DATED 12th August 2020

**(1) THE SECRETARY OF STATE FOR EDUCATION**

-and-

**(2) MACE LIMITED**

**CONTRACT**

relating to

the refurbishment of Sanctuary Buildings

incorporating the conditions of the JCT Design

and Build Contract 2016 Edition

**This Contract** is made on 12th August 2020

**BETWEEN:**

**(1) THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Employer"**)

**(2) MACE LIMITED** (company number 02410626) whose registered office is situated at 155 Moorgate, London, EC2M 6XB (the **"Contractor"**)

**RECITALS**

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| --- | --- |
| First | the Employer wishes to have the design and construction of the following work carried out: the design, installation and refurbishment of existing toilets and tea points on levels 1-4 (south elevation) including the removal of existing facilities at Sanctuary Buildings, 20 Great Smith Street, Westminster, London, SW1P 3BT (the "**Works**") in accordance with the JCT Design and Build Contract (2016 edition) including sections 1 to 13 and the appendices annexed thereto subject to the further amendments set out in Appendix 1 to this Contract (hereinafter referred to as the "**Conditions**") and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the "**Employer's Requirements**"); |
| Second | in response to the Employer's Requirements the Contractor has supplied to the Employer:   documents showing and describing the Contractor's proposals for the design and construction of the Works (the "**Contractor's Proposals**"); and   an analysis of the Contract Sum (the "**Contract Sum Analysis**"); |
| Third | the Contractor has examined the Employer’s Requirements and accepts entire responsibility for the contents of the Employer’s Requirements (including, but not limited to, responsibility for any design contained therein) and is satisfied that:   1. the Contractor’s Proposals meet the Employer’s Requirements; 2. there is no discrepancy within and/or between the Employer’s Requirements   and the Contractor’s Proposals; and   1. the Employer’s Requirements can be carried out within the timescale envisaged and at the cost indicated in the Contract Sum Analysis. |
| Fourth | for the purposes of the Construction Industry Scheme (**CIS**) under the Finance Act 2004 the status of the Employer as at the Base Date is that stated in the Contract Particulars; |
| Fifth | the division of the Works into Sections is shown in the Employer’s Requirements or in such other documents as are identified in the Contract Particulars; |
| Sixth | where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars; and |
| Seventh | whether any of Supplemental Provisions 1 to 12 apply is stated in the Contract Particulars. |

**ARTICLES:**

**IT IS HEREBY AGREED** as follows

|  |  |
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| **1.** | **CONTRACTOR’S OBLIGATIONS**  The Contractor shall carry out and complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents and in so doing agrees to accept responsibility for any design contained within the Employer’s Requirements. |
| **2.** | **CONTRACT SUM**  The Employer shall pay the Contractor at the times and in the manner specified in the Conditions, the VAT exclusive sum of three million, four hundred and ninety-four thousand, three hundred and thirty-six pounds and sixty-three pence (£3,494,336.63) (the "**Contract Sum**") or such other sum as shall become payable under this Contract. |
| **3.** | **EMPLOYER’S AGENT**  For the purpose of this Contract the "**Employer's Agent**" is Arcadis LLP of Arcadis House, 34 York Road, London N1 9AB or such other person as the Employer nominates in his place. Save to the extent that the Employer may otherwise specify by written notice to the Contractor, (i) all notices, applications, requests or statements submitted by the Contractor to the Employer must at the same time also be submitted to the Employer's Agent; and (ii) the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and to otherwise act for the Employer under any of the Conditions. |
| **4.** | **EMPLOYER’S REQUIREMENTS AND CONTRACTOR’S PROPOSALS**  The Employer's Requirements, the Contractor's Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars. |
| **5.** | **PRINCIPAL DESIGNER**  The Principal Designer for the purpose of the CDM Regulations is:  (1) Arcadis LLP of Arcadis House, 34 York Way, London, N1 9AB up to the date of this Contract; and  (2) the Contractor from the date of this Contract;  or such replacement as the Employer at any time appoints to fulfil that role. |
| **6.** | **PRINCIPAL CONTRACTOR**  The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role. |
| **7.** | **ADJUDICATION**  Notwithstanding anything else contained in this Contract, if any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2. |
| **8.** | **LEGAL PROCEEDINGS**  Subject to referral to Article 7 if any dispute or difference as to any matter or thing of whatsoever nature arising under this Contract or out of or in connection therewith shall arise between the Contractor and the Employer either during the progress of the Works or after the completion or abandonment of the Works or of after the determination of the employment of the Contractor it shall be determined by legal proceedings and the English Courts shall have jurisdiction over any such dispute or difference. |
| **9.** | **COLLATERAL WARRANTIES** |
|  | 9.1 The Contractor shall, if requested by the Employer in writing, procure and deliver to the Employer within 14 days of the Employer’s request, duly executed deeds of collateral warranty in the relevant forms set out in **Appendix 2** in favour of any Beneficiary.  9.2 The Contractor shall, if requested by the Employer in writing, procure and deliver to the Employer within 14 days of the Employer’s request, duly executed deeds of collateral warranty in the relevant forms set out in **Appendix 3** and **Appendix 4**, from the Design Consultants and the Key Sub-Contractors respectively, in favour of the Employer and any Beneficiary.  9.3 The Contractor shall ensure that a certified copy of each Design Consultant’s appointment and each Key Sub-Contractor’s sub-contract shall be provided by the Contractor to the Employer within 14 days of its execution. The Contractor may redact commercially sensitive pricing information. |
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| **10.** | **WANT OF KNOWLEDGE**  Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from his liabilities or obligations under this Contract nor shall such liabilities or obligations be removed, restricted, limited or qualified in any respect of want of knowledge, and no defence or claim by the Contractor shall be admissible in respect of any want of knowledge thereof. |
| **11.** | **MANUFACTURERS' GUARANTEES**  The Contractor shall obtain all available manufacturers’ guarantees and/or warranties in favour of the Employer for items of plant and equipment and will deliver them to the Employer (as part of the related information concerning the maintenance and operation of the Works) once obtained but in any event prior to or on practical completion of the sub-contract works under which the plant and equipment was installed. |
| **12.** | **PRE-CONSTRUCTION SERVICES AGREEMENT**  Any work, services or supplies performed or provided by or on behalf of the Contractor in connection with the subject matter of this Contract whether carried out before, on, or after the date of this Contract or pursuant to any pre-construction services agreement shall be treated as having been performed or provided under this Contract. Such work, services or supplies shall be subject to the provisions of this Contract and any payments made by the Employer to the Contractor in respect thereof shall be treated as payments under this Contract on account of the Contract Sum. |
| **13.** | **DEEMED AWARENESS**  The Contractor acknowledges and accepts that the heating system on the Site as identified to it by the Employer under the Contract Documents is critical to the Employer's ability to run its business from the building on the Site. The Contractor must exercise the reasonable skill and care required by clause 2.17.1.1 to see that it designs and carries out the Works in a manner that does not interfere with the effective output of the heating system save for those areas where (and the period during which) the Employer and the Contractor have agreed that the heating system can be shut down in order to carry out the Works. |
| **14.** | **SCHEDULE OF AMENDMENTS**  The Conditions of the JCT Design and Build Contract 2016 edition (“**DB 2016**”) are intended to be and are hereby incorporated into and amended and supplemented by the Schedule of Amendments contained in Appendix 1 to this Contract and this Contract shall be read and construed accordingly. In the case of inconsistency between the Schedule of Amendments and any other term of this Contract, the Schedule of Amendments shall prevail. |

**CONTRACT PARTICULARS**

**Contract Particulars**

|  |  |  |
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| *Clause* | *Subject* |  |
| Fourth Recital and clause 4.5 | Construction Industry Scheme (CIS) | Employer at the Base Date is a 'contractor' for the purposes of the CIS. |
| Fifth Recital | Description of Sections (if any)  (*if not shown or described in the*  *Employer’s Requirements state the*  *reference numbers and dates or*  *other identifiers of documents in*  *which they are shown*) | Section 1 – all works comprising the toilet refurbishment works as described in the Employer's Requirements and Contractor's Proposals  Section 2 – all works comprising the asbestos remediation works as described in the Employer's Requirements and Contractor's Proposals  Section 3 – all works comprising the fire alarm works as described in the Employer's Requirements and Contractor's Proposals  Section 4 – all works comprising the lift refurbishment works as described in the Employer's Requirements and Contractor's Proposals |
| Sixth Recital | Framework Agreement | Framework Agreement for fit-out works between Her Majesty’s Revenue and Customs and Mace Limited (ref 1610-SCR-Government Hub Fit Out) dated 13/06/2017 |
| Seventh Recital  and Part 1 of  Schedule 2 | Supplemental Provisions *(Where neither entry against Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)* |  |
|  | Named Sub-Contractors | Supplemental Provision 1  does not apply |
|  | Valuation of Changes  - Contractor’s estimates | Supplemental Provision 2  applies |
|  | Loss and Expense  - Contractor’s estimates | Supplemental Provision 3  applies |
| Seventh Recital  and Part 2 of  Schedule 2 | Supplemental Provisions *(Where neither entry against one of Supplemental Provisions 4 to10 below is deleted, that Supplemental Provision applies.)* |  |
|  | Acceleration Quotation | Supplemental Provision 4  applies |
|  | Collaborative working | Supplemental Provision 5  applies |
|  | Health and safety | Supplemental Provision 6  applies |
|  | Cost savings and value improvements | Supplemental Provision 7  applies |
|  | Sustainable development and environmental considerations | Supplemental Provision 8  applies |
|  | Performance Indicators and monitoring | Supplemental Provision 9  applies |
|  | Notification and negotiation of disputes | Supplemental Provision 10  applies |
|  | Where Supplemental Provision 10 applies, the respective nominees of the Parties are  Transparency  The Public Contracts Regulations 2015 | Employer's nominee: James Hughes    Contractor's nominee: Stuart Ward    or such replacement as each Party may notify to the other from time to time  Supplemental Provision 11  applies  Supplemental Provision 12 applies |
| Article 4 | Employer's Requirements *(State reference numbers and dates or other identifiers of the relevant documents.)* | Comprise the following documents: As included in the technical documents appended to Appendix 8 |
| Article 4 | Contractor's Proposals *(State reference numbers and dates or other identifiers of the relevant documents.)* | Comprise the following documents: As included in the technical documents appended to Appendix 8 |
| Article 4 | Contract Sum Analysis *(State reference numbers and dates or other identifiers of the relevant documents.)* | The document identified as the Contract Sum Analysis as included in the technical documents appended to Appendix 8 |
| 1.1 | Base Date | The date of this Contract |
| 1.1 | BIM Protocol (where applicable) *(State title, edition, date or other identifiers of the relevant documents)*. | N/A |
| 1.1 | Date for Completion of the Works *(Where completion by Sections does not apply)* |  |
|  | Sections: Dates for Completion of  Sections | Section 1 – 18 December 2020  Section 2 – 11 September 2020  Section 3 – 18 December 2020  Section 4 – 31 March 2021 |
| 1.7 | Addresses for service of notices etc. by the Parties *(If none is stated, the address in each case, unless and until otherwise agreed and subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)* | Employer: The Sanctuary Buildings, 20 Great Smith Street, Westminster, SW1P 3BT  Contractor: Mace Limited, 155 Moorgate, London, EC2M 6XB |
| 2.3 | Date of Possession of the Sites *(where possession by Sections does not apply)* |  |
|  | Sections: Dates of Possession of  Sections | Section 1 – 7 August 2020  Section 2 – 7 August 2020  Section 3 – 7 August 2020  Section 4 – 7 August 2020 |
| 2.4 | Deferment of possession of the Sites  *(where possession by Sections does not apply)* | Clause 2.4 applies |
|  | Sections: deferment of possession of sections | Maximum period of deferment (if less than 6 weeks) is 6 weeks  Section 1 – 6 weeks  Section 2 – 6 weeks  Section 3 – 6 weeks  Section 4 – 6 weeks |
| 2.17.10 | Limit of Contractor’s liability | £5,241,504.95 |
| 2.29.2 | Liquidated damages  (where completion by Sections does not apply)  Sections: rate of liquidated damages for each Section | Section 1 – £17,383 per week or pro rata part thereof  Section 2 – £966 per week or pro rata part thereof  Section 3 – £10,693 per week or pro rata part thereof  Section 4 - £6,958 per week or pro rata part thereof |
| 2.34 | Sections: Section Sums | Section 1 – £1,327,941.65  Section 2 – £919,534.16  Section 3 – £755,363.68  Section 4 - £491,497.14 |
| 2.35 | Rectification Period *(where completion by Sections does not apply)* |  |
|  | Sections: Rectification Periods | Section 1 – 12 months from the date of Practical Completion of the Works  Section 2 – 12 months from the date of Practical Completion of the Works  Section 3 – 12 months from the date of Practical Completion of the Works  Section 4 – 12 months from the date of Practical Completion of the Works  from the date of Practical Completion of each Section. |
| 4.6 | Advance Payment | Clause 4.6 does not apply |
| 4.6 | Advance Payment Bond | An advance payment bond is not required |
| 4.7.1 | Method of Payment | Periodically in accordance with Alternative B (clause 4.13) |
|  | Alternative A: Stage Payments | N/A |
|  | Interim Payments – Interim Valuation Dates *(The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is to be one month after the Date of Possession.)* | The first Interim Valuation Date is: the last day or nearest Business Day of the month in which the Date of Possession occurs  and thereafter the same date in each month or the nearest Business Day in that month |
| 4.18.1 | Retention Percentage | Three per cent |
| 6.4.1 | Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than | £10,000,000 for any one occurrence or series of occurrences arising out of one event |
| 6.5.1 | Insurance – liability of Employer | Not required |
| 6.7 and Schedule 3 | Works Insurance – Insurance Options applicable | Schedule 3:  Insurance Option C applies (as amended) |
| 6.7 and Schedule 3 Insurance Option  A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2) | Percentage to cover professional fees  *(If no other percentage is stated, it shall be 15 per cent.)* | 15 per cent |
|  | Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is *(as supplied by the Contractor)* | N/A |
|  | Where Insurance Option C applies, paragraph C.1 *(unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)* | Applies/is replaced by the provisions of the following document(s): N/A |
| 6.10 and Schedule 3 | Terrorism Cover - details of the required cover (Unless otherwise stated, Pool Re Cover is required.) | Pool Re Cover is required |
| 6.17 | 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 |
| 6.20 | Joint Fire Code – amendments/revisions *(The cost shall be borne by the Contractor unless otherwise stated.)* | The cost, if any, of compliance with amendment(s) or revisions(s) to the Joint Fire Code shall be borne by the Contractor |
| 8.9.2 | Period of suspension *(If none is stated, the period is 2 months.)* | 2 months |
| 8.11.1.1 to 8.11.1.6 | Period of suspension *(If none is stated, the period is 2 months.)* | 2 months |
| 9.2.1 | Adjudication |  |
|  | Nominator of Adjudicator – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  *(Where an Adjudicator is not named and a nominator has been selected, the nominator shall be one of the nominators listed opposite selected by the Party requiring the reference to adjudication.)* | The Chairman of the Technology and Construction Solicitors' Association |
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This Contract has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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| --- | --- | --- | --- |
| The CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION herewith affixed and authenticated | | )))) |  |
|  | |  |  |
| Authorised by the Secretary of State |  | |
|  |  | |
| Full name (Block Capitals) |  | |
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| --- | --- |
| EXECUTED AS A DEED by MACE LIMITED acting by a Director and a witness |  |
|  |  |
|  |  |
| Director |  |

