(1) THE SECRETARY OF STATE FOR EDUCATION

2023

-and-

(2) WILLMOTT DIXON CONSTRUCTION LIMITED

# CONTRACT

relating to Sanctuary Buildings Refurbishment (Second Phase) incorporating the conditions of the JCT Design and Build Contract 2016 Edition

26813333v2

DATED

THIS CONTRACT is made on

24 April

2023

#### BETWEEN:

- <u>THE SECRETARY OF STATE FOR EDUCATION</u> of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "Employer"); and
- (2) WILLMOTT DIXON CONSTRUCTION LIMITED (company number 00768173) whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire, SG6 4ET (the "Contractor")

# RECITALS

- First the Employer wishes to have the design and construction of the following work carried out: the internal refurbishment of existing levels 8, 7, 6, and 4 (together with replacement of core infrastructure services) at Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "Works") in accordance with the JCT Design and Build Contract (2016 edition) including sections 1 to 13 and the Schedules 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 subject to the Conditions, is satisfied that the Contractor's Proposals and the Contract Sum Analysis meet the Employer's Requirements and has also agreed to accept full responsibility for any design contained in the Employer's Requirements;
  - 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;
  - Seventh whether any of Supplemental Provisions 1 to 12 apply is stated in the Contract Particulars;

## ARTICLES:

## IT IS HEREBY AGREED as follows

#### 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

(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 (Company number: OC368843) whose registered office is at 80 Fenchurch Street, London, EC3M 4BY 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 and the BIM Protocol are those referred to in the Contract Particulars.

## 5. PRINCIPAL DESIGNER

The Principal Designer for the purpose of the CDM Regulations is:

- for RIBA Stages 1 3 (inclusive), Arcadis LLP;
- for RIBA Stage 4 onwards, the Contractor;

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

## 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

6.

9.

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.

## COLLATERAL WARRANTIES: THE CONTRACTOR

- 9.1 The Contractor shall execute and deliver to the Employer by the date of this Contract collateral warranties in the form of Annex 1 to this Contract with only such amendments as the Employer may approve in favour of:
  - 9.1.1 any freeholder or landlord of the Sites (where this is not the Employer); and
  - 9.1.2 Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA.
- 9.2 Should the collateral warranties from the Contractor not be delivered to the Employer within 10 Business Days of a written request from the Employer then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant collateral warranties have been provided to the Employer.

## 10. SUB-CONTRACTORS

10.1 In this Article 10 'Principal Building Sub-Contractor' means any Sub-Contractor or supplier of the Contractor for the following elements of the Works:

Partitions and ceilings;

Glazed partitions;

Joinery;

IPS and oubicles; and

Mechanical, electrical, plumbing, and heating services.



- 10.2 Each of the Principal Building Sub-Contractors shall be appointed by deed, and within 5 Business Days of the appointment of a Principal Building Sub-Contractor the Contractor shall supply a complete copy of the sub-contract to the Employer.
- 10.3 The Contractor shall procure that every Principal Building Sub-Contractor shall provide to the Employer collateral warranties, in respect of each sub-contract package, in the form as set out in Annex 2 to this Contract with only such amendments as the Employer may approve in favour of:

10.3.1 the Employer;

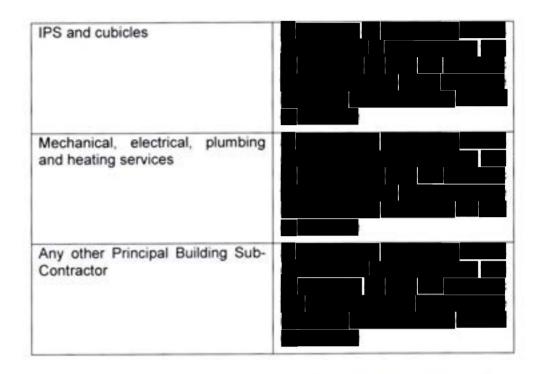
10.3.2 any freeholder or landlord of the Sites (where this is not the Employer);

10.3.3 Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA.

10.4 The Contractor shall procure that each Principal Building Sub-Contractor takes out and maintains in force professional indemnity insurance ("PI Insurance") provided that such insurance is generally available in the market to members of the relevant Principal Building Sub-Contractor's trade at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Principal Building Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

10.5 The Contractor shall provide evidence satisfactory to the Employer (as and when reasonably required by the Employer) of the PI Insurance being in full force and effect for the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending twelve (12) years after the date of Practical Completion of the Works pursuant to clause 2.27 in respect of the Works which shall be at the appropriate level as set out in the table below:

Principal Building Sub-Contractor	Level of PI Insurance		
Partitions and ceilings			
Glazed partitions			
Joinery			



- 10.6 Should the collateral warranties from the Principal Building Sub-Contractor not be delivered to the Employer within 10 Business Days of a written request from the Employer then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular sub-contractor's work until such time as the relevant collateral warranty has been delivered.
- 10.7 The Employer's right to withhold payment under Article 10.6 shall not apply once the Contractor satisfies its obligations under Article 10.

