permitted Uses in the copyright licence (clauses 2.41.2 & 2.41.3)

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works."

Note: if the Contractor will carry out a CDP, the definition of Standard of Care amendment defines the Standard of Care so that the Contractor's design duties can refer back to a single Standard of Care, even if those design duties appear in different clauses or sub-clauses. If the Contractor will perform a CDP, the Standard of Care to be exercised by the Contractor is a key part of the amendments to SBC/XQ 2011. If there is no CDP, the Standard of Care is still applicable, but it is acknowledged that the Contractor may not have designed any of the Works.

SECTION 2 CARRYING OUT THE WORKS**CLAUSE 2.1A**

"Insert new sub-clause 2.1A:

The Employer requires that the Contractor complies with the following publications and West Sussex County Council Building Contract Directives (BCD) (copies of BCD's included in these Employers Requirements):

- a) WSCC Design Guide for Sustainable Buildings.
- b) WSCC Construction Guides for Building Construction, Mechanical Engineering and Electrical Engineering.
- c) CCTV Code of Practice (revised Edition 2008) issued by Information Commissioners Office.
- d) WSCC General Policy Brief for Education Buildings"

CLAUSE 2.1B

Insert new sub-clause 2.1B:

"The Contractor shall be deemed to have satisfied itself as to the soil and

CL 2.1A

CL 2.1B

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

rock strata comprising the site of the Works and notwithstanding any other provision of this Contract, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustment of the Contract Sum, or to any extension of time (whether under Clause 2.28 or otherwise) or to any entitlement on the part of the Contractor to terminate his employment under this Contract."

REFERENCE**CLAUSE 2.1C**

Insert new sub-clause 2.1C:

CL 2.1C

"The Contractor shall not

- .1 do or permit to allow to be done by act or thing or omission in connection with this contract which would either cause or give proper grounds for an action to be brought against the Employer under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or
- .2 give grounds for a person to rely upon such act or thing or omission on the part of the Contractor in his defence in any proceedings brought against a third party by the Council."

CLAUSE 2.2

Insert in sub-clause 2.2.1, after "they are relevant),":

CL 2.2.1

"carry out and"

Note: amendment helps the Employer create more of a single point of responsibility for design & construction of the CDP (where there is a CDP).

CLAUSE 2.3

Insert in sub-clause 2.3.1 after "so far as procurable, be" (in both places it appears):

CL 2.3.1

"of satisfactory quality and"

Note: 'new' not added to clause 2.3.1 as it could conflict with the specification of recycled materials in the ERs.

Insert in sub-clause 2.3.3 after "in the case of the Contractor's Designed Portion be" **and** after "shall in any other case be":

CL 2.3.3

"of satisfactory quality or proper and workmanlike (as the case may be) and"

Insert new sub-clause 2.3.6:

CL 2.3.6

"The Contractor shall not use or cause or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances. The Contractor shall immediately notify the Architect/Contract Administrator if it becomes aware of any such use."

Note: The Contractor, as the person carrying out the Works, can control what goes into the Works on the site. Therefore, new sub-clause 2.3.6

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

expressly refers to the Deleterious Materials/Hazardous Substances duties of the Contractor in terms that do not relate only to design liabilities.

REFERENCE

Insert new sub-clause 2.3.7:

CL 2.3.7

"The Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Materials or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Materials or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor's responsibility to comply with this Clause 2.3.7 based on the Environmental Laws in effect at the time its services are rendered."

CLAUSE 2.13

Delete clause 2.13

CL 2.13

Note: To create a single point of responsibility to ensure that the Contractor can be held responsible for the ERs.

CLAUSE 2.14

Delete sub-clause 2.14.1 and replace with:

CL 2.14.1

"Subject to clause 2.17, if any inadequacy is found in any design in the Employer's Requirements, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly. That correction, alteration or modification shall not be treated as a Variation and there shall be no addition to the Contract Sum in respect of that correction, alteration or modification or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such correction, alteration or modification."

CLAUSE 2.16

In sub-clause 2.16.2 delete, from the end of the sub-clause, "treated as a Variation" and replace with:

CL 2.16.2

", to the extent that it relates to the removal of that discrepancy, shall not be treated as a Variation and there shall be no addition to the Contract Sum"

Note: To create a single point of responsibility. Note that this amendment still allows the CPs to prevail over the ERs, if the CPs deal with a discrepancy in the ERs. (If the Employer requires the ERs to prevail, delete "the Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), without any adjustment of the Contract Sum. Where the Contractor's Proposals do not deal with such a discrepancy," in clause 2.16.2.

CLAUSE 2.17

In sub-clause 2.17.2.1, after "change in the Statutory Requirements" insert:

CL 2.17.2.1

"that was not foreseen by the Contractor at the Base Date and that could not

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

reasonably have been foreseen by a competent contractor at the Base Date"

Note: amendment means that a Contractor should take responsibility for anticipated changes in Statutory Requirements, where these affect the CDP (and not all changes in Statutory Requirements that the Contractor should have foreseen).

CLAUSE 2.19

Delete clause 2.19 and replace with:

"Where there is a Contractor's Designed Portion:"

- (a) Insert new sub-clause 2.19.1:

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

- (b) Insert new sub-clause 2.19.2:

"Without prejudice to clause 2.19.1, the Contractor shall be fully responsible in all respects for any design of the CDP Works that is carried out by a professional consultant or specialist designer or sub-contractor that the Contractor has or will employ (including a person employed at the Employer's request) whether such design work is carried out before, on or after the date of this Contract."

- (c) Insert new sub-clause 2.19.3:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

.1 designing the CDP Works; and

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

- (d) Insert new sub-clause 2.19.4:

"Without prejudice to clauses 2.1 and 2.17.3, the Contractor warrants that it shall use the Standard of Care to see that its design of the CDP Works complies with Statutory Requirements."

Note: amendments applicable where there is a CDP.

CLAUSE 2.20

In sub-clause 2.20.1 after "Contractor's Proposals" insert:

"or the Employer's Requirements"

Note: relates to single point of responsibility.

CLAUSE 2.28

Delete "and" from the end of sub-clause 2.28.6.3.

REFERENCE**CL 2.19****CL 2.19.1****CL 2.19.2****CL 2.19.3****CL 2.19.4****CL 2.20.1****CL 2.28.6.3**

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

Note: typographical - to provide for additional sub-clause 2.28.6.5

REFERENCE

Delete the full stop at the end of sub-clause 2.28.6.4 and replace with: "; and"

CL 2.28.6.4

Note: typographical - to provide for additional sub-clause 2.28.6.5

Add a new sub-clause 2.28.6.5:

CL 2.28.6.5

"(save where the Relevant Event is as defined in clause 2.29.9 and provided, in that case, that the Contractor has complied fully with any obligation upon it to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

Note: To make it expressly clear that a Contractor is not entitled to an extension of time if the Contractor causes a Relevant Event. The drafting in brackets covers the exception of the joint names insurance regime: an insurance policy taken out by the Employer may protect the Contractor, even if a Specified Peril arises as a result of the Contractor's negligence.

CLAUSE 2.29

In sub-clause 2.29.2.1 after "clause 2.15" insert: "subject always to clause 2.16)".

CL 2.29.2.1

Note: amendment relates to single point of responsibility.

Sub-clause 2.29.7 deleted

CL 2.29.7

Sub-clause 2.29.10

CL 2.29.10

After "or threat of terrorism" delete wording and insert:

"resulting in death or injury to any person employed on the site of the Works or the reasonable apprehension thereof and/or any restriction of access to or egress from or any activity on the site of the Works by the relevant authorities in dealing with such event or threat."

Sub-clause 2.29.11 deleted.

CL 2.29.11**CLAUSE 2.35**

Add to the end of clause 2.35:

CL 2.35

"Provided that the Architect/Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part."

Note: clarifies that the Architect or Contract Administrator is not obliged to issue a certificate before the end of the Rectification Period that applies to the Relevant Part.

CLAUSE 2.38

Delete "within a reasonable time" in line 13.

CL 2.38

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

In line 14 after "be made good" insert "within the following required times"

Insert after seventeenth line at end of clause:

"The required times are:

- a) Water ingress or damp from internal services; 8 working hours
- b) Electrical and heating faults; 8 working hours
- c) Blocked drains; 8 working hours
- d) Ill-fitting doors/windows where security affected; 8 working hours
- e) Defective floor coverings or pavings; 7 working days unless in the opinion of the Employer, these represent a possible danger in which case 8 working hours
- f) All other defects which the Architect/Contract Administrator considers require attention before the end of the Rectification Period, which are not listed above, will be attended to within 5 working days or such lesser period as the Architect/Contract Administrator may reasonably require."