|  |  |  |
| --- | --- | --- |
| Witness  Witness Name  Witness Address |  |  |

**APPENDIX 1**

##### SCHEDULE OF AMENDMENTS

The following amendments are made to the JCT Design and Build Contract, 2016 edition.

##### CONDITIONS Section 1: Definitions and Interpretation Definitions

* 1. **Insert** the following as new definitions:

"Asbestos has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632."

"Asbestos Survey the asbestos survey included in the technical documents appended to Appendix 8 of this Contract."

“Beneficiary a Landlord, Purchaser, Funder and/or Tenant.”

“Construction Products

Regulations

the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC)."

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

"COVID-19 Event "the outbreak of coronavirus disease (COVID-19) prior to or following the date of this Contract (as the case may be) and/or the implementation by the UK Government and/or any UK public health authority of measures in response to the COVID-19 outbreak, but only to the extent that the COVID-19 outbreak and/or resulting measures directly affect the execution of the Works at the Site, including but not limited to:

1. shortages of labour or supervision as a result of preventative measures to contain the COVID-19 outbreak and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar, required; or
2. shortages of plant or materials due to delays in their manufacture, distribution or delivery to Site; or
3. any suspension of the Works, closure, or restricted access to the Site or amended working methods (howsoever arising) as a result of measures to contain the COVID-19 outbreak.

save where the impact upon the execution of the Works, including any shortages in labour, plant or materials, has arisen as a result of the negligence or default of the Contractor (howsoever arising) and provided that other contractors engaged in projects of a similar size scale and complexity to the Works in the same geographic region are generally affected in the same way."

"Defined Provisional Sum as set out in the table attached to the Contract Sum Analysis."

“Defined Provisional Sum Longstop Instruction Date as set out in the table attached to the Contract Sum Analysis."

“Deleterious any materials, equipment, products or kits that are generally

accepted, or generally suspected, in the construction industry at the relevant time as:

* + 1. posing a threat to the health and safety or any person;
    2. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works;
    3. reducing, or possibly reducing, the normal life expectancy of the completed Works or any part or component of the Works;
    4. not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
    5. having been supplied or placed on the market in breach of

the Construction Products Regulations.”

“Design Consultants the architect for the Works (Think Idea Limited), or such replacement appointed from time to time, and any other designer who the Contractor has retained in connection with the Works."

“Emergency Repair the repair, rectification or replacement work which is necessary as

a result of a defect, shrinkage, damage or other fault:

1. that may reasonably be regarded by the Employer or any Beneficiary as a matter of emergency;
2. that causes or may cause the Employer or a Beneficiary to be unable to operate or use the Works or any part of the Works or plant or machinery forming part of the Works properly or at all; and/or
3. that it is a significant threat to health and safety.”

“Key Personnel see the **Contract Particulars** (against the reference to **clause**

**2.2.6**)"

“Key Sub-Contractors those sub-contractors with a material design responsibility and also include, without limitation, those sub-contractors who are responsible for the following elements of the works:

(i) Lifts;

(ii) Fire alarms;

(iii) Joinery; and

(iv) Mechanical, Electrical, Plumbing and Heating (MEPH)."

“Landlord the Employer’s landlord of the property which is part of the site, namely Legal and General Assurance (Pensions Management) Limited (CRN: 01006112), One Coleman Street, London, EC2R 5AA"

“Material all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, BIM documents, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works (and completed Works), including the Contractor’s Design Documents, and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).”

“Payee the party who is entitled to receive a payment from the other party

under this Contract.”

“Payer the party who is required to make a payment to the other party

under this Contract.”

“Permitted Uses the design, construction, completion, reconstruction, modification,

refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, promotion, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Works (and the completed Works).”

"Refurbished Buildings the buildings that are the subject of the Works."

“Schedule of Amendments the Schedule of Amendments as attached at Appendix 1."

"Undefined Provisional Sum: as set out in the table attached to the Contract Sum Analysis."

“Viable Rates and Terms: see **clause 6.15.2**.” “Warranty Retention: see **clause 7E**.”

“Works Programme: see **clause 2.2A**.” **Amend** the following definitions:

Agreement: At the end of the definition of “Agreement” **insert** “(all as amended

by the Schedule of Amendments annexed hereto)”

BIM Protocol: **Delete** “(where applicable)”

Conditions: At the end of the definition of “Conditions” **insert** “(all as amended

by the Schedule of Amendments annexed hereto)”

Consultants: **Delete** this definition. Contract Documents: **Delete** “(where applicable)”

After “these Conditions”, **insert** “as amended by the Schedule of Amendments.”

Contract Particulars: At the end of the definition of “Contract Particulars” **insert** “all as

amended by the Schedule of Amendments.”

Employer: At the end of the definition **insert** “(which expression shall include its successors in title and permitted assigns)”

Employer’s Rights **Delete** this definition

Funder **Delete** the existing definition and replace with “each and every party providing, or intending to provide, finance to the Employer in connection with the Works (including its successors in title and assigns and those deriving title under it or them)”

Funder’s rights **Delete** this definition

Interest Rate **Delete** “5%” and **insert** “2%”

P&T Rights **Delete** this definition

Provisional Sum **Insert** after "Employer's Requirements" the words "which can either be a Defined Provisional Sum or an Undefined Provisional Sum as stated in the table attached the Contract Sum Analysis"

Purchaser: **Delete** the existing definition and **insert** “any person purchasing, or intending to purchase, the premises comprising the Works or any part thereof.”

Rights Particulars: **Delete** this definition

Tenant: **Delete** the existing definition and **insert** “any person taking, or intending to take, a lease or underlease of the premises comprising the Works or any part thereof.”

##### Interpretation

**1.3 Agreement etc. to be read as a whole**

After “override or modify” **insert** “the Schedule of Amendments, ”

* 1. **Contracts (Rights of Third Parties) Act 1999 Delete** clause 1.6 and **insert** the following:

“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.”

* 1. **Notices and other communications**

1.7.5 In line 2 after “property” **insert** “(including Emergency Repair)”

* 1. **Effect of Final Statement**

1.8.1.1 **Delete** this clause and **replace** with “Not used.”

**1.9 Effect of payments other than payment of Final Statement Delete** “Save as stated in clause 1.8,”

**Insert** the following as new clauses 1.12 to 1.15:

**“1.12 Entire agreement**

The Employer and the Contractor each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements expressly set out in this Contract provided that this clause shall not exclude any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

* 1. **Set-off and abatement**

Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.”

* 1. **Severance**

If any term, condition or provision in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.”

* 1. **Priority of documents**

In the event of any conflict or inconsistency between the terms of this Contract and any framework agreement that the contract particulars state is applicable to

this Contract, the terms of that framework agreement shall prevail.”

##### CONDITIONS Section 2: Carrying out the Works

**Contractor’s Obligations**

**2.1 General obligations**

2.1.1 In line 1 after “proper” **insert** “, good”

In line 1 after “workmanlike manner” **insert** “and in accordance with the recommendations of BS 8000 (unless there is a discrepancy or conflict between the recommendations of BS 8000 and the Contract Documents in which case the Contract Documents shall prevail)”

In line 3 after “shall” **insert** “carry out and”

**Insert** the following as a new clause 2.1.5:

* + 1. The Employer and the Contractor shall:
       1. comply with their respective obligations set out in the BIM Protocol;
       2. have the benefit of any rights granted to them in the BIM Protocol; and
       3. have the benefit of any limitations or exclusions of their liability

contained in the BIM Protocol.”

**2.2 Materials, goods and workmanship**

2.2.1 After “so far as procurable,” **insert** “be good quality materials of satisfactory quality that are appropriate for their use and”

At the end of clause 2.2.1, **insert** the following as a new sentence:

“The Contractor warrants that he will use well-maintained plant and equipment in

carrying out the Works.”

I**nsert** the following as new clauses 2.2.6 and 2.2.7:

“2.2.6 The Contractor warrants and undertakes that it shall ensure that the Key Personnel maintain a material involvement in the Works and, so far as reasonably possible, the Contractor shall not change the identity of the Key Personnel without the Employer’s prior written consent (such consent not to be unreasonably withheld or delayed).