## 11. DESIGN CONSULTANTS

- 11.1 Not used.
- 11.2 Not used.
- 11.3 Within 15 Business Days of executing this Contract, the Contractor shall appoint the following consultants (or such other consultants as the Employer shall approve) for the purposes of the Works:

Architect and BREEAM assessor;

Mechanical, electrical, and plumbing engineer;

Civil and structural engineer;

Acoustic engineer;

Fire engineer;

BIM consultant and surveyor; and

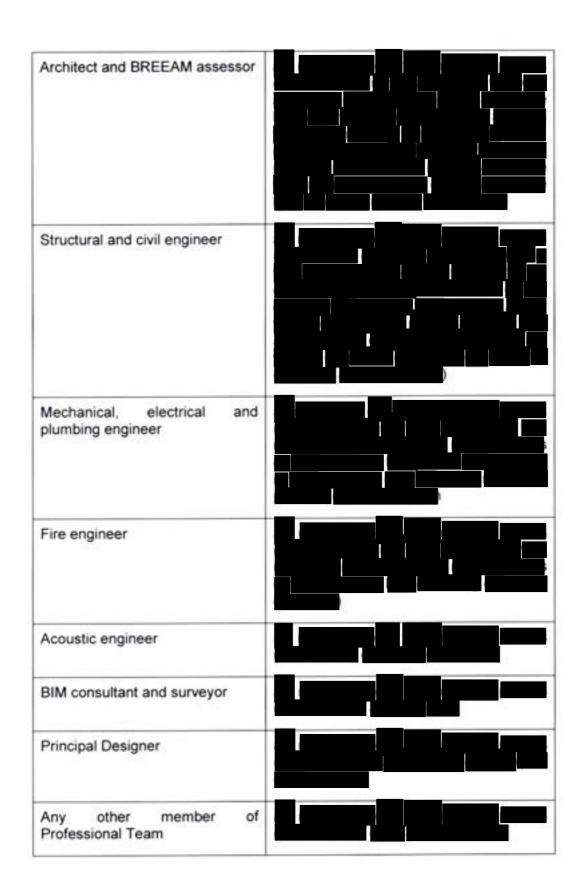
Principal Designer;

(together the "Design Consultants").

11.4 The Design Consultants shall be appointed by deed in the terms of the respective draft appointments contained in Annex 3 with such modifications (if any) as the Contractor or any Design Consultant shall require and the Employer (acting reasonably) shall approve.

- 11.5 Within 5 Business Days after the appointment of each Design Consultant the Contractor shall supply to the Employer a completed certified copy of the Design Consultant's deed of appointment.
- 11.6 The Contractor shall not dismiss any of the Design Consultants or vary the terms of their appointment without the written approval of the Employer.
- 11.7 If the employment of any Design Consultant is terminated before the completion of the services allocated to him, the Contractor shall as soon as is practicable but on 5 Business Days' notice to the Employer appoint another consultant to complete those services (save any consultant to whom the Employer shall make reasonable objection in writing). The foregoing provisions of this Article 11 shall apply to such replacement consultant, with such amendments as are necessary.
- 11.8 The Contractor shall procure that every Design Consultant shall provide to the Employer collateral warranties in the form of Annex 4 to this Contract with only such amendments as the Employer may approve in favour of:
  - 11.8.1 the Employer;
  - 11.8.2 any freeholder or landlord of the Sites (where this is not the Employer); and
  - 11.8.3 Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA.
- 11.9 Should the collateral warranties from the Design Consultants not be delivered to the Employer within 10 Business Days of a written request from the Employer then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular Design Consultant's work until such time as the relevant collateral warranty has been delivered.
- 11.10 The Employer's right to withhold payment under Article 11.9 shall not apply once the Contractor satisfies its obligations under this Article 11.
- 11.11 The Contractor shall procure that each Design Consultant takes out and maintains in force PI Insurance provided that such insurance is generally available in the market to members of the relevant consultant's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Design Consultant's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.
- 11.12 The Contractor shall provide evidence satisfactory to the Employer (as and when reasonably required by the Employer) of the PI Insurance being in full force and effect for the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending twelve (12) years after the date of Practical Completion of the Works pursuant to clause 2.27 in respect of the Works which shall be at the appropriate level as set out in the table below:

Design Consultant	Level of PI Insurance	



12. PARENT COMPANY GUARANTEE

The Contractor shall procure the execution and delivery to the Employer by its Parent, within 10 Business Days of a written request from the Employer, of a parent company guarantee, in the form set out in Annex 6 to this Contract with only such amendments as the Employer may approve. In the event of any change of ownership or control in the Contractor, the Contractor shall immediately provide a replacement parent company guarantee from the replacement parent company.

13. COMPLETION CERTIFICATE

- 13.1 The Contractor shall be responsible for obtaining a completion certificate under Regulation 17 of the Building Regulations 2010 in respect of the Works or any Section.
- 13.2 The Employer shall not be required to give a statement to the effect that the Works or any Section has reached Practical Completion until the Contractor has complied with Article 13.1 in respect of the Works or such Section.

14. EMPLOYER'S POLICIES

Subject to the provisions of clause 2.17 the Contractor shall ensure the Works fully comply with all applicable Employer's Policies.

## 15. AUDIT

The Contractor shall cooperate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Employer and to provide documents, or to procure the provision of documents, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

## 16. NOT USED

## 17. PRE-CONSTRUCTION SERVICES AND MINOR WORKS

The Contractor acknowledges that the terms and conditions of this Contract are deemed to apply to all the Works (including any Works undertaken under the Pre-Construction Services Agreement and Minor Works Building Contract) either which the Contractor has commenced, provided or completed or which the Contractor has procured the commencement, provision and completion of prior to the date of this Contract.

