

Dated

2018

(1) WAKEFIELD COLLEGE

(2) TBC

NEC3 Engineering and Construction Short Contract (April 2013)

in relation to the refurbishment of level 1 and 2 at Radcliffe Building,
Wakefield College, Margaret Street, Wakefield, West Yorkshire, WF1 2DH

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CONTRACT AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 2018

BETWEEN:

- (1) Wakefield College of Wakefield Campus, Margaret Street, Wakefield, West Yorkshire WF1 2DH (a further education corporation incorporated pursuant to the Further & Higher Education Act 1992) ("the *Employer*"); and
- (2) TBC ("the *Contractor*").

BACKGROUND:

The *Employer* wishes to have the following *works* provided: the refurbishment of areas within level 1 and 2 at Radcliffe Building, Wakefield College, Margaret Street, Wakefield, West Yorkshire WF1 2DH.

IT IS NOW AGREED THAT:

1. The *Contractor* will Provide the Works in accordance with the Contractor's Proposals, the Works Information and the *conditions of contract* identified in the Contract Data.
2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data.
3. The documents forming part of this contract are this Contract Agreement and:
 - 3.1 the *Contractor's* Proposals
 - 3.2 the *Employer's* Acceptance
 - 3.3 the Contract Data
 - 3.4 the *conditions of contract*
 - 3.5 the Site Information
 - 3.6 the Works Information
 - 3.7 the original Accepted Programme

(copies of which (except the core clauses and clauses of the NEC Engineering and Construction Short Contract (April 2013) (as amended) are annexed and/or have been signed for identification purposes by or on behalf of the *Employer* and the *Contractor*).

4. If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:
- the Contract Agreement
 - the Contract Data
 - the *conditions of contract*
 - the *Contractor's* Proposals
 - the Works Information
 - the Site Information
 - the *Employer's* Acceptance
 - the original Accepted Programme.
5. The Contract Date (the date when this contract came into existence) is 2018.

THIS DOCUMENT is executed as a deed in duplicate and delivered on the date stated at the beginning of this Deed.

THE COMMON SEAL OF
WAKEFIELD COLLEGE
was affixed to this Deed
in the presence of

)
)
)
)

Chair of Corporation

Authorised Signatory

SIGNED as a deed by
TBC
acting by a director and its
Company Secretary or two directors

)
)
)
)

Director

Director/Company Secretary

CONTRACT DATA

Statements given in all contracts

- The *Employer* is

Name: Wakefield College

Address: Wakefield Campus, Margaret Street, Wakefield, West Yorkshire WF1 2DH (FAO: Jon Howard)

his successors and assignees

- The *works* are the refurbishment of areas within level 1 and level 2 to the Radcliffe building at Wakefield College, Margaret Street, Wakefield, West Yorkshire, WF1 2DH as described in the Contractor's Proposals and the Works Information.
- The *site* is Radcliffe Building, Wakefield College, Margaret Street, Wakefield, West Yorkshire, WF1 2DH.
- The *starting date* is TBC 2018
- The *completion date* is 17 August 2018
- The *period for reply* is two weeks
- The *defects date* is 52 weeks after Completion of the whole of the *works*.
- The *defect correction period* is 4 weeks, except that the *defect correction period* for Critical Defects, which might affect the safe and secure running of the *Employer's* facility is 48 hours. "Critical Defects" are Defects affecting the security systems, fire alarm systems, building heating systems, building potable water supplies, building mains electricity supply systems (excluding statutory undertakers' works).
- The *delay damages* are £1000 per week
- The *assessment day* is the last working day of each month
- The *retention* is 5%
- Collateral Warranties may be required (Clause 24)
- The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply
- The *Adjudicator* is to be appointed by the President of the Royal Institute of Chartered Surveyors.
- The interest rate on late payment is 2% (two per cent.) per annum above the official dealing rate of the Bank of England for the time being in force.