CLAUSE 2.39

Add to the end of clause 2.39:

"Provided that the Architect/Contract Administrator shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period."

Note: clarifies that the Architect or Contract Administrator is not obliged to issue a Certificate of Making Good before the end of the Rectification Period.

NEW CLAUSE 2.39A

Add a new clause 2.39A after clause 2.39:

"Snagging list and defects, shrinkages or other faults remaining at practical completion

Clauses 2.38 and 2.39 shall apply, all other things being equal, to:

.1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;

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

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

Note: Although a snagging list is used to identify minor works that a Contractor should carry out straight after practical completion, the JCT contracts do not include specific drafting to deal with snagging lists or minor items of incomplete work. Therefore, the amendments deal with snagging lists and envisage that any snagging list will be issued at, or straight after, practical completion. The drafting does not envisage that a snagging list is issued after practical completion during the Rectification Period.

CLAUSE 2.41

Delete sub-clauses 2.41.2 **and** 2.41.3 and replace with:

REFERENCE

CL 2.39

CL 2.39A

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE
CL 2.41.2**

Sub-Clause 2.41.2

"The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including, without limitation, any of the Permitted Uses.

Sub-Clause 2.41.3

CL 2.41.3

This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.

Sub-clause 2.41.4:

CL 2.41.4

The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided."

Note: Even if there is no CDP, it is helpful to an Employer if the contract confirms that the Employer has an appropriate copyright licence, e.g. even if the Contractor has not carried out any design of the Works, it may own copyright in the layout of lists of documents or in the words and layout of an operations/maintenance manual prepared for the H&S file.

SECTION 3 CONTROL OF THE WORKS**NEW CLAUSE 3.25**

Insert new clause 3.25:

CL 3.25**"Project meetings**

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Architect/Contract Administrator shall be permitted to attend such meetings."

SECTION 4 PAYMENTPROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS
(Clauses 4.9 - 4.15 inclusive)**CLAUSE 4.9**

Delete clause 4.9 and replace with:

.1 The Architect/Contract Administrator shall issue Interim Certificates in accordance with clause 4.9.2 each stating the amount due to the Contractor from the Employer, to what the amount relates and the basis on which the amount has been calculated.

CL 4.9.1

.2 Interim Certificates shall be issued on the date provided for in the Contract Particulars up to the date of practical completion of the Works or the date within one month thereafter. Interim Certificates shall thereafter be issued on the same date at intervals of 2 months (unless otherwise agreed) and upon whichever is the later of the expiry of the Rectification Period or the issue of the Certificate of Making Good (or, where there are Sections, the last such period or

CL 4.9.2

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)
certificate).

REFERENCE

CLAUSE 4.10

Delete clause 4.10 and replace with:

"Subject to any agreement between the Parties as to stage payments, the amount stated as due in an Interim Certificate shall be the Gross Valuation pursuant to clause 4.16 less the aggregate of:

CL 4.10

.1 any amount which may be deducted and retained by the Employer as provided in clauses 4.18 to 4.20 ("the Retention");

CL 4.10.1

.2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.8; and

CL 4.10.2

.3 the sums stated as due in previous Interim Certificates."

CL 4.10.3

CLAUSE 4.11

Delete clause 4.11 and replace with:

"Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the amount to be stated as due in an Interim Certificate, except where Fluctuations Option C (formula adjustment) applies, when an interim valuation shall be made before the issue of each Interim Certificate."

CL 4.11

CLAUSE 4.12

Delete clause 4.12 and replace with:

"Without affecting the Architect/Contract Administrator's obligation to issue Interim Certificates, the Contractor, not later than 7 days before the date for issue of an Interim Certificate, shall submit to the Quantity Surveyor and the Architect/Contract Administrator an application setting out what the Contractor considers to be the sum of the Gross Valuation, including the sum that the Contractor considers will become due on the payment due date for that Interim Certificate and the basis on which that sum is calculated. When the Contractor submits his application, the Quantity Surveyor shall make an interim valuation. If the Quantity Surveyor disagrees with the sum shown in the application, he shall at the time of making the valuation, submit to the Contractor and the Architect/Contract Administrator a statement, which shall be in similar detail to the application and shall identify the disagreement."

CL 4.12

CLAUSE 4.13

Delete clause 4.13 and replace with:

.1 Immediately following the issue of an Interim Certificate the Contractor shall send a valid invoice to the Employer and the Architect/Contract Administrator (containing the relevant project purchase order number) confirming the amount due within the Interim Certificate ("the Contractor's Invoice"). For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of an Interim Certificate shall be the date of issue of the Contractor's Invoice and

CL 4.13.1

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

the final date for payment pursuant to the an Interim Certificate shall be 30 days from the date of issue of the Contractor's Invoice.

- .2 The Employer is entitled to exercise any rights under this Contract of withholding, paying less or deduction from sums due or to become due to the Contractor against any amount due under an Interim Certificate, whether or not any Retention is included in that Interim Certificate under clause 4.20.

Note: In amended sub-clause 4.13.2, "Notwithstanding his fiduciary interest in the Retention as stated in clause 4.18, the" has been deleted and replaced with: "The". Given the amendment to clause 4.18, this amendment helps to confirm that the Employer does not have a fiduciary duty with respect to the Retention.

- .3 Not later than 5 days after the date of issue of a Contractor's Invoice the Employer or the Architect/Contract Administrator shall give a notice to the Contractor which shall, in respect of the amount stated as due, specify the sum that the Employer or the Architect/Contract Administrator considers to be due at the payment due date and the basis on which the amount has been calculated ('the notified sum'). It is immaterial that the notified sum may be zero.

- .4 Not later than 5 days before the final date for payment the Employer or the Architect/Contract Administrator may give a notice to the Contractor of the Employer's intention to pay less than the notified sum. The notice shall set out the sum due on the date the notice is served and the basis on which the sum is calculated. It is immaterial that the sum may be zero.

- .5 Subject to any notice given under clause 4.13.4, the Employer shall no later than the final date for payment pay the Contractor the notified sum contained in the notice given under clause 4.13.3 or, in the absence of a notice under clause 4.13.3, the amount stated as due in the Contractor's Invoice.

- .6 If the Employer fails properly to pay the amount, or any part of it, due to the Contractor under these Conditions by the final date for its payment, the Employer shall, in addition to the amount not properly paid, pay the Contractor simple interest at the Interest Rate for the period until the payment is made. Interest under this clause shall be a debt due to the Contractor by the Employer.

- .7 Where there is a failure to issue a Contractor's Invoice either on time or at all, the Contractor's entitlement to interest shall commence on and be calculated from and including the day immediately following the date that would have been the final date for payment had the Contractor's Invoice been issued on time.

- .8 Acceptance of a payment of interest under this clause 4.13 shall not in any circumstances be construed as a waiver of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.14 or to terminate his employment under section 8.

CLAUSE 4.14

Delete clause 4.14 and replace with:

- .1 Without affecting the Contractor's other rights and remedies, if the Employer, subject to any notice issued pursuant to clause 4.13.4, fails to pay the Contractor in full (including any VAT properly

REFERENCE**CL 4.13.2****CL 4.13.3****CL 4.13.4****CL 4.13.5****CL 4.13.6****CL 4.13.7****CL 4.13.8****CL 4.14.1**

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE**

chargeable in respect of such payment) by the final date for payment as required by these Conditions and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of any or all of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend such performance until payment is made in full.

.2 Where the Contractor exercises his right of suspension under clause 4.14.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right. **CL 4.14.2**

.3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained. The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor. **CL 4.14.3**

Note: In amended sub-clause 4.14.3, "or on request" has been deleted and, at the end of the sub-clause, a new sentence has been added: "The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor." so that the Contractor provides details of costs and expenses incurred at the same time as the Contractor applies for payment of those costs and expenses.

CLAUSE 4.15

Delete clause 4.15 and replace with:

CL 4.15.1

.1 The Architect/Contract Administrator shall issue the Final Certificate not later than 2 months after whichever of the following occurs last:

- .1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
- .2 the date of issue of the Certificate of Making Good under clause 2.39 or (where there are Sections) the last such certificate to be issued; or
- .3 the date of which the Architect/Contract Administrator sends to the Contractor copies of the statement and of any ascertainment to be prepared under clause 4.5.2.