2.2.7 Throughout the duration of this Contract the Contractor shall use all reasonable endeavours to create employment opportunities for residents of the United Kingdom and shall create apprenticeship and job opportunities in accordance with the Employer’s Requirements.”

After clause 2.2, **insert** the following as a new clause 2.2A:

“**2.2A The Works Programme**

2.2A.1 As soon as possible after execution of this Contract and in any event no less than 7 Business Days prior to starting work on site, the Contractor will produce a fully resourced programme for the execution of the Works in such form and giving such information as prescribed in the Employer’s Requirements or as the Employer may otherwise reasonably require (the “**Works Programme**”). Thereafter, the Contractor must revise the Works Programme as appropriate to minimise or avoid any delay or disruption, or anticipated delay or disruption, to the carrying out of the Works.

2.2A.2 The Contractor will report to the Employer every month in writing comparing the progress of the execution of the Works with the then current Works Programme and will promptly advise the Employer in the event of delay or disruption and will set out the measures which the Contractor is taking or proposes to take to minimise or make good such delay or disruption.”

##### Possession

**2.5 Early use by Employer**

2.5.1 At the end of clause 2.5.1, **insert** the following as a new sentence:

“Subject to such confirmation, the Contractor’s consent shall not be unreasonably delayed or withheld.”

**Insert** the following as a new clause 2.5.3:

“2.5.3 Where the Employer uses or occupies the site under clause 2.5.1, this shall not be construed as evidence to deem, for the purposes of this Contract, that practical completion shall have taken place.”

**2.8 Construction information**

**Replace** “Save for any Contractor’s Design Documents contained in the Contractor’s Proposals, the” with “The”

##### Discrepancies and Divergences

**2.11 Preparation of Employer’s Requirements**

2.11 **Delete** clause 2.11 and **insert** the following:

“The Contractor accepts entire responsibility for the contents of the Employer’s

Requirements including the adequacy of any design contained within them.”

* 1. **Employer’s Requirements – Inadequacy**
     1. **Delete** “and the Contractor under clause 2.11 is not responsible for verifying its

adequacy”

* + 1. **Delete** clause 2.12.2
  1. **Notification of Discrepancies etc.**

2.13 **Renumber** “2.13” as “2.13.1”, “2.13.1” as “2.13.1.1” and replicate for “2.13.2”

and “12.3.3”

**Insert** the following as a new clause 2.13.2:

"2.13.2 The Contractor shall not have or make any claim for loss and/or expense under clause 4.19 and clause 2.25 shall not have effect, where and to the extent that the cause of the progress of the Works (having been delayed, affected or suspended) is:

1. any such discrepancy or divergence as is referred to in clause 2.13; or
2. any failure by the Contractor to provide necessary drawings, documents or other information in due time and/or in accordance with the Conditions.

The Contractor shall not be entitled to any adjustment of the Contract Sum in respect of any instructions issued by the Employer in order to correct any such discrepancy or divergence as is referred to in this clause 2.13.”

* 1. **Discrepancies in Documents**

2.14.2 In line 1 after “within the Employer’s Requirements (including any Change to them)” **insert** “or between the Employer’s Requirements (including any Change to them) and the Contractor’s Proposals”.

**Delete** “and treated as a Change” and **insert** “and the Contractor shall be obliged to comply with the decision or acceptance by the Employer without affecting in any way or to any degree the responsibility of the Contractor under this Contract and without any adjustment to the Contract Sum (whether under clause 4.19 or otherwise) nor shall there be any extension to the Completion Date.”

**2.15 Divergences from Statutory Requirements**

2.15.1 In line 7 after “clause 2.15.2,” **insert** “carry out and”.

* + - 1. In line 1 after “Statutory Requirements” **insert** the following:

“(which could not have been reasonably foreseen by an experienced and competent design and build contractor)”.

* + - 1. At the end of clause 2.15.2.2, before the full stop, **insert** the following:

“and has not been caused by the Contractor’s breach of this Contract (to include without limitation, the Contractor’s default, omission and/or negligence in the provision of the Contractor’s planning services to procure the Development Control Requirements) other than an amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable.”

##### Design Work - liabilities and limitation

**Delete** clause 2.17 and **insert** the following:

“2.17.1 The Contractor shall be solely responsible in all respects for the design of the Works (including any design contained in a Change and any performance specification) and shall adopt and take full responsibility and liability for any error, mistake, inaccuracy or discrepancy in the design of the Works including any design contained in the Employer’s Requirements and/or the Contractor’s Proposals and/or other Contractor’s Design Documents, whether or not carried out before or after the date of this Contract and whether or not by any Contractor’s Person. Without prejudice to the foregoing generality, the Contractor undertakes and warrants to the Employer that:

* + - * 1. he has exercised and will continue to exercise in the performance of his design services, the reasonable skill, care and diligence expected of competent and properly qualified persons of the relevant disciplines who are experienced in carrying out such

design services in relation to works of a similar size, scope and nature to the Works.

* + - * 1. subject to the standard of reasonable skill and care required by clause 2.17.1.1, when completed the Works will comply with:

any performance specification or requirement included or referred to in the Employer’s Requirements and/or the Contractor’s Proposals including in any Changes issued pursuant to section 5 of these Conditions; and

all appropriate requirements of any Local or Public Authority, Consents and any relevant Statutory Requirements.

2.17.2 The Contractor warrants and undertakes to the Employer that it shall not use or specify for use or permit to be used by or on behalf of the Contractor in relation to the Works anything which, at the time of specification or use, is Deleterious.

2.17.3 Subject to Sections 10 and 11 of this Agreement, the Contractor shall be deemed to have inspected the physical and other conditions (including the sub-soil and sub-surface conditions) of or affecting the site, its surroundings and access to the site and shall be deemed to have fully acquainted and satisfied itself with the same and to have obtained all necessary information as to any risks, contingencies, restrictions and all other circumstances in relation thereto which may influence or affect the execution of the Works. The Contractor shall be responsible for satisfying himself as to the restrictions on access to the site and the restrictions on parking around the site.

* + 1. No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether or not the same ought reasonably to have been discovered or foreseen by a competent and careful contractor, shall entitle the Contractor to make any claim for an extension of time under clause

2.25 or for loss and/or expense under clause 4.19 (or otherwise) or to any adjustment of the Contract Sum.

* + 1. The Employer makes no representation or warranty as to the accuracy or completeness of any survey, report or document provided by the Employer or included in or forming part of the Employer’s Requirements regarding any matter, including without limitation any matter referred to in this clause 2.17. The Employer shall have no liability arising out of or in relation to any such survey, report or document or their contents including any representation or statement, whether made negligently or otherwise.
    2. The Contractor shall be responsible for satisfying itself as to the location and nature of the power and utility services and mains which may affect the Works, including the excavation of trial holes if appropriate. All protection to such services and mains deemed necessary by the relevant authority, Statutory Undertaker or public utility organisation as a consequence of executing the Works are to be agreed between the Contractor and that party and advised to the Employer’s Agent and carried out or procured by the Contractor. The costs of all such location and protection works, including any charges or fees levied by that authority, Statutory Undertaker or public utility are the responsibility of the Contractor.
    3. The Contractor shall make, and be deemed to have made, at his own cost due allowance for any service installations and diversions on or through the site and

also for restricted access to the Works and restrictions on parking and for the works of any statutory bodies, authorities, Statutory Undertakers or public utilities insofar as these may affect the carrying out of the Works.

* + 1. Without prejudice to the provisions of clauses 2.17.6 and 2.17.7, the Contractor shall comply with any special requirements that any Statutory Undertakers may require at his own cost without any entitlement to an adjustment to the Contract Sum or to an adjustment of the Completion Date under clause 2.25 or to loss and/or expense under clause 4.19 (or otherwise).
    2. The Contractor shall be responsible for making all necessary applications for services and utilities connections required for the purposes of the Works to the relevant service and utilities providers and/or Statutory Undertakers or other relevant body as the case may be and the Contractor shall be responsible for lodging all necessary documentation including all drawings and specifications. The Contractor shall be responsible for procuring the installation or diversion of such services and utilities connections. It is agreed that the Contract Sum is inclusive of all fees and other sums payable to the service and utilities providers or other body in order to achieve the necessary service and utilities connections in respect of all sums due by way of standing charges and consumption charges which are referable for the period up to and including the date of practical completion.”
    3. Without affecting any other limitation in this Contract, the Contractor’s liability under or in connection with this Contract shall be limited to the sum stated in the Contract Particulars. This limit shall apply however that liability arises including a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty, provided that this clause shall not exclude or limit the Contractor’s liability for:
       1. any indemnities listed in this Contract;
       2. fraud or fraudulent misrepresentation;
       3. breach by the Contractor of clauses 2.38 or 3.16 of this Contract; or
       4. termination pursuant to clauses 8.4 to 8.6 of this Contract.”

2.17.11 Save where otherwise stated in the Employer’s Requirements, the Contractor shall be responsible for making all necessary applications for the Consents required for the purposes of the Works to the relevant Statutory Undertakers or other relevant body as the case may be and the Contractor shall be responsible for lodging all necessary documentation including all drawings and specifications. The Contractor shall be responsible for obtaining and/or discharging those Consents. It is agreed that the Contract Sum is inclusive of all fees and other sums payable to any other body in order to obtain and discharge the necessary Consents.”

##### Unfixed Materials and Goods – property, risk etc.

* 1. **Materials and goods – on site**

In line 3, delete "subject to Insurance Options B or C (if applicable)"

##### Adjustment of Completion Date

* 1. **Notice by Contractor of delay to progress**

2.24.1 After the word “forthwith” insert “(and in any event not later than 14 days after it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed)”

At the end of clause 2.24.1 **insert** “and provide a revised version of the Works Programme to illustrate the nature of the delay.”

2.24A **Insert** new clause:

**"Delay arising out of a COVID-19 Event**

2.24A Notwithstanding any other provision of this Contract, the Contractor's sole and exclusive remedy for any delay to the progress of the Works arising directly or indirectly out of a COVID-19 Event or any additional costs or expenses arising directly or indirectly out of a COVID-19 Event shall be the right to apply for an extension of time pursuant to clause 2.24 on the grounds that the delay was caused by the occurrence of a COVID-19 Event. The Contractor waives any rights it may have to make any other claim under this Contract relating indirectly or directly to COVID-19 and, for the avoidance of doubt, the Employer shall have no liability for any additional costs or expenses attributable to a COVID-19 Event."

* 1. **Fixing Completion Date**

2.25.5 After “2.25.3” **insert** “provided always that the Contractor has complied with clause 2.24.1.”

2.25.5.1 **Delete** “and whether or not the Relevant Event has been specifically notified by the Contractor under clause 2.24.1.”

* 1. **Relevant events**

2.26.1 At the start of this clause insert “Subject always to clause 5.8,”

2.26.2.1 **Delete** this clause

2.26.2.2 **Delete** “or 3.11” and **replace** with "or 3.11A or (subject to the proviso therein) 3.11B".

* + 1. At the end of clause 2.26.6 **insert** the following before the semi-colon:

“or in the case of any impediment or prevention, save to the extent that the same is the consequence of the reasonable exercise of the rights of the Employer under this Contract”

* + 1. At the end of clause 2.26.7 **insert** the following:

“, but always subject to clauses 2.17.7 and 2.17.8”

2.26.12 **Delete** this clause and **replace** with “Not used.”

2.26.18 **Insert** the followingnew sub-clause 2.26.18:

"2.26.18 a COVID-19 Event."

**Insert** the following as a new clause 2.26A after clause 2.26:

“2.26A (save where the Relevant Event is as defined in clause 2.26.9 the Contractor shall not become entitled to any extension of time on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor the Contractor’s Persons.”