- The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer's* property in excess of £1,000,000.00 for any one event.
- The *Employer* provides this insurance: None.
- The minimum limit of cover for the third insurance stated in the Insurance Table is £1,000,000.00
- The minimum limit of cover for the fourth insurance stated in the Insurance Table is £1,000,000.00
- Insurers shall be lawfully carrying on such insurance business in the United Kingdom.
- *Contractor's* professional indemnity insurance is required.
- The *Contractor's* professional indemnity insurers shall be lawfully carrying on such insurance business in the United Kingdom.
- The minimum limit of indemnity of the *Contractor's* professional indemnity insurance is £1,000,000.00 for any one occurrence or series of occurrences arising out of each and every event and in the aggregate in any one year period of insurance with a minimum of two (2) automatic reinstatements of the aggregate indemnity limit in any one year period of insurance. The *Contractor* is to notify the *Employer* within seven days of any automatic reinstatement taking place in any one year period of insurance.
- The period during which professional indemnity insurance is to be maintained shall be for a period beginning not later than the Contract Date and ending 12 (twelve) years (or such other period as is required by the Contract Data) after Completion of the whole of the *works* or the termination of this contract or the termination of the *Contractor's* employment under this contract for any reason, including breach by the *Employer*, whichever is earlier.
- The *tribunal* is litigation.
- The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (April 2013) and the additional conditions annexed to this contract.

THE *CONTRACTOR'S* OFFER

- The *Contractor* is
Name: TBC
Address: TBC
- The percentage for overheads and profit added to the Defined Cost for people is TBC%
- The percentage for overheads and profit added to other Defined Cost is TBC%
- The *Contractor* offers to Provide the Works in accordance with the *Contractor's* Proposals, the Works Information and the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.
- The offered total of the Prices is £TBC.

THE *EMPLOYER'S* ACCEPTANCE

- The *Employer* accepts the *Contractor's* Offer to Provide the Works.

ADDITIONAL CONDITIONS OF CONTRACT

The core clauses are amended and added to as follows:

Core clauses

Clause 11.2 Insert the following new definitions:

- “(14) The CDM Regulations are the Construction (Design and Management) Regulations 2015 and the related Approved Codes of Practice together with any requirements issued from time to time by the Health and Safety Executive.
- (15) The Contract Agreement is the agreement entered into between the *Employer* and the *Contractor* under which the *Employer* has required the *Contractor* to Provide the Works in accordance with the Contractor’s Proposals and the Works Information.
- (16) The Contractor’s Design Documents are the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium (excluding internal memoranda and documents, working papers and templates) created and/or developed by or for the *Contractor* in relation to the *works*.
- (17) Intellectual Property is all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any similar rights or property in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property.
- (18) The Other Beneficiaries are the freehold owner or landlord of the site of the *works* (if not the *Employer*).
- (19) The Statutory Requirements are any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the *works* or performance of any obligations under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or with whose systems the *works* are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under such provisions which control the right to develop the Site.”

Clause 14.3 Delete and substitute:

- “14.3 No communication (including instructions, the Defects Certificate and other certificates), no acceptance of a communication from the *Contractor*, and no inspection, test or acceptance of the *Contractor*’s work, by the *Employer* changes the *Contractor*’s liability under this contract (including the *Contractor*’s responsibility to Provide the Works, his liability for Defects and for his design).”

Clause 18.1 Insert new clause:

- “18.1 The *Contractor* notifies the *Employer* as soon as he considers that, if completed in accordance with this contract, the *works* will not be in

accordance with the Statutory Requirements. If the *Employer* agrees, he gives an instruction to change the Works Information appropriately. Notwithstanding any other provision of this contract, any such possible non-compliance with the Statutory Requirements and/or instruction is not a compensation event, and does not result in any increase in the Prices or any delay to the Completion Date."

Clause 20.1 Delete and substitute:

"20.1 The *Contractor* Provides the Works, both before and after the Contract Date, in accordance with

- this contract
- the CDM Regulations and
- the Statutory Requirements."

Clause 20A Insert new clause:

20A.1 The *Contractor* is the Principal Contractor for the purposes of the CDM Regulations or, if he ceases to be the Principal Contractor, such other contractor as the *Employer* appoints under regulation 14(2) of the CDM Regulations."

Clause 21 Delete clause 21.1 and 21.2 and substitute:

"21.1 The *Contractor* does not, without the prior written consent of the *Employer*, assign the benefit of and his rights and benefits under this contract. The *Employer* may, without the consent of the *Contractor*, by written notice to the *Contractor*, assign the benefit of and his rights and benefits under this contract on not more than 2 (two) occasions provided that assignments to any company, bank or institution providing finance in connection with or secured (whether by charge, sale and leaseback or otherwise) upon the *works* shall not count towards such limited number of assignments.