.2 The Final Certificate shall state:

- .1 the Contract Sum adjusted as necessary in accordance with clause 4.3; and
- .2 the sum of the amounts already stated as due in Interim Certificates plus the amount of any advance payment paid pursuant to clause 4.8;

CL 4.15.2

and the difference (if any) between the two sums shall (without affecting the rights of the Contractor in respect of any Interim Certificate not paid in full by the Employer by its final date for payment) be expressed in the Final Certificate as a balance due to

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

the Contractor from the Employer or to the Employer to the Contractor, as the case may be. The Final Certificate shall state the basis on which that amount has been calculated.

- | | REFERENCE |
|-----|------------------|
| .2A | |
| .3 | CL 4.15.3 |
| .4 | CL 4.15.4 |
| .5 | CL 4.15.5 |
| .6 | CL 4.15.6 |
| .7 | CL 4.15.7 |
| .8 | CL 4.15.8 |
| .9 | CL 4.15.9 |

(END OF PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS)

CLAUSE 4.18

Delete clause 4.18 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.9.2.1, the Employer shall be:

CL 4.18

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

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

REFERENCE
CL 4.18.1

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

CL 4.18.2

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

CL 4.18.3

Note: Without amendment, SBC 2011 imposes fiduciary duties on the Employer. The amendments mean, in effect, that the retention is due to the Contractor in the same way as any other sum due under the contract.

CLAUSE 4.23

Delete "and" from the end of sub-clause 4.23.2, change the full stop at the end of sub-clause 4.23.3 to: "; and",

CL 4.23.2

and insert new sub-clause 4.23.4:

CL 4.23.4

".4 not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable) in respect of any cost or loss and/or expense arising by reason of an error, omission, negligence or default of the Contractor or the Contractor's Persons."

Note: amendment creates an express clause limiting the Contractor's contractual right to claim "direct loss and/or expense" in situations where the Contractor is at fault. The drafting in brackets is the exception which requires the Employer to pay the Contractor any sum recovered under the joint names insurance policy even if a Specified Peril arose because of the Contractor's negligence.

CLAUSE 4.24

Insert at the start of sub-clause 4.24.2.3: "(subject to clause 2.14)".

CL 4.24.2.3

Note: amendment reflects changes to clause 2.14, to create more of a single point of responsibility for CDP

SECTION 5 CHANGES**CLAUSE 5.9**

In the paragraph below sub-clause 5.9.2, after "(including CDP Works), then" add:

CL 5.9.2

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

Note: amendment added because the Contractor should not be paid more, as a result of a Variation, if the Architect or Contract Administrator had to

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

instruct that Variation because of the Contractor's default.

REFERENCESECTION 6 INJURY DAMAGE AND INSURANCE**CLAUSE 6.1**

In clause 6.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

Note: amendment widens the Contractor's scope of liability. Without amendment, the Contractor is only liable for personal injury or death arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a design or statutory obligation.

CL 6.1**CLAUSE 6.2**

In clause 6.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

Note: amendment widens the Contractor's scope of liability. Without amendment, the Contractor is only liable for property damage arising out of the Works. Without amendment, that liability would not necessarily include the Contractor carrying out another obligation, such as a design or statutory obligation.

CL 6.2**CLAUSE 6.3A**

Insert new clause 6.3A after clause 6.3:

"Contractor to prevent nuisance and indemnify Employer

The Contractor shall prevent any nuisance (including any noisy working operations) or other interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A."

Note: amendment to help guard against a neighbour delaying or preventing Works by seeking an injunction to prevent a nuisance. The amendment seeks a full indemnity against a nuisance claim.

CL 6.3A**CLAUSE 6.3B**

Insert new clause 6.3B after new clause 6.3A:

"Contractor to prevent trespass to neighbours

Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons

CL 6.3B

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

(including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.38 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any conditions contained in that agreement."

REFERENCE**CLAUSE 6.10.5**

Insert new clause 6.10.5:

CL 6.10.5

"The Contractor shall ensure that his insurer is a member of the Pool Reinsurance Company Limited scheme (or of any similar successor scheme) prior to entering into the contract and if requested to do so by the Employer, shall produce for inspection documentary evidence of such membership."

Note: JCT default position is that Pool Re insurance applies in respect of terrorism. (Legal Insurance Team is content with this position). Contractor's insurer must be a member of the scheme in order to benefit under the scheme.

CLAUSE 6.12

Delete clause 6.12 and replace with:

CL 6.12**"Obligation to insure**

The Contractor shall maintain professional indemnity insurance for an amount of at least £2,000,000 (Two Million Pounds) for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that (subject to clause 6.12A) such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

.1 with reputable insurers lawfully carrying on insurance business in the UK;

CL 6.12.1

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

CL 6.12.2

.3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930."

CL 6.12.3

Note: amendment to clause 6.12 only required where there is a CDP.

NEW CLAUSE 6.12A

Insert new clause 6.12A, after clause 6.12:

CL 6.12A

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE****"Commercially reasonable rates**

Any increased or additional premium required by insurers for the insurance referred to in clause 6.12 and clause 6.13B because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates."

NEW CLAUSE 6.12B**CL 6.12B**

Insert new clause 6.12B, after clause 6.12A:

"Contractor may not settle, compromise or affect a claim

In relation to the insurance referred to in clause 6.12, the Contractor shall not, without the Employer's consent:

.1 settle or compromise any claim with the insurers that relates to a claim by the Employer against the Contractor; or

.2 by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers."

NEW CLAUSE 6.12C**CL 6.12C**

Insert new clause 6.12C, after clause 6.12B:

"Evidence of insurance

Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.12 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:

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

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

Note: additional clauses 6.12A, B & C only required where there is a CDP.

NEW CLAUSE 6.13A**CL 6.13A**

Insert new clause 6.13A after clause 6.13:

"Sub-contractors' professional indemnity insurance

The Contractor shall procure that sub-contractors with a design responsibility who are required by the Employer to provide a deed of collateral warranty shall maintain professional indemnity insurance in accordance with the required form of collateral warranty. Within 14 days of the date of this Contract (or, if later, within 14 days of the appointment of a sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the sub-contractors' insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each sub-contractor's insurers or brokers confirming:

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

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

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

that letter.”

Notwithstanding clause 6.13A, if the sub-contractor does not have and/or is unable to obtain professional indemnity insurance cover, the Employer will be entitled to call upon the Contractor’s professional indemnity insurance policy under and pursuant to the Contract. For the avoidance of doubt, the sub-contractor’s professional indemnity insurance cover shall be the first and primary cover for the purposes of any matter for which professional indemnity insurance is required pursuant to the Contract.”

Note: The Contractor should ensure that it appoints sub-contractors with the required level of insurance.

NEW CLAUSE 6.13B

Insert new clause 6.13B after clause 6.13A:

“Professional consultant or specialist designers’ professional indemnity insurance

The Contractor shall be fully responsible for ensuring that any professional consultant or specialist designer that the Contractor has or will employ (including a person employed at the Employer’s request) whether such design work is carried out before, on or after the date of this Contract maintains the required level (as stipulated in the tender requirements) of professional indemnity insurance. Within 14 days of the date of this Contract (or, if later, within 14 days of the appointment of a professional consultant or specialist designer), the Contractor shall procure and shall send to the Employer evidence that the professional consultant or specialist designer’s insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each professional consultant or specialist designer’s insurers or brokers confirming:

.1 the professional consultant or specialist designer’s then current insurance, as referred to in this clause; and

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

Notwithstanding clause 6.13B, If the professional consultant or specialist designer does not have and/or is unable to obtain professional indemnity insurance cover, the Employer will be entitled to call upon the Contractor’s professional indemnity insurance policy under and pursuant to the Building Contract. For the avoidance of doubt, the professional consultant or specialist designer’s professional indemnity insurance cover shall be the first and primary cover for the purposes of any matter for which professional indemnity insurance is required pursuant to the Building Contract.”

NEW CLAUSE 6.13C

Insert new clause 6.13C after clause 6.13B:

“Contractor to co-operate with Employer’s reasonable insurance requirements

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

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

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

REFERENCE

CL 6.13B

CL 6.13C

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE**

Notes: this amendment potentially confers an advantage on the Employer. The existing JCT clause 6.13 only requires the Contractor to notify the Employer, whereas, the amendment requires the Contractor's active co-operation.

NEW CLAUSE 6.13D

Insert new clause 6.13D after clause 6.13C:

"Cover for asbestos claims [is] [is not] required, with a limit of indemnity of £2,000,000 (Two Million Pounds). The required limit of indemnity is an annual aggregate amount."

CL 6.13D

Note: amend clause; include cover for asbestos as appropriate with regard to the project requirements.