##### Practical Completion, Lateness and Liquidated Damages

* 1. **Practical completion**

**Renumber** “2.27” as “2.27.1”, “2.27.1” as “2.27.1.1” and “2.27.2” and

“2.27.1.2”

**Delete** the opening paragraph and **insert** the following:

“The Contractor shall provide the Employer with not less 7 days’ notice in writing of the date when the Contractor anticipates that the Works or any Section will reach practical completion. Provided that the Contractor has provided sufficient prior notice and that practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with this clause 2.27 and clauses

2.37 and 3.16 in respect of the supply of documents and information, then:” At the end of clause 2.27.1, **insert** the following as a new sentence:

“If the Employer does not consider that practical completion of the Works or a Section has been achieved then the process in clause 2.27.1 shall be repeated and the Contractor shall be obliged to provide the Employer with further notice of the

date when the Contractor anticipates that practical completion of the Works or a

Section will be achieved.”

**Insert** the following new clauses 2.27.2 to 2.27.4 after clause 2.27.1:

“2.27.2 For the purposes of this clause 2.27, ‘practical completion’ means the state in which the Works are (or any Section is) complete in all respects and free from any apparent defects, save for any minor items of any incomplete works or minor defects the existence, completion, rectification of which will not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works or Section, provided that where it is expressly stated in any provisions of the Contract Documents that the testing, commissioning, regulation or adjustment of any mechanical or electrical services is to be completed before practical completion of the Works or any Section, the Works or Section shall not be considered practically completed until the same is done as the Contract Documents require.

* + 1. The Practical Completion Statement or Section Completion Certificate (as the case may be) may have appended to it a snagging list setting out minor, incomplete or defective works and the timescale within which such works are to be made good by the Contractor. Should the Contractor fail to make good the works set out on any snagging list within the time set out on that list or such other reasonable period as the Employer’s Agent may instruct, the Employer shall be entitled to complete or make good those items and deduct those sums from the Contract Sum or recover those costs from the Contractor as a debt.
    2. The Employer’s Agent shall not be obliged to issue the Practical Completion Statement or Section Completion Certificate (as the case may be) unless all items required by the Employer’s Agent have been provided to the Employer including but not limited to:
       1. two complete sets of copies of test certificates and commissioning reports, full maintenance and operation manuals for the mechanical and electrical installation (if any) and any other plant and material installed at the Works;
       2. one hard copy and one electronic copy of the health and safety file maintained in relation to the Works pursuant to the Contractor’s obligations under the CDM Regulations;
       3. copies of all manufacturers’ guarantees and/or warranties which are available or should be available in respect of the Works;
       4. the collateral warranties and certified copy sub-contracts and design appointments required by this Contract;
       5. completion certificates from the Local or Public Authority or, where applicable, a building inspector;
       6. two copies of the fire, gas safety and electrical certificates; and
       7. keys for all locks at the site, individually labelled indicating their location
       8. all Models, Materials or Specific Models as required by the BIM Protocol;
       9. evidence that the Contractor has obtained complied with and/or discharged all of the conditions of the Consents (except for those Consents that the Employer’s Requirements state are not the Contractor’s responsibility) that are required to be complied with before the site can be occupied and used for the intended use they have been occupied.”

##### Partial Possession by Employer

**2.30 Contractor’s consent**

In the third line, after “obtained” **insert** “(which consent shall not be

unreasonably delayed or withheld)”

**2.33** In line 1, **delete** "under Insurance Option A, B or C.2 whichever applies" and **replace** with "paragraph C.2 of Insurance Option C"

##### Defects

**2.35 Schedules of defects and instructions**

**Insert** the following as a new clause 2.35A after clause 2.35:

“2.35A.1 In the event that any defects, shrinkage or other fault is deemed by the Employer to require an Emergency Repair, the Contractor shall attend the site to rectify the Emergency Repair within 24 hours of it being notified to the Contractor by suitable means. If the Contractor fails to attend to the Emergency Repair within

24 hours the Employer shall be entitled to engage others to carry out the Emergency Repair and shall be entitled to deduct those costs from the Contract Sum or recover those costs from the Contractor as a debt.

* 1. 5A.2 In carrying out any works pursuant to clause 2.35A.1, the Contractor shall:
     1. act in a reasonable manner so as to cause as little disturbance and interference as reasonably practicable to the business carried out on at the site and forthwith make good any damage to the fixtures, fittings and stock on site to the Employer’s reasonable satisfaction.
     2. insofar as reasonably possible carry out such works outside the usual trading hours of the Employer, Tenant or any other third party in occupation of the site.”

**2.36 Notice of Completion of Making Good**

In line 2 after “have been made good” **insert** “to the reasonable satisfaction of

the Employer”

At the end of clause 2.36, before the full stop, **insert** the following:

“provided that the Employer shall not be required to issue any Notice of Completion of Making Good any earlier than the expiry of the Rectification Period.”

##### Contractor’s Design Documents

**2.38 Copyright and use**

2.38.1 In line 3, replace “Contractor’s Design Documents” with “Material”

**Delete** clauses 2.38.2 and 2.38.3 and **insert** the following:

“2.38.2 Notwithstanding clause 2.38.1, the Contractor grants to the Employer and its nominees (and if it cannot grant such a licence at the date of this Contract then the Contractor shall procure its ability to grant such licence and shall then grant on the same terms when it is able to do so) with full title guarantee a non- exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Works (and completed Works) including any of the Permitted Uses.

* + 1. The licence carries the right to grant sub-licences and is transferable to third

parties without the Contractor’s consent.”

* + 1. Replace the word “Contractor’s Design Documents” with “Material”

**Insert** the following as new clauses 2.39 to 2.40:

##### Additional Provisions

“**2.39 Nuisance**

The Contractor shall at all times prevent any nuisance (including but without limitation any noisy working operations or obstruction or damage of the roadways or common areas) or other interference with the rights of the Employer (in respect of land not forming part of the site) and any adjoining land-owner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and the Contractor shall assist the Employer in defending any action or proceedings which may be instigated in relation thereto. Without prejudice to the generality of the foregoing, the Contractor shall indemnify the Employer, on demand and as a debt, against any and all expenses, liabilities, losses, claims and proceedings whatsoever (including the entire legal fees and internal management time incurred by the Employer in defending and/or managing any such expenses, liabilities, losses, claims and proceedings whether or not such legal fees and internal management time are reasonably incurred) resulting from any failure by the Contractor to comply with this clause 2.39.

* 1. **Trespass**

Without prejudice to any other provision of this Contract, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of a tower crane jib or the erection of scaffolding or hoarding) on or over any nearby property arising out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of nearby property and members of the public. If carrying out the Works or any obligation pursuant to clauses 2.35 and/or 2.35A would otherwise be an act of trespass, the Contractor shall, at no cost to the Employer, obtain the prior written agreement of the owners or occupiers of any nearby property to that act. That agreement shall be subject to the Employer's approval before its completion. The Contractor shall comply with any condition or obligation contained in that agreement, at no cost to the Employer, and shall not be entitled to any extension of time as a result of any condition or obligation contained in that agreement."

##### CONDITIONS Section 3: Control of the Works Sub-Contracting

**3.3 Consent to sub-contracting**

* + - 1. In line 2, after “Works” **insert** the following:

“(save that the Contractor shall not sub-contract the whole of the Works under one contract or to one sub-contractor)”

* + - 1. At the end of clause 3.3.1.2, **insert** the following as a new sentence:

“The Contractor shall appoint any Design Consultants under an appointment that is executed as a deed and which contains no limitations on liability which are of a lesser amount on an any one claim basis than the respective Design Consultant’s level of professional indemnity insurance cover (subject to a minimum level of cover set out in clause 6.15.6.1). In addition, such appointment of any Design Consultant shall contain terms, in respect of the design of the Works and the provision of collateral warranties that are no less onerous than those terms imposed on the Contractor under this Contract.”

**3.4 Conditions of sub-contracting**

3.4.2.5 **Delete** this clause and replace with:

“3.4.2.5.1 that each Key Sub-Contractor or Design Consultant must execute and deliver collateral warranties in favour of the Employer and/or any Beneficiary in the relevant form annexed to this Contract.

3.4.2.5.2 that each Key Sub-Contractor or Design Consultant carried out and maintains professional indemnity insurance for an amount of not less than that required by clause 6.15.6.2 of this Contract”

**Insert** the following as a new clause 3.4.4:

“3.4.4 the sub-contract for Key Sub-Contractors shall contain such amendments as are necessary to render it consistent with the Contract Documents and be executed as a deed.”

**Insert** the following as a new clause 3.4.5:

“3.4.5 the Contractor shall ensure that it complies with the government’s Prompt Payment Policy and that it pays any sums due to its sub-contractor within 30 days of the final date for payment.”

**Insert** the following as a new clause 3.4A:

**“3.4A Additional conditions of Key Sub-Contractor’s sub-contract and Design**

**Consultant’s appointment**

* 1. 4A.1 The Contractor shall:
     1. (where stated in the Contract Particulars) within 7 days of entering into this Contract, enter into a deed of novation in the form prescribed by the Employer and accept the appointment of those Novated Design Consultants nominated by the Employer;
     2. within 7 days of the execution of each Design Consultant’s appointment (including a novation of a Novated Design Consultant) and each Key Sub- Contractor’s sub-contract, deliver to the Employer a certified copy of the relevant sub-contract or appointment;
     3. not vary, waive, release or dismiss any Key Sub-Contractor or Design Consultant without the written approval of the Employer (such approval not to be unreasonably withheld or delayed);
     4. not do anything that would entitle any of the Design Consultants or Key Sub-Contractors to regard its employment under its appointment or sub- contract as terminated;
     5. immediately inform the Employer if the Contractor believes that any Design Consultant or Key Sub-Contractor may be intending to rescind or terminate its appointment or sub-contract;
     6. ensure that each Design Consultant or Key Sub-Contractor is contractually required to adopt open book contracting; and
     7. insofar as it is relevant to the Works, ensure that each Design Consultant and Key Sub-Contractor complies with the BIM Protocol.

3.4A.2 If the employment of any Key Sub-Contractor or any Design Consultant is terminated before the completion of the sub-contract works or design allocated to such Key Sub-Contractor or Design Consultant (as the case may be), the Contractor shall, as soon as is practicable but on 7 days’ prior written notice to the Employer, appoint another sub-contractor or designer (subject to the Employer’s consent) to complete those sub-contract or design works (save for any sub-contractor or designer which the Employer makes reasonable objection to in writing). The foregoing provisions of this clause 3.4A shall apply to such replacement sub-contractor or designer, mutatis mutandis.

3.4A.3 If the Contractor breaches any provision of clause 3.4 or this clause 3.4A, it shall be a deemed failure to comply with his obligations pursuant to clause 8.4.2.”

**3.11 Instructions on Provisional Sums**

3.11 Delete and replace with:

"3.11A The Employer shall issue instructions in relation to the expenditure of the Undefined Provisional Sums included in the Employer's Requirements."

"3.11B The Employer shall issue instructions in relation to the expenditure of the Defined Provisional Sums included in the Employer's Requirements. The Contractor shall not be entitled to any extension to the Completion Date for any such instructions provided that each instruction to expend a Defined Provisional Sum is given prior to the relevant Defined Provisional Sum Longstop Instruction Date but may be entitled to an extension to the Completion Date where an instruction is given after the relevant Defined Provisional Sum Longstop Instruction Date.”.

##### CONDITIONS Section 4: Payment

**Payments and Notices – general provisions**

* 1. **Interim Payments – Contractor’s Interim Payment Applications, due dates and**

**Payment Notices**

* + 1. **After** “by the Employer to the Contractor” **insert** “or the Contractor to the Employer”
    2. In line 2 **delete** “by the Employer”
    3. **Insert** the following to the end of clause 4.7.3

“The sum due in an Interim Payment Application shall be calculated in accordance with clause 4.14 (Sums due as Interim Payments). Where an Interim Payment is not calculated in accordance with clause 4.14 (Sums due as Interim Payments) the sum stated as due in the Interim Payment Application shall be deemed to be

£nil.”