21.2 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a subcontractor's employees and equipment were the *Contractor's*."

Clause 23 Insert new clause:

"23.1 Subject to any rights in any designs, drawings and other documents supplied to the *Contractor* for the purposes of this contract by or on behalf of the *Employer*, the Intellectual Property in all Contractor's Design Documents remains vested in the *Contractor*.

23.2 The *Contractor* grants the *Employer* an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the *works* including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, extension, reinstatement, refurbishment and repair of the *works*. Such licence

carries the right to grant sub-licences and is transferable to third parties.

- 23.3 The *Contractor* is not liable for any use by the *Employer* of any of the Contractor's Design Documents for any purpose other than that for which they were prepared and/or provided.
- 23.4 The *Contractor* does not grant to any third party the right to use any of the Contractor's Design Documents or any Intellectual Property in any of the Contractor's Design Documents except under any warranty he is obliged to give under this contract.
- 23.5 The *Contractor* warrants that the Contractor's Design Documents (except to the extent that duly authorised subcontractors are used) are the *Contractor's* own original work and that in any event their use in connection with the *works* will not infringe the rights of any third party.
- 23.6 The *Contractor* agrees on reasonable request at any time and following reasonable prior written notice to give to the *Employer*, or those authorised by the *Employer*, access to the Contractor's Design Documents and to provide copies (including copy negatives and CAD disks) of the Contractor's Design Documents at the *Employer's* expense.
- 23.7 In relation to the design of the *works*, the *Contractor* warrants and undertakes to the *Employer* that the *Contractor* has exercised and shall continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified and competent architect or other appropriate designer experienced in designing work of a similar size, scope, nature and complexity to the *works*.
- 23.8 The *Contractor* warrants to the *Employer* that the *Contractor* does not specify or approve for use in the *works*, or use in the *works*, any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with
- the guidance given in the edition current at the date of specification and/or use of the publication "Good Practice in Selection of Construction Materials 2011" published by the British Council for Offices in March 2011
 - relevant British or European Standards or Codes of Practice or
 - any publications of the Building Research Establishment related to the specification of products or materials.
- If in the performance of his duties under this contract, the *Contractor* becomes aware that he or any person has specified, approved or used any such products or materials, the *Contractor* immediately notifies the *Employer* of the same.
- 23.9 (1) The *Contractor* does not, without the prior written approval of the *Employer* take or permit to be taken any photographs of the *works* for use in any publicity or advertising.
- (2) The *Contractor* and his agents and employees do not, without the prior written approval of the *Employer*, disclose to any other person (other than any person to whom disclosure must be

made in order for the *Contractor* to fulfil his duties under this contract, the *Contractor's* lawyers, auditors and other professional advisers subject to a duty of confidence or as may be required by statute or by a court of competent jurisdiction) any information about the *works* including the *Contractor's* Design Documents or any information about the *Employer* or his business or any information about any person in whose favour the *Contractor* is obliged under this contract to execute a warranty or their businesses, nor does the *Contractor* exploit any such information for his own benefit or the benefit of any other person. The *Contractor's* obligations under this **Clause 23.9** do not apply to any information which is already in the public domain or to any information which came to him otherwise than in connection with his involvement in relation to the *works* except where its entry into the public domain or its coming to the *Contractor* was as a result of a breach of any contractual obligation by the *Contractor* or any other person for whom the *Contractor* is responsible.

- (3) The *Contractor* ensures that similar provisions are included in his contracts with subcontractors and shall enforce such provisions."

Clause 24 Insert new clause:

Collateral Warranties

24.2 The *Contractor shall* within 21 (twenty-one) days from receipt of the *Employer's* notice, delivers a Subcontractor Collateral Warranty in favour of the *Employer* executed by the relevant subcontractor (being the subcontractor undertaking the ground works for the project) in the form annexed at **Schedule B (Subcontractor's Collateral Warranty)**, or a similar form reasonably required by the *Employer*, subject to any amendments proposed by the relevant Subcontractor and approved by the *Contractor* and the *Employer*, such approval not to be unreasonably delayed or withheld.