NEW CLAUSE 6.13E

Insert new clause 6.13E after clause 6.13D:

"Cover for fungal mould claims is required, with a limit of indemnity of £2,000,000 (Two Million Pounds)."

CL 6.13E

The PI insurance amendments above are generally a more 'belt and braces' approach.

Additional clauses 6.13A, B, C, D & E only required where there is a CDP.

CLAUSE 6.16

Add, at the end of the first sentence of sub-clause 6.16.1.2, before the full stop:

CL 6.16.1.2

"provided always that, if the Remedial Measures were specified by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons, then the Contractor shall not be entitled to any addition to the Contract Sum or any other payment in connection with those instructions and shall not be entitled to any extension of time fixing a later date as the Completion Date for the Works or any Section in connection with those instructions under clause 2.28";

and, in the final sentence of the sub-clause, after "Save to the extent that they relate to the Contractor's Designed Portion" add:

"and provided that the Remedial Measures were not specified by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons".

Note: this amendment seeks to address a possible weakness in the JCT clause, in that the clause implies, but does not make clear, who will pay for "Remedial Measures" ordered by the insurer, if a party breaches the Joint Fire Code.

SECTION 7 ASSIGNMENT THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**CLAUSE 7.1**

Delete clause 7.1 and replace with:

CL 7.1

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE****"General right to assign**

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

CL 7.1.1

.2 The Employer shall notify the Contractor of any assignment within 14 days. If the Employer fails to do this, the assignment shall still be valid.

CL 7.1.2

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

CL 7.1.3

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

CL 7.1.4

Note: Assignment of rights under a contract is the complete transfer of the rights to receive the benefits accruing to one of the parties to that contract. An Assignment only transfers the rights/benefits to a new owner. The original Employer will remain liable to the Contractor for any payments due under the Contract (unless the original Employer's obligations are novated). The words "taking an interest in the Works or the Completed Works" have been included to give the Contractor some legal comfort that the benefit of the Contract will not be assigned to an inappropriate third party.

Note: JCT clause 1.7 requires any notice/communication to be in writing. Therefore, the requirement of s136 Law of Property Act 1925, that assignments must be in writing, should be complied with.

CLAUSE 7.2

Delete clause 7.2 and its heading.

CL 7.2

Note: consequential amendment; JCT clause 7.2 is inconsistent with amended clause 7.1.

SECTION 8 TERMINATION**CLAUSE 8.4**

In sub-clause 8.4.1.3 after "requiring him to remove" insert:

CL 8.4.1.3

"or rectify"

Note: Employer may require an element of the Works, which does not comply with the Contract, to be rectified and not removed.

CLAUSE 8.5

In sub-clause 8.5.3.3 at the start of the sub-clause, after "the Employer may", insert:

CL 8.5.3.3

", at the Contractor's expense,"

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE**

Note: amendment makes it clear that some of the Employer's costs incurred after the Contractor's insolvency should be paid by the Contractor. In reality, the Contractor is unlikely to pay those sums, but if other sums are due to the Contractor for Works performed prior to insolvency, the Employer may withhold these additional costs and expenses.

CLAUSE 8.6

In clause 8.6, after "acting on his behalf", insert:

"or associated with him",

and at the end of the clause, after the full stop, insert:

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

Note: this amendment is intended to help ensure that "associated persons" is interpreted in the same way under the Contract as under the Bribery Act 2010.

CLAUSE 8.7

In sub-clause 8.7.2 after "the Contractor shall" and before the colon, insert:

", at the Contractor's expense"

In sub-clause 8.7.4, after "as referred to in clause 2.38)", insert:

"and at the Contractor's expense"

CLAUSE 8.7.2.4

Insert new clause 8.7.2.4:

"Upon any termination of the Contractor's employment or if the Contract is terminated or discharged and notwithstanding that the validity of termination or discharge is disputed by the Contractor, the Contractor shall vacate the site having carried out all necessary measures to ensure the Works and the site are left in a condition whereby:

- i) they present no hazard to any personnel and the general public;
- ii) they are compliant with all Health and Safety legislation; and
- iii) they are suitably secured to prevent unauthorised access and the removal of any unfixed materials and any plant.

The Contractor shall promptly deliver to the Employer possession of the Site and of the Works."

CLAUSE 8.12

CL 8.6

CL 8.7.2

CL 8.7.4

CL 8.7.2.4

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE**

Delete sub-clause 8.12.3.5.

CL 8.12.3.5

Note: Employer's argument would be that the Contractor will be paid enough, on termination, under sub-clauses 8.12.3.1 to 8.12.3.4 and that paying the Contractor additional "loss and expense" would be too much and could, for example, include a loss of profit claim.

Delete sub-clause 8.12.4.

CL 8.12.4

Note: consequential amendment; clause 8.12.4 is not required as clause 8.12.3.5 has been deleted.

SECTION 10 FREEDOM OF INFORMATION DATA PROTECTION CRIME AND DISORDER

Insert new section 10

CLAUSE 10.1 FREEDOM OF INFORMATION

Insert new sub-clause 10.1.1:

CL 10.1.1

"The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations and the National Audit Act 1983 and further acknowledges the statutory obligations on and commitment of the Employer to open government and public access to information and, accordingly, shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosure and audit obligations."

Insert new sub-clause 10.1.2:

CL 10.1.2

"The Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Employer all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;
- (b) provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five (5) working days (or such other period as the Employer may reasonably specify) of the Employer's request; and
- (c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 10.1.3:

CL 10.1.3

"The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations or the Environmental Information Regulations or the National Audit Act 1983."

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)**REFERENCE**

Insert new sub-clause 10.1.4:

CL 10.1.4

“In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer.”

Insert new sub-clause 10.1.5:

CL 10.1.5

“The Contractor acknowledges that (notwithstanding the provisions of this clause 1.5 the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”) and any directions of the Information Commissioner, be obliged under the FOIA, or the Environmental Information Regulations, or the Environmental Information Regulations or the National Audit Act 1983 to disclose information concerning the Contractor or the Works:

- (a) in certain circumstances without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause (a) above applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.”

Insert new sub-clause 10.1.6:

CL 10.1.6

“The Contractor shall ensure that all Information is retained for disclosure and shall permit the Employer to inspect such records as may be reasonably requested from time to time.”

Insert new sub-clause 10.1.7:

CL 10.1.7

“In the event that the Contractor incurs or would incur costs in actively locating, retrieving and extracting information in assisting the Employer to respond to a request for information, the Contractor must inform the Employer of such likely costs and the Employer will inform the Contractor in writing whether or not it still requires the Contractor to assist with complying with the request. If the Employer informs the Contractor to proceed with the request, the Employer will reimburse the Contractor for such reasonable and necessary costs as the Contractor incurs but only to the extent that the Employer itself is entitled to reimbursement of such costs in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.”

Insert new sub-clause 10.1.8:

CL 10.1.8

“The Contractor acknowledges that identification of any matter to the Employer by the Contractor as commercially sensitive information is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause.”

Insert new sub-clause 10.1.9:

CL 10.1.9

“The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor

BCD4 STANDARD BUILDING CONTRACT (Without Quantities)

hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as the Employer is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Employer decides. The Contractor shall render such assistance and cooperate with the Employer to enable such publication, including, if the Employer so requires, assisting the Employer at no additional costs to the Employer in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose."

REFERENCE**CLAUSE 10.2 DATA PROTECTION**

Insert new sub-clause 10.2.1:

"The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (the Act) and will indemnify the Employer against all actions cost expenses claims proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor and his servants, employees and agents."

CL 10.2.1

Insert new sub-clause 10.2.2:

"The Employer is a Data Controller under the Act and is committed to protect the privacy of all persons by processing personal information in a manner which meets the requirement of the Act."

CL 10.2.2**CLAUSE 10.3 CRIME AND DISORDER**

Insert new clause 10.3:

The Contractor shall comply on the Employers behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and will indemnify the Employer against all actions, costs, expenses, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises upon acts or omissions by the Contractor, its servants, employees and agents under the Contract.

CL 10.3

5.

EXECUTION OF CONTRACTS:

Contracts will be executed as a Deed.

Attestation

[Note: (to be deleted):

Insert text and delete square brackets/text as appropriate to the individual project requirements and append the completed Employer's Schedule of Contract Amendments to the JCT Contract]

**EMPLOYER'S SCHEDULE OF CONTRACT AMENDMENTS (January 2012)
JCT STANDARD BUILDING CONTRACT WITHOUT QUANTITIES (SBC/XQ) 2011**

[insert PROJECT NAME AND PROJECT NUMBER]

This Contract shall incorporate all the provisions of the JCT Standard Building Contract Without Quantities 2011 except that the Recitals, Articles, Contract Particulars and Conditions shall be amended by this Schedule of Employer's Contract Amendments (January 2012) and shall be construed as varied accordingly.