18. NOT USED

19. SCHEDULE OF AMENDMENTS AND CLARIFICATIONS

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 (i) the Schedule of Amendments contained in Appendix 1 to this Contract and (ii) the Schedule of Clarifications contained within the Contractor's Proposals. This Contract shall be read and construed accordingly. In the case of inconsistency between the Schedule of Amendments, the Schedule of Clarifications and any other term of this Contract, the Schedule of Clarifications shall prevail. If the inconsistency is solely between the Schedule of Amendments and any other term of this Contract, the Schedule of Amendments and any other term of this Contract, the Schedule of Amendments shall prevail.

## 20. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract.

## 21. ELECTRONIC EXECUTION

Each Party agrees that this Contract may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Contract as if signed by each Party's manuscript signature.

The executed signature page of a counterpart of this Contract (in PDF, JPEG or other agreed format), together with the agreed final form of this Contract may be delivered by e-mail to the other Party.

Without prejudice to the validity of the Contract, each of the Employer and the Contractor shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter.

# CONTRACT PARTICULARS

# **Contract Particulars**

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	Section 1 (Level 7 main works)
	Employer's Requirements state the reference numbers and dates or other identifiers of documents in which they are shown)	Section 2 (Level 8 main works)
		Section 3 (Infrastructure works - AHUs)
		Section 4 (Infrastructure works - LV upgrade)
		Section 5 (Infrastructure works – Chillers)
		Section 6 (Level 4 design works)
		Section 7 (Level 6 design works)
		Section 8 (Level 4 strip out works)
		Section 9 (Level 6 strip out works)
		Section 10 (Procurement of long lead-in items relating to Level 4 & 6 works)
		Section 11 (General works)
Sixth Recital	Framework Agreement	The Southern Construction Framework established pursuant to a contract notice published on 17 June 2019 in the Official Journal of the European Union under reference 2019/S 117- 285945
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

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

Collaborative working

Health and safety

Cost savings and value improvements

Sustainable development and environmental considerations

Performance Indicators and monitoring

Notification and negotiation of disputes

Where Supplemental Provision 10 applies, the respective nominees of the Parties are Supplemental Provision 3 applies

Supplemental Provision 4 applies

Supplemental Provision 5 applies

Supplemental Provision 6 applies

Supplemental Provision 7 applies

Supplemental Provision 8 applies

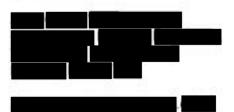
Supplemental Provision 9 applies

Supplemental Provision 10 applies

Employer's nominee:



Contractor's nominee:



or such replacement as each Party may notify to the other from time to time

Supplemental Provision 11 applies

Transparency

	The Public Contracts Regulations 2015	Supplemental Provision 12 applies
Article 4	Employer's Requirements including the BIM Protocol (State reference numbers and dates or other identifiers of the relevant documents.)	Comprise the relevant documents contained in the USB stick of technical documents appended to this Contract at Annex 16
Article 4	Contractor's Proposals (State reference numbers and dates or other identifiers of the relevant documents.)	Comprise the relevant documents contained in the USB stick of technical documents appended to this Contract at Annex 16
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 contained in the USB stick of technical documents appended to this Contract at Annex 16
1.1	Base Date	25 March 2022
1.1	BIM Protocol (where applicable) (State title, edition, date or other identifiers of the relevant documents).	The BIM Protocol set out in Anne. 8
1.1	Date for Completion of the Works (Where completion by Sections does not apply)	
	Sections: Dates for Completion of Sections	Section 1 (Level 7 main works) 21 July 2023
		Section 2 (Level 8 main works) 21 July 2023
		Section 3 (Infrastructure works AHUs) – 13 May 2024
		Section 4 (Infrastructure works LV upgrade) – 24 October 2024
		Section 5 (Infrastructure works Chillers) – 19 December 2023
		Section 6 (Level 4 design works - 31 October 2023
		Section 7 (Level 6 design works - 1 August 2023
		Section 8 (Level 4 strip out works - 26 September 2023
		Section 9 (Level 6 strip out works - 27 June 2023
		Section 10 (Procurement of Ion lead-in items relating to Level 4

6 works ) – 30 May 2023 Section 11 (General works) – 24 October 2024

1.7

2.3

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:



Contractor:



Date of Possession of the Sites (where possession by Sections does not apply)

Sections: Dates of Possession of Sections Section 1 (Level 7 main works) -11 July 2022