24.3 Within 21 (twenty-one) days of entering into a subcontract in respect of which collateral warranties may be required under this **Clause 24**, the *Contractor* provides the *Employer* with a certified copy of the relevant subcontract, provided that the *Employer* agrees that the *Contractor* may redact all financial information on prices or commercially sensitive information."

Clause 32 Insert new clause:

As Built Information

32.1 The As Built Information comprises full drawings, documents and information as necessary to show and describe the *works* or a section "as built", together with manuals and such other information as is necessary to explain the operation and maintenance of the *works* or a *section*, and includes any other information identified as As Built Information in this contract.

32.2 The *Contractor* supplies to the *Employer* the As Built Information within 4 (four) weeks of Completion of the works or relevant section.

32.3 The As Built Information is supplied in 3 (three) copies, or in such other number as is stated in this contract, in the form and medium stated in this contract, or approved by the *Employer*."

Clause 50.6 Insert at the end of the clause:

"The *Employer* has the full beneficial interest in the amount retained, without any fiduciary obligation; and the relationship of the *Employer* and the *Contractor* with regard to the amount retained is solely that of debtor and unsecured creditor, subject to the terms of this contract."

Clause 50.8 Insert new clauses:

"50.8 All sums payable by or to the *Employer* or the *Contractor* are exclusive of Value Added Tax ("VAT"). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.

50.9 If the *Employer* is a "contractor" for the purposes of the Construction Industry Scheme ("CIS") under the Finance Act 2004, or if at any time the *Employer* becomes such a "contractor", the obligation of the *Employer* to make any payment under this contract is subject to the provisions of the CIS."

Clause 70.3 Insert new clause:

"70.3 Whatever title the *Contractor* has to Plant and Materials which is outside the Working Areas passes to the *Employer* once the *Employer* has made payment for the same in full. The *Contractor* shall, once the *Employer* has made such payment, forthwith provide a vesting certificate to the *Employer* in the form annexed at **Schedule B (Vesting Certificate)**."

Clause 81 Insert a new clause:

"81.4 (1) The *Contractor* shall at all times use reasonable endeavours to prevent any public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the works or of any obligation under **Clause 41** and assists the *Employer* in defending any relevant action or proceedings which may be instituted.

(2) The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer* (which is itself not the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor or supplier) and has not been avoided despite the *Contractor*

using all reasonable and practical means to avoid the same.

- (3) The *Employer* issues to the *Contractor* such instructions as he considers necessary if any injunction is granted or court order is made in consequence of any such nuisance or interference, but (except as described above) the *Contractor* is not entitled to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to an extension of time by reason of any such instruction."

Clause 82.2 Insert new clause:

"82.2 The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the Defects Certificate or a termination certificate has been issued, and are

- with reputable insurers approved by the *Employer*, lawfully carrying on such insurance business in the territory named in the Contract Data, and upon reasonable commercial terms and rates prevailing for the time being in the insurance market: those terms and conditions shall not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from insurers, or any other term or condition which might adversely affect the rights of any person to recover from insurers under any applicable law relating to the rights of any third parties (other than the insured, and including the *Employer*) against insurers; and
- in the joint names of the *Employer*, such other persons as the *Employer* may reasonably require (including the *Employer's* consultants, any persons who have entered or shall enter into an agreement for the provision of finance in connection with the *works*, and any persons who have acquired or shall acquire any interest in or over the *works* or any part of the *works*), and the *Contractor*, and shall also cover all Subcontractors."

Clause 83 Insert a new clause:

"83 **Professional indemnity insurance**

83.1 If the Contract Data so requires, the *Contractor* maintains professional indemnity insurance

- covering all his design liability under this contract
- upon commercially reasonable rates and terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the territory named in the Contract Data
- in an amount not less than that, and of the type, required by the Contract Data
- for a period beginning not later than the Contract Date and ending 12 (twelve) years (or such other period as is required by the Contract Data) after Completion of the whole of the *works* or the termination of this contract or the termination of the

Contractor's employment under this contract for any reason, including breach by the *Employer*, whichever is earlier

provided that such insurance is available generally in the market to design and build contractors at commercially reasonable rates and terms.