The definitions in the JCT Standard Building Contract Without Quantities 2011 edition have the same meaning in this Employer's Schedule of Contract Amendments, unless the meaning given in the JCT Standard Building Contract Without Quantities 2011 edition is different to, or conflicts with, the meaning given in this Employer's Schedule of Contract Amendments, in which case this Employer's Schedule of Contract Amendments shall prevail.

Without prejudice to the above, in case of any difference, discrepancy or conflict between this Employer's Schedule of Contract Amendments and the JCT Standard Building Contract Without Quantities 2011 edition, this Employer's Schedule of Contract Amendments shall prevail.

RECITALS

TWELFTH RECITAL

Only where there is a Contractor's Designed Portion (and the Employer wishes to create a single point of responsibility), delete the existing twelfth recital and replace with:

"The Contractor has examined the Employer's Requirements and has agreed to accept full responsibility for any design contained in them."

ARTICLES

INSERT NEW ARTICLE 10:

"Contractor's Parent Company Guarantee or Performance Bond or Deposit by Way of Security"

["If the Contract Sum is £250,000 or more, the Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form included within the Employer's Requirements. The parent company guarantee shall be executed and delivered by **[insert name and company number of Contractor's parent company]**. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer may deduct £**[insert amount]** from the sums that would otherwise be due to the Contractor under this Contract."**]**

[OR:]

["The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form included within the Employer's Requirements. The bond amount shall be no less than 10% of the Contract Sum. The bond shall be executed and delivered by a surety approved by the Employer, acting

reasonably. In the event of the Surety becoming bankrupt or insolvent or compounding with his or their creditors, the Contractor shall, upon being required by the Employer to do so, enter into a new bond with a fresh Surety in the same sum. If the Contractor does not procure execution and delivery of the bond, then, notwithstanding any other term of this Contract, the Employer may deduct £[insert amount] from the sums that would otherwise be due to the Contractor under this Contract."

"The cost of providing the performance bond is to be entered as a separate total in the Contract Sum Analysis, together with the name and address of the proposed Surety. The name and address of a broker or other intermediary will not be accepted."

NB the Employer is to select either a bond OR a parent company guarantee for inclusion in the Employer's Requirements having regard to the prevailing financial circumstances. If the Employer selects a bond, the Contractor may elect to deposit the bond amount with the Employer's bank in lieu of a bond. In such circumstances, the Contractor shall, no later than the date of this Contract, enter into an Agreement for Deposit by Way of Security with the Employer in the form included within the Employer's Requirements to deposit an amount which shall be no less than 10% of the Contract Sum into the Employer's bank account. If the Contractor does not enter into the Agreement for Deposit by Way of Security, notwithstanding any other term of this Contract, the Employer may deduct £[insert amount] from the sums that would otherwise be due to the Contractor under this Contract.]

CONTRACT PARTICULARS

CLAUSE 2.19.3

Delete the whole entry of Part 1 of the Contract Particulars relating to clause 2.19.3.

CLAUSE 6.12

Delete the whole entry of Part 1 of the Contract Particulars relating to clause 6.12.

CLAUSE 7.2

Delete the whole entry of Part 1 of the Contract Particulars relating to clause 7.2.

CONDITIONS

SECTION 1 DEFINITIONS AND INTERPRETATION

CLAUSE 1.1

Add these definitions:

"Deleterious Materials: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time 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 reducing, 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, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément. For the avoidance of doubt, Deleterious Materials includes, but is not limited to, the following:

- i) High alumina cement concrete.
- ii) Cement containing added calcium chloride as a setting agent.
- iii) Crocidolite.

- iv) Asbestos products.
- v) Woodwool slabs in permanent shuttering form.
- vi) Polyisocyanurate or polyurethane foam.
- vii) Calcium chloride in blockwork or brickwork.
- viii) Aggregates which do not comply with BS882 and BS8100 and aggregates susceptible to alkali silica reaction.
- ix) Cement made with aggregate containing silica and/or;
- x) Calcium silicate bricks and tiles.
- xi) Lead or any products containing lead for use in drinking water systems.
- xii) Urea formaldehyde foam.
- xiii) Materials which are generally composed of mineral fibres either manmade or naturally occurring which have a diameter of 3 microns or less and/or a length of 200 microns or less or which contain any fibres not sealed or otherwise stabilised to ensure that fibre migration is prevented."

"Environmental Laws: any law, statute, statutory instrument or legislation of the European Union having effect in the United Kingdom concerning the protection of the environment or the generation, transportation, storage, use, treatment or disposal of Hazardous Substances."

"Hazardous Substances: any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substances) capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health including but not limited to any controlled, hazardous, toxic or dangerous waste."

"Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided 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)."

"Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Works (and the completed Works)."

"Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works (insofar as the Contractor is responsible for designing the Works) similar in scope and character to the Works including (but without limitation to the generality of the foregoing) not using or causing or permitting to be used any Deleterious Materials or Hazardous Substances in the Works."

SECTION 2 CARRYING OUT THE WORKS

CLAUSE 2.1A

"Insert new sub-clause 2.1A:

The Employer requires that the Contractor complies with the following publications and West

Sussex County Council Building Contract Directives (BCD) (copies of BCD's included in these Employers Requirements):

- a) WSCC Design Guide for Sustainable Buildings.
- b) WSCC Construction Guides for Building Construction, Mechanical Engineering and Electrical Engineering.
- c) CCTV Code of Practice (revised Edition 2008) issued by Information Commissioners Office.
- d) WSCC General Policy Brief for Education Buildings"

CLAUSE 2.1B

Insert new sub-clause 2.1B:

"The Contractor shall be deemed to have satisfied itself as to the soil and rock strata comprising the site of the Works and notwithstanding any other provision of this Contract, no matter arising from the state and condition of the soil and rock strata comprising the site Works shall give rise to any adjustment of the Contract Sum, or to any extension of time (whether under Clause 2.28 or otherwise) or to any entitlement on the part of the Contractor to terminate his employment under this Contract."

CLAUSE 2.1C

Insert new sub-clause 2.1C:

"The Contractor shall not

- .1 do or permit to allow to be done by act or thing or omission in connection with this contract which would either cause or give proper grounds for an action to be brought against the Employer under Section 7 of the Human Rights Act 1998 or any amendment or re-enactment of that Act or
- .2 give grounds for a person to rely upon such act or thing or omission on the part of the Contractor in his defence in any proceedings brought against a third party by the Council."

CLAUSE 2.2

Insert in sub-clause 2.2.1, after "they are relevant),":

"carry out and"

CLAUSE 2.3

Insert in sub-clause 2.3.1 after "so far as procurable, be" (in both places it appears):

"of satisfactory quality and"

Insert in sub-clause 2.3.3 after "in the case of the Contractor's Designed Portion be" **and** after "shall in any other case be":

"of satisfactory quality or proper and workmanlike (as the case may be) and"

Insert new sub-clause 2.3.6:

"The Contractor shall not use or cause or permit the use in the Works of any products or materials, which, at the time of use, are Deleterious Materials or Hazardous Substances. The Contractor shall immediately notify the Architect/Contract Administrator if it becomes aware of any such use."

Insert new sub-clause 2.3.7:

"The Contractor shall not transport to, use, generate, dispose of or install at the site of the Works any Deleterious Materials or Hazardous Substances except in accordance with Environmental Laws applicable at the time of performing the Works. The Contractor shall use the Standard of Care not to cause any release of Deleterious Materials or Hazardous Substances into, or contamination of the environment, including soil, the atmosphere, any water course or ground water, except in accordance with Environmental Laws applicable at the time of performing the Works. It is the Contractor's responsibility to comply with this Clause 2.3.7 based on the Environmental Laws in effect at the time its services are rendered."

CLAUSE 2.13

Delete clause 2.13

CLAUSE 2.14

Delete sub-clause 2.14.1 and replace with:

"Subject to clause 2.17, if any inadequacy is found in any design in the Employer's Requirements, if or to the extent that that inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly. That correction, alteration or modification shall not be treated as a Variation and there shall be no addition to the Contract Sum in respect of that correction, alteration or modification or in respect of any instruction requiring a Variation of work not comprised in the Contractor's Designed Portion that is necessitated by any such correction, alteration or modification."