Section 2 (Level 8 main works) -18 August 2022

Section 3 (Infrastructure works -AHUs) – 13 December 2022

Section 4 (Infrastructure works – LV upgrade) – 13 January 2023

Section 5 (Infrastructure works – Chillers) – 9 January 2023

Section 6 (Level 4 design works) - 10 May 2023

Section 7 (Level 6 design works) - 6 March 2023

Section 8 (Level 4 strip out works) – 29 August 2023

Section 9 (Level 6 strip out works) - 30 May 2023

Section 10 (Procurement of long lead-in items relating to Level 4 &

			6 works ) – the date of this Contract
			Section 11 (General works) – the date of this Contract
	2.4	Deferment of possession of the Sites (where possession by Sections does not apply)	Clause 2.4 applies
			Maximum period of deferment (if less than 6 weeks) is 6 weeks
:		Sections: deferment of possession of sections	All Sections = 6 weeks
1000	2.17.4	Limit of Contractor's liability	
	2.29.2	Liquidated damages (where completion by Sections does not apply)	
		Sections: rate of liquidated damages for each Section	Section 1 (Level 7 main works) =
			Section 2 (Level 8 main works) =
2			Section 3 (Infrastructure works – AHUs) =
			Section 4 (Infrastructure works – LV upgrade) =
			Section 5 (Infrastructure works – Chillers) =
			Section 6 (Level 4 design works)
			Section 7 (Level 6 design works)
			Section 8 (Level 4 strip out works)
			Section 9 (Level 6 strip out works)

		Section 10 (Procurement of long lead-in items relating to Level 4 & 6 works ) – Section 11 (General works) –
		Where liquidated damages are enforced by the Employer for delays across both Sections 1 and 2, the combined liquidated damage rate shall be capped at a rate of
2.34	Sections: Section Sums	Section 1 (Level 7 main works) =
		Section 2 (Level 8 main works) =
		Section 3 (Infrastructure works - AHUs) =
		Section 4 (Infrastructure works - LV upgrade) =
		Section 5 (Infrastructure works – Chillers) =
		Section 6 (Level 4 design works)
		Section 7 (Level 6 design works)
		Section 8 (Level 4 strip out works)
		Section 9 (Level 6 strip out works)
		Section 10 (Procurement of long lead-in items relating to Level 4 & 6 works ) – included in other relevant Section Sums
		Section 11 (General works) -
		Plus preliminary costs of
2.35	Rectification Period (where completion by Sections does not apply)	N/A

	Sections: Rectification Periods	All Sections = 12 months 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 for plant purchases
4.7.1	Method of Payment	Periodically in accordance with Alternative B (clause 4.13)
	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	
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	
6.5.1	Insurance – liability of Employer	N/A
6.7 and Schedule 3	Works Insurance – Insurance Options applicable	Schedule 3: Insurance Option C applies (as amended in Appendix A)
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.)	
	Where Insurance Option C applies and cover is to be provided under the Contractor's annual policy (paragraph C.2), the annual renewal date is (as supplied by the Contractor)	
	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 (as amended)
6 10 and Schedule	Terrorism Cover - details of the	Pool Re Cover is required

3	required cover (Unless otherwise stated, 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, not a 'Large Project'
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.)	
8.11.1.1 to 8.11.1.6	Period of suspension (If none is stated, the period is 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	The Chairman of the Technology and Construction Solicitors' Association

By signing below, the Contractor confirms that this Contract is irrevocably and unconditionally released to the Employer for completion.

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

The CORPORATE SEAL of the )	
SECRETARY OF STATE FOR )	
EDUCATION herewith affixed and )	
authenticated )	
Authorised by	
the Secretary of	
State -	
Full name (Block	<b>1</b>
Capitals)	
	100
EXECUTED AS A DEED by WILLMOTT DIXON	

CONSTRUCTION LIMITED acting by a Director in the presence of a witness:

Director Signature:

Witness Signature: Witness Name: Witness Occupation: Witness Address:



# **APPENDIX 1**

# Schedule of Amendments to Conditions of Contract

1.1	Definitions	
	nd existing definitions and insert n	ew definitions, as follows:
Asbe	stos	has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632;
Build	ling/Buildings	any building or other erection at any of the Sites;
CDM	Regulations	the Construction (Design and Management) Regulations 2015 and any modification or replacement of the same;
Cons	sents	means any planning permissions referred to in the Employer's Requirements or any other planning permissions relating to the Works, the approvals of reserved matters relating to the conditions attaching to any planning permissions referred to in the Employer's Requirements of any other planning permissions relating to the Works, any obligation under section 106 Town and Country Planning Act 1990, section 38 of section 278 Highways Act 1980 or section 104 Water Industry Act 1991, and all other permissions, consents, approvals, licences certificates, and permits whether of a public of private nature as may be necessary lawfully to commence, carry out and complete the Works;
Cons	struction Programme	the programme for the carrying out and completion of the Works;
Cont	ract	the Articles, Contract Documents, Conditions Schedule of Amendments any other documen forming part of this Contract;
Cont	ract Particulars	Insert at the end of the definition after the word Parties "each as may be amended by the Schedule of Amendments";
Cont	amination	all or any pollutants or contaminants, including any chemical or industrial, radioactive dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
COV	ID-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:

- 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, selfisolation or similar, required; or
- shortages of plant or materials due to delays in their manufacture, distribution or delivery to Site; or
- 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.

the Data Protection Act 1998 and all other applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including, on and from 25 May 2018, the GDPR, and the LED together with all legally binding guidance and codes of practice issued or adopted by a regulator (or group of regulators) with jurisdiction over the data processing arrangements contemplated in this Contract;

the protocol set out in the Employer's Requirements identifying the obligations and responsibilities of the parties in relation to the removal of items from the Existing Buildings and their relocation and installation in the New Buildings or Refurbished Buildings (as appropriate);

means those rates and/or methodologies set out in the Employer's Requirements to be applied when developing the Section Sums for any additional Works under this Contract;

means those policies as set out in Annex 7 to this Schedule of Amendments;

the buildings shown on the plans in Annex 14 prior to the relevant Completion Date but excluding any new facilities comprising the

