

DATED _____ **202**^[*]

(1) **THE MAYOR AND BURGESSES OF THE ROYAL
BOROUGH OF KENSINGTON AND CHELSEA**

(2) **[CONTRACTOR]**

BUILDING CONTRACT

Incorporating and amending the

**JCT Intermediate Building Contract with
Contractor's Design, 2016 Edition**

**Relating to external refurbishment works at
Bramley House, Bramley Road, London W10
6SX**



THE ROYAL BOROUGH OF
**KENSINGTON
AND CHELSEA**

THIS AGREEMENT is dated

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (**Employer**, such term to include any successors in title or permitted assigns); and
- (2) **[CONTRACTOR - TBC]** incorporated and registered in England and Wales with company number **[CONTRACTOR - TBC]** whose registered office is at **[CONTRACTOR - TBC]** (**Contractor**).

BACKGROUND

- (A) The Employer wishes to procure the construction of certain works, including the design of part of those works.
- (B) The Contractor has agreed to carry out that design and construction work, as required by this agreement.
- (C) The Employer and Contractor have agreed to incorporate and amend the JCT Intermediate Building Contract with Contractor's Design, 2016 edition ("**JCT ICD**") as set out in this agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1. Definitions:

JCT Articles	the section of the JCT ICD titled "Articles".
JCT Attestation	the section of the JCT ICD titled "Attestation".
JCT Conditions	the section of the JCT ICD titled "Conditions".
JCT Contract Particulars	the section of the JCT ICD titled "Contract Particulars".
JCT Recitals	the section of the JCT ICD titled "Recitals".
Schedule of Amendments	the parties, background, agreed terms and schedules forming part of this agreement, which amend the JCT ICD.

- 1.2. Capitalised terms used in this agreement have the same meaning as in the JCT ICD unless the meaning given in the JCT ICD is different from, or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.
- 1.3. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6. A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.7. References to clauses, schedules and annexes are to the clauses, schedules and annexes of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.8. Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT ICD, the Schedule of Amendments shall prevail.
- 1.9. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative only and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. INCORPORATION AND AMENDMENT OF THE JCT ICD

- 2.1. This agreement incorporates and amends the JCT ICD as follows:
 - 2.1.1. it incorporates the JCT Recitals, as amended by Part 1 of Schedule A;
 - 2.1.2. it incorporates the JCT Articles, as amended by Part 2 of Schedule A;
 - 2.1.3. it incorporates the JCT Contract Particulars, as set out in Part 3 of Schedule A; and
 - 2.1.4. it incorporates the JCT Conditions, as amended by Part 4 of Schedule A.
- 2.2. This agreement does not incorporate the JCT Attestation.

3. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The parties hereby submit to the exclusive jurisdiction of the English Courts.

4. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

The Common Seal of **THE MAYOR
AND BURGESSES OF THE ROYAL
BOROUGH OF KENSINGTON AND
CHELSEA** was hereunto affixed in the
presence of:

)
)
)
) Authorised signatory

Executed as a deed by)
[CONTRACTOR - TBC]

acting by two directors or by a director)
and the company secretary

)
) Director

)
)
) Director / Secretary

SCHEDULE A - SCHEDULE OF AMENDMENTS

PART 1. Recitals

1. FIRST RECITAL

Complete the First Recital with this description of the Works:

External repair and redecoration works at Bramley House, Bramley Road, London, W10 6SX (as further detailed in the Contract Documents).

2. SECOND RECITAL

Complete the Second Recital with this description of the Contractor's Designed Portion:

Basement staircase structural plate repairs, mastic asphalt works, lintel repairs, windows & doors, concrete roof tower slabs, solar PV, communal lighting installation (all as further detailed in the Contract Documents).

3. THIRD RECITAL

Complete the Third Recital with this description of the Contract Drawings:

As attached at Annex A.

4. FOURTH RECITAL

4.1 Delete the following:

"the Bills of Quantities"

4.2 Delete from "particulars of the Intermediate Named Sub-Contract..." to "...and the Tender Documents referred to in them);" (inclusive).

5. FIFTH RECITAL

5.1 Delete "and has provided the Employer with the priced schedule of activities annexed to this Contract ('the Activity Schedule')".

5.2 Delete the final paragraph of the Fifth Recital and replace with "The Priced Document is attached to this Contract at Annex C".

6. SEVENTH RECITAL

Delete the existing text of the Seventh Recital and replace with:

"the Contractor has examined the Employer's Requirements and confirms:

- the Contractor has inspected the site and satisfied himself as to its dimensions, location and other matters relevant to the CDP Works;
- the Contractor's Proposals meet with the Employer's Requirements and there is no discrepancy within and/or between the two documents; and
- the Contractor shall be fully responsible in all respects for the design of the CDP Works (whether contained in the Employer's Requirements or the Contractor's Proposals), including without limitation design development, selection of goods and materials and satisfaction of performance specifications."

7. NINTH RECITAL

Delete the whole of the Ninth Recital and replace with:

"Number not used".

PART 2. Articles

1. ARTICLE 2: CONTRACT SUM

Complete Article 2 with this Contract Sum:

[TBC]

2. ARTICLE 3: ARCHITECT / CONTRACT ADMINISTRATOR

Complete Article 3 with this Architect / Contract Administrator:

Stace LLP of 273 High St, Epping CM16 4DA (company number OC312683).

Insert the following at the end of Article 3:

"The Contractor shall, in good faith, fully cooperate with the Architect / Contract Administrator at all times in the performance of its obligations under this Contract."

3. ARTICLE 4: QUANTITY SURVEYOR

Complete Article 4 with this Quantity Surveyor:

Stace LLP of 273 High St, Epping CM16 4DA (company number OC312683).

4. ARTICLE 5: PRINCIPAL DESIGNER

Complete Article 5 with this Principal Designer:

Derisk (UK) Limited of 29/30 Fitzroy Square, London, W1T 6LQ (company number 09236125).

5. ARTICLE 6: PRINCIPAL CONTRACTOR

Complete Article 6 with this Principal Contractor:

The Contractor

6. NEW ARTICLE 10: EFFECT OF APPROVAL

Insert new Article 10:

"Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from its obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the Employer or the Architect / Contract Administrator or their agents or representatives on the site of the Works, or the carrying out of tests on the instructions of the Employer or the Architect / Contract Administrator or by any instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer or the Architect / Contract Administrator."

PART 3. Contract Particulars

Clause Reference	Subject	Particulars
<i>Fourth Recital</i>	Employer's Requirements <i>(State reference numbers and dates or other identifiers of documents in which these are contained)</i>	As attached at Annex D to this Contract.
<i>Sixth Recital</i>	Contractor's Proposals <i>(State reference numbers and dates or other identifiers of documents in which these are contained)</i>	As attached at Annex E to this Contract.
<i>Sixth Recital</i>	CDP Analysis <i>(State reference numbers and dates or other identifiers of documents in which this is contained)</i>	As attached at Annex F to this Contract.
<i>Eighth Recital and clause 4.6</i>	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS.
<i>Tenth Recital</i>	CDM Regulations	the project is notifiable.
<i>Eleventh Recital</i>	Description of Sections (if any) <i>(If not shown or described in the Bills of Quantities / Specification / Work Schedules or the Contract Drawings, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i>	Section 1 – External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works Section 2 – Windows & Doors Section 3 – Roof, Green Roof & Solar PV Works.
<i>Twelfth Recital</i>	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>	Not applicable
<i>Thirteenth Recital and Schedule 5</i>	Supplemental Provisions <i>(Where neither entry against an item below is deleted, the Supplemental Provision applies.)</i>	
	Collaborative working	Supplemental Provision 1 applies

Clause Reference	Subject	Particulars	
	Health and safety	Supplemental Provision 2 applies	
	Cost savings and value improvements	Supplemental Provision 3 applies	
	Sustainable development and environmental considerations	Supplemental Provision 4 applies	
	Performance indicators and monitoring	Supplemental Provision 5 applies [Refer to: <ul style="list-style-type: none"> - Appendix H of the Invitation to Tender documentation - KPI Schedule; and - Appendix S of the Invitation to Tender documentation - Social Value Implementation Plan (KPI Schedule).] [Note: KPI / Social Value drafting to be finessed as required post-tender, to ensure that the correct technical annexures are correctly referenced and adequately tie in with the JCT text.]	
	Notification and negotiation of disputes	Supplemental Provision 6 applies	
	Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee	[TBC]
		Contractor's nominee	[TBC]
		or such replacement as each Party may notify to the other from time to time.	
Article 8	Arbitration	Article 8 and clauses 9.3 to 9.8 (Arbitration) do not apply.	
1.1	Base Date	[DATE OF SUBMISSION OF TENDER]	
1.1	BIM Protocol (where applicable) <i>(State title, edition, date or other identifiers of the relevant documents)</i>	Not applicable.	

Clause Reference	Subject	Particulars	
1.1	Date for Completion of the Works <i>(where completion by Sections does not apply)</i>	Not applicable.	
1.1	Sections: Dates for Completion of Sections	Section 1 - External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works	[TBC]
		Section 2 - Windows & Doors	[TBC]
		Section 3 - Roof, Green Roof & Solar PV Works.	[TBC]
1.7	Addresses for service of notices by the Parties <i>(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i>	Employer: Town Hall, Hornton Street, London W8 7NX	
		Contractor: [TBC]	
2.4	Date of Possession of the site <i>(where possession by Sections does not apply.)</i>	Not applicable.	
2.4	Sections: Dates of Possession of Sections	Section 1 - External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works	[TBC]
		Section 2 - Windows & Doors	[TBC]
		Section 3 - Roof, Green Roof & Solar PV Works.	[TBC]

Clause Reference	Subject	Particulars	
2.5	Deferment of possession of the site <i>(where possession by Sections does not apply)</i>	Clause 2.5 does not apply	
2.5	Sections: deferment of possession of Sections	Clause 2.5 applies Maximum period of deferment is 6 weeks	
2.21A	Additional pre-requisites to achievement of practical completion or sectional completion	In addition to the matters listed at clause 2.21A, the following shall be a pre-requisite to achievement of practical completion or sectional completion (as applicable): <ul style="list-style-type: none"> Statutory approval: Planning & Building Control Sign Off [Any others TBC] 	
2.23.2	Liquidated damages <i>(where completion by Sections does not apply)</i>	Not applicable.	
2.32.2	Sections: rate of liquidated damages for each Section	Section:	Rate per week or pro-rata for part thereof (£)
		Section 1 - External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works	£1,452
		Section 2 - Windows & Doors	£295
		Section 3 - Roof, Green Roof & Solar PV Works.	£1,495
2.29	Sections: Section Sums	Section 1 - External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works	[TBC]
		Section 2 - Windows & Doors	[TBC]