- 83.2 Those terms and conditions shall not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from insurers, or any other term or condition which might adversely affect the rights of any person to recover from insurers under any applicable law relating to the rights of third parties (other than the insured and including the *Employer*) against insurers.
- 83.3 The *Contractor* does not by any act or omission lose or prejudice the *Contractor's* right to make or proceed with such a claim against insurers.
- 83.4 Any increased or additional premium required by insurers by reason of the *Contractor's* claims record or other matters particular to the *Contractor* shall be considered to be within commercially reasonable rates.
- 83.5 The *Contractor* immediately informs the *Employer* if such insurance ceases to be available generally in the market to design and build contractors at commercially reasonable rates and terms, and fully co-operates with any measures reasonably required by the *Employer*, including
- completing any proposals for insurance and associated documents
 - maintaining such insurance at premiums above commercially reasonable rates, if the *Employer* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable rates, or
 - if the *Employer* effects such insurance at rates above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Contractor* would have been at commercially reasonable rates.
- 83.6 The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of this contract or the termination of the *Contractor's* employment under this contract for any reason, including breach by the *Employer*."

LIST OF SCHEDULES

SCHEDULE	DESCRIPTION
A	Subcontractor's Collateral Warranty
B	Vesting Certificate

SCHEDULE A

Subcontractor's Collateral Warranty

Dated

2018

(1) [SUBCONTRACTOR]

(2) [BENEFICIARY]

(3) TBC

Subcontractor warranty

relating to the construction of the refurbishment to level 1 and 2 of the
Radcliffe Building at Wakefield College

Eversheds LLP
Bridgewater Place
Water Lane
Leeds
LS11 5DR

Tel 0845 497 9797
Fax 0845 498 4994
Int +44 113 243 0391
DX 12027 Leeds-27
www.eversheds.com

THE PARTICULARS

Date of this Deed	:	
The Subcontractor	:	[NAME] [(registered number [number])] [whose registered office is at] [of] [Address]
The Beneficiary	:	[NAME] [(registered number [number])][whose registered office is at] [of] [Address]
The Contractor	:	TBC
The Employer	:	Wakefield College of Wakefield Campus, Margaret Street, Wakefield, West Yorkshire WF1 2DH (a further education corporation incorporated pursuant to the Further & Higher Education Act 1992)
The Main Contract	:	the contract dated [DATED] made between the Contractor and the [Beneficiary][Employer]
The Main Works	:	the design and construction of the works to be provided by the Contractor in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract
The Subcontract	:	the contract dated [DATED] made between the Contractor and the Subcontractor
The Subcontract Works	:	the part of the Main Works specified in the Subcontract
The Development	:	the development at the Site of works comprising a modular 6 th form centre
The Site	:	Wakefield College, Radcliffe Building, Margaret Street, Wakefield, WF1 2DH

Documents

- : all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Subcontractor used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the Subcontractor in the course of performing its obligations under the Subcontract

Intellectual Property

- : all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property

Liability Period

- : the period from the date of the Subcontract until no less than 12 years after completion of the Main Works

Professional Indemnity Insurance

- : professional indemnity insurance with a minimum limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of any one event

THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the Subcontractor;[and]
- (2) the Beneficiary; [and
- (3) the Contractor].

BACKGROUND:

- (A) In accordance with the Main Contract, the [Beneficiary][Employer] has appointed the Contractor to provide the Main Works in relation to the Development.
- (B) In accordance with the Subcontract the Contractor has appointed the Subcontractor to carry out and complete the Subcontract Works in connection with the Development.
- (C) The Beneficiary has an interest in the Development as it is [providing finance in connection with the Development pursuant to the Funding Agreement] OR [the/a] [landlord][freehold owner][purchaser][tenant][provider of finance in connection with the [purchase][lease] of [the Site][*description of part of the Site*].
- (D) The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. **DEFINITIONS**

The words and expressions defined in the Particulars shall have the same meaning throughout this Agreement and references to the Particulars and clauses are to the Particulars, and clauses of this Agreement.

2. **CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Subcontractor receipt of which the Subcontractor acknowledges.