**Insert** the following as a new clause 4.7.6:

“4.7.6 The Contractor warrants the sum claimed in his Interim Payment Application is calculated in accordance with clause 4.14 (Sums due as Interim Payments).”

* 1. **Interim and final payments – final date and amount**
     1. **Delete** “14 days” and **insert** “28 days”.
     2. Throughout clause 4.9.2, **replace** “Employer” with “the Payer”

4.9.5 Throughout clause 4.9.5, **replace “**the Employer” with “the Payer”

**Insert** the following as a new clause 4.9.8:

“4.9.8 In the event that the sum specified in a Payment Notice is a negative figure showing a balance due to the Employer to be paid by the Contractor, the Contractor shall, subject to any Pay Less Notice given under clause 4.9.5, pay the sum specified in the Employer’s Payment Notice to the Employer by the final date for payment. Where a Pay Less Notice is given by the Contractor to the Employer, the payment to be made to the Employer on or before the final date for payment shall not be less that the amount stated as due in the Pay Less Notice.”

**4.10 Pay Less Notices and other general provisions**

“4.10.4 **Replace** “The Employer’s fiduciary interest… prevent him from exercising” with “The Employer may exercise”

##### Retention

**4.16 Rules on treatment of Retention**

**Delete** the existing clause and **insert** the following:

“4.16.1 The Employer will be under no obligation to set aside in a separate account any amount representing the Retention and will be under no fiduciary obligation with regard to it.

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

##### Loss and Expense

* 1. **Matters materially affecting regular progress Insert** new sub-clause 4.19.3:

Notwithstanding any other provision, the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment under this Contract in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or any

Contractor’s Person, or any of their respective agents servants or sub-contractors (other than an amount that is recoverable by the Employer under a policy of insurance maintained in accordance with Insurance Option B or Insurance Option C, if applicable).”

* 1. **Notification and ascertainment**
     1. After the words “as soon as” **insert** “and in any event not later than 14 days after”
  2. **Relevant Matters**
     1. At the start of this clause, **insert** “Subject always to clause 5.8, ”

##### CONDITIONS Section 5: Changes

**General**

**5.1 Definition of Changes**

**Replace** the full stop at the end of clause 5.1.2.4 with a semi-colon and **insert**

the following as a new clause 5.1.3:

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

##### The Valuation Rules

**5.6 Change of conditions for other work**

At the end of the clause, **insert** the following:

“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.”

**Insert** a new clause 5.8:

“**5.8 Employer’s instruction affecting the Contract Sum and/or the Completion Date**

* + 1. Where in the opinion of the Contractor any instructions issued by the Employer to the Contractor under this Contract may require an adjustment to the Contract Sum and/or the Completion Date, before complying with that instruction the Contractor shall provide to the Employer as soon as practicable (and in any event within 10 Business Days of the date of the Employer’s instruction) with details of all necessary design details including Material associated with that instruction, along with details of the value of the adjustment to the Contract Sum (providing the Employer with all necessary supporting calculations by reference to the values contained in the Contract Sum Analysis) and the length of any extension of time to the Completion Date which the Contractor considers he may be entitled to if he complies with that instruction.
    2. The Employer shall either confirm or revoke that instruction in writing. The Contractor shall not be entitled to any adjustment to the Contract Sum or the Completion Date in respect of any Change under this Contract unless and until he is in receipt of an Employer’s written instruction pursuant to this clause 5.8.2.”

##### CONDITIONS Section 6: Injury Damage and Insurance Personal Injury and Property Damage

**6.3 Loss or damage to Existing Structures or their contents**

6.3.1 **Delete** clause 6.3.1 and **replace** with "The Contractor's liability and indemnity under clause 6.2 in respect of any property real or personal shall include any loss or damage to Existing Structures and to any of their contents that is caused by any of the risks or perils required or agreed to be insured against under Insurance Option C, subject to a maximum aggregate limit of one hundred million pounds (£100,000,000.00)."

6.3.2 **Delete** clause 6.3.2 and replace with "Not used"

6.3.3 **Delete** clause 6.3.3 and replace with "Not used"

##### Insurance of the Works and Existing Structures

**6.9 Sub-contractors- Specified Perils cover under Works Insurance Policies**

6.9.1 In line 1, **delete** ", where Insurance Option A applies, and the Employer, where Insurance Option B or C applies,"

In line 2, after the word "Policy" **insert** ", pursuant to paragraph C.2 of Schedule 3"

**6.10 Terrorism Cover – policy extensions and premiums**

6.10.1 In line 2, **delete** "where Insurance Option A applies, or the Employer, where Insurance Option B or C applies" and **replace** with "pursuant to paragraph C.2 of Schedule 3"

6.10.2 In line 1 **delete** "Insurance Option A applies and"

In line 1, **insert** after the word "required" "pursuant to paragraph C.2 of Schedule 3"

6.10.3 In line 1 **delete** "Where Insurance Option A applies and" and **replace** with "In the event that"

**6.11 Terrorism Cover – non-availability – Employer's options**

6.11.3 In line 1 **delete** "Where Insurance Option A applies and" and **replace** with "If"

##### Professional Indemnity Insurance

**6.13 Loss or damage – insurance claims and reinstatement**

**6.14.1 and 6.14.2 Delete** clauses 6.14.1 and 16.14.2 and at the end of clause 6.14 **insert** "the provisions of clause 8.12 (except clause 8.12.3.5) shall apply"

* 1. **Obligation to insure**

**Delete** clause 6.15.2 and **insert** the following:

“6.15.2 thereafter, provided it is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting (“**Viable Rates and Terms**”), the Contractor shall maintain such insurance until the expiry of the period stated in the Contract Particulars from the date of practical completion of the Works. Any increased or additional premium required by insurers by reason of the Contractor’s own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within Viable Rates and Terms;”

* + 1. **Replace** the full stop at the end of clause 6.15.3 with a semi-colon.

**Insert** the following as new clauses 6.15.4 to 6.15.6:

* + 1. immediately inform the Employer if such insurance ceases to be available at Viable Rates and Terms so the Contractor and the Employer can discuss the means of best protecting their respective positions in respect of the Works in the absence of such insurance. If the professional indemnity insurance cover ceases to be available by reason of the Contractor’s acts, defaults or omissions and/or due to the Contractor’s claims record such cover shall nevertheless be deemed to be available at Viable Rates and Terms;
    2. fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Viable Rates and Terms if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above Viable Rates and Terms; and
    3. procure that:
       1. each Design Consultant maintains professional indemnity insurance of not less than £1,000,000 (one million pounds) for any one claim or series of claims arising out of any one event; and
       2. each Key Sub-Contractor maintains professional indemnity insurance of not less than £1,000,000 (one million pounds) [for any one claim or series of claims arising out of any one event/in the aggregate],

for a period of 12 years from the date of practical completion of the Works.”

* 1. **Professional Indemnity Insurance: Increased cost and non-availability Delete** the existing clause 6.16 and **insert** “Not used.”

##### CONDITIONS Section 7: Assignment, Third Party Rights and Collateral Warranties Assignment

**7.1 General**

**Delete** clause 7.1 and **insert** the following:

“7.1 The Employer may assign his entire rights and benefits under this Contract to any person having or acquiring an interest in the Works and such rights and benefits shall be capable of one further assignment by the assignee. In addition, the Employer’s rights and benefits may be charged and/or assigned by way of security and by way of reassignment on redemption without the Contractor’s consent and without the same counting against the permitted number of assignments. Also, intra group assignments shall be permitted and shall not count against the permitted number of two assignments. The Contractor may not assign the benefit of this Contract without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).”

##### Performance Bonds and Guarantees

**Delete** clause 7.3 and **insert** the following:

“7.3.1 The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached at **Appendix 5** to the Schedule of Amendments. The parent company guarantee shall be executed and delivered by the Contractor’s Parent Company. If the Contractor does not procure execution and delivery of the parent company guarantee, then, notwithstanding any other term of this Contract, the Employer shall not be liable to make any payment to the Contractor under this Contract until the Contractor has procured such execution and delivery.”

##### Clauses 7A to 7E – Preliminary

**Delete** clauses 7.4 to 7.6

##### Third Party Rights from Contractor

**Delete** existing clauses 7A to 7E and **insert** the following:

“**7A Contractor’s warranties – any Beneficiary**

The Contractor shall, within 14 days of receiving a written request from the Employer, deliver to the Employer duly executed deeds of collateral warranty in the relevant form set out in **Appendix 2** in favour of any Beneficiary.

**7B Design Consultants’ warranties – Employer and any Beneficiary**

The Contractor shall, within 14 days of receiving a written request from the Employer (whether before or after completion of the Works), procure and deliver to the Employer duly executed deeds of collateral warranty in the form set out in **Appendix 3** from each Design Consultant in favour of the Employer and any Beneficiary.

**7C Key Sub-Contractors’ warranties – Employer and any Beneficiary**

The Contractor shall, within 28 days of receiving a written request from the Employer (whether before or after completion of the Works), procure and deliver to the Employer duly executed deeds of collateral warranty in the form set out in **Appendix 4** from each Key Sub-Contractor in favour of the Employer and any Beneficiary.

**7D** Notwithstanding clauses 7B and 7C, minor changes sought by Key Sub-Contractors and Design Consultants to the collateral warranty template will be considered by the Employer but the Employer will not be required to consider or to agree to material changes such as clauses limiting or excluding liability or which are net contributions clauses or clauses which materially lessen the obligations owed by the sub-contractor or design consultant to the beneficiary under the collateral warranty.

7E **Warranty Retention**

Where the Contractor has failed to provide either:

1. any collateral warranty under clauses 7A, 7B or 7C; or
2. any certified copy of a Key Sub-Contractor sub-contract or a Design Consultant appointment under clause 3.4A.1.1,

then, provided such failure is not caused by the insolvency of the relevant Key Sub-Contractor or Design Consultant, the Employer may, provided that the Employer issues a valid Pay Less Notice in accordance with clause 4.9.5, retain from any Interim Payment a sum of 10% of the Gross Valuation of the Works that relate to each such warranty and 10% of the Gross Valuation for Works that relate to each such certified copy which the Contractor has failed to provide (the “**Warranty Retention**”). Any such Warranty Retention shall be released to the Contractor to the extent that the Contractor remedies such failure to provide any relevant warranty, sub-contract or appointment (as the case may be).”

##### CONDITIONS Section 8: Termination

**Termination by Employer**

**8.4 Default by Contractor**

8.4.1.3 In line 2 after “remove” **insert** “or rectify”

* + - 1. At the end of the clause, **insert** “or”

**Insert** a new clause 8.4.1.6:

* + - 1. “fails to comply with any other requirement in this Contract which is listed as a Contractor default event, ”

**8.5 Insolvency of Contractor**

8.5.1 In clause 8.5.1 after “Insolvent” **insert** the following:

“or files a notice of his intention to appoint an administrator: ”

In clause 8.5.1, **transfer** “the Employer may…” until the end of the clause to a

new clause 8.5.1.1.

At the end of new clause 8.5.1.1, **insert** “; and”.

**Insert** the following as a new clause 8.5.1.2:

“8.5.1.2 The event of Insolvency is deemed to be a material breach of this Contract.”

8.5.3.3 After “the Employer may” **insert** “at the Contractor’s expense, ”

* 1. **Insert** a new clause 8.11A: “The Employer may at any time terminate this Contract by giving not less than [30] days' written notice to the Contractor (notwithstanding the provisions of clause 8.2.2).”
  2. At the start of clause 8.12 after “clauses 8.9 to 8.11” , in the third line of clause 8.12.3 after "clause 8.11" and in clause 8.12.4 after "or 8.10" **insert**

“or clause 8.11A”

##### CONDITIONS Section 10: Asbestos

**Insert** new clause 10 as follows:

**"Section 10: Asbestos**

10.1 The Contractor shall only be required to remove or encapsulate any Asbestos that is marked as requiring removal or encapsulation in the Asbestos Remediation Scope of Works, Part 3, Sections 3.1 – 3.14 in the Employer's Requirements.