Clause Reference	Subject	Particulars	
		Section 3 - Roof, Green Roof & Solar PV Works.	[TBC]
2.30	Rectification Period (<i>where completion by Sections does not apply</i>) (<i>If no other period is stated, the period is 6 months.</i>)	Not applicable.	
2.30	Sections: Rectification Periods (<i>If no other period is stated, the period is 6 months.</i>)	Section	Months (from the date of practical completion of each Section)
		Section 1 - External Elevations, Walkways, Balconies, External Areas, Decorations & General MEP Works	12 months
		Section 2 - Windows & Doors	12 months
		Section 3 - Roof, Green Roof & Solar PV Works.	12 months
4.7	Advance payment (<i>Not applicable where the Employer is a Local or Public Authority</i>)	Clause 4.7 applies (only applicable to the placing of order of windows, if deemed required).	
4.7	Advance Payment Bond (<i>Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.</i>)	An advance payment bond is required if advance payment for placing order of windows is deemed required. The bond value will need to amount to £400,000.00	
4.8.1	Interim payments - Interim Valuation Dates (<i>If no date is stated, the first Interim Valuation Date is one month after the Date of Possession</i>)	The first Interim Valuation Date is the date falling one month from the first Date of Possession and thereafter the same date in each calendar month	

Clause Reference	Subject	Particulars
4.9.1	<p>Interim payments - percentages of value</p> <p>Where the Works, or those works in a Section, have not achieved practical completion, the percentage of total value in respect of the works that have not achieved practical completion is</p> <p><i>(The percentage is 95 per cent unless a different rate is stated.)</i></p> <p>Where the Works, or those works in a Section, have achieved practical completion, the percentage in respect of the completed works is</p> <p><i>(The percentage is 97 ½ per cent unless a different rate is stated.)</i></p>	<p>95 per cent</p> <p>97.5 per cent</p>
4.10.4	<p>Listed Items – uniquely identified</p> <p><i>(Delete the entry if no bond is required.)</i></p>	<p>For uniquely identified Listed Items a bond in respect of payment for such items is required for:</p> <p>-TBC</p>
4.10.5	<p>Listed Items – not uniquely identified</p> <p><i>(Delete the entry if clause 4.10.5 does not apply.)</i></p>	<p>For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for:</p> <p>-TBC</p>
6.3B	Third party consents, approvals, licences and permissions	<p>The Contractor is responsible for obtaining the following without addition to the Contract Sum:</p> <ul style="list-style-type: none"> Any required pavement licences or suspensions required to carry out the Works. Building Control Supporting Information and Certification, through regular process.
6.4.1	Contractor's Public Liability Insurance: injury to persons or property – the required level of insurance cover is not less than	£10 Million for any one occurrence or series of occurrences arising out of one event.

Clause Reference	Subject	Particulars	
6.5.1	Insurance – liability of Employer <i>(Not required unless it is stated that it is required and the minimum amount of indemnity is stated)</i>	Insurance is required. Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £10 Million	
6.7 and Schedule 1	Works Insurance – Insurance Option applicable	Schedule 1:	
		Option C applies	
	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	15%	
	Where cover is to be provided under the Contractor's annual policy, the annual renewal date is	Not applicable – Option C applies	
	Where Insurance Option C applies, paragraph C.1	applies	
6.10 and Schedule 1	Terrorism Cover – details of the required cover <i>(Unless otherwise stated, Pool Re Cover is required.)</i>	Pool Re Cover is required.	
6.15	Joint Fire Code	The Joint Fire Code applies	
	If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':	No	
6.18	Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i>	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor.	
6.19	Contractor's Designed Portion Professional Indemnity Insurance Level of cover <i>(if an alternative is not selected the amount shall be the aggregate amount for any one period of</i>	Amount of Indemnity required	Relates to claims or series of claims arising out of one event and is £10 Million.

Clause Reference	Subject	Particulars	
	<p><i>insurance. A period of insurance for these purposes shall be one year unless otherwise stated)</i></p> <p><i>(If no amount is stated, insurance under clause 6.19 shall not be required)</i></p>		
	<p>Cover for pollution and contamination claims</p> <p><i>(if no amount is stated such cover shall not be required;; unless otherwise stated, the required limit of indemnity is an annual aggregate amount)</i></p>	Is required with a sub-limit of indemnity of £5 Million.	
	Expiry of required period of CDP Professional Indemnity Insurance (after the date of practical completion of the Works) is	12 years	
7.2.1	Performance bond or guarantee from bank or other approved surety	is required	
		The required form of the bond or guarantee is set out in Schedule C to the Schedule of Amendments.	
		Value: 10% of the Contract Sum	
	Period of validity: the expiry date of the performance bond or guarantee is to be	the date of practical completion of the whole of the Works	
	Reduction in value - if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is	Not applicable.	
7.2.2	Guarantee from the Contractor's parent company	is required	
		Parent company's name and registration number: TBC	
		The required form of the guarantee is set out in Schedule B to the Schedule of Amendments.	
8.9.2	<p>Period of suspension</p> <p><i>(If none is stated, the period is 2 months.)</i></p>	2 months	

Clause Reference	Subject	Particulars
8.11.1.1 to 8.11.1.5	Period of suspension <i>(If none is stated, the period is 2 months.)</i>	2 months
9.2.1	Adjudication	The Adjudicator is to be nominated by the Adjudicator nominating body.
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	The Royal Institution of Chartered Surveyors

PART 4. Conditions

1. CLAUSE 1.1

1.1 Amend these definitions:

- (a) Agreement: add to the end of the definition, before the full stop:
", each as amended by the Schedule of Amendments".
- (b) Article: add to the end of the definition, before the full stop:
", as amended by Part 2 of the Schedule of Amendments".
- (c) CDM Regulations: add to the end of the definition, before the full stop:
"and any related guidance requirements issued by the Health and Safety Executive from time to time, or any remaking thereof or any amendments to a regulation therein".
- (d) Conditions: add to the end of the definition, before the full stop:
", each as amended by Part 4 of the Schedule of Amendments".
- (e) Contract Documents: delete the existing definition and replace with:
"the Agreement, these Conditions and all Schedules and Annexes hereto, the Contract Drawings, the Contract Bills, Specification and/or Work Schedules (as applicable), the Employer's Requirements, the Contractor's Proposals, the CDP Analysis, the Priced Document and (where applicable) the BIM Protocol".
- (f) Contract Particulars: add to the end of the definition, before the full stop:
", as set out in Part 3 of the Schedule of Amendments".
- (g) Funder: delete the existing definition text and replace with:
"a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works, or the site of the Works, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise (including, without limitation, any entity that enters or has entered into a 'forward funding' or 'forward purchase' agreement with the Employer)."
- (h) Purchaser: delete the existing definition and replace with "any person (save for a residential occupier) who takes or agrees to take a freehold interest in the whole or any part of the Works".
- (i) Recitals: add to the end of the definition, before the full stop:
", as amended by Part 1 of the Schedule of Amendments".
- (j) Tenant: delete the existing definition and replace with "any person (save for a residential occupier) who takes or agrees to take a leasehold interest in the whole or any part of the Works".

1.2 Add these definitions:

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU), both as amended by the Construction Products (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/465)."

"Covid-19 Pandemic: the outbreak of the virus known as Coronavirus or SARS-CoV-2 (recognised as a pandemic by the World Health Organization on 11 March 2020), including any secondary or subsequent resurgence of that virus or a mutated form of the same."

"Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the time of specification or use 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 or European Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations."

"Employer Exceptional Event: an event or circumstance which (i) is beyond the Employer's control; (ii) the Employer could not reasonably have provided against before entering into the Contract; (iii) having arisen, the Employer could not reasonably have avoided or overcome; and (iv) is not substantially attributable to the Employer."

"Employer's Policies: the Employer's policies set out at Annex G to this Contract."

"Key Sub-contractor: a sub-contractor appointed by the Contractor to carry out design works and/or named or identified in Part 1 of Schedule E to the Schedule of Amendments and any replacement of a Key Sub-contractor."

"Material: designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other documents or materials in any medium which have been created, developed and/or provided by the Contractor or its sub-consultants or sub-contractors in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them."

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

"Professional Consultant: a professional consultant appointed by the Contractor to carry out design services and/or named or identified in Part 1 of Schedule D to the Schedule of Amendments, and any replacement of a Professional Consultant."

"Schedule of Information Requirements: a schedule stating the information that the Contractor requires the Employer, the Architect / Contract Administrator and the Employer's Persons to release and the required timescales for that release."

"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 similar in scope, character, value and complexity to the CDP Works."

"Third Party Agreements: the agreements, or extracts from agreements, between the Employer and third parties, which may affect the Works, attached at Schedule F to the Schedule of Amendments, as supplemented by any instruction from the Employer referred to in clause 5.1.3."

"Wage Levels: means:

- in relation to employees working in London, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the London Living Wage from time to time;
- in relation to employees working outside of London and aged 25 or over, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the National Living Wage from time to time; and
- in relation to employees working outside of London and aged 24 or under, the national minimum wage."

2. CLAUSE 1.3

In clause 1.3, after "override or modify" add: "the Schedule of Amendments,"

3. CLAUSE 1.6

Delete clause 1.6, but not its heading, and replace with:

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

4. CLAUSE 1.9

Delete sub-clause 1.9.1.1 and replace with "Not used".

5. CLAUSE 1.11

In clause 1.11.2 delete "either Party's consent under clause 7.1" and replace with "the Employer's consent under clause 7.1.4".

6. CLAUSE 1.13

Insert new clause 1.13:

"The appointment of the Contractor under this Contract shall be deemed to have commenced with effect from the date when the Contractor first began to carry out any services or works relating to the Works. To the extent that any such services or works were carried out prior to or otherwise than pursuant to this Contract, the duties and obligations contained in this Contract shall be deemed to apply to the carrying out of those services or works. All payments made in respect of services or works carried out prior to the date of this Contract shall be treated as payments on account of sums due under this Contract."

7. CLAUSE 2.1

7.1 Insert at the start of sub-clause 2.1.1: "carry out and"

7.2 At the end of sub-clause 2.1.1, delete "so far as not described or stated" to the end of the sub-clause (inclusive).

7.3 Delete sub-clause 2.1.2 and replace with:

"ensure the proper integration, co-ordination and compatibility of the various components and elements that make up and comprise the CDP Works, one with another and with the remainder of the Works (and comply with all Architect/Contract Administrator instructions in this regard, subject to the provisions of clause 3.8.2); and"

8. CLAUSE 2.1A

Insert a new clause 2.1A:

"Audit, Employer Policies, Wage Levels and publicity

- .1 The Contractor shall:
 - .1 at all times maintain complete and accurate records and information as to all work and services carried out, and all sums paid, under this Contract;
 - .2 afford the Employer and/or the Employer's designated auditor(s) access to all such records and information at all reasonable times on request; and
 - .3 provide copies of such records and information as and when reasonably required by the Employer and/or the Employer's designated auditor(s).
- .2 The Contractor shall, and shall procure that the Contractor's Persons, comply with the Employer's Policies.
- .3 The Contractor shall ensure that staff employed by it, or by any of its sub-contractors, who are engaged on the provision of the Works are paid no less than the relevant Wage Levels.
- .4 The Contractor shall not, and shall procure that the Contractor's Persons shall not, without the prior written consent of the Employer publish alone or in conjunction with any other person any articles, illustrations, photographs, videos or press announcements relating to the Works, or otherwise publicise this Contract or the Works, save in accordance with any legal obligation upon the Contractor to do so."