CLAUSE 2.16

In sub-clause 2.16.2 delete, from the end of the sub-clause, "treated as a Variation" and replace with:

", to the extent that it relates to the removal of that discrepancy, shall not be treated as a Variation and there shall be no addition to the Contract Sum"

CLAUSE 2.17

In sub-clause 2.17.2.1, after "change in the Statutory Requirements" insert:

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

CLAUSE 2.19

Delete clause 2.19 and replace with:

"Where there is a Contractor's Designed Portion:"

- (a) Insert new sub-clause 2.19.1:

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

- (b) Insert new sub-clause 2.19.2:

"Without prejudice to clause 2.19.1, the Contractor shall be fully responsible in all respects for any design of the CDP Works that is carried out by a professional consultant or specialist designer or sub-contractor that the Contractor has or will employ (including a person employed at the

Employer's request) whether such design work is carried out before, on or after the date of this Contract."

- (c) Insert new sub-clause 2.19.3:

"Without derogating from any other provision in this Contract, the Contractor warrants to the Employer that it shall use the Standard of Care when:

.1 designing the CDP Works; and

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

- (d) Insert new sub-clause 2.19.4:

"Without prejudice to clauses 2.1 and 2.17.3, the Contractor warrants that it shall use the Standard of Care to see that its design of the CDP Works complies with Statutory Requirements."

CLAUSE 2.20

In sub-clause 2.20.1 after "Contractor's Proposals" insert:

"or the Employer's Requirements"

CLAUSE 2.28

Delete "and" from the end of sub-clause 2.28.6.3.

Delete the full stop at the end of sub-clause 2.28.6.4 and replace with: "; and"

Add a new sub-clause 2.28.6.5:

"(save where the Relevant Event is as defined in clause 2.29.9 and provided, in that case, that the Contractor has complied fully with any obligation upon it to maintain insurance against Specified Perils under this Contract) the Contractor shall not be entitled to any extension of time on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

CLAUSE 2.29

In sub-clause 2.29.2.1 after "clause 2.15" insert: "subject always to clause 2.16)".

Delete sub-clause 2.29.7

In sub-clause 2.29.10 after "or threat of terrorism" delete wording and insert:

"resulting in death or injury to any person employed on the site of the Works or the reasonable apprehension thereof and/or any restriction of access to or egress from or any activity on the site of the Works by the relevant authorities in dealing with such event or threat."

Delete sub-clause 2.29.11

CLAUSE 2.35

Add to the end of clause 2.35:

"Provided that the Architect/Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period for the Relevant Part."

CLAUSE 2.38

Delete "within a reasonable time" in line 13.

In line 14 after "be made good" insert "within the following required times"

Insert after seventeenth line at end of clause:

- "The required times are:
- a) Water ingress or damp from internal services; 8 working hours
 - b) Electrical and heating faults; 8 working hours
 - c) Blocked drains; 8 working hours
 - d) Ill-fitting doors/windows where security affected; 8 working hours
 - e) Defective floor coverings or pavings; 7 working days unless in the opinion of the Employer, these represent a possible danger in which case 8 working hours
 - f) All other defects which the Architect/Contract Administrator considers require attention before the end of the Rectification Period, which are not listed above, will be attended to within 5 working days or such lesser period as the Architect/Contract Administrator may reasonably require."

CLAUSE 2.39

Add to the end of clause 2.39:

"Provided that the Architect/Contract Administrator shall not be required to issue any Certificate of Making Good earlier than the expiry of the Rectification Period."

NEW CLAUSE 2.39A

Add a new clause 2.39A after clause 2.39:

"Snagging list and defects, shrinkages or other faults remaining at practical completion

Clauses 2.38 and 2.39 shall apply, all other things being equal, to:

- .1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion or attached to a Practical Completion Certificate or Section Completion Certificate;
- .2 any defects, shrinkages or other faults in the Works at practical completion; and
- .3 any incomplete work, forming part of the Works, remaining at practical completion."

CLAUSE 2.41

Delete sub-clauses 2.41.2 **and** 2.41.3 and replace with:

Sub-Clause 2.41.2

"The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of Contractor for any purpose relating to the Works (and the completed Works) including, without limitation, any of the Permitted Uses.

Sub-Clause 2.41.3

This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.

Sub-clause 2.41.4:

The Contractor shall have no liability for use of the Material for any purpose other

than that for which it was prepared and/or provided."

SECTION 3 CONTROL OF THE WORKS

NEW CLAUSE 3.25

Insert new clause 3.25:

"Project meetings

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Architect/Contract Administrator shall be permitted to attend such meetings."

SECTION 4 PAYMENT

PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS

(Clauses 4.9 - 4.15 inclusive)

CLAUSE 4.9

Delete clause 4.9 and replace with:

- .1 The Architect/Contract Administrator shall issue Interim Certificates in accordance with clause 4.9.2 each stating the amount due to the Contractor from the Employer, to what the amount relates and the basis on which the amount has been calculated.
- .2 Interim Certificates shall be issued on the date provided for in the Contract Particulars up to the date of practical completion of the Works or the date within one month thereafter. Interim Certificates shall thereafter be issued on the same date at intervals of 2 months (unless otherwise agreed) and upon whichever is the later of the expiry of the Rectification Period or the issue of the Certificate of Making Good (or, where there are Sections, the last such period or certificate).

CLAUSE 4.10

Delete clause 4.10 and replace with:

"Subject to any agreement between the Parties as to stage payments, the amount stated as due in an Interim Certificate shall be the Gross Valuation pursuant to clause 4.16 less the aggregate of:

- .1 any amount which may be deducted and retained by the Employer as provided in clauses 4.18 to 4.20 ("the Retention");
- .2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Contract Particulars for clause 4.8; and
- .3 the sums stated as due in previous Interim Certificates."

CLAUSE 4.11

Delete clause 4.11 and replace with:

"Interim valuations shall be made by the Quantity Surveyor whenever the Architect/Contract Administrator considers them necessary for ascertaining the amount to be stated as due in an Interim Certificate, except where Fluctuations Option C (formula adjustment) applies,

when an interim valuation shall be made before the issue of each Interim Certificate.”

CLAUSE 4.12

Delete clause 4.12 and replace with:

“Without affecting the Architect/Contract Administrator’s obligation to issue Interim Certificates, the Contractor, not later than 7 days before the date for issue of an Interim Certificate, shall submit to the Quantity Surveyor and the Architect/Contract Administrator an application setting out what the Contractor considers to be the sum of the Gross Valuation, including the sum that the Contractor considers will become due on the payment due date for that Interim Certificate and the basis on which that sum is calculated. When the Contractor submits his application, the Quantity Surveyor shall make an interim valuation. If the Quantity Surveyor disagrees with the sum shown in the application, he shall at the time of making the valuation, submit to the Contractor and the Architect/Contract Administrator a statement, which shall be in similar detail to the application and shall identify the disagreement.”

CLAUSE 4.13

Delete clause 4.13 and replace with:

- .1 Immediately following the issue of an Interim Certificate the Contractor shall send a valid invoice to the Employer and the Architect/Contract Administrator (containing the relevant project purchase order number) confirming the amount due within the Interim Certificate (“the Contractor’s Invoice”). For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of an Interim Certificate shall be the date of issue of the Contractor’s Invoice and the final date for payment pursuant to the an Interim Certificate shall be 30 days from the date of issue of the Contractor’s Invoice.
- .2 The Employer is entitled to exercise any rights under this Contract of withholding, paying less or deduction from sums due or to become due to the Contractor against any amount due under an Interim Certificate, whether or not any Retention is included in that Interim Certificate under clause 4.20.
- .3 Not later than 5 days after the date of issue of a Contractor’s Invoice the Employer or the Architect/Contract Administrator shall give a notice to the Contractor which shall, in respect of the amount stated as due, specify the sum that the Employer or the Architect/Contract Administrator considers to be due at the payment due date and the basis on which the amount has been calculated (‘the notified sum’). It is immaterial that the notified sum may be zero.
- .4 Not later than 5 days before the final date for payment the Employer or the Architect/Contract Administrator may give a notice to the Contractor of the Employer’s intention to pay less than the notified sum. The notice shall set out the sum due on the date the notice is served and the basis on which the sum is calculated. It is immaterial that the sum may be zero.
- .5 Subject to any notice given under clause 4.13.4, the Employer shall no later than the final date for payment pay the Contractor the notified sum contained in the notice given under clause 4.13.3 or, in the absence of a notice under clause 4.13.3, the amount stated as due in the Contractor’s Invoice.
- .6 If the Employer fails properly to pay the amount, or any part of it, due to the Contractor under these Conditions by the final date for its payment, the Employer shall, in addition to the amount not properly paid, pay the Contractor simple interest at the Interest Rate for the period until the payment is made. Interest under this clause shall be a debt due to the Contractor by the Employer.
- .7 Where there is a failure to issue a Contractor’s Invoice either on time or at all, the

Contractor's entitlement to interest shall commence on and be calculated from and including the day immediately following the date that would have been the final date for payment had the Contractor's Invoice been issued on time.