3. **SUBCONTRACTOR'S DUTIES UNDER THE SUBCONTRACT**

The Subcontractor warrants to the Beneficiary that it has performed and shall continue to perform its duties under the Subcontract in accordance with the Subcontract and that it has exercised and shall continue to exercise reasonable skill and care (except where the Subcontract imposes a higher standard in which

case such higher standard shall apply) in relation to the following (so far as the Subcontractor is responsible for them):

- 3.1 the design of the Subcontract Works;
- 3.2 the selection of goods, materials, equipment or plant for the Subcontract Works; and
- 3.3 the satisfaction of any performance requirement or specification of or for the Subcontract Works.

4. **INTELLECTUAL PROPERTY RIGHTS**

- 4.1 Subject to the following provisions of this Deed, all Intellectual Property in the Documents shall remain vested in the Subcontractor.
- 4.2 The Subcontractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Subcontractor's obligations or the termination of the Subcontract or this Deed or the determination of the Subcontractor's engagement under the Subcontract or any dispute under the Subcontract or this Deed) to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Development including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Development. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 4.3 The Subcontractor shall not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Subcontract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Subcontract.
- 4.4 The Subcontractor shall not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in **clause 4.2**.
- 4.5 The Subcontractor warrants that the Documents (save to the extent that duly authorised sub-subcontractors have been used to prepare the same) are the Subcontractor's own original work and that in any event their use in connection with the Development shall not infringe the rights of any third party. The Subcontractor further warrants that where duly authorised sub-contractors are used their work shall be original and that the Subcontractor shall obtain the necessary consents in relation to **clause 4.2**.

- 4.6 The Subcontractor agrees on reasonable request at any time and following reasonable prior notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the Beneficiary's expense.

5. **PROHIBITED MATERIALS**

- 5.1 Subject to **clause 3**, the Subcontractor warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Subcontract regarding prohibited materials.
- 5.2 For the avoidance of doubt, this **clause 5** does not create any additional duty for the Subcontractor to inspect or check the work of others which is not required by the Subcontract.

6. **PROFESSIONAL INDEMNITY INSURANCE**

- 6.1 The Subcontractor by this Deed covenants with the Beneficiary that it has taken out and shall maintain [Professional Indemnity Insurance][Product Liability Insurance], for the duration of the Liability Period in relation to the Subcontract Works, provided always that:
- 6.1.1 if such insurance is not available to the Subcontractor at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Subcontractor), the Subcontractor and the Beneficiary shall meet, and the Subcontractor shall outline the steps it intends to take to manage such risks and the Parties shall use reasonable endeavours to agree a method of managing such risks;
- 6.1.2 the Subcontractor shall provide the Beneficiary with reasonable evidence that the policies referred to in this **clause 6** are in full force and effect together with a summary of the policy terms and conditions.

7. **NO APPROVAL**

The Subcontractor's liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

8. **ASSIGNMENT**

The Beneficiary may, without the consent of the Subcontractor [and without prejudice to the provisions of **clause 15**], assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, on not more than two occasions only. The Beneficiary shall give the

Subcontractor notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Subcontractor shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. FURTHER WARRANTIES

9.1 The Subcontractor shall within 14 days of a request made at any time by the Beneficiary, duly execute and deliver as a deed a collateral warranty in the same terms as this Deed mutatis mutandis (save for this **clause 9** [and **clause 15**]) in favour of:

- 9.1.1 any first purchaser acquiring the whole or any part of the Beneficiary's interest in the Development and/or the Site;
- 9.1.2 any first tenant acquiring a leasehold interest in the whole or any part of the Development and/or the Site;
- 9.1.3 any funder providing finance in connection with the whole or any part of the Development and/or the Site;
- 9.1.4 the freehold owner or landlord of the Site (if not the Employer)

provided that the Subcontractor has not already executed a collateral warranty in favour of the said purchaser, tenant or funder (as the case may be).

10. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45p.m. on any day it shall be deemed to be served on the next working day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

11. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including, without limitation, any remedies in negligence.

12. **LIMITATION**

- 12.1 The Subcontractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer, provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subcontractor from the Contractor.
- 12.2 The Subcontractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer.
- 12.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.
- 12.4 The Subcontractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Subcontract Works or any part of them.