9. CLAUSE 2.1B

Insert new clause 2.1B:

"Site conditions

The Contractor has had an opportunity of inspecting the physical conditions (including but not limited to the roof details, abutments, walkways and all windows and doors) and other conditions of or affecting the site of the Works and shall be deemed to be fully acquainted with the same before the date of this Contract and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. Notwithstanding any other provision of this Contract, no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance shall entitle the Contractor to any additional payment (whether by way of an addition to the Contract Sum or otherwise) or an extension of time. As between the Contractor and the Employer, the Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.1B and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Employer shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document."

CLAUSE 2.1C

Insert new clause 2.1C:

"Covid-19 precautions

The Contractor undertakes:

- .1 to take all practicable steps to prevent the transmission of Covid-19 (and other disease and infection) at the site and generally among the Contractor's Persons;
- .2 to comply, and to require all persons coming onto the site or otherwise performing the Works to comply, at all times with all Statutory Requirements, good industry practice, guidance and operational protocols relating to the Covid-19 Pandemic;
- .3 to comply with all Covid-19 Pandemic related reporting requirements, data gathering and information sharing requirements reasonably imposed by the Employer from time to time; and
- .4 to require its subcontractors (at all levels) to agree a clause equivalent in all material respects to this clause 2.1C."

10. CLAUSE 2.2

- 10.1 Delete existing clause 2.2.1 and replace with:

"All materials and goods for the Works shall be of satisfactory quality, reasonably fit for their intended purposes and of a standard appropriate to the Works and shall comply with any standards, quality and requirements set out in the Contract Documents."

- 10.2 Renumber existing clause 2.2.2 as sub-clause 2.2.5 and insert new sub-clause 2.2.2:

"The workmanship for the Works shall be of the standards described in the Contract Documents, or if not described or to the extent these contain a lesser standard, all workmanship shall be of satisfactory quality and carried out in a good, proper and workmanlike manner."

- 10.3 Insert a new sub-clause 2.2.3:

"Where and to the extent that approval of quality of materials or goods or of the standards of workmanship is a matter for the opinion of the Architect/Contract Administrator, such quality and standards shall be to his reasonable satisfaction."

- 10.4 Insert a new sub-clause 2.2.4:

"The Contractor shall exercise the Standard of Care not to specify or use anything in the Works, which, at the time of specification or use, is Deleterious."

- 10.5 Insert a new sub-clause 2.2.5:

"The Contractor shall ensure that all goods, materials, products and equipment intended for incorporation in the Works are correctly and properly installed in accordance with manufacturer's instructions and recommendations. To the extent that the Contractor considers an alternative method of installation is required or would better suit any goods, materials, products or equipment, it shall seek the Architect / Contract Administrator's prior written approval. Any such approval given by the Architect / Contract Administrator shall not relieve the Contractor from his obligation to ensure that goods, materials, products and equipment are correctly and properly installed."

11. CLAUSE 2.3

Delete the second sentence of clause 2.3 and replace with: "The amount of any such fees or charges (including any rates or taxes other than VAT) shall be deemed to have been included in the Contract Sum."

12. CLAUSE 2.4

Delete "On" at the start of this clause and replace with "Subject always to clause 2.4A, on".

13. CLAUSE 2.4A

Insert a new clause 2.4A:

"1 The Contractor acknowledges that the site forms part of the Bramley House estate and that certain related persons (the "**Other Personnel**") will be present during the carrying out of the Works. The Contractor further acknowledges that the Employer may procure the completion of certain works not forming part of this Contract (the "**Third Party Works**") during the carrying out of the Works. The Contractor shall:

- .1 fully and actively cooperate with the Other Personnel and any contractors engaged in connection with the Third Party Works in the performance of the Contractor's duties and obligations under this Contract;
- .2 comply with all reasonable instructions issued by the Employer (or the Architect / Contract Administrator) in respect of the coordination of the Works with the Third Party Works and the requirements and activities of the Other Personnel; and
- .3 take all reasonably practicable measures to ensure that no unforeseen interruption or interference is caused by or to the Other Personnel or the Third Party Works in the execution of the Works.

Subject to clauses 2.4A.2 and 2.4A.3, the Contractor shall not be entitled to an extension of time or additional payment (whether by addition to the Contract Sum or otherwise) due to the requirements of this clause.

- .2 Where and to the extent that the Third Party Works or the requirements and activities of the Other Personnel are not sufficiently detailed in the Contract Documents to enable a competent and experienced contractor to carry out and complete the Works in conjunction with the same, without consequent delay and/or disruption to the Works, then such consequent delay and/or disruption shall be treated as a Relevant Event and a Relevant Matter.
- .3 Where and to the extent that the regular progress of the Works is delayed or disrupted due to any impediment, prevention or default (whether by act or omission) by the Other Personnel or any contractor engaged in connection with the Third Party Works, then this shall be treated as a Relevant Event and a Relevant Matter."

14. CLAUSE 2.6

Delete clause 2.6 and replace with "Not used."

15. CLAUSE 2.7

Delete clause 2.7 and replace with "Not used."

16. CLAUSE 2.8

In clause 2.8.3, after "divulge" insert: "(except in compliance with statutory obligations or the requirements of any auditor or otherwise in accordance with the terms of this Contract)".

17. CLAUSE 2.10

Delete the whole of sub-clause 2.10.1.

18. CLAUSE 2.11

Delete from the start of sub-clause 2.11.1 "Where not included in the Information Release Schedule, the" and replace with: "The".

19. CLAUSE 2.13

19.1 Delete sub-clause 2.13.3.2 and replace with "in the case of an inconsistency within or between the Employer's Requirements, the Contractor's Proposals and/or other Contractor's Design Documents, he shall as soon as practicable after its discovery make proposals for the necessary amendments".

19.2 Delete sub-clause 2.13.4 and replace with "Not used".

20. CLAUSE 2.14

In sub-clause 2.14.1 after "within or between the Contractor's Proposals" insert ", the Employer's Requirements".

21. CLAUSE 2.19

21.1 Insert a new sub-clause 2.19.1A after sub-clause 2.19.1, as follows:

"The Contractor shall not be entitled to any extension of time on account of any Relevant Event arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

21.2 Insert a new sub-clause 2.19.6 as follows:

"Without prejudice to the generality of clause 2.19.1A, if the Contractor fails to give the notice and/or particulars required under clause 2.19.1 at the earliest practicable opportunity when a competent and experienced contractor could have given them, then any associated extension of time shall be assessed as if the Contractor had given the notice and/or particulars at that time."

22. CLAUSE 2.19A

Insert new clause 2.19A after clause 2.19:

"The Contractor shall make due allowance in its programme for any work to be undertaken by any Statutory Undertaker and shall give sufficient notice in writing to each of them of the dates and times when their work can be undertaken on site without causing any delay or disruption to the Works."

23. CLAUSE 2.20

23.1 In sub-clause 2.20.2.1, after "clause 2.13" insert: "(subject always to clauses 2.14 and 2.34)"

23.2 Insert at the end of sub-clause 2.20.2.3 "or unless the inspection or test was expressly envisaged by the Contract Documents or was reasonably necessary following the discovery of a defect to check for similar non-compliances".

23.3 Insert the following at the end of sub-clause 2.20.7: "(provided that the Contractor has complied fully with its obligations under clause 2.19A of this Contract)".

23.4 Add to the end of sub-clause 2.20.11, before the semicolon:

"provided that such strike, lockout or local combination of workmen is of a national or regional nature, does not affect the site of the Works alone and is not restricted to the employees of the Contractor or any sub-contractor".

23.5 In sub-clause 2.20.12 add at the end of the sub-clause and before the semi-colon:

"save for:

- any statutory powers exercised in connection with the United Kingdom's exit from the European Union or the associated transition period (including consequent effects on economic circumstances, market conditions and/or labour availability), which shall not be treated as directly affecting the execution of the Works for the purpose of this clause 2.20.12; and
- any statutory powers exercised in connection with the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.20.14 below"

23.6 In sub-clause 2.20.13 add at the end of the sub-clause and before the full stop:

"save that the term 'force majeure' shall not include:

- any consequences of the United Kingdom ceasing to be a member state of the European Union or the cessation of the associated transition period (including any change in economic circumstances, market conditions and/or labour availability); and
- any consequences of the Covid-19 Pandemic, which shall be governed by the provisions of clause 2.20.14 below".

23.7 Insert a new sub-clause 2.20.14:

"the imposition (pursuant to Statutory Requirements or published industry guidance) of any restrictions in relation to the operation of construction sites in England which are required directly because of the Covid-19 Pandemic and which are more onerous than any such restrictions in force at the Base Date".

24. CLAUSE 2.20A

Insert a new clause 2.20A:

"Employer Exceptional Events

- .1 If the Employer is or will be prevented from performing any obligations under this Contract due to an Employer Exceptional Event, then the Employer shall promptly notify the Contractor, specifying the obligations in respect of which performance is or will be prevented (the "prevented obligations").
- .2 The Employer shall be excused from performance of the prevented obligations for so long as such Employer Exceptional Event prevents the Employer from performing them. Other than performance of the prevented obligations, the Employer shall not be excused from performance of all other obligations under the Contract.
- .3 The obligations of the Employer to make payments due to the Contractor under this Contract shall not be excused by an Employer Exceptional Event."

25. CLAUSE 2.21A

Insert new sub-clause 2.21A:

"It shall be a pre-requisite to practical completion of the Works or any Section that the Contractor shall have:

- .1 completed the Works or Section such that they are free from apparent defects, subject only to minor defects which do not affect or impair the use, enjoyment, occupation and/or fitting out of the Works or Section by the Employer;
- .2 delivered all collateral warranties required under clause 7 of this Contract;
- .3 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the Works or the relevant Section, in accordance with the Contract Documents and the Employer's reasonable requirements; and
- .4 satisfied any further pre-requisites to practical completion or sectional completion as may be stated in the Contract Particulars."