10.2 The Contractor further accepts, in relation to the Refurbished Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:

10.2.1 any other Asbestos identified in the Asbestos Survey that is disturbed or otherwise damaged by the Contractor during the carrying out of the Works; and

10.2.2 unless access to carry out additional surveys was denied and then only to the extent access was denied, any Asbestos that would have been identified had the Contractor carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances.

10.3 The Employer accepts, in relation to the Refurbished Buildings, entire responsibility for Asbestos which has not been identified in the Asbestos Survey (other than Asbestos liability referred to in clause 10.2.2) and the discovery of any such Asbestos shall constitute a Relevant Event and a Relevant Matter, subject to, and in accordance with, clauses 2.25 and 4.20."

##### CONDITIONS Section 11: Site Surveys

**Insert** new clause 11 as follows:

**"Section 11: Site Surveys**

11.1 The Contractor shall be deemed to have visited the site or, in the case of a Section, each relevant part of the site, before submitting its tender or offer and to have made all visual inspections as it would have been reasonable to expect an experienced contractor to have carried out to determine which further surveys are required to carry out the Works. The Contractor has procured such surveys (set out in Appendix 8 (the “**Site Surveys**”)) and has taken into account the results of the Site Surveys when making its offer. The Contractor shall not be entitled to any extension of time, addition to the Contract Sum nor any reimbursement for loss or expense resulting from a site condition or other matter affecting the Works which, subject to the Contractor being given access to the relevant parts of the site,:

i) the Contractor could have reasonably foreseen by carrying out such visual inspections diligently; or

ii) has been identified by the Site Surveys; or

iii) could have been foreseen from proper interpretation of the Site Surveys.

11.2 Where the risks, contingencies and other circumstances which may influence or affect the Works were not ascertainable by the Contractor because he was not given access to relevant parts of the site or could not have been ascertainable by a prudent and experienced Contractor from i) the visual inspections; ii) the Site Surveys; or iii) a proper interpretation of the Site Surveys, such risk, contingency or circumstance shall amount to a Change for the purpose of this Contract.

11.3 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 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 negligent or otherwise, therein contained”.

##### SCHEDULES

**SCHEDULE 2 SUPPLEMENTAL PROVISIONS**

Part 1

Named Sub-Contractors

Delete existing clauses 1.1.2, 1.2, 1.4.2, 1.4.3, and 1.5.

##### SCHEDULE 3 INSURANCE OPTIONS

##### Insurance Option C

* 1. **Delete** the heading "(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)"  
       
     **Delete** "Employer" and **replace** with "Contractor"

In line 3, **delete** "him or for which he is responsible" and **replace** with "the Employer or for which the Employer is responsible"

At the end of the clause, **insert** "which arise out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person".

* 1. Delete “Employer” and replace with “Contractor”

In line 2, after the word "Insurance" **insert** "with insurers approved by the Employer"

**Paragraph C.4**

**Insert** the following new paragraph C.4:

"C.4 The Contractor shall send to the Employer’s Agent for deposit with the Employer the Joint Names Policy referred to in paragraph C.2, each premium receipt for it and any relevant endorsements of it. If the Contractor defaults in taking out or maintaining the Joint Names Policy as required by paragraph C.2, the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of premiums may be deducted by him from any sums due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt."

**Paragraph C.5**

**Insert** the following new paragraph C.5:

"**Use of Contractor's annual policy – as alternative**

C.5 If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

1. provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph C.2; and

2. is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph C.2. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars."

##### SCHEDULE 5 THIRD PARTY RIGHTS

**Delete** the existing schedule and **replace** with “Not used”.

##### SCHEDULE 7 JCT FLUCTUATION OPTION A

**Delete** the existing schedule and **replace** with “Not used.”

## Appendix 2

##### CONTRACTOR’S COLLATERAL WARRANTY

Template Deed of Collateral Warranty to be provided by the Contractor in favour of a

**Landlord / Purchaser/ Tenant**

**Dated [2020]**

1. **[Contractor]**
2. **[Beneficiary]**

**Contractor’s Collateral Warranty in favour of [Landlord/Purchaser/Tenant]**

#### relating to a project at [SHORT DESCRIPTION OF PROPERTY OR WORKS]

**THIS DEED** is made on [2020]

##### BETWEEN:

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

##### INTRODUCTION

1. The Employer has engaged the Contractor to carry out design and construction work.
2. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the [design and] construction work.
3. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
4. The Contractor has agreed to enter into this agreement with the Beneficiary for the benefit of the Beneficiary.

**NOW THIS DEED WITNESSES** in accordance of the sum of £10.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

##### Interpretation

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

* 1. Definitions:

**Building Contract** an agreement dated [ ] made between (1) the Employer and (2) the Contractor.

**Business Day** a day which is not a Saturday, Sunday or a Public Holiday.

##### Construction Products Regulations

the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Deleterious** materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

* + 1. posing a threat to the health and safety of any person; or
    2. posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
    3. reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
    4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
    5. having been supplied or placed on the market in breach of the Construction Products Regulations.

**Employer** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].

**Funder** any person providing, or intending to provide, finance to the Employer in connection with the Works.

**Material** all 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 materials provided in connection with the Works including the Contractor’s Design Documents (as defined in the Building Contract) (and completed Works) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works (and completed Works).

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

**Property** [DESCRIPTION OF THE PROPERTY].

**Public Holiday** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday or

which is otherwise a public holiday in England.

##### Viable Rates and Terms

see clause 4.1.

**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.

* 1. Clause headings shall not affect the interpretation of this agreement.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
  3. A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
  7. A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
     1. directives, decisions and regulations of the Council or Commission of the European Union;
     2. acts of Parliament;
     3. orders, regulations, consents, licences, notices and bye-laws made or granted;
        1. under any act of Parliament; or
        2. under any directive, decision or regulation of the Council or Commission of the European Union; or
        3. By a court of competent jurisdiction; and
     4. any mandatory codes of practice issued by a statutory body.
  8. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
  9. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
  10. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  11. A reference to writing or written includes faxes but not e-mail.
  12. References to clauses are to the clauses of this agreement.
  13. Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.

##### Comply with Building Contract

* 1. The Contractor warrants to the Beneficiary that:
     1. it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
        1. carry out and complete the Works properly; and
        2. use workmanship and materials of the quality and standard specified in the Building Contract;
     2. without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Building Contract, it:
        1. has designed, or will design, the Works; and
        2. has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,

with 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 and character to the Works; and

* + 1. it has used 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 and character to the Works to not specify or use anything in the Works, which, at the time of specification or use, is Deleterious.
  1. In proceedings for breach of this clause 2.2, the Contractor may:
     1. rely on any limit of liability or other term of the Building Contract; and
     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).

* 1. The Contractor's duties or liabilities under this agreement shall not be negated or diminished by:
     1. any approval or inspection of:
        1. the Property; or
        2. the Works; or
        3. any designs or specifications for the Property or the Works; or
     2. any testing of any work, goods, materials, plant or equipment; or
     3. any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Employer.
  2. This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.

##### Copyright

* 1. The copyright in the Material shall remain vested in the Contractor but the Contractor grants to the Beneficiary (and if it cannot grant such a licence at the date of this agreement then the Contractor shall procure its ability to grant such licence and shall then grant on the same terms when it is able to do so) with full title guarantee a non-exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Works (and 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 consent of the Contractor.
  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.
  4. The Contractor warrants to the Beneficiary that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Contractor shall indemnify the Beneficiary from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising by reason of this warranty being or becoming incorrect.
  5. 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.

##### Professional indemnity insurance

* 1. The Contractor shall take out professional indemnity insurance for an amount of at least £[SUM] for any one occurrence, or series of occurrences, arising out of any one event and thereafter maintain for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting (“**Viable Rates and Terms**”). 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:
        1. do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
        2. would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
  2. Any increased or additional premium required by insurers by reason of the Contractor’s own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within Viable Rates and Terms.
  3. The Contractor shall not, without the Beneficiary's written consent:
     1. settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Contractor; or
     2. by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers.
  4. The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at Viable Rates and Terms so the Contractor and the Beneficiary can discuss the means of best protecting their respective positions in respect of the Works in the absence of such insurance. If the professional indemnity insurance cover ceases to be available by reason of the Contractor’s acts, defaults or omissions and/or due to the Contractor’s claims record such cover shall nevertheless be deemed to be available at Viable Rates and Terms.
  5. The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such

insurance at rates above Viable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above Viable Rates and Terms

* 1. Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:
     1. the Contractor's then current professional indemnity insurance; and
     2. that the premiums for that insurance have been paid in full at the date of that letter.

##### Liability period

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this agreement may be commenced against the Contractor up until the expiry of 12 years from the date of practical completion of the Works and the Contractor agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

##### Assignment

* 1. The Beneficiary may by absolute legal assignment assign the benefit of this agreement:
     1. on two occasions to any person; and
     2. without counting as an assignment under clause 6.1.1:
        1. by way of security to a Funder (including any reassignment on redemption of security); or
        2. to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.
  2. The Beneficiary shall notify the Contractor of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
  3. The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

##### Notices

* 1. Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or

recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

* + 1. Contractor: to [ ]
    2. Beneficiary: to [ ]

or as otherwise specified by the relevant party by notice in writing to each other party.

* 1. A notice shall be deemed to have been duly received:
     1. if delivered personally, when left at the address and for the contact referred to in this clause; or
     2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
     3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
  2. A notice required to be given under this agreement shall not be validly given if sent by e-mail.
  3. This clause shall not apply to the service of any proceedings or other documents in any legal action.

##### Third party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

##### Governing law and jurisdiction

* 1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
  2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into as a deed on the date stated at the beginning of it.

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF

DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

## Appendix 3

##### DESIGN CONSULTANT COLLATERAL WARRANTY

Template Deed of Collateral Warranty to be provided by the Design Consultants in favour of the

**Employer and Landlord/ Purchaser/ Tenant**

**Dated [2020]**

1. **[Design Consultant]**
2. **[Contractor]**
3. **[Beneficiary]**

**Design Consultant’s Warranty in favour of [Employer/Landlord/Purchaser/Tenant]**

#### relating to a project at [SHORT DESCRIPTION OF PROPERTY OR WORKS]

**THIS DEED** is made on [2020]

##### 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 **Consultant**); and
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**);]1

##### INTRODUCTION

1. The [Employer/Beneficiary] has engaged the Contractor to carry out [design and] construction work under the Building Contract.
2. By the Professional Appointment the Contractor has appointed the Consultant to perform the Services.
3. The Consultant has agreed to enter into this Deed with the Beneficiary for the benefit of the Beneficiary.