13. **THIRD PARTY RIGHTS**

The Parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

14. **GOVERNING LAW AND JURISDICTION**

- 14.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.
- 14.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Deed (including (without limitation) in relation to any non-contractual obligations). The parties irrevocably submit to the jurisdiction of those courts.

15. **[STEP-IN RIGHTS]**

- 15.1 Subject to **clause 15.7**, the Subcontractor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Subcontract or its engagement under it or

discontinue or suspend the performance of any duties or obligations under the Subcontract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Subcontractor's grounds for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or discontinuing or suspending its performance of the Subcontract and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice:

15.1.1 the Beneficiary may give notice to the Subcontractor expressly confirming its intention to comply with **clause 15.1.3** and that the Beneficiary shall become the employer under the Subcontract to the exclusion of the Contractor and, upon giving such notice, that shall be the case and the Subcontract shall be and remain in full force and effect notwithstanding any of the grounds in the Subcontractor's notice under **clause 15.1**; and

15.1.2 if the Beneficiary has given notice under **clause 15.1.1** or under **clause 15.3**, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the Contractor; and

15.1.3 if:

15.1.3.1 the Beneficiary has given notice under **clause 15.1.1** then from the date of the Subcontractor's notice; or

15.1.3.2 the Beneficiary has given notice under **clause 15.3** then from the date of the Beneficiary's notice

the Beneficiary shall, by **clause 15.1.1**, become responsible for all sums properly payable to the Subcontractor under the Subcontract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Subcontract accruing due after the service of such Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.

15.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Subcontractor the Beneficiary shall not be under any obligation to the Subcontractor nor shall the Subcontractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Subcontractor under either **clause 15.1.1** or **clause 15.3**.

- 15.3 The Subcontractor further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary's intention to comply with **clause 15.1.3** and subject to **clause 15.1.2** and **clause 15.1.3**, it shall accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Subcontract Works upon the terms and conditions of the Subcontract. The Beneficiary shall then become the employer under the Subcontract to the exclusion of the Contractor and the Subcontractor shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Subcontract.
- 15.4 Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this **clause 15** to any other person then if both the Beneficiary and any such other person serve notice under **clause 15.1** or **clause 15.3** or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person].
- 15.5 The Contractor acknowledges that the Subcontractor shall be entitled to rely on a notice given to the Subcontractor by the Beneficiary under **clause 15.3** as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 15.6 The Beneficiary may by notice to the Subcontractor appoint another person to exercise its rights under this **clause 15** subject to the Beneficiary remaining liable to the Subcontractor as guarantor for its appointee in respect of its obligations under this Deed.
- 15.7 Where the Subcontractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Subcontract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Subcontractor shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the Contractor.
- 15.8 Notwithstanding the other provisions of this **clause 15**, if the Subcontract has for any reason been terminated prior to receipt by the Subcontractor of a notice from the Beneficiary served under **clause 15.1.1** or **clause 15.1.3**, the Subcontractor shall on receipt of any such notice from the Beneficiary enter into a new subcontract with the Beneficiary on the same terms as the Subcontract to continue the Subcontract Works in all respects as if the Subcontract had been transferred to the Beneficiary in accordance with the provisions of this **clause 15.**]

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by)
[SUBCONTRACTOR])
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary

SIGNED as a deed by)
[BENEFICIARY])
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary

[**SIGNED** as a deed by)
TBC)
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary]

SCHEDULE B
Vesting Certificate

Full name: Vesting certificate (construction goods, plant or materials).

[ON HEADED NOTE PAPER OF CONTRACTOR OR SUB-CONTRACTOR]

[ADDRESSEE]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[POSTCODE]

[DATE]

Dear Sirs,

**Vesting Certificate in relation to [Interim [Certificate OR Payment] No.] OR
[OTHER IDENTIFYING DESCRIPTION]**

In consideration of the payment of £1, receipt of which we acknowledge, we write in relation to the ownership of certain off-site plant, materials, goods and items.

1. This letter relates to the following:
 - 1.1 A [sub- **OR** building] contract between us dated [DATE] (**Contract**).
 - 1.2 The Contract is to be performed at [DESCRIPTION OF PROPERTY] (**Property**).
 - 1.3 The Contract relates to [DESCRIPTION OF WORKS], as more particularly described in the Contract (**Works**).
 - 1.4 The items listed in the appendix to this letter, as also described in the Contract (**Listed Items**).