26. CLAUSE 2.23

26.1 In clause 2.23.1 (final hanging paragraph), delete "5 days" and replace with "the day".

27. CLAUSE 2.30

Insert the following at the end of clause 2.30:

"Any defects notified under this clause 2.30 shall be made good by the Contractor within a reasonable period of time following notification, and forthwith in the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation or use of the relevant part of the Works. If the Contractor fails to make good any defects, shrinkages or other faults notified by the Employer pursuant to this clause within the time required under this clause then the Employer shall be entitled to instruct another contractor to carry out such works and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor."

28. CLAUSE 2.31

Add to the end of clause 2.31 before the full stop:

", provided that the Architect/Contract Administrator shall not be required to issue that certificate earlier than the expiry of the Rectification Period".

29. CLAUSE 2.31A

Add a new clause 2.31A after clause 2.31:

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

Clauses 2.30 and 2.31 shall apply, without limitation, to:

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

- .2 any defects, shrinkages or other faults in the Works or Section at practical completion or sectional completion; and
- .3 any incomplete work, forming part of the Works or Section, remaining at practical completion or sectional completion."

30. CLAUSE 2.32

After "and use by the Employer" insert "operation and maintenance manuals and".

31. CLAUSE 2.33

Delete clause 2.33 and replace with the following:

- ".1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free, world-wide licence to copy and make full use of any Material prepared by or on behalf of the Contractor for any purpose relating to the Works (and the completed Works) including any of the Permitted Uses.
- .2 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.
- .3 The Employer may, at any time (whether before or after completion of the Works, or termination of the Contractor's engagement under this Contract), request a copy or copies of (some or all of) the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Employer.
- .4 All royalties or other sums payable in respect of the supply and use of any patented articles processes or inventions required in connection with the Works shall be paid by the Contractor and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs, and expenses suffered or incurred by the Employer by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Works.
- .5 The Contractor hereby unconditionally and for all purposes waives all moral rights to which it is entitled under Part One of Chapter IV of the Copyright Designs and Patents Act 1988 in all Material produced or to be produced by the Contractor pursuant to this Contract (and shall procure an equivalent waiver from its sub-contractors).
- .6 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."

32. CLAUSE 2.34

- 32.1 Delete clause 2.34.1 and replace with the following:

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 (i) all design work prepared or proposed by or on behalf of the Employer on or before the date of this Contract forming part of the Employer's Requirements; and (ii) all design work prepared or proposed by or on behalf of the Employer after the date of this Contract in relation to Variations pertaining to the CDP Works or the correction of any error, omission, discrepancy or divergence under clause 2.34.3. The Contractor warrants to the Employer that it shall use the Standard of Care when designing the CDP Works and that its design complies with Statutory Requirements."

- 32.2 Delete clause 2.34.2 and replace with "Where and to the extent that this Contract involves the Contractor in taking on work relating to a dwelling or dwellings then, notwithstanding any other

term in this Contract, the Contractor's liability to the Employer includes liability under the Defective Premises Act 1972, including liability arising from or in connection with standards of care and/or limitation periods imposed by the Defective Premises Act which differ from those otherwise imposed expressly or impliedly by the written terms of this Contract."

32.3 Delete clauses 2.34.3, 2.34.4 and 2.34.5 and replace with the following:

"Where there is an error, omission or discrepancy within the Employer's Requirements, the Contractor's Proposals or the Contractor's Design Documents (including any non-compliance with Statutory Requirements), or a divergence between any of the Employer's Requirements, the Contractor's Proposals and the Contractor's Design Documents, the Contractor shall notify the Employer of the error, omission, discrepancy or divergence and of its proposed amendments to correct or remove it (as the case may be). Subject always to compliance with the Statutory Requirements, the Employer shall decide between the discrepant or divergent items (as the case may be) or otherwise may accept the Contractor's proposed amendments or decide how the error, omission, discrepancy or divergence shall be dealt with. The Contractor shall be obliged to comply with the decision or acceptance by the Employer without any adjustment of the Contract Sum or extension of time for completion and without affecting in any way or to any degree the responsibility of the Contractor under this Contract for the design of the whole of the CDP Works."

33. **CLAUSE 2.35**

Add a new clause 2.35:

"Third Party Agreements

- .1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.
- .2 The Contractor shall ensure that no act or default or omission on its part or on the part of any of the Contractor's Persons in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

34. **CLAUSE 2.36**

Insert a new clause 2.36:

"Contractor's additional information sharing requirements

- .1 The Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, a master programme showing how the Contractor intends to time and sequence the Works (including the design phase, lead-in times for procurement of materials, and the construction phase) in order to achieve practical completion and (where applicable) sectional completion on or before the relevant Completion Date. The Contractor shall provide a copy of the latest master programme to the Employer whenever reasonably requested and the Employer shall be entitled to require the Contractor to submit a revised programme if at any time it considers that the details do not comply with the requirements of this Contract.
- .2 Where and to the extent required by the Employer or the Architect / Contract Administrator, the Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, a Schedule of Information Requirements.
- .3 Without prejudice to its other duties and obligations under this Contract, the Contractor shall provide (at its own cost) such information as the Employer or the Employer's

Persons may require from time to time on the nature, state and progress of the Works (including without limitation information on the selection of goods and materials, buildability, procurement times and construction times)."

35. CLAUSE 3.2

Insert the following at the end of clause 3.2:

"The Employer shall be entitled (acting reasonably) to require the removal of a person-in-charge or any other person engaged on the carrying out of the Works if, in the Employer's opinion, their performance or conduct is or has been unsatisfactory and the Contractor shall promptly remove such person and replace them with such person as the Employer shall first have approved in writing. Any cost incurred by the Contractor in replacing the person-in-charge or any other person engaged on the carrying out of the Works (in any circumstances) shall be borne by the Contractor. The person-in-charge shall keep complete and accurate records regarding on-site activity in accordance with any requirements reasonably imposed by the Employer and shall make the same available for inspection by the Employer at all reasonable times."

36. CLAUSE 3.4

In sub-clause 3.4.1, delete from "Except where the Employer is a Local Authority" to the end of the sub-clause, inclusive.

37. CLAUSE 3.5

Insert the following at the end of clause 3.5:

"The Employer may refuse consent if, without limitation, there are reasonable concerns regarding the proposed sub-contractor's claims or incidents records, competence, experience and/or organisational capability."

38. CLAUSE 3.6

38.1 Insert the following after "JCT Intermediate Building Sub-Contract" in the first paragraph of clause 3.6:

"The appointment of all Professional Consultants and Key Sub-Contractors shall be on terms and conditions which are to be approved by the Employer (such approval not to be unreasonably withheld or delayed). The Contractor shall upon reasonable request (but not later than 14 days from request) by the Employer or the Architect / Contract Administrator, provide a full copy of the executed form of sub-contract to the Employer, redacted as necessary to remove commercially sensitive pricing information only."

38.2 Delete the existing text of sub-clause 3.6.2.5 and replace with the following:

"where applicable, for the execution and delivery by the sub-contractor, in each case within 10 Business Days of receipt of a written request by the Contractor, of such collateral warranties as comply with this Contract;"

39. CLAUSE 3.8

Insert at the end of clause 3.8.1: "on the grounds of health and safety".

40. CLAUSE 3.10

Delete clause 3.10 and replace with "Not used".

41. CLAUSE 3.11

Delete sub-clause 3.11.3 and replace with: "Number not used."

42. CLAUSE 3.14

Insert the following at the end of clause 3.14, before the full stop: "or unless the inspection or test was expressly envisaged by the Contract Documents or was reasonably necessary following the discovery of a defect to check for similar non-compliances".

43. CLAUSE 3.16

In clause 3.16.1, before "removal from" insert "rectification of or".

44. CLAUSE 3.18

44.1 In sub-clause 3.18.4, delete "immediately" and replace with "promptly"

44.2 Add new clause 3.18.5:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations. Where the Contractor is not the Principal Designer, the Contractor shall further provide (at its own cost) all necessary assistance to and co-operate fully with the Principal Designer in the performance of its duties."

44.3 Add new clause 3.18.6:

"the Contractor warrants to the Employer that he has the necessary skills, knowledge and experience to undertake all roles performed pursuant to the CDM Regulations under or in connection with this Contract and that it has sufficient resources and will allocate those resources to the fulfilment of such duties."

44.4 Add new clause 3.18.7:

"the Contractor hereby warrants that in relation to the preparation of the design of the CDP Works it shall carry out and fulfil, and shall ensure that all sub-contractors responsible for design shall carry out and fulfil, the duties of a designer under the CDM Regulations. The Contractor shall further ensure that all of his consultants, sub-contractors and suppliers shall liaise and co-operate with the Principal Designer."

45. CLAUSE 3.19

Insert new clause 3.19:

"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 Employer (including, without limitation, any representatives of Purchasers, Tenants and/or Funders) or the Architect/Contract Administrator shall be permitted to attend such meetings."

46. CLAUSE 4.3

Delete clause 4.3.2 and replace with "Not used".

47. CLAUSE 4.4

Delete clause 4.4 and replace with "Not used".

48. CLAUSE 4.5

48.1 Delete the existing text of clause 4.5.1 and replace with: "The Contract Sum is exclusive of VAT. In relation to each payment under this Contract, the payer shall in addition pay the amount of any VAT properly chargeable in respect of it."

48.2 Insert the following as new clause 4.5.3:

"The Employer confirms that it will receive the Works as an 'end user' for the purposes of the Value Added Tax Act (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the reverse charge for building and construction services), and so will not apply the reverse charge to the supply of the Works. The Contractor shall issue the Employer with VAT invoices, with any VAT charged at the appropriate rate. In the event that the Employer is no longer the end user for these purposes, it will inform the Contractor as soon as reasonably practicable and shall, where legally required to do so, apply the reverse charge in relation to the Works in accordance with the Value Added Tax Act 1994 and related secondary legislation. The Contractor shall not charge VAT on the Works to the extent that the Employer is obliged to apply the reverse charge in accordance with this clause 4.5.3."

49. CLAUSE 4.8

In clause 4.8.1, delete "the date 7 days after".

50. CLAUSE 4.9

50.1 Insert at the end of sub-clause 4.9.1.2 "and provided that the Contractor has provided reasonable evidence that unencumbered title to the Site Materials shall pass to the Employer upon payment".

50.2 Delete the final paragraph of clause 4.9.1 (beginning with "those values shall be adjusted").

50.3 In sub-clause 4.9.2, delete the two entries in the clause that refer to "Fluctuations".

50.4 In sub-clause 4.9.3 delete: "4.4 (Fluctuations - Named Sub-Contractors)" and "or any amount under any applicable Fluctuations Provision other than by means of an adjustment under clause 4.9.1".