- .8 Acceptance of a payment of interest under this clause 4.13 shall not in any circumstances be construed as a waiver of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4.14 or to terminate his employment under section 8.

CLAUSE 4.14

Delete clause 4.14 and replace with:

- .1 Without affecting the Contractor's other rights and remedies, if the Employer, subject to any notice issued pursuant to clause 4.13.4, fails to pay the Contractor in full (including any VAT properly chargeable in respect of such payment) by the final date for payment as required by these Conditions and the failure continues for 7 days after the Contractor has given notice to the Employer, with a copy to the Architect/Contract Administrator, of his intention to suspend the performance of any or all of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend such performance until payment is made in full.
- .2 Where the Contractor exercises his right of suspension under clause 4.14.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.
- .3 Applications in respect of any such costs and expenses shall be made to the Architect/Contract Administrator and the Contractor shall with his application submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained. The Contractor shall, on request, submit such further details as are reasonably requested by the Architect/Contract Administrator or the Quality Surveyor.

CLAUSE 4.15

Delete clause 4.15 and replace with:

- .1 The Architect/Contract Administrator shall issue the Final Certificate not later than 2 months after whichever of the following occurs last:
 - .1 the end of the Rectification Period in respect of the Works or (where there are Sections) the last such period to expire;
 - .2 the date of issue of the Certificate of Making Good under clause 2.39 or (where there are Sections) the last such certificate to be issued; or
 - .3 the date of which the Architect/Contract Administrator sends to the Contractor copies of the statement and of any ascertainment to be prepared under clause 4.5.2.
- .2 The Final Certificate shall state:
 - .1 the Contract Sum adjusted as necessary in accordance with clause 4.3; and
 - .2 the sum of the amounts already stated as due in Interim Certificates plus the amount of any advance payment paid pursuant to clause 4.8;

and the difference (if any) between the two sums shall (without affecting the rights of the Contractor in respect of any Interim Certificate not paid in full by the Employer by its final date for payment) be expressed in the Final Certificate as a balance due to

the Contractor from the Employer or to the Employer to the Contractor, as the case may be. The Final Certificate shall state the basis on which that amount has been calculated.

- .2A Immediately following the issue of the Final Certificate the Party to whom the balance is stated to be payable or the Architect/Contract Administrator shall issue a valid invoice (containing the information required for the Contractor's Invoice) confirming the amount due within the Final Certificate ('the Final Invoice'). For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the due date for payment in respect of the Final Certificate shall be the date of issue of the Final Invoice.
- .3 Not later than 5 days after the date of issue of the Final Invoice the Party by whom the balance is stated to be payable ("the paying Party") or the Architect/Contract Administrator shall give a notice to the other Party which shall, in respect of the balance stated as due, specify the sum that the paying Party or the Architect/Contract Administrator considers to be due at the payment due date and the basis on which the amount has been calculated ('the notified sum'). It is immaterial that the notified sum may be zero.
- .4 The final date for payment of the balance shall be 28 days from the date of issue of the Final Invoice. Not later than 5 days before the final date for payment the paying Party or the Architect/Contract Administrator may give a notice to the other Party of his intention to pay less than the notified sum. The notice shall set out the sum due on the date the notice is served and the basis on which that sum is calculated. It is immaterial that the notified sum may be zero.
- .5 Where the paying Party does not give a notice pursuant to clause 4.15.3 he shall, subject to any notice given under clause 4.15.4, pay the other Party any balance stated as due to the other Party in the Final Invoice.
- .6 If the paying Party fails properly to pay the balance, or any part of it, by the final date for its payment, he shall in addition to the amount not properly paid pay to the other Party simple interest at the Interest rate for the period until payment is made.
- .7 Where there is a failure to issue the Final Invoice either on time or at all, the provisions of clause 4.13.7 shall correspondingly apply in respect of interest on any balance due by the paying Party to the other Party.
- .8 Acceptance of a payment of interest under this clause 4.15 shall not in any circumstances be construed as a waiver of any right to proper payment of the balance.
- .9 The balance due and any interest under this clause 4.15 shall be a debt due by the paying Party to the other Party.

(END OF PROVISION FOR THE EMPLOYER'S NEW PAYMENT REQUIREMENTS)

CLAUSE 4.18

Delete clause 4.18 and replace with:

"With regard to the Retention, which the Employer may deduct and retain as referred to in clause 4.9.2.1, the Employer shall be:

- .1 under no fiduciary obligation to the Contractor or any third party;
- .2 under no obligation to set aside in a separate bank account any amount representing the Retention; and
- .3 entitled to the full beneficial interest in any interest accruing on the Retention and shall be

under no obligation to account to the Contractor for any such interest."

CLAUSE 4.23

Delete "and" from the end of sub-clause 4.23.2, change the full stop at the end of sub-clause 4.23.3 to: "; and",

and insert new sub-clause 4.23.4:

".4 not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable) in respect of any cost or loss and/or expense arising by reason of an error, omission, negligence or default of the Contractor or the Contractor's Persons."

CLAUSE 4.24

Insert at the start of sub-clause 4.24.2.3: "(subject to clause 2.14)".

SECTION 5 CHANGES

CLAUSE 5.9

In the paragraph below sub-clause 5.9.2, after "(including CDP Works), then" add:

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

SECTION 6 INJURY DAMAGE AND INSURANCE

CLAUSE 6.1

In clause 6.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

CLAUSE 6.2

In clause 6.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

CLAUSE 6.3A

Insert new clause 6.3A after clause 6.3:

"Contractor to prevent nuisance and indemnify Employer

The Contractor shall prevent any nuisance (including any noisy working operations) or other interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.3A."

CLAUSE 6.3B

Insert new clause 6.3B after new clause 6.3A:

"Contractor to prevent trespass to neighbours

Without prejudice to clauses 6.1, 6.2 and 6.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works or any obligation pursuant to clause 2.38 would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act. That agreement shall be subject to the Employer's approval before its completion, such approval not to be unreasonably withheld or delayed. The Contractor shall comply with any conditions contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any conditions contained in that agreement."

CLAUSE 6.10.5

Insert new clause 6.10.5:

"The Contractor shall ensure that his insurer is a member of the Pool Reinsurance Company Limited scheme (or of any similar successor scheme) prior to entering into the contract and if requested to do so by the Employer, shall produce for inspection documentary evidence of such membership."

[CLAUSE 6.12

Delete clause 6.12 and replace with:

"Obligation to insure

The Contractor shall maintain professional indemnity insurance for an amount of at least £2,000,000 (Two Million Pounds) for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that (subject to clause 6.12A) such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

- .1 with reputable insurers lawfully carrying on insurance business in the UK;
- .2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- .3 on terms that do not require the Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930."]

[NEW CLAUSE 6.12A

Insert new clause 6.12A, after clause 6.12:

"Commercially reasonable rates

Any increased or additional premium required by insurers for the insurance referred to in clause 6.12 and clause 6.13B because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates."]

[NEW CLAUSE 6.12B

Insert new clause 6.12B, after clause 6.12A:

"Contractor may not settle, compromise or affect a claim

In relation to the insurance referred to in clause 6.12, the Contractor shall not, without the Employer's consent:

- .1 settle or compromise any claim with the insurers that relates to a claim by the Employer against the Contractor; or
- .2 by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers."]

[NEW CLAUSE 6.12C

Insert new clause 6.12C, after clause 6.12B:

"Evidence of insurance

Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the Contractor's insurance referred to in clause 6.12 is in force, including, if required by the Employer, an original letter from the Contractor's insurers or brokers confirming:

- .1 the Contractor's then current professional indemnity insurance; and
- .2 that the premiums for that insurance have been paid in full at the date of that letter."]

[NEW CLAUSE 6.13A

Insert new clause 6.13A after clause 6.13:

"Sub-contractors' professional indemnity insurance

The Contractor shall procure that sub-contractors with a design responsibility who are required by the Employer to provide a deed of collateral warranty shall maintain professional indemnity insurance in accordance with the required form of collateral warranty. Within 14 days of the date of this Contract (or, if later, within 14 days of the appointment of a sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the sub-contractors' insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each sub-contractor's insurers or brokers confirming:

- .1 the sub-contractor's then current insurance, as referred to in this clause; and
- .2 that the premiums for that insurance have been paid in full at the date of that letter."