**NOW THIS DEED WITNESSES** in accordance of the sum of £10.00 paid by the Beneficiary, receipt of which the Consultant acknowledges, as follows:

##### Interpretation

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

* 1. Definitions:

##### Building Contract

a contract dated [ ] made between (1) the [Employer/Beneficiary] and (2) the Contractor;

**Business Day** a day which is not a Saturday, Sunday or a Public Holiday;

**CDM Regulations** the Construction (Design and Management) Regulations 2015 (SI 2015/51);

**[Contractor** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS];]

##### Construction Products

the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation

1 Note, the Contractor is only a party to the warranty where the Employer is the Beneficiary and step-in rights apply

**Regulations** (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);

**Deleterious** any materials, equipment, products or kits that are generally accepted, or suspected, in the construction industry at the relevant time as:

* + 1. posing a threat to the health and safety or any person;
    2. posing a threat to the structural stability, performance or physical integrity of the Project or any part or component or part of the Project;
    3. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
    4. not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
    5. having been supplied or placed on the market in breach of the Construction Products Regulations;

**[Employer** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS];]

**Material** all 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 materials provided in connection with the Project (and completed Project) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project;

**Permitted Uses** without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, promotion, decommissioning, demolition, reinstatement, extension, building information modelling and repair of any part of or the whole of the Project;

##### Professional Appointment

an agreement in writing dated [DATE] between the Consultant and the Contractor;

**Project** [INSERT DESCRIPTION OF PROJECT];

**Property** [INSERT DESCRIPTION OF PROPERTY];

**Public Holiday** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday or which is otherwise a public holiday in England;

**Services** The services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

* 1. Clause headings shall not affect the interpretation of this agreement.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
  3. A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
  7. A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
     1. directives, decisions and regulations of the Council or Commission of the European Union;
     2. acts of Parliament;
     3. orders, regulations, consents, licences, notices and bye-laws made or granted;
        1. under any act of Parliament; or
        2. under any directive, decision or regulation of the Council or Commission of the European Union; or
        3. By a court of competent jurisdiction; and
     4. any mandatory codes of practice issued by a statutory body.
  8. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
  9. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
  10. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  11. A reference to writing or written includes faxes but not e-mail.
  12. References to clauses are to the clauses of this agreement.
  13. Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.

##### Skill and care

* 1. The Consultant undertakes and warrants to the Beneficiary that it has observed and performed and will continue to observe and perform its obligations under the Professional Appointment, including its obligations to:
     1. carry out and fulfil, in all respects, the duties of a designer [and principal designer] under the CDM Regulations; and
     2. not, without the [Employer/Beneficiary]’s written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
  2. Without prejudice to the generality of the foregoing clause 2.1. the Consultant undertakes and warrants to the Beneficiary that if and only to the extent that the Consultant is required by the Professional Appointment to:
     1. design any part of the Project; or
     2. select materials or equipment for incorporation into the Project,

that in designing or selecting the Consultant has and will use the Required Standard;

* 1. The Consultant undertakes and warrants to the Beneficiary that it has used and will use the Required Standard not to specify for use anything in the Project which, at the time of specification or use, is Deleterious.
  2. In the event of a claim brought against the Consultant by the Beneficiary the Consultant may rely on any defence or limitation available to it under the Professional Appointment save that it shall not be entitled to raise by way of defence, set off, abatement or counterclaim any monies claimed due from the Contractor under the Professional Appointment or otherwise. The Consultant shall not be entitled to defend any claim on the basis of a no loss argument whether based on the logic that the Beneficiary has not suffered a

recoverable loss because the Contractor [or the Employer] has not suffered that loss or because the Contractor [or the Employer] would not suffer a similar loss because of their (or his) different interest(s) in the Project to that interest of the Beneficiary or a defence based on similar logic.

##### [Step-in rights: Consultant may not terminate or discontinue2

* 1. The Consultant shall not exercise, or seek to exercise, any right to:
     1. terminate its employment under the Professional Appointment; or
     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 Consultant shall specify the grounds for the Consultant's proposed termination or discontinuance.

* 1. If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.
  2. The 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 Consultant, copied to the Contractor:
     1. requiring the Consultant not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;
     2. acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Professional Appointment; and
     3. undertaking that the Beneficiary or its nominee will pay to the Consultant:
        1. any sums due and payable to the Consultant under the Professional Appointment in future; and
        2. any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.
  3. If the Beneficiary or its nominee serves notice on the Consultant under clause 3.3, 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 Consultant and the Beneficiary (to the exclusion of the Contractor).
  4. In complying with this clause 3, the Consultant:

22 Step-in rights in clauses 3 to 6 to be included where the Beneficiary is the Employer.

* + 1. does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Contractor; and
    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 Consultant's right to terminate or discontinue has ceased under clause 3.3.]

##### [Step-in rights: Beneficiary may step-in

* 1. Without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Contractor, that:
     1. confirms that the Beneficiary wishes to step-in to the Professional Appointment; and
     2. complies with the requirements for a Beneficiary's notice under clause 3.3,

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 Consultant and the Beneficiary (to the exclusion of the Contractor).

* 1. The Consultant shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.
  2. In complying with this clause 4, the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Contractor.]

##### [Step-in rights: Consultant's position and Contractor's consent

* 1. The Consultant shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.
  2. The Contractor has executed this agreement to confirm its consent to the agreement.]

##### [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 Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.]

##### Copyright

* 1. The copyright in the Material shall remain vested in the Consultant but the Consultant grants to the Beneficiary and its nominees (and if it cannot grant such a licence at the date of this agreement then the Consultant shall procure its ability to grant such licence and shall then grant on the same

terms when it is able to do so) with full title guarantee a non-exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Consultant for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Project (and completed Project) including any of the Permitted Uses.

* 1. This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.
  2. The Consultant shall not be liable for any such use by the Beneficiary of any Material for any purpose other than that for which they were originally prepared by the Consultant.
  3. The Consultant warrants to the Beneficiary that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Consultant shall indemnify the Beneficiary from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising by reason of this warranty being or becoming incorrect.
  4. The Beneficiary may, at any time (whether before or after completion of the Services, or after termination of the Consultant's engagement under the Professional Appointment), request a copy or copies of (some or all of) the Material from the Consultant. On the Beneficiary’s payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

##### Professional indemnity insurance

* 1. The Consultant shall maintain professional indemnity insurance covering (inter alia) all its design liabilities hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £[ ] ([

] million pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Building Contract, provided always that such insurance is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting (**Viable Rates and Terms**).

* 1. Any increased or additional premium required by insurers by reason of the Consultant’s own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within Viable Rates and Terms.
  2. The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at commercially affordable rates on or on Viable Rates and Terms in order that the Consultant and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Project in the absence of such insurance.
  3. The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially affordable rates if the Beneficiary undertakes in writing to reimburse the Consultant in respect of the net additional cost of such insurance above such commercially affordable rates.
  4. As and when reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection reasonable documentary evidence (including if required by the Beneficiary, the originals of the relevant insurance documents) that its professional indemnity liability insurance is being maintained.
  5. The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever.

##### Liability period

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this Deed may be commenced against the Consultant up until the expiry of 12 years from the date of practical completion of the whole of the Works as defined in the Building Contract and the Consultant agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

##### Assignment

* 1. The Consultant consents to the benefit of this Deed being assigned two times only PROVIDED ALWAYS that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
  2. The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promise under this Deed.

##### Notices

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if sent by pre-paid post and sent to the address for the party shown above or such other address as may be notified in writing. Notices so posted before 5pm shall be deemed served on the morning of the second Business Day following posting. Notices so posted after 5pm or posted on a day which is not a Business Day shall be deemed to have been posted on the next Business Day before 5pm. Notices may be delivered by hand if left at the relevant address for the party in question in an addressed envelope between the hours of 9am and 5pm on a Business Day and signed for.

##### Extraneous rights

* 1. This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.
  2. No approval or inspection of the Project or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.
  3. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
  4. This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.
  5. The Contractor and the Consultant undertake to the Beneficiary not to vary or depart from the terms and conditions of the Professional Appointment such that the obligations owed to the Beneficiary under this warranty are reduced or if they do so then the same shall not derogate from the obligations owed to the Beneficiary hereunder without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed).

##### Governing law

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

**EXECUTED AS A DEED** by the parties on the date which first appears in this Deed.

Executed as a deed by [NAME OF CONSULTANT] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF

DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

|  |  |  |  |
| --- | --- | --- | --- |
| The CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION herewith affixed and authenticated | | )))) |  |
|  | |  |  |
| Authorised by the Secretary of State |  | |
|  |  | |
| Full name (Block Capitals) |  | |
|  |  | |
|  |  | |

....................................... [SIGNATURE OF DIRECTOR]

Director

## Appendix 4

##### KEY SUB-CONTRACTOR COLLATERAL WARRANTY

Template Deed of Collateral Warranty to be provided by a Key Sub-Contractor in favour of the

**Employer and Landlord/ Purchaser/ Tenant**

**Dated [2020]**

1. **[Sub-Contractor]**
2. **[Beneficiary]**
3. **[Contractor]**

**Sub-Contractor’s Warranty in favour of**

**[Employer/Landlord/Purchaser/Tenant]**

#### relating to a project at [SHORT DESCRIPTION OF PROPERTY OR WORKS]

**THIS DEED** is made on [2020]

##### BETWEEN:

1. [SUB-CONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Sub-Contractor**); and
2. [BENEFICIARY] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Beneficiary**);
3. [[CONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Contractor**).]1

##### INTRODUCTION

1. The Employer has by the Building Contract employed the Contractor to carry out and complete the Project.
2. By the Sub-Contract the Contractor has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works at the Project on terms set out therein.
3. The Sub-Contractor has agreed to enter into this Deed with the Contractor and the Beneficiary for the benefit of the Beneficiary.

**NOW THIS DEED WITNESSES** in accordance of the sum of £10.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges, as follows:

##### Interpretation

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

* 1. In this Deed:

**Building Contract** a contract dated [ ] made between (1) the Employer and (2) the Contractor.

**Business Day** a day which is not a Saturday, Sunday or a Public Holiday.

**[Contractor** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

##### Construction Products Regulations

the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products

1 Note, the Contractor is only a party to the warranty where the Employer is the Beneficiary and step-in rights apply

Directive (89/109/EC).

**Deleterious** any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

* + 1. posing a threat to the health and safety or any person;
    2. posing a threat to the structural stability, performance or physical integrity of the Project or any part or component or part of the Project;
    3. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
    4. not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
    5. having been supplied or placed on the market in breach of the Construction Products Regulations;

**[Employer** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

**Material** all 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 materials provided in connection with the Project (and completed Project) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project;

**Permitted Uses** without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, promotion, decommissioning, demolition, reinstatement, extension, building information modelling and repair of any part of or the whole of the Project;

**Project** [INSERT DESCRIPTION OF THE PROJECT];

**Property** [INSERT DESCRIPTION OF THE PROPERTY];

##### Required Standard

all the reasonable skill and care which is to be expected of an appropriately qualified, competent designer of the relevant discipline who is experienced in undertaking the design of developments similar in scope and character to the Project;

**Sub-Contract** means a Sub-Contract dated [ ] made between (1) the Contractor and (2) the Sub- Contractor for the carrying out of the Sub-Contract Works.

##### Sub-Contract Works

means the works carried out by the Sub-Contractor in connection with the Project and as described in the Sub-Contract.

* 1. Clause and paragraph headings shall not affect the interpretation of this Deed.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
  3. A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
  7. Any obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
  8. A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
     1. directives, decisions and regulations of the Council or Commission of the European Union;
     2. acts of Parliament;
     3. orders, regulations, consents, licences, notices and bye-laws made or granted;
        1. under any act of Parliament; or
        2. under any directive, decision or regulation of the Council or Commission of the European Union; or
        3. By a court of competent jurisdiction; and
     4. any mandatory codes of practice issued by a statutory body.
  9. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
  10. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
  11. Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
  12. A reference to writing or written includes faxes but not e-mail.
  13. References to clauses are to the clauses of this Deed.
  14. Where the words include(s), including or in particular are used in this Deed, they are deemed to have the words "without limitation" following them.