51. CLAUSE 4.12

51.1 In clause 4.12.1, delete "14 days" and replace with "30 days".

51.2 In clause 4.12.5 (final paragraph), delete "5 days" and replace with "1 day".

52. CLAUSE 4.13

Delete clause 4.13.3 and replace with:

"The Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.8.2 shall be:

- .1 without fiduciary obligation to the Contractor or any third party;
- .2 without obligation to set aside any amount representing that percentage in a separate bank account; and

- .3 a full beneficial interest, including a full beneficial interest in any interest accruing on that percentage without obligation to account to the Contractor for any such interest."

53. CLAUSE 4.14

- 53.1 In clause 4.14.1 after "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" insert: "any or all of".
- 53.2 In clause 4.14.3, delete: "or on request" and, at the end of the sub-clause, add a new sentence:
- "The Contractor shall, on request, submit such further details as are reasonably requested by or on behalf of the Employer."

54. CLAUSE 4.15

Delete "If" from the start of the clause and insert: "Subject to clause 4.15A, if"

55. CLAUSE 4.15A

Insert new clause 4.15A:

"Disturbance of regular progress due to Contractor default

The Contractor shall not be entitled to the addition of any amount to the Contract Sum or to any other payment in respect of any cost and/or loss and/or expense arising by reason of any error, omission, negligence or default of the Contractor or the Contractor's Persons."

56. CLAUSE 4.16

Delete the existing text of clause 4.16.4 and replace with the following:

"If the Contractor applies for the recovery of loss and/or expense in accordance with this clause 4.16, save where these Conditions provide that there shall be no addition to the Contract Sum or otherwise exclude the operation of this clause, the amount of the loss and/or expense incurred shall be ascertained and added to the Contract Sum."

57. CLAUSE 4.17

- 57.1 In sub-clause 4.17.2.3 add to the end of the sub-clause, before the semi-colon:
- "or unless the inspection or test was expressly envisaged by the Contract Documents or was reasonably necessary following the discovery of a defect to check for similar non-compliances".
- 57.2 In sub-clause 4.17.2.4 add to the end of the sub-clause, before the semi-colon:
- "(subject always to clauses 2.14 and 2.34)".

58. CLAUSE 4.19

Delete the existing text of clause 4.19 (and its heading) and replace with the following:

"Payment by the Employer to the Contractor of the amount of any direct loss and/or expense ascertained in accordance with clauses 4.15 and 4.16 (subject to any rights of set-off which the Employer may have) shall, save where expressly stated otherwise in this Contract, be full compensation for the Contractor in respect of the matters which are the subject of the Contractor's application to the Employer under clauses 4.15 and 4.16. Save where expressly

stated otherwise in this Contract, the Employer shall have no further liability in respect of such matters whether under this Contract or otherwise."

59. CLAUSE 5.1

Change the full stop at the end of sub-clause 5.1.2.4 to a semicolon and add a new sub-clause 5.1.3:

".3 without prejudice to the rest of this clause 5.1, an instruction from the Employer supplementing or amending the Third Party Agreements."

60. CLAUSE 5.5

Add to the end of the final paragraph of clause 5.5, before the full stop:

"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"

61. 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".

62. 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".

63. CLAUSE 6.3A

Add new clause 6.3A after clause 6.3:

"Contractor to prevent nuisance"

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably be aware, arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference for which it has been responsible. 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."

64. CLAUSE 6.3B

Add a new clause 6.3B after clause 6.3A:

"Trespass and third party consents"

.1 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 carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions 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.

- .2 The Contractor shall obtain, without addition or adjustment of the Contract Sum, any third party consents, approvals, licences or permissions stated in the Contract Particulars.
- .3 If requested by the Employer, the Contractor at its own cost shall provide reasonable assistance (including the provision of copies of drawings and specifications) to the Employer and its nominated representatives and consultants in obtaining any third party consents, approvals, licences or permissions which are not the Contractor's responsibility to obtain under clause 6.3B.2.
- .4 The Contractor shall comply, and shall procure that all Contractor's Persons comply, in all respects with any third party consents, approvals, licences or permissions referenced in this clause 6.3B, as the same may be varied from time to time."

65. CLAUSE 6.4

Insert at the end of clause 6.4.1.1, before the semi-colon: "and shall have a minimum indemnity limit of £10,000,000 for any one claim".

66. CLAUSE 6.13

Insert a new sub-clause 6.13.7:

"If any loss or damage affecting any executed work, Site Materials, the Existing Structures or their contents is caused or contributed to by the Contractor or the Contractor's Persons, then the Employer shall be entitled to recover from the Contractor any resulting deductible payable under the relevant insurance policy (whether by deducting such amount from sums due to the Contractor or by claiming the same as a debt)."

67. CLAUSE 6.14

In the opening paragraph of clause 6.14, delete "either Party" and replace with "the Employer". Delete "the other" and replace with "the Contractor".

68. CLAUSE 6.17

- 68.1 Add, at the end of the first sentence of sub-clause 6.17.1.2, 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".

- 68.2 In the final sentence of sub-clause 6.17.1.2, 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,".

69. CLAUSE 6.19

Delete clause 6.19 and replace with:

"Obligation to insure

The Contractor shall maintain professional indemnity insurance with a minimum limit of indemnity and on the basis and for the duration as set out in the Contract Particulars, provided that (subject to clause 6.20) 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 2010."

70. CLAUSE 6.20

Insert at the end of clause 6.20:

"Any increased or additional premium required by insurers for the insurance referred to in clause 6.19 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."

71. CLAUSE 6.21

Add new clause 6.21:

"Evidence of professional indemnity insurance etc.

- .1 Whenever the Employer reasonably requests, the Contractor shall send the Employer evidence that the insurance required to be maintained under clause 6.19 is in force.
- .2 The Contractor shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements.
- .3 The obligation under this Contract to take out and maintain professional indemnity insurance shall continue notwithstanding termination of the Contract, or determination of the Contractor's employment hereunder, in either case for any reason whatsoever, including (without limitation) breach by the Employer."

72. CLAUSE 6.22

Add new clause 6.22:

"Key Sub-contractors' insurance

The Contractor shall procure that the Key Sub-contractors shall maintain professional indemnity insurance in accordance with the required form of sub-contractor's deed of collateral warranty and Part 2 of Schedule E to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall procure and shall send to the Employer evidence that the Key Sub-contractors' insurance referred to in this clause is in force."

73. CLAUSE 6.23

Add a new clause 6.23:

"Professional Consultants' insurance

The Contractor shall procure that the Professional Consultants shall maintain professional indemnity insurance in accordance with the required form of professional consultant's deed of collateral warranty and Part 2 of Schedule D to the Schedule of Amendments. Within 10 Business Days of the date of this Contract (or, if later, within 10 Business Days of the appointment of a Professional Consultant), the Contractor shall procure and shall send to the Employer evidence that the Professional Consultant's insurance referred to in this clause is in force."

74. CLAUSE 6.24

Add a new clause 6.24:

"The Contractor shall not do or permit or suffer to be done any act or thing which may vitiate or prejudice the recovery of any sum under any policy or policies of insurance effected by either Party."

75. CLAUSE 7.1

Delete the whole of clause 7.1 and its heading and replace with:

"General right to assign

- .1 The Employer may on two occasions without the consent of the Contractor assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.
- .2 The Employer shall notify the Contractor of any assignment within 10 Business Days.
- .3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 7.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract or because the loss or damage suffered has been suffered by such person only and not by the Employer, or because such loss is different from that which would have been suffered by the Employer.
- .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 (save that the Employer's consent shall not be required where and to the extent that the assignment is automatically permitted by virtue of the Business Contract Terms (Assignment of Receivables) Regulations 2018)."

76. CLAUSE 7.2

Insert the following at the end of clause 7.2:

"If the Contractor does not procure execution and delivery of the parent company guarantee and/or performance bond (as applicable) within 10 Business Days of the date of this Contract, then, notwithstanding any other term of this Contract, the Employer shall be entitled to withhold all sums due to the Contractor until such time as the required security is executed and delivered."

77. CLAUSES 7.3 TO 7.8 (INCLUSIVE)

77.1 Delete existing clauses 7.3 to 7.8 (inclusive) and their headings.

77.2 Replace clause 7.3 with:

"Contractor's collateral warranty

- .1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any Funder, any Purchaser and any Tenant identified in the Employer's request, in the form of the Contractor's deed of collateral warranty contained in Schedule G to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably require.
- .2 If the Contractor does not procure execution and delivery of any such warranty within the time period required under this clause then, notwithstanding any other term of this Contract, the Employer shall be entitled to withhold all sums due to the Contractor until such time as the required warranty is executed and delivered."

77.3 Replace clause 7.4 with:

"Professional Consultants - collateral warranties

- .1 The Contractor shall ensure, within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Professional Consultant), that the Professional Consultant identified in the request has executed and delivered a deed of collateral warranty in favour of the Employer and/or in favour of any Funder, any Purchaser and any Tenant identified in the Employer's request, in the relevant form set out in Part 3 of Schedule D to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably require.
- .2 If the Contractor fails to procure any executed deed of collateral warranty from any Professional Consultant within the time period required under clause 7.4.1, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Professional Consultant and claimed by the Contractor in its application for payment until such time as the required warranty is executed and delivered."

77.4 Replace clause 7.5 with:

"Sub-contractor collateral warranties

- .1 Within 10 Business Days of a request from the Employer (or, if later, within 10 Business Days of the appointment of a Key Sub-contractor), the Contractor shall ensure that the Key Sub-contractor identified in the request has executed and delivered a deed of collateral warranty in favour of the Employer and/or in favour of any Funder, any Purchaser and any Tenant identified in the request, in the relevant form set out in Part 3 of Schedule E to the Schedule of Amendments with such amendments as the relevant beneficiary may reasonably require.
- .2 If the Contractor fails to procure any executed deed of collateral warranty from any Key Sub-contractor within the time period required under clause 7.5.1, the Employer in its absolute discretion may withhold payment for the elements of the work undertaken by that Key Sub-contractor and claimed by the Contractor in its application for payment until such time as the required warranty is executed and delivered."

77.5 Replace clause 7.6 with:

"Contractor's duty not to terminate or vary appointments or sub-contracts

The Contractor shall not terminate or vary the appointment of any Professional Consultant or Key Sub-Contractor without the Employer's prior consent, which shall not be unreasonably withheld or delayed."

78. CLAUSE 8.1

78.1 Insert a new clause 8.1.5 as follows:

“.5 a company also becomes Insolvent when it becomes subject to a moratorium under Part A1 of the Insolvency Act 1986 or when it becomes subject to a restructuring plan under Part 26A Companies Act 2006”.

78.2 In the final paragraph of the clause, delete the reference to “8.1.4” and replace with “8.1.5”.

79. CLAUSE 8.4

79.1 In sub-clause 8.4.1.3 after "requiring him to remove" insert: "or rectify". Delete "and by such refusal or neglect the Works are materially affected".