Decant Protocol

**Data Protection Law** 

**Development Parameters** 

**Employer's Policies** 

**Existing Buildings** 



#### Works;

the documents in the Employer's Requirements and/or Contractor's Proposals relevant to external envelope, specifically, specifications and drawings setting out the detailed design for the Works and specifying all systems, methods, products and materials to be used in the construction and delivery of those external walls of the Works (including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in and forming part of the Contractor's Proposals);

means any unpredictable occurrence which is beyond the responsibility and control of either Party, attributable either to the forces of nature or to other circumstances not confined in their effects wholly or principally to the Parties, the Sites or the Works;

the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

that degree of skill, care, prudence and foresight which would ordinarily be expected from time to time from a skilled and experienced building contractor under the same or similar circumstances;

Law Enforcement Directive (Directive (EU) 2016/680);

the building contract between the Employer and the Contractor dated 1 September 2022 relating to strip out works, preliminaries, and early procurement of long lead plant and equipment items (together with high level MEP services installation to Levels 7 and 8);

has the meaning set out in clause 2.39;

any Buildings constructed pursuant to this Contract;

a power, utilities or services outage resulting in partial or full evacuation of a Building;

the Contractor's parent company named in the Framework Agreement;

personal data as defined in the Data Protection Law which is supplied to the Contractor by the Employer or obtained by the Contractor in the

course of performing the Works;

has the meaning set out in Article 10.4;

a stage of completeness of the Works which allows the Sites to be occupied and in which:

- there are no apparent deficiencies or defects and no incomplete items of work which would or could
  - compromise the health and safety of persons entering and/or occupying the Property; and/or
  - given their cumulative number and/or nature, have more than a trivial impact on the beneficial occupation and use of the Property, by reason of their rectification or completion; and
- (b) the Site has been substantially cleared of all temporary buildings, builders' plant and equipment, unused materials and rubbish

provided that where the Contract Documents expressly state that the commissioning, testing and/or adjustment of any mechanical or electrical services installations forming part of the Works is to be completed before Practical Completion of the Works is to be regarded for the purposes of this Contract as achieved, then the Works shall not be considered to have achieved Practical Completion for the purposes of this Contract until such commissioning testing and/or adjustment is completed as the Contract Documents require:

the pre-construction services agreement between the Employer and the Contractor dated 6 July 2022 relating to the provision of preconstruction services;

- (a) offering, giving or agreeing to give to any servant of the Employer any gift or consideration of any kind as an inducement or reward:
  - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the

PI Insurance Practical Completion

Pre-Construction Services Agreement

Prohibited Act

Employer; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Employer;
- (b) entering into this Contract or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Employer;
- (c) committing any offence:
  - under the Bribery Act 2010;
  - under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Employer; or

defrauding or attempting to defraud or conspiring to defraud the Employer;

delete definition

the Existing Buildings shown in the plans in Annex 14 to be refurbished or remodelled (including any demolition) pursuant to this Contract:

the schedule of additional amendments, modifications and changes to the Conditions as set out in this Appendix 1;

the agreed derogations from the Employer's Requirements as set out in the Contractor's Proposals;

the plan or plans of the Sites set out in Annex 14;

Purchaser Refurbished Buildings

Schedule of Amendments

Schedule of Clarifications

Site Plan(s)

Sites	the work area or areas edged red on the relevant Site Plan(s) together with the Buildings or relevant part(s) of the Buildings within the aforementioned work areas and the service ducts and media for all utilities and services serving the Buildings or relevant part(s) of the Buildings;
Sub-Contractor	any person engaged as an independent contractor by the Contractor to carry out and complete all or any part of the Works;
Works Insurance Policy	delete "under whichever of Insurance Options A, B or C applies" and replace with "by the Contractor"
VAT	delete the definition and substitute "value added tax chargeable under the Value Added Tax Act 1994 (as amended, extended or re-enacted) and any similar or replacement tax".

## Contracts (Rights of Third Parties) Act 1999

## 1.6 Delete and substitute

"This Contract 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 a successor to or an assignee of the rights of the Employer is deemed to be a party to this Contract.

## Effect of Final Account and Final Statement

1.8.1.1 Insert "Not Used" in lieu of existing clause.

## Effect of payments other than payment of Final Statement.

1.9 Insert "No comment, notice, certificate, instruction, statement or" in lieu of "Save as stated in clause 1.8 no" in line 1.

Delete "of itself" in line 1.

## **General obligations**

## 2.1.5 Insert as 2.1.5

"In performing his obligations under this Contract, the Contractor shall, and shall ensure that each of its sub-contractors shall, comply with the Modern Slavery Act 2015 and shall have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance"

## **Other Works**

## 2.1.6 Insert as 2.1.6

"The Contractor acknowledges that other works (which may or may not be carried out by other contractors) will be carried out at the Site (Other Works). The Contractor shall ensure that the Works and the Other Works are co-ordinated, programmed and integrated so as to avoid any addition to the Contract Sum and/or any delay. The Contractor shall not be entitled to any addition to the Contract Sum or to any adjustment of the Completion Date of the Works in relation to the Contractor carrying out its obligations under this clause, nor as a result of the Contractor's co-ordination, programming and/or integration of the Works and/or

the Other Works, or its working methods or any other matter within the Contractor's control, or for any act, error, omission, negligence, breach or default by or on behalf of the Contractor or any Contractor's Person in relation to this clause and/or the Other Works."