Prior to their delivery to (or adjacent to) the site of the Works (**Site**), we have applied for payment in relation to the Listed Items in an interim [certificate **OR** payment **OR** application]. We warrant that the Listed Items:

2. Have been manufactured or prepared and are [substantially] ready for incorporation in the Works.
3. Are our absolute and unencumbered property. However, on payment of the interim [certificate **OR** payment] referred to in this letter, under and in accordance with the Contract, they will immediately become your absolute and unencumbered property. At that time, we, our sub-contractors, suppliers, servants and agents

and any other third party shall have no property in any part or all of them, no claim to part or all of them and no lien or charge over part or all of them.

4. Are in accordance with the Contract. [In the event that they are not in accordance with the Contract, we acknowledge that you may reject them and instruct us that they shall immediately re-vest in us and be entirely at our risk.]
5. [Are referred to in a bond, which we have executed and delivered to you in accordance with the Contract.]
6. Are, at our cost, insured against loss or damage for their full value under a policy of insurance protecting our interests and your interests, in our and your joint names, in respect of the [Specified Perils **OR** DEFINED TERM/DESCRIPTION FROM CONTRACT] (as [defined **OR** referred to] in the Contract) for a period no shorter than the period from the date of payment of the interim [certificate **OR** payment] to the date of delivery of the Listed Items to (or adjacent to) the Site. Upon [reasonable] request, we shall provide you, your servants or agents with a copy of the relevant insurance policy and/or allow you, your servants or agents to inspect the original insurance policy that effects such insurance.
7. At the premises where they have been manufactured or assembled or are stored, clearly identify that:
 - 7.1 they are held to your order (or to the order of another person, whom you have notified to us); and
 - 7.2 they are to be delivered to (or adjacent to) the Site; and
we confirm that they:
 - 7.3 are set apart; [and **OR** or]
 - 7.4 have been clearly and visibly marked, individually or in sets, in a manner agreed between us, in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site; and
 - 7.5 will be stored to your [reasonable] satisfaction.
8. Will be delivered to (or adjacent to) the Site to suit the agreed programme for the Works. In the event of the termination of the Contract or our employment under

the Contract for any reason (including, without limitation, our insolvency or breach of contract), we shall, at our cost, deliver them to (or adjacent to) the Site or to an alternative [reasonable] location for the purposes of storage, as instructed by you. If we fail to promptly perform that delivery, you may enter any premises and, at our cost, collect them and take them to (or adjacent to) the Site or to any [reasonable] location for the purposes of storage.

9. May be inspected at any time[, on reasonable notice,] by you, your servants or agents.

For the purposes of this letter, you and we have agreed that:

10. A person who is not a party to this letter shall not have any rights under or in connection with it, but you may assign the benefit of this letter to any person to whom you [validly] assign the benefit of the Contract, provided that such assignment takes place at the same time (and to the same person) as the assignment of the benefit of the Contract or at the same time (and to the same person) as a novation of the Contract. Any reference to you in this letter includes your permitted assignees.
11. Any notice sent under this letter shall be sent in accordance with the Contract.
12. In the event of any dispute or difference under this letter, that dispute or difference shall be settled in the same way as a dispute or difference under the Contract and shall be subject to the same governing law and jurisdiction as the Contract.
13. This letter is without prejudice to the terms of the Contract, which shall continue to be binding and of full effect and shall not be amended, waived or affected by this letter.
14. [Without prejudice to the previous paragraph of this letter, we shall indemnify and hold you harmless from all costs, claims, demands, losses and expenses of whatsoever nature arising from any breach or non-observance of any of the terms contained in this letter.]

Please acknowledge receipt and acceptance of this letter by signing, dating and returning the enclosed copy.

Yours faithfully,

.....
[NAME OF SENDER]

We hereby acknowledge receipt and accept the contents of this letter

Signed
[NAME OF RECIPIENT]

Date

Annex Listed Items

Item	Description	Mark	Value
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

These Listed Items are held/stored at: [LOCATION].