79.2 Insert new sub-clause 8.4.1.6:

".6 fails to maintain or provide adequate evidence of any insurance cover required to be procured by the Contractor under this Contract"

79.3 Insert new sub-clause 8.4.4:

"The Employer may immediately terminate the Contractor's employment under this Contract by giving written notice, if the Contractor is in material or persistent breach of its obligations under this Contract and fails to rectify such breach within 14 days of being notified of the same."

80. 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,"

81. CLAUSE 8.6

Delete the existing text of clause 8.6 and replace with the following:

“.1 The Employer shall be entitled at any time to terminate the Contractor's employment under this Contract or any other contract with the Employer and recover all its loss if the Contractor, the Contractor's Persons or anyone acting on the Contractor's behalf do any of the following things:

.1 offer, give or agree to give to anyone any inducement fee or reward in respect of this Contract or any other contract with the Employer (even if the Contractor does not know what has been done); or

.2 commit an offence under the Bribery Act 2010; or

.3 commit any fraud in connection with this or any other contract with the Employer whether alone or in conjunction with the Employer's Persons (including any person employed on a permanent, temporary or agency arrangement by the Employer); or

.4 give any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

.2 The Employer shall be entitled at any time to terminate the Contractor's employment under this or any other contract with the Employer if (where this Contract is one to which regulation 73(1) of the PC Regulations applies) the circumstances set out in regulations 73(1)(b) of the PC Regulations apply.

- .3 Any clause under this Contract limiting the Contractor's liability shall cease to apply in circumstances where the Contractor's employment is terminated pursuant to this clause 8.6."

82. CLAUSE 8.7

- 82.1 In sub-clause 8.7.2 after "the Contractor shall" and before the colon, insert: ", at the Contractor's expense"
- 82.2 In sub-clause 8.7.4, after "as referred to in clause 2.30)", insert: "and at the Contractor's expense"

83. CLAUSE 8.11

- 83.1 In the final paragraph of clause 8.11.1, delete "either Party, subject to clause 8.11.2," and replace with "the Employer". Delete "the other" and replace with "the Contractor".
- 83.2 Delete clause 8.11.2 and replace with "Not used".

84. CLAUSE 10

Insert a new clause 10 as follows:

"Data protection

- .1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- .2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- .3 Without prejudice to the generality of clause 10.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:
 - .1 process that Personal Data only on the written instructions of the Employer as set out in the Data Processing Instructions Schedule attached at Annex H to this Contract or otherwise provided by the Employer, unless the Contractor is required by Applicable Laws. Where the Contractor is relying on Applicable Laws for processing Personal Data other than in accordance with the Employer's Data Processing Instructions, the Contractor shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer;
 - .2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access

to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- .3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- .4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
 - .1 the Employer or the Contractor has provided appropriate safeguards in relation to the transfer or the recipient is located in a location deemed by the UK to provide personal data with an adequate level of protection;
 - .2 the data subject has enforceable rights and effective legal remedies; and
 - .3 the Contractor complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;
- .5 assist the Employer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- .6 notify the Employer without undue delay on becoming aware of a Personal Data breach;
- .7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and
- .8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Employer or the Employer's designated auditor.

.4 The Employer does not consent to the Contractor appointing any third party processor of Personal Data under this Contract.

.5 In this clause 10, the following definitions apply:

"Applicable Laws: the laws applicable to the Contractor to process Personal Data."

"Data Protection Legislation: (i) the UK GDPR; (ii) the Data Protection Act 2018; and (iii) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing."

"UK GDPR: the retained General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018."

85. CLAUSE 11

Insert a new clause 11 as follows:

"Anti-Slavery

- .1 The Contractor shall, and shall procure that the Contractor's Persons, comply with the Modern Slavery Act 2015 and any related Employer's Policies.
- .2 Without prejudice to the generality of clause 11.1, the Contractor undertakes, warrants and represents that:
 - .1 neither the Contractor nor any of its officers, employees, agents or subcontractors has:
 - .1 committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
 - .2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - .3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and
 - .2 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 (and any related Employer's Policies) in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Employer on request at any time.
 - .3 The Contractor shall notify the Employer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Contractor's obligations under clause 11.1 or clause 11.2. Any such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor's obligations.
 - .4 Any breach of clause 11.1 or clause 11.2 by the Contractor shall be deemed to be a material breach of this Contract which is not capable of remedy and shall entitle the Employer to terminate the Contractor's engagement with immediate effect under clause 8.4.4."

86. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION, SCHEDULE 1: INSURANCE OPTIONS

This agreement incorporates Schedule 1 to the JCT Conditions.

87. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION, SCHEDULE 2: NAMED SUB-CONTRACTORS

This agreement incorporates Schedule 2 to the JCT Conditions.

88. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION, SCHEDULE 3: FORMS OF BONDS

Delete Schedule 3 to the JCT Conditions and replace with: "Schedule 3 not used."

89. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION SCHEDULE 4: FLUCTUATIONS OPTIONS

Delete Schedule 4 to the JCT Conditions and replace with: "Schedule 4 not used."

90. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION, SCHEDULE 5: SUPPLEMENTAL PROVISIONS

This agreement incorporates Schedule 5 to the JCT Conditions, amended as follows:

90.1 Insert at the end of paragraph 5.1, before the full stop: “(including any Social Value Requirements detailed at Annex I)”.

90.2 Insert a new paragraph 5.4 as follows:

“If at any time it becomes reasonably apparent that the Contractor has not achieved, and will not achieve, the Social Value Requirements, then without limiting the Employer’s other rights and remedies the Employer may deduct any corresponding Social Value Credits from sums due to the Contractor (or otherwise may recover such Social Value Credits as a debt).”

90.3 Insert a new paragraph 5.5 as follows:

“In this paragraph 5:

Social Value Requirements means the initiatives detailed at Annex I that the Contractor has committed to implementing as part of its tender, to ensure that the delivery of the Works achieves a wider societal or community benefit.

Social Value Credits means the service credits detailed at Annex I that will become chargeable to the Contractor if at any time it becomes reasonably apparent that the Contractor has not achieved, and will not achieve, the Social Value Requirements.”

91. JCT INTERMEDIATE BUILDING CONTRACT, 2016 EDITION, SCHEDULE 6: DESIGN SUBMISSION PROCEDURE

91.1 This agreement incorporates Schedule 6 to the JCT Conditions.

SCHEDULE B - PARENT COMPANY GUARANTEE

THIS DEED is dated _____ 202[*]

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Guarantor**')
(2) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (the '**Employer**').

BACKGROUND:-

- (A) By an agreement in writing dated [DATE] (**Building Contract**) and made between the Employer and [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**), the Contractor agreed to design and construct works at [SITE ADDRESS] (**Works**).
(B) The Guarantor (the parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties or obligations under the Building Contract.

AGREED TERMS:-

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1. Definitions:

Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Insolvency Event	a party suffers an insolvency event if it suffers any of the events referred to at clause 8.1 of the Building Contract.

1.2. Clause headings shall not affect the interpretation of this deed.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7. This deed shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-

enacted from time to time.

- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to writing or written includes fax and email.
- 1.11. Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.12. A reference to this deed or to any other deed, agreement or document referred to in this deed is a reference to this deed or such other deed, agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.13. References to clauses are to the clauses of this deed.
- 1.14. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. GUARANTEE AND INDEMNITY

- 2.1. The Guarantor guarantees the due and punctual performance by the Contractor of the Contractor's duties and obligations to the Employer under the Building Contract.
- 2.2. If the Contractor fails to observe or perform any of its duties or obligations to the Employer under the Building Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Building Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such failure or non-payment and shall, on first written demand, pay to the Employer, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.
- 2.3. If the Contractor suffers an Insolvency Event or if the Employer terminates the Contractor's employment under clauses 8.4 to 8.6 (inclusive) of the Building Contract, the Guarantor shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such Insolvency Event or termination and shall, on first written demand, pay to the Employer without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.

3. AMENDMENTS TO THE BUILDING CONTRACT

The Building Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Building Contract as modified, amended or supplemented) shall not be affected by:

- 3.1.1. any such modification, amendment or supplement; or
- 3.1.2. any invalidity, avoidance or termination of the Building Contract; or
- 3.1.3. any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this deed shall apply to the terms of any such compromise as they apply to the Building Contract.

4. EMPLOYER DOES NOT HAVE TO PURSUE CONTRACTOR

The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

5. INSOLVENCY OF CONTRACTOR

Without affecting clause 2.3, if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

6. PRIORITY OF CLAIMS AGAINST THE CONTRACTOR

As long as any liability incurred by the Contractor to the Employer guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

7. LIMIT OF LIABILITY

The Employer may not recover any more under this deed in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter, net of any set off. The Employer may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

8. ASSIGNMENT

8.1. The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Building Contract.

8.2. The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Employer's written consent.

8.3. The Employer shall notify the Guarantor of any assignment.

8.4. The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed or because the loss or damage suffered has been suffered by such person only and not by the Employer, or because such loss is different from that which would have been suffered by the Employer.

9. THIRD PARTY RIGHTS

Subject to clause 8, no one other than a party to this deed, their successors and permitted assignees, shall have any right to enforce any of its terms.

10. GOVERNING LAW

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

11. JURISDICTION

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

Executed as a deed by [GUARANTOR])

acting by a director)

.....

Director

in the presence of:)

Witness Signature)

Witness Name)

Address)

SCHEDULE C - PERFORMANCE BOND

The Guarantee Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to Guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by Contractor (or the Contractor becoming insolvent within the meaning of clause 8.1 of the Contract, or the Employer terminating the Contractor's employment under clauses 8.4 to 8.6 (inclusive) of the Contract) the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as a result, as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time, concession or waiver by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract, insolvency or termination as referred to in clause 1 of this Guarantee Bond which has occurred and in respect of which a claim in writing containing particulars of such breach, insolvency or termination (as applicable) has been made upon the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
- 6 This Guarantee Bond and the benefits thereof may be assigned by the Employer, without the prior written consent of the Guarantor and the Contractor, to any party to whom the Contract is (in accordance with its terms) properly assigned by the Employer. The Guarantor shall not

contend that any person to whom the benefit of this Guarantee Bond is assigned may not recover any sum under this Guarantee Bond because that person is an assignee and not a named party to this Guarantee Bond or because the loss or damage suffered has been suffered by such person only and not by the Employer, or because such loss is different from that which would have been suffered by the Employer.