#### Materials, goods and workmanship

- 2.2.1 Insert "shall be new and of such kinds and of such quality to enable the Contractor to comply with the Contract Documents" in lieu of "as described in the Contractor's Proposals or other Contractor's Design Documents" in line 3.
- 2.2.2 Insert "shall be of such quality to enable the Contractor to comply with the Contract Documents" in lieu of "as described in the Contractor's Proposals or other Contractor's Design Documents" in line 3.
- 2.2.5 Insert "ensure that" in lieu of "encourage" in line 1. Insert "are" in lieu of "to be" in line 1.

## **Prohibited materials**

- 2.2.6 Insert new clause: "The Contractor shall not specify or approve for use, use or permit to be used in connection with the Works any materials which at the time of specification or use (as the case may be):
- 2.2.6.1 are known to be deleterious (either to health and safety or to the durability of the Works); or
- 2.2.6.2 contravene any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- 2.2.6.3 do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of specification or use."

Insert new clause 2.2.A

## Outages

- 2.2A.1 Notwithstanding any other provision of this Contract, the Contractor shall, in carrying out and completing the Works take all reasonable but commercially prudent endeavours to avoid causing any Outages.
- 2.2A.2 The Contractor agrees and accepts that, in the event of an Outage caused directly by the Contractor's or its Sub-Contractors' error, negligence, omission, the Employer shall be entitled to deduct a sum from the Contract Sum calculated as
- 2.2A.3 The maximum total sum that the Employer is able to deduct for the total of all Outages is limited to a total sum of **Control of the project**, including any programme extensions, and is the maximum total that can be deducted.

## **Date of Possession - progress**

2.3 Insert "on licence" following "Contractor" in line 2.

## Work not forming part of the Contract

Insert new clause 2.6.A.1:

2.6.A.1 The Contractor shall in accordance with the requirements of the Employer afford reasonable facilities for any Employer's Persons and their workmen and of any other properly authorised authorities or statutory corporations or statutory bodies who may be employed in the execution on or near the Sites of any work not in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

Insert new clause 2.6.A.2:

2.6.A.2 It is agreed and declared for the purposes of clause 2.25.6 (but without limitation) that the Contractor could reasonably foresee the activities of the contractors and workmen of the Statutory Undertakers referred to in the Employer's Requirements on or near the Sites or parts thereof throughout the period of the Contract.

#### Insert new clause 2.6.A.3:

2.6.A.3 The Contractor shall provide attendance for such Employer's Persons and workmen as may be directed by the Employer (acting reasonably).

Insert new clause 2.6.A.4:

- 2.6.A.4 For the purposes of clause 2.6.A.3, attendance shall be deemed to cover all expenses incurred by the:
  - 2.6.A.4.1 planning, programming and co-ordinating his work with that of such Employer's Persons and workmen;
  - 2.6.A.4.2 accepting delivery, unloading and storing material for the Employer's Persons as required; and
  - 2.6.A.4.3 allowing the Employer's Persons space for their site offices and all reasonable access and facilities for the proper execution of their work including the free use of craneage, scaffolding, ladders, stores, messrooms, latrines, site services, including background lighting and distributing boards for the Employer's Persons own localised lighting, and providing the necessary watching and lighting, provided that these facilities are normally available on-site at the time."

## Contract Documents

2.7 Delete text of sub-clauses 2.7.1 and 2.7.2 and replace with "not used"

#### **Construction Information**

- 2.8A Insert as clause 2.8A:
- "2.8A.1 The Contractor shall produce the Construction Programme to the Employer prior to the Date of Possession (or, if there are Sections, prior to the first of the Dates of Possession) and shall thereafter revise the Construction Programme as appropriate from time to time (and if and whenever there is any material delay to the execution of the Works) so as to minimise or avoid any anticipated delay or disruption to the carrying out of the Works, and shall provide the Employer with the revised Construction Programme.
- 2.8A.2 Each month the Contractor shall report to the Employer in writing comparing the progress of the Works with the Construction Programme current at that time, and promptly advise the Employer of any delay or disruption to the Works, setting out the measures he is taking or proposes to take to minimise or make good such delay or disruption".

## Site boundaries

2.9 Insert after "boundaries of the site" on line 1:

"The Contractor shall be deemed to have carried out a site survey, the accuracy of which is entirely the Contractor's responsibility. The setting out of the survey and all aspects of the Works dependent thereon shall be the Contractor's responsibility and no costs will be borne by the Employer in connection with correcting any errors therein."

Divergence in Employer's Requirements and definition of the Sites boundary

2.10.1 Delete clause and insert:

"Where there is a divergence between the Employer's Requirements and the definition of the Sites boundary given as provided in clause 2.9 it is to be corrected by the Contractor at his own expense."