Notwithstanding clause 6.13A, if the sub-contractor does not have and/or is unable to obtain professional indemnity insurance cover, the Employer will be entitled to call upon the Contractor's professional indemnity insurance policy under and pursuant to the Contract. For the avoidance of doubt, the sub-contractor's professional indemnity insurance cover shall be the first and primary cover for the purposes of any matter for which professional indemnity insurance is required pursuant to the Contract."]

[NEW CLAUSE 6.13B

Insert new clause 6.13B after clause 6.13A:

"Professional consultant or specialist designers' professional indemnity insurance

The Contractor shall be fully responsible for ensuring that any professional consultant or specialist designer that the Contractor has or will employ (including a person employed at the Employer's request) whether such design work is carried out before, on or after the date of this Contract maintains the required level (as stipulated in the tender requirements) of professional indemnity insurance. Within 14 days of the date of this Contract (or, if later, within 14 days of the appointment of a professional consultant or specialist designer), the Contractor shall procure and shall send to the Employer evidence that the professional consultant or specialist designer's insurance referred to in this clause is in force, including, if required by the Employer, an original letter from each professional consultant or specialist designer's insurers or brokers confirming:

- .1 the professional consultant or specialist designer's then current insurance, as referred to in this clause; and
- .2 that the premiums for that insurance have been paid in full at the date of that letter."

Notwithstanding clause 6.13B, If the professional consultant or specialist designer does not have and/or is unable to obtain professional indemnity insurance cover, the Employer will be entitled to call upon the Contractor's professional indemnity insurance policy under and pursuant to the Building Contract. For the avoidance of doubt, the professional consultant or specialist designer's professional indemnity insurance cover shall be the first and primary cover for the purposes of any matter for which professional indemnity insurance is required pursuant to the Building Contract."

[NEW CLAUSE 6.13C

Insert new clause 6.13C after clause 6.13B:

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

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

- .1 completing any proposals for insurance and associated documents; or
- .2 maintaining insurance at rates above commercially reasonable rates, if the Employer reimburses the Contractor for the net cost of that insurance above commercially reasonable rates."

[NEW CLAUSE 6.13D

Insert new clause 6.13D after clause 6.13C:

"Cover for asbestos claims [is] [is not] required, with a limit of indemnity of £2,000,000 (Two Million Pounds). The required limit of indemnity is an annual aggregate amount."

[NEW CLAUSE 6.13E

Insert new clause 6.13E after clause 6.13D:

"Cover for fungal mould claims is required, with a limit of indemnity of £2,000,000 (Two Million Pounds)."

CLAUSE 6.16

Add, at the end of the first sentence of sub-clause 6.16.1.2, before the full stop:

"provided always that, if the Remedial Measures were specified by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons, then the Contractor shall not be entitled to any addition to the Contract Sum or any other payment in connection with those instructions and shall not be entitled to any extension of time fixing a later date as the Completion Date for the Works or any Section in connection with those instructions under clause 2.28";

and, in the final sentence of the sub-clause, after "Save to the extent that they relate to the Contractor's Designed Portion" add:

"and provided that the Remedial Measures were not specified by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons".

SECTION 7 ASSIGNMENT THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES

CLAUSE 7.1

Delete clause 7.1 and replace with:

"General right to assign

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

.2 The Employer shall notify the Contractor of any assignment within 14 days. If the Employer fails to do this, the assignment shall still be valid.

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

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

CLAUSE 7.2

Delete clause 7.2 and its heading.

SECTION 8 TERMINATION

CLAUSE 8.4

In sub-clause 8.4.1.3 after "requiring him to remove" insert:

"or rectify"

CLAUSE 8.5

In sub-clause 8.5.3.3 at the start of the sub-clause, after "the Employer may", insert:

", at the Contractor's expense,"

CLAUSE 8.6

In clause 8.6, after "acting on his behalf", insert:

"or associated with him",

and at the end of the clause, after the full stop, insert:

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

CLAUSE 8.7

In sub-clause 8.7.2 after "the Contractor shall" and before the colon, insert:

", at the Contractor's expense"

In sub-clause 8.7.4, after "as referred to in clause 2.38)", insert:

"and at the Contractor's expense"

CLAUSE 8.7.2.4

Insert new clause 8.7.2.4:

"Upon any termination of the Contractor's employment or if the Contract is terminated or discharged and notwithstanding that the validity of termination or discharge is disputed by the Contractor, the Contractor shall vacate the site having carried out all necessary measures to ensure the Works and the site are left in a condition whereby:

- i) they present no hazard to any personnel and the general public;
- ii) they are compliant with all Health and Safety legislation; and
- iii) they are suitably secured to prevent unauthorised access and the removal of any unfixed materials and any plant.

The Contractor shall promptly deliver to the Employer possession of the Site and of the Works."

CLAUSE 8.12

Delete sub-clause 8.12.3.5.

Delete sub-clause 8.12.4.

SECTION 10 FREEDOM OF INFORMATION DATA PROTECTION CRIME AND DISORDER

Insert new section 10

CLAUSE 10.1 FREEDOM OF INFORMATION

Insert new sub-clause 10.1.1:

"The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations and the National Audit Act 1983 and further acknowledges the statutory obligations on and commitment of the Employer to open government and public access to information and, accordingly, shall assist and cooperate with the Employer to enable the Employer to comply with its information disclosure and audit obligations."

Insert new sub-clause 10.1.2:

"The Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Employer all requests for information that it receives as soon as practicable and in any event within two (2) working days of receiving a request for information;
- (b) provide the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five (5) working days (or such other period as the Employer may reasonably specify) of the Employer's request; and
- (c) provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 10.1.3:

"The Employer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations or the Environmental Information Regulations or the National Audit Act 1983."

Insert new sub-clause 10.1.4:

“In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Employer.”

Insert new sub-clause 10.1.5:

“The Contractor acknowledges that (notwithstanding the provisions of this clause 1.5 the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”) and any directions of the Information Commissioner, be obliged under the FOIA, or the Environmental Information Regulations, or the Environmental Information Regulations or the National Audit Act 1983 to disclose information concerning the Contractor or the Works:

- (a) in certain circumstances without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause (a) above applies the Employer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.”

Insert new sub-clause 10.1.6:

“The Contractor shall ensure that all Information is retained for disclosure and shall permit the Employer to inspect such records as may be reasonably requested from time to time.”

Insert new sub-clause 10.1.7:

“In the event that the Contractor incurs or would incur costs in actively locating, retrieving and extracting information in assisting the Employer to respond to a request for information, the Contractor must inform the Employer of such likely costs and the Employer will inform the Contractor in writing whether or not it still requires the Contractor to assist with complying with the request. If the Employer informs the Contractor to proceed with the request, the Employer will reimburse the Contractor for such reasonable and necessary costs as the Contractor incurs but only to the extent that the Employer itself is entitled to reimbursement of such costs in accordance with and to the level set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.”

Insert new sub-clause 10.1.8:

“The Contractor acknowledges that identification of any matter to the Employer by the Contractor as commercially sensitive information is of indicative value only and that the Employer may be obliged to disclose it in accordance with this clause.”

Insert new sub-clause 10.1.9:

“The Contractor acknowledges that the Employer is subject to transparency obligations which require the Employer to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Council to publish this Contract and its schedules in its entirety, including from time to time agreed changes to the Contract (save and except such matters as the Employer is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Employer decides. The Contractor shall render such assistance and cooperate with the Employer to enable

such publication, including, if the Employer so requires, assisting the Employer at no additional costs to the Employer in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.”

CLAUSE 10.2 DATA PROTECTION

Insert new sub-clause 10.2.1:

“The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (the Act) and will indemnify the Employer against all actions cost expenses claims proceedings and demands which may be made or brought against the Employer for breach of statutory duty under the Act which arises from the use, disclosure or transfer of personal data by the Contractor and his servants, employees and agents.”

Insert new sub-clause 10.2.2:

“The Employer is a Data Controller under the Act and is committed to protect the privacy of all persons by processing personal information in a manner which meets the requirement of the Act.”

CLAUSE 10.3 CRIME AND DISORDER

Insert new clause 10.3:

The Contractor shall comply on the Employers behalf with the provisions of Section 17 of the Crime & Disorder Act 1998 and will indemnify the Employer against all actions, costs, expenses, proceedings and demands which may be brought against the Employer for breach of statutory duty under the Act which arises upon acts or omissions by the Contractor, its servants, employees and agents under the Contract.