- 7 Subject to clause 6, the parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 This Guarantee Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

The Schedule

The Contractor: [] whose registered office address is at []

The Guarantor: [] whose registered office address is at []

The Employer: **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX

The Contract: A contract dated [] entered into between the Employer and the Contractor in the form of an amended JCT Intermediate Contract With Contractor's Design 2016 Edition with the original contract sum of []

The Bond Amount: The sum of []

Expiry: The date of practical completion of the whole of the Works, which shall be conclusive for the purposes of this Guarantee Bond

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this day of

Executed and delivered as a deed by []

in the presence of

Director

Director/Secretary

SIGNED AS A DEED BY

[]

for and on behalf of the Guarantor

In the presence of:-

Witness :

Occupation :

Bond No. :

**SCHEDULE D - PROFESSIONAL CONSULTANTS, PROFESSIONAL CONSULTANTS'
INSURANCE AND PROFESSIONAL CONSULTANT'S DEED OF COLLATERAL WARRANTY**

PART 1. Professional Consultants

The Professional Consultants identifiable at the date of this Contract are:

- [TBC]

PART 2. Professional Consultants' professional indemnity insurance

Each Professional Consultant shall maintain professional indemnity insurance in the following amounts on an each and every claim basis:

- [TBC]

PART 3. Professional Consultant's collateral warranty

THIS DEED is dated _____

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in [JURISDICTION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Sub-Consultant**')
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Beneficiary**')
- (3) [FULL COMPANY NAME] incorporated and registered in [JURISDICTION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Contractor**').

BACKGROUND:-

- (A) The Employer has engaged the Contractor to carry out design and construction work.
- (B) The Contractor has engaged the Sub-Consultant to perform the Services as part of that design and construction work.
- (C) The Beneficiary has an interest in the Project.
- (D) The Sub-Consultant has agreed to enter into this Deed for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Sub-Consultant as consideration under this Deed.

AGREED TERMS:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Deed.

Business Day	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Employer	THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA of Town Hall, Hornton Street, London W8 7NX.
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 Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them.
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information modelling and repair of the Property and the Project.
Professional Appointment	an agreement in writing dated [DATE] between the Sub-Consultant and the Contractor for the Services.
Project	the design and construction of external refurbishment works at the Property.
Property	the site of the Project at Bramley House, Bramley Road, London W10 6S.
Required Standard	all the reasonable skill, care and diligence as may be expected of a properly qualified and competent sub-consultant experienced in performing services of a similar nature, size, scope and complexity to the Services.
Services	the services referred to in the Professional Appointment, performed by or on behalf of the Sub-Consultant under the Professional Appointment.

2. **Comply with Professional Appointment**

2.1 The Sub-Consultant warrants to the Beneficiary that:

- 2.1.1 it has complied, and shall continue to comply, with its obligations under the Professional Appointment; and
- 2.1.2 it has exercised and shall continue to exercise the Required Standard when performing the Services.

2.2 In proceedings for breach of this clause 2, the Sub-Consultant may:

- 2.2.1 rely on any limit of liability or other term of the Professional Appointment; and
- 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint contractor, with the Contractor, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the Contractor under the Professional Appointment).

2.3 The Sub-Consultant's duties or liabilities under this Deed shall not be negated or diminished by any approval or inspection of the Property, the Project, any designs or specifications for the Property or the Project, any testing of any work, goods, materials, plant or equipment, or any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Contractor.

2.4 This Deed shall not negate or diminish any other liability or otherwise owed to the Beneficiary by the Sub-Consultant.

3. Step-in rights: Sub-Consultant may not terminate or discontinue

3.1 The Sub-Consultant shall not exercise, or seek to exercise, any right to:

3.1.1 terminate its employment under the Professional Appointment; or

3.1.2 discontinue performance of the Services,

for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Sub-Consultant shall specify the grounds for the Sub-Consultant's proposed termination or discontinuance.

3.2 The Sub-Consultant's right to terminate its employment under the Professional Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Consultant, copied to the Contractor:

3.2.1 requiring the Sub-Consultant not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;

3.2.2 acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Professional Appointment; and

3.2.3 undertaking that the Beneficiary or its nominee will pay to the Sub-Consultant any sums due and payable to the Sub-Consultant under the Professional Appointment in future and any sums then due and payable to the Sub-Consultant under the Professional Appointment that are unpaid.

3.3 If the Beneficiary (or its nominee) serves notice on the Sub-Consultant under clause 3.2, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Beneficiary (to the exclusion of the Contractor).

3.4 In complying with this clause 3, the Sub-Consultant:

3.4.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Contractor; and

3.4.2 may exercise its right to terminate its employment under the Professional Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Sub-Consultant's right to terminate or discontinue has ceased under clause 3.2.

4. Step-in rights: Beneficiary may step-in

4.1 Without affecting clause 3, if the Beneficiary serves a notice on the Sub-Consultant, copied to the Contractor, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.2,

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

4.2 The Sub-Consultant shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give a notice under clause 3 or 4. The Sub-Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Sub-Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Contractor.

5. Step-in rights: Sub-Consultant's position and Contractor's consent

5.1 The Sub-Consultant shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2 The Contractor has entered into this Deed to confirm its consent to the agreement.

6. Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Consultant from the Beneficiary's nominee.

7. Step-in rights: Priority

7.1 Where the Sub-Consultant has given rights similar to those contained in clauses 3 to 6 or their equivalent to any third party then if both the Beneficiary and any such party serve notice under clauses 3 to 6 or their equivalent the deemed order of priority shall be as follows:

7.1.1 [insert agreed order of priority]; then

7.1.2 any other third party.

8. No instructions to Sub-Consultant by Beneficiary

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Sub-Consultant under this Deed.

9. Copyright

9.1 The Sub-Consultant grants to the Beneficiary, 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, the Sub-Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses. The licence shall enable the Beneficiary to copy and use the Material for an extension of the Project but not to reproduce any designs contained in that Material for any such extension.

9.2 This licence carries the right to grant sub-licences and is freely transferable to third parties without the consent of the Sub-Consultant.

9.3 The Sub-Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Sub-Consultant. On the Beneficiary's payment of the Sub-Consultant's reasonable charges for

providing the copy (or copies), the Sub-Consultant shall provide the copy (or copies) to the Beneficiary.

10. Professional indemnity insurance

10.1 The Sub-Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM] [for any one claim / in the annual aggregate] for the duration of its liability under the Professional Appointment, provided that such insurance is available at commercially reasonable rates.

10.2 Any increased or additional premium required by insurers because of the Sub-Consultant's claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.

10.3 The Sub-Consultant shall immediately inform the Beneficiary if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Sub-Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Consultant regarding the Project and the Property, without that insurance.

10.4 Whenever the Beneficiary reasonably requests, the Sub-Consultant shall send the Beneficiary evidence that the Sub-Consultant's professional indemnity insurance is in force.

11. Assignment

11.1 The Beneficiary may assign the benefit of this Deed without the consent of the Sub-Consultant on two occasions to any person. In this Deed, the term "Beneficiary" shall be read and construed accordingly.

11.2 The Sub-Consultant shall not contend that any person to whom the benefit of this Deed is assigned under clause 11.1 may not recover any sum under this Deed because that person is an assignee and not a named party to this Deed or because the loss or damage suffered has been suffered by such person only and not by the original Beneficiary, or because such loss is different from that which would have been suffered by the original Beneficiary.

12. Third party rights

Subject to clause 11, a person who is not a party to this Deed shall not have any rights under or in connection with it.

13. Governing law and jurisdiction

This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and shall be subject to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

Signed as a deed by)
[SUB-CONSULTANT])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

Signed as a deed by)
[BENEFICIARY])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

Signed as a deed by)
[CONTRACTOR])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

SCHEDULE E - KEY SUB-CONTRACTORS, KEY SUB-CONTRACTORS' INSURANCE AND KEY SUB-CONTRACTOR'S DEED OF COLLATERAL WARRANTY

PART 1. Key Sub-contractors

The Key Sub-contractors identifiable at the date of this Contract are:

- [TBC]

PART 2. Key Sub-contractors' professional indemnity insurance

Each Key Sub-Contractor shall maintain professional indemnity insurance in the following amounts on an each and every claim basis:

- [TBC]

PART 3. Key Sub-contractor's deed of collateral warranty

THIS DEED is dated _____

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Sub-Contractor**')
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Beneficiary**')
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Contractor**').

BACKGROUND:-

- (A) The Employer has engaged the Contractor to carry out design and construction work.
- (B) The Contractor has engaged the Sub-Contractor to carry out *[insert description of package of work]* as part of that design and construction work.
- (C) The Beneficiary has an interest in the Works.
- (D) The Sub-Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Sub-Contractor as consideration under this Deed.

AGREED TERMS:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Deed.

Building Contract	an agreement in writing dated [DATE] between the Employer and the Contractor.
Business Day	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Employer	THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA of Town Hall, Hornton Street, London W8 7NX.
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 Sub-Contract Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them.
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of the Property and the Works.
Property	the site of the Works at Bramley House, Bramley Road, London W10 6S.
Sub-Contract	an agreement in writing dated [DATE] between the Contractor and the Sub-Contractor.
Sub-Contract Works	the design, construction and completion of the building works referred to in the Sub-Contract, carried out by the Sub-Contractor under the Sub-Contract.
Works	the design, construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

2. Comply with Sub-Contract

2.1. The Sub-Contractor warrants to the Beneficiary that:

- 2.1.1. it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to:
 - 2.1.1.1. carry out and complete the Sub-Contract Works properly; and
 - 2.1.1.2. use workmanship and materials of the quality and standard specified in the Sub-Contract; and
- 2.1.2. without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Sub-Contract, it has designed, or will design, the Sub-Contract Works with all the reasonable skill, care and diligence to be expected of a properly qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract Works.

- 2.2. In proceedings for breach of this clause 2, the Sub-Contractor may:
- 2.2.1. rely on any limit of liability or other term of the Sub-Contract; and
 - 2.2.2. raise equivalent rights of defence as it would have had, if the Beneficiary had been named as a joint employer, with the Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual contractor under the Sub-Contract).
- 2.3. The Sub-Contractor's duties or liabilities under this Deed shall not be negated or diminished by any approval or inspection of the Property, the Works, the Sub-Contract Works or any designs or specifications for the Property or the Works, or any testing of any work, goods, materials, plant or equipment or any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Contractor.
- 2.4. This Deed shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Sub-Contractor.
- 3. Step-in rights: Sub-Contractor may not terminate or discontinue**
- 3.1. The Sub-Contractor shall not exercise, or seek to exercise, any right to:
- 3.1.1. terminate its employment under the Sub-Contract; or
 - 3.1.2. discontinue the Sub-Contract Works,
- for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination or discontinuance.
- 3.2. The Sub-Contractor's right to terminate its employment under the Sub-Contract, or to discontinue the Sub-Contract Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Contractor, copied to the Contractor:
- 3.2.1. requiring the Sub-Contractor not to terminate its employment or not to discontinue the Sub-Contract Works under the Sub-Contract;
 - 3.2.2. acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
 - 3.2.3. undertaking that the Beneficiary or its nominee will pay to the Sub-Contractor any sums due and payable to the Sub-Contractor under the Sub-Contract in future and any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.
- 3.3. If the Beneficiary or its nominee serves notice on the Sub-Contractor under clause 3.2, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).
- 3.4. In complying with this clause 3, the Sub-Contractor:
- 3.4.1. does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
 - 3.4.2. may exercise its right to terminate its employment under the Sub-Contract or discontinue the Sub-Contract Works after the expiry of the notice period referred

to in clause 3.1, unless the Sub-Contractor's right to terminate or discontinue has ceased under clause 3.2.