#### Preparation of Employer's Requirements

2.11 Delete.

## Employer's Requirements – inadequacy

Insert new clause 2.12 in lieu of existing clause 2.12:

2.12 "If either Party finds that any design in the Contract Documents contains any defect or inadequacy (other than a defect or inadequacy in the Employer's Requirements which is corrected by the Contractor's Proposals but including any non-compliance with Statutory Requirements) it shall so notify the other Party and the Contractor shall inform the Employer in writing of his proposals for removing such defect or inadequacy, and with the Employer's consent (which shall not be unreasonably withheld or delayed) the Contractor shall remove such defect or inadequacy in accordance with such proposals, at the Contractor's cost."

#### Notification of discrepancies etc

2.13 Delete.

Discrepancies in documents

#### 2.14 Delete and substitute:

\*2.14.1 If either Party finds any discrepancy in or between any of:

- (a) the Employer's Requirements;
- (b) the Contractor's Proposals;
- (c) any instruction for a Change; or
- (d) the Schedule of Clarifications,

he shall immediately give written notice of the discrepancy to the other Party.

- 2.14.2 Where such discrepancy is in the Employer's Requirements but is resolved by the Schedule of Clarifications, the Schedule of Clarifications shall prevail. Where such discrepancy is not resolved by the Schedule of Clarifications, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer's consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor's cost and no extension of time shall be given pursuant to clause 2.25.
- 2.14.3 Where such discrepancy is between the Employer's Requirements and the Contractor's Proposals or within the Contractor's Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer's consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor's cost and no extension of time shall be given pursuant to clause 2.25.
- 2.14.4 Where the discrepancy results from an instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy.
- 2.14.5 Nothing in this clause 2.14 shall relieve the Contractor of the obligation to comply with Statutory Requirements nor of his responsibility for the design of the Works."

#### Divergences from Statutory Requirements

2.15.1 Insert "and with no extension of time pursuant to clause 2.25" in lieu of ", save as provided in clause 2.15.2," in line 3 of the second paragraph.

2.15.2.1 In line 1 after "Statutory Requirements" insert "or the requirements of the fire officer".

In line 2 after "the Works" **delete** the remainder of the sub-clause and **insert**: "the Contractor shall inform the Employer in writing of its proposed alteration or modification and with the Employer's consent (which shall not be unreasonably withheld or delayed) the Contractor, (entirely at its own cost unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the alteration or modification unless instructed by the Employer not to do so".

- 2.15.2.2 Insert "Employer's Requirements or the" prior to "Contractor's Proposals" in line 1. In line 3 after "Development Control Requirements" delete the remainder of the subclause and insert. "the Contractor shall inform the Employer in writing of its proposed alteration or modification and with the Employer's consent (which shall not be unreasonably withheld or delayed) the Contractor, (entirely at its own cost unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the alteration or modification unless instructed by the Employer not to do so".
- 2.15.2.3 In line 2 after "Requirements" delete the remainder of the sub-clause and insert: "the Contractor (entirely at its own cost unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the amendment".

## Design Work - liabilities and limitation

2.17.1 Insert "Employer's Requirements and" after "comprised in the" in line 1.

After "the Contractor" in line 4 **delete** the remainder of the sub-clause and **insert**. "has exercised and will continue to exercise in the performance of the Contract all the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer experienced in carrying out design such as that required under this Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works."

#### 2.17.2 Delete and insert:

"Without derogation from any other provision in this Contract the Contractor shall be fully responsible in all respects for the design of the Works including all design work proposed by or on behalf of the Employer prior to the date of this Contract and forming part of the Employer's Requirements."

#### 2.17.3 Delete and insert:

"The Contractor shall not be excused liability for breach of any of the warranties set out in clause 2.17.1 by reason of the fact that he may have exercised all due skill, care and diligence in the selection of the persons to whom he delegated his responsibilities."

#### Insert new clause 2.17.4

2.17.4 The aggregate liability of the Contractor to the Employer for any matters arising in connection with the performance of its obligations under this Contract shall not except as set out below at clause 2.17.5 exceed the amount, if any, stated in the Contract Particulars.

Insert new clause 2.17.5

- 2.17.5 The Contractor shall not exclude or restrict its liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability under clause 2.17.4 has been reached or exceeded:
  - 2.17.5.1 payments made by the Contractor to the extent corresponding payments are either received by the Contractor pursuant to insurance policies required to be effected and maintained in accordance with section 6 of this Contract (other than PI Insurance) or would have been received but for the failure of the Contractor to maintain such policies in accordance with section 6 of this Contract or to make a claim under such policies;
  - 2.17.5.2 the Contractor's liability under clause 2.29;
  - 2.17.5.3 the Contractor's liability in the event he abandons the Works;
  - 2.17.5.4 the Contractor's liability in the event of any fraud, wilful misconduct of direct employees of the Contractor or of its Design Consultants, Sub-Contractors and sub-consultants, in each case to the extent employed or directed by the Contractor, fraudulent misrepresentation, abandonment, corruption or criminal conduct on the part of the Contractor;
  - 2.17.5.5 the Contractor's liability in respect of any employer's liability; and
  - 2.17.5.6 the Contractor's liability in respect of personal injury or death.

Insert new clause 2.17A: "Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract, it is hereby expressly agreed and acknowledged that no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the Works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor."