##### Skill and care

* 1. The Sub-Contractor undertakes and warrants to the Beneficiary that it has observed and performed and will continue to observe and perform its obligations under the Sub-Contract, including its obligations to:
     1. carry out and complete the Sub-Contract Works properly; and
     2. use workmanship and materials of the quality and standard specified in the Sub-Contract.
  2. Without prejudice to the generality of the foregoing clause 2.1. the Sub- Contractor undertakes and warrants to the Beneficiary that if and only to the extent that the Sub-Contractor is required by the Sub-Contract to:
     1. design any part of the Project; or
     2. select materials or equipment for incorporation into the Project,

that in designing, specifying or selecting the Sub-Contractor has and will use the reasonable skill and care which is to be expected of an appropriately qualified, competent designer of the relevant discipline who is experienced in undertaking the design of developments similar in scope and character to the Project and in terms of selecting materials and equipment who is equivalently experienced in selecting materials or equipment;

* 1. The Sub-Contractor undertakes and warrants to the Beneficiary that it has used and will use Required Standard not to specify for use anything in the Project which, at the time of specification or use, is Deleterious.
  2. In the event of a claim brought against the Sub-Contractor by the Beneficiary the Sub-Contractor may rely on any defence or limitation

available to it under the Sub-Contract save that it shall not be entitled to raise by way of defence, set off, abatement or counterclaim any monies claimed due from the Contractor under the Sub-Contract or otherwise. The Sub-Contractor shall not be entitled to defend any claim on the basis of a no loss argument whether based on the logic that the Beneficiary has not suffered a recoverable loss because the Contractor or the Employer has not suffered that loss or because the Contractor or the Employer would not suffer a similar loss because of their (or his) different interest(s) in the Project to that interest of the Beneficiary or a defence based on similar logic. 11

##### [Step-in rights: Sub-Contractor may not terminate or discontinue2

* 1. The Sub-Contractor shall not exercise, or seek to exercise, any right to:
     1. terminate its employment under the Sub-Contract; or
     2. discontinue the [design and] construction of 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.

* 1. If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub- Contract shall be extended to take account of the notice period required under clause 3.1.
  2. The Sub-Contractor's right to terminate its employment under the Sub- Contract, or to discontinue the [design and] construction of 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:
     1. requiring the Sub-Contractor not to terminate its employment or not to discontinue the [design and] construction of the Sub- Contract Works under the Sub-Contract;
     2. acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
     3. undertaking that the Beneficiary or its nominee will pay to the Sub-Contractor:
        1. any sums due and payable to the Sub-Contractor under the Sub-Contract in future; and
        2. any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.

2 Step-in rights in clauses 3 to 6 will be included if the Beneficiary is the Employer.

* 1. If the Beneficiary or its nominee serves notice on the Sub-Contractor under clause 3.3, 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).
  2. In complying with this clause 2.1, the Sub-Contractor:
     1. does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
     2. may exercise its right to terminate its employment under the Sub-Contract or discontinue the [design and] construction of 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 3.3.]

##### [Step-in rights: Beneficiary may step-in

* 1. Without affecting clause 3.1, if the Beneficiary serves a notice on the Sub- Contractor, copied to the Contractor, that:
     1. confirms that the Beneficiary wishes to step-in to the Sub- Contract; and
     2. complies with the requirements for a Beneficiary's notice under clause 3.3,

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).

* 1. 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.
  2. 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.]

##### [Step-in rights: Sub-Contractor's position and Contractor's consent

* 1. The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with clause 2.1 or clause 4.]
  2. The Contractor has executed this Deed to confirm its consent to the agreement.]

##### [Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 2.1 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.]

##### Copyright

* 1. The copyright in the Material shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Beneficiary and its nominees (and if it cannot grant such a licence at the date of this Deed then the Sub-Contractor shall procure its ability to grant such licence and shall then grant on the same terms when it is able to do so) with full title guarantee a non-exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Sub-Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Project (and completed Project) including any of the Permitted Uses.
  2. This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.
  3. The Sub-Contractor shall not be liable for any such use by the Beneficiary of any Material for any purpose other than that for which they were originally prepared by the Sub-Contractor.
  4. The Sub-Contractor warrants to the Beneficiary that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Sub- Contractor shall indemnify the Beneficiary from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising by reason of this warranty being or becoming incorrect.
  5. The Beneficiary may, at any time (whether before or after completion of the Sub-Contract Works, or after termination of the Sub-Contractor's engagement under the Sub-Contract), 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.

##### [Indemnity insurance3

* 1. The Sub-Contractor shall maintain professional indemnity insurance covering (inter alia) all its design liabilities hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £[ ] ([

] million pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Building Contract, provided always that such insurance is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting (**Viable Rates and Terms**).

* 1. Any increased or additional premium required by insurers by reason of the Sub-Contractor’s own claims record or other acts, omissions, matters or

3 Delete clause if the Sub-Contractor has no design role

things particular to the Sub-Contractor shall be deemed to be within Viable Rates and Terms.

* 1. The Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially affordable rates on or on Viable Rates and Terms in order that the Sub-Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Sub-Contractor in respect of the Project in the absence of such insurance.
  2. The Sub-Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially affordable rates if the Beneficiary undertakes in writing to reimburse the Sub-Contractor in respect of the net additional cost of such insurance above such commercially affordable rates.
  3. As and when reasonably requested to do so by the Beneficiary the Sub- Contractor shall produce for inspection reasonable documentary evidence (including if required by the Beneficiary, the originals of the relevant insurance documents) that its professional indemnity insurance is being maintained.
  4. The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever.]

##### Liability period

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this Deed may be commenced against the Sub-Contractor up until the expiry of 12 years from the date of practical completion of the whole of the Works as defined in the Building Contract and the Sub-Contractor agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

##### Assignment

* 1. The Sub-Contractor consents to the benefit of this Deed being assigned two times only PROVIDED ALWAYS that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
  2. The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promise under this Deed.

##### Notices

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if sent by pre-paid post and sent to the address for the party shown above or such other address as may be notified in writing. Notices so posted before 5pm shall be deemed served on the morning of the second Business Day following posting. Notices so posted after 5pm or posted on a day which is not a Business Day shall be deemed to have been posted on the next Business Day before 5pm. Notices may be delivered by hand if left at the relevant address for the party in question in an addressed envelope between the hours of 9am and 5pm on a Business Day and signed for.

##### Extraneous rights

* 1. This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.
  2. No approval or inspection of the Project or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.
  3. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
  4. This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.
  5. The Contractor and the Sub-Contractor undertake to the Beneficiary not to vary or depart from the terms and conditions of the Sub-Contract such that the obligations owed to the Beneficiary under this warranty are reduced or if they do so then the same shall not derogate from the obligations owed to the Beneficiary hereunder without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed).

##### Governing law

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

**EXECUTED AS A DEED** by the parties on the date which first appears in this Deed.

Executed as a deed by [NAME OF SUB- CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF

DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

|  |  |  |  |
| --- | --- | --- | --- |
| The CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION herewith affixed and authenticated | | )))) |  |
|  | |  |  |
| Authorised by the Secretary of State |  | |
|  |  | |
| Full name (Block Capitals) |  | |
|  |  | |
|  |  | |

....................................... [SIGNATURE OF DIRECTOR]

Director

## Appendix 5

##### PARENT COMPANY GUARANTEE

**Dated [2020]**

1. **[Guarantor]**
2. **[Employer]**

**Parent Company Guarantee**

relating to a project at [SHORT DESCRIPTION OF PROPERTY OR WORKS]

**THIS DEED** is made on [2020]

##### 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. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Employer**).

In consideration of the sum of one pound (£1) paid by the Employer to the Guarantor (receipt of which is hereby acknowledged) and in consideration of the Contractor's involvement in the Project **THIS DEED WITNESSES** as follows:

##### Definitions and circumstances

* 1. Definitions

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

##### Building Contract

the building contract between the Employer and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract.

**Business Day** has the same meaning as in the Building Contract.

**Contractor** [FULL COMPANY NAME] incorporated and registered in [England and Wales] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].

**Obligations** terms duties undertakings and obligations of the Contractor to be observed performed or carried out under the Building Contract.

**Project** [INSERT DESCRIPTION OF PROJECT].

**Works** the works to be carried out by the Contractor under the Building Contract in relation to the Project.

* 1. Circumstances
     1. The Employer has appointed or may appoint the Contractor in relation to the Project under the Building Contract.
     2. [The Contractor is a wholly-owned subsidiary of the Guarantor under and in accordance with the Companies Act 2006.]
     3. The Guarantor agrees to guarantee the due performance by the Contractor of the Building Contract.

##### Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees to the Employer and its successors and assigns the full and timeous performance observance and compliance by the Contractor of the Obligations.

##### Guarantor to be principal debtor: time indulgence etc.

* 1. It is hereby agreed that the Employer shall at all times be entitled (but not obliged) to treat the Guarantor as sole principal debtor in regard to the liability of the Guarantor provided herein.
  2. The liability of the Guarantor herein shall be neither discharged nor reduced by:
     1. any variation or alteration to the Building Contract or any other guarantee or indemnity subsisting from time to time in connection with the Building Contract;
     2. any assignment by the Contractor of any interest under or of the benefit of the Building Contract;
     3. any suspension or termination of the Contractor's employment under the Building Contract;
     4. the demand or failure to demand payment from the Contractor;
     5. the enforcing or failure to enforce the Obligations any other guarantee indemnity or security subsisting from time to time in connection therewith or any right or remedy generally;
     6. the compromise or release of any such guarantee indemnity or security;
     7. the dissolution amalgamation reconstruction or reorganisation of the Contractor;
     8. the ineffectiveness illegality or unenforceability of any of the Obligations or of the Building Contract;
     9. any breach by the Contractor of the Obligations or the Building Contract or other default of the Contractor;
     10. any time indulgence waiver or consent given whensoever or howsoever to the Contractor.

##### Continuing security

The Guarantor's undertakings herein shall remain fully subsisting until such time as the Contractor has fully performed the Obligations and there has been a cessation of all liabilities of the Contractor under the Building Contract.

##### Guarantor's recovery

The Guarantor shall not make demand on or enforce any guarantee indemnity security right or remedy against the Contractor arising out of or in connection with the Building Contract without the consent of the Employer.

##### Assignment

* 1. The Employer shall be entitled at any time without the consent of the Guarantor to assign or transfer the benefit of this deed to any person to whom the benefit of the Building Contract has been assigned and references to ‘Employer’ shall include such assigns.
  2. Save for clause 6.1 this deed and the benefits conferred by it may not be assigned by either party.

##### No greater liability

The Guarantor shall have no greater liability to the Employer under or by virtue of this guarantee than it would have had if the Guarantor had been named as Contractor under the Building Contract and the Guarantor shall be entitled in any action or proceedings by the Employer to raise all defences and limitations that would have been available to the Contractor under the Building Contract.

##### Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

##### Notices

* 1. Any notice or communication to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
  2. Notice may be served by:
     1. personal delivery; or
     2. pre-paid Recorded Signed for or Special Delivery post.
  3. Notices and communications shall be deemed to have been served or received as follows:
     1. in the case of personal delivery on the date of delivery;
     2. in the case of Recorded Signed for or Special Delivery post on the second Business Day after the notice or communication is posted.

##### Governing law and jurisdiction

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

**IN WITNESS** whereof this deed has been executed by the parties as a deed the day and year first above written

Executed as a deed by [NAME OF GUARANTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

....................................... [SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

....................................... [SIGNATURE OF DIRECTOR]

Director

|  |  |  |  |
| --- | --- | --- | --- |
| The CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION herewith affixed and authenticated | | )))) |  |
|  | |  |  |
| Authorised by the Secretary of State |  | |
|  |  | |
| Full name (Block Capitals) |  | |
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**APPENDIX 6**

**NOT USED**

Appendix 7

**NOT USED**

**Appendix 8**

**CONTRACT DOCUMENTS**

The encrypted USB attached to this page is Appendix 8 comprising the Employer's Requirements, Contractor's Proposals, Asbestos Survey and Contract Sum Analysis.

By signing below each Party agrees and acknowledges that the encrypted USB is an accurate electronic representation of the paper files comprising the Employer's Requirements, Contractor's Proposals, Asbestos Survey and Contract Sum Analysis.

|  |
| --- |
| ………………………………  (Signed by the Employer)  …………………………….  (Signed by the Contractor) |