4. Step-in rights: Beneficiary may step-in

4.1. Without affecting clause 3.1, if the Beneficiary serves a notice on the Sub-Contractor, copied to the Contractor, that:

4.1.1. confirms that the Beneficiary wishes to step-in to the Sub-Contract; and

4.1.2. complies with the requirements for a Beneficiary's notice under clause 3.2,

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

4.2. The Sub-Contractor shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Sub-Contractor shall not enquire whether the Beneficiary may give that notice.

4.3. In complying with this clause 4, the Sub-Contractor does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor.

5. Step-in rights: Sub-Contractor's position and Contractor's consent

5.1. The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2. The Contractor has executed this Deed to confirm its consent to the agreement.

6. Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.

7. Step-in rights: Priority

Where the Sub-Contractor has given rights similar to those contained in clauses 3 to 6 or their equivalent to any third party then if both the Beneficiary and any such party serve notice under clauses 3 to 6 or their equivalent the deemed order of priority shall be as follows:

7.1.1. [insert agreed order of priority];

7.1.2. any other third party.]

8. No instructions to Sub-Contractor by Beneficiary

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Sub-Contractor under this Deed.

9. Copyright

9.1. The Sub-Contractor grants to the Beneficiary, 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, the Sub-Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses. The licence shall enable the Beneficiary to copy and use the Material for an extension of the Works but not to reproduce any designs contained

in that Material for any such extension.

- 9.2. This licence carries the right to grant sub-licences and is freely transferable to third parties without the consent of the Sub-Contractor.
- 9.3. The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 9.4. The Beneficiary may request a copy or copies of (some or all of) the Material from the Sub-Contractor. On the Beneficiary's payment of the Sub-Contractor's reasonable charges for providing the copy (or copies), the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.

10. Professional indemnity insurance

- 10.1. The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] [for any one claim / in the annual aggregate] for the duration of its liability under the Sub-Contract, provided that such insurance is available at commercially reasonable rates.
- 10.2. Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 10.3. The Sub-Contractor shall immediately inform the Beneficiary if the Sub-Contractor's required insurance ceases to be available at commercially reasonable rates, so that the Sub-Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Contractor regarding the Works and the Property, without that insurance.
- 10.4. Whenever the Beneficiary reasonably requests, the Sub-Contractor shall send the Beneficiary evidence that the Sub-Contractor's insurance is in force.

11. Assignment

- 11.1. The Beneficiary may assign the benefit of this Deed without the consent of the Sub-Contractor on two occasions to any person. In this Deed, the term "Beneficiary" shall be read and construed accordingly.
- 11.2. The Sub-Contractor shall not contend that any person to whom the benefit of this Deed is assigned under clause 11.1 may not recover any sum under this Deed because that person is an assignee and not a named party to this Deed or because the loss or damage suffered has been suffered by such person only and not by the original Beneficiary, or because such loss is different from that which would have been suffered by the original Beneficiary.

12. Third party rights

Subject to clause 11, a person who is not a party to this Deed shall not have any rights under or in connection with it.

13. Governing law and jurisdiction

This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and shall be subject to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

Signed as a deed by)
[SUB-CONTRACTOR])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

Signed as a deed by)
[BENEFICIARY])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

Signed as a deed by)
[CONTRACTOR])
acting by a director)
and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

SCHEDULE F - THIRD PARTY AGREEMENTS

[Any agreements between the Employer and third parties that may affect the carrying out of the Works (or relevant extracts) to be attached.]

SCHEDULE G - CONTRACTOR'S FORM OF WARRANTY

THIS DEED is dated _____ 202[*]

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Contractor**')
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Beneficiary**')
- (3) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (the '**Employer**').

BACKGROUND:-

- (A) The Employer has engaged the Contractor to carry out design and construction work.
- (B) The Beneficiary has an interest in the design and construction work.
- (C) The Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.
- (D) The Beneficiary has paid £1 to the Contractor as consideration under this Deed.

AGREED TERMS:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Deed.

Building Contract	an agreement in writing dated [DATE] between the Employer and the Contractor.
Business Day	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
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 all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them.
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of the Property and the Works.
Property	the site of the Works at Bramley House, Bramley Road, London W10 6SX.

Works

the design, construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

2. Comply with Building Contract

2.1. The Contractor warrants to the Beneficiary that:

2.1.1. it has complied, and shall continue to comply, with its obligations under the Building Contract; and

2.1.2. without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Building Contract, it has designed, or will design, the Works with all the reasonable skill, care and diligence to be expected of a properly qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope, character and nature to the Works.

2.2. In proceedings for breach of this clause 2, the Contractor may:

2.2.1. rely on any limit of liability or other term of the Building Contract; and

2.2.2. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract).

2.3. The Contractor's duties or liabilities under this Deed shall not be negated or diminished by any approval or inspection of the Property, the Works, any designs or specifications for the Property or the Works, any testing of any work, goods, materials, plant or equipment, or any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Employer.

2.4. This Deed shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.

3. Step-in rights: Contractor may not terminate or discontinue

3.1. The Contractor shall not exercise, or seek to exercise, any right to:

3.1.1. terminate its employment under the Building Contract; or

3.1.2. discontinue the design and construction of the Works,

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

3.2. The Contractor's right to terminate its employment under the Building Contract, or to discontinue the design and construction of the Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

3.2.1. requiring the Contractor not to terminate its employment or not to discontinue the design and construction of the Works under the Building Contract;

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

3.2.3. undertaking that the Beneficiary or its nominee will pay to the Contractor any sums

due and payable to the Contractor under the Building Contract in future and any sums then due and payable to the Contractor under the Building Contract that are unpaid.

- 3.3. If the Beneficiary (or its nominee) serves notice on the Contractor under clause 3.2, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 3.4. In complying with this clause 3, the Contractor:
- 3.4.1. does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and
- 3.4.2. may exercise its right to terminate its employment under the Building Contract, or discontinue the design and construction of the Works, after the expiry of the notice period referred to in clause 3.1, unless the Contractor's right to terminate or discontinue has ceased under clause 3.2.

4. Step-in rights: Beneficiary may step-in

- 4.1. Without affecting clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:
- 4.1.1. confirms that the Beneficiary wishes to step-in to the Building Contract; and
- 4.1.2. complies with the requirements for a Beneficiary's notice under clause 3.2,
- then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 4.2. The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.
- 4.3. In complying with this clause 4, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.

5. Step-in rights: Contractor's position and Employer's consent

- 5.1. The Contractor shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.
- 5.2. The Employer has executed this Deed to confirm its consent to the agreement.

6. Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.

7. Step-in rights: Priority

Where the Contractor has given rights similar to those contained in clauses 3 to 6 or their equivalent to any third party then if both the Beneficiary and any such party serve notice under clauses 3 to 6 or their equivalent the deemed order of priority shall be as follows:

7.1.1. [insert agreed order of priority]; and

7.1.2. any other third party.

8. No instructions to Contractor by Beneficiary

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Contractor under this Deed.

9. Copyright

9.1. The Contractor grants to the Beneficiary, 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, the Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses. The licence shall enable the Beneficiary to copy and use the Material for an extension of the Works but not to reproduce any designs contained in that Material for any such extension.

9.2. This licence carries the right to grant sub-licences and is freely transferable to third parties without the consent of the Contractor.

9.3. The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

9.4. The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

10. Professional indemnity insurance

10.1. The Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one claim for the duration of its liability under the Building Contract, provided that such insurance is available at commercially reasonable rates.

10.2. Any increased or additional premium required by insurers 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.

10.3. The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Property, without that insurance.

10.4. Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force.

11. Assignment

11.1. The Beneficiary may assign the benefit of this Deed without the consent of the Contractor on two occasions to any person. In this Deed, the term "Beneficiary" shall be read and construed accordingly.

11.2. The Contractor shall not contend that any person to whom the benefit of this Deed is assigned under clause 11.1 may not recover any sum under this Deed because that person is an assignee and not a named party to this Deed or because the loss or damage suffered has been suffered by such person only and not by the original Beneficiary, or because such loss is different from that which would have been suffered by the original Beneficiary.

12. Third party rights

Subject to clause 11, a person who is not a party to this Deed shall not have any rights under or in connection with it.

13. Governing law and jurisdiction

This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and shall be subject to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered on the date stated at the beginning of it.

Signed as a deed by)

[CONTRACTOR])

acting by a director)

and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

Signed as a deed by)

[BENEFICIARY])

acting by a director)

and a director **OR** its secretary)

Director

.....

Director **OR** Secretary

The Common Seal of **THE MAYOR
AND BURGESSES OF THE ROYAL
BOROUGH OF KENSINGTON AND
CHELSEA** was hereunto affixed in the
presence of:

)

)

)

) Authorised signatory

Annex A
Contract Drawings

[To be attached]

Annex B
Specification / Work Schedules

[To be attached]

Annex C

Priced Document

[To be attached]

Annex D

Employer's Requirements

[To be attached (or cross-refer to relevant sections of the Contract Drawings / Specification if there is not a standalone CDP ERs document).]

Annex E

Contractor's Proposals

[To be attached (or cross-refer to relevant sections of the Contract Drawings / Specification if there is not a standalone CPs document).]

Annex F

CDP Analysis

[To be attached (or cross-refer to relevant sections of the Priced Document if there is no standalone CDP Analysis).]

Annex G

Employer's Policies

[To be attached]

Annex H - Data processing instructions schedule

Subject matter of Processing	The provision of support services to the Employer's tenants, in respect of defects, shrinkages and other faults in the Works.
Duration of Processing	The date falling 12 months following practical completion of the Works
Nature and Purpose of Processing	Taking and recording incoming enquiries in order to rectify any defects post-completion.
Types of Personal Data	Name, address and contact details.
Categories of Data Subjects	The Employer's tenants.

[Note: Subject to final sign-off by RBKC's data protection team.]

Annex I – Social Value

Social Value Requirement	Social Value Credit
REFER to ITT & SCORING MATRIX CRITERIA FOR WEIGHTING AND CREDITS ASSOCIATED	REFER to ITT & SCORING MATRIX CRITERIA FOR WEIGHTING AND CREDITS ASSOCIATED

[Note: KPI / Social Value drafting to be finessed as required post-tender, to ensure that the correct technical annexures are correctly referenced and adequately tie in with the JCT text.]