## Materials and goods - on site

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

#### Materials and goods – off site

2.22 Renumber clause 2.22 as 2.22.1 and then insert new clause 2.22.2:

"The Contractor shall ensure that the Listed Items are either set apart or have been clearly and visibly marked individually or inset by letters or figures or by reference to a predetermined code at the premises where they have been manufactured or assembled or stored. The Contractor shall ensure that the Listed Items are identified as being the property of the Employer."

2.23 After "delay" insert ", notice".

After "further delay" insert ", further notice".

Insert new clause 2.24A

## "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. "

## Fixing Completion Date

2.25.6.3 Insert "Save in respect of a Change properly instructed pursuant to clause 5.1.1.4" at the start of this sub-clause.

## **Relevant Events**

- 2.26.2.1 Delete text and replace with "Not used".
- 2.26.2.2 Delete "or 3.11".
- 2.26.5 In line 1, after "under clause 4.11" insert "or clause 8.10.3".
- 2.26.6 Insert at the end of clause 2.26.6: "or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract".
- 2.26.7 Insert at the end of clause "provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of such work as soon as is reasonably practicable after the date of this Contract so as not to delay or disrupt the Statutory Undertaker in relation to such works".
- 2.26.9 Insert at the end of the clause "but only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Sub-Contractor or supplier or their respective servants or agents."
- 2.26.11 Insert at the end of the clause "save where such events arise upon the Sites or concern the Contractor's employees and do not arise out of or in connection with a national labour dispute".
- 2.26.12 Insert at the end of the clause "provided such exercise or statutory power could not have been reasonably foreseen by the Contractor".
- 2.26.14 Delete and substitute "Force Majeure".
- 2.26.15 Insert new clause:

"the discovery of Asbestos in accordance with clause 11.4"

2.26.16 Insert new clause:

"the discovery of defects in the Refurbished Buildings, subject to the provisions of clause 12.3.2

2.26.17 Insert new clause:

"a COVID-19 Event."

## 2.26.18 Insert new clause:

"any change to the Fire Safety Strategy after the Base Date, required as a result of any direction, interpretation or requirement of any statutory body or relevant third party, including but not limited to any local authority, building control, or approved inspector and which affects the execution of the Works".

## Delay caused by Contractor's default

2.26A Insert as clause 2.26A:

"Notwithstanding any other provision under these Conditions, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor or of any Sub-Contractor or supplier of any tier, or of any of his or their employees or agents."

## Practical Completion

- 2.27 Insert "in the opinion of the Employer's Agent" following "When" in line 1.
- 2.27 In line 2, after "clauses 2.37 and 3.16", insert: "and the Contractor has complied with Article 15 and (if the Contractor is and remains the Principal Designer) he has complied with clause 3.16.2."

## Fire Safety

Insert new clause 2.27A: "Where and to the extent any method, system, design, product or materials that are expressly set out in the Fire Safety Strategy which (1) have been installed and fitted by the Contractor and (2) building regulation approval has been issued in relation to the relevant element of the Works, then the issue of such building regulation approval on practical completion of the Works shall be deemed conclusive evidence that such method, system, design products or materials comply with the requirements of this Contract in respect of all regulations connected with such approval, the Statutory Requirements and, in particular, the Building Regulations."

## Payment or allowance of liquidated damages

2.29.1 Delete sub-clause 2.29.1.2 and insert:

"the Employer has informed the Contractor in writing that he shall or may require the Contractor to pay or allow liquidated damages,"

2.29.2 Insert at the end of the clause: ", and the Employer's notice under clause 29.2 may also suffice as the Employer's notification under clause 2.29.1.2".

## Practical Completion date

2.31 Insert at the end of the clause "provided, however, that the Rectification Period for the Relevant Part shall extend until the issue by the Employer of the Notice of Completion of Making Good in respect of the whole of the Works".

## Defects etc – Relevant Part

2.32 Insert at the end of clause 2.32:

"Provided that the Employer shall not be required to issue such notice any earlier than 10 Business Days after the end of the Rectification Period applicable to such Relevant Part."

## Insurance - Relevant Part

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"

## Schedules of defects and instructions

- 2.35 In line 3 after "Contract" insert "or frost occurring before Practical Completion of the Works or relevant Section."
- 2.35.2 In line 3, delete "after delivery of that schedule or".

2.35 In the final paragraph after "Within a reasonable time" insert "(and in any event within a period of 10 Business Days or such longer period as the Parties may, acting reasonably, agree)"

#### Defects requiring urgent attention

2.35A Insert as clause 2.35A:

"In cases of urgency the Employer may require any matter notified under clause 2.35 to be made good within such period of time specified by the Employer as the circumstances require."

## Defects etc. at Practical Completion

2.35B Insert as clause 2.35B:

"The foregoing provisions of this clause 2.35 apply to any defects, shrinkages or other faults and to any items of incomplete work remaining at Practical Completion."

## Notice of Completion of Making Good

2.36 Insert to the end of clause 2.36:

"Provided that the Employer shall not be required to issue any notice to that effect any earlier than 10 Business Days after the end of the relevant Rectification Period."

## As built drawings

Delete clause 2.37 and insert the following:

- 2.37.1 "On or before and as a condition precedent to Practical Completion the Contractor shall without further charge supply to the Employer in relation to the Works drafts of:
  - 2.37.1.1 all operating and maintenance documents in accordance with the Employer's Requirements;
  - 2.37.1.2 originals of all warranties, guarantees and certificates or other documents then available in respect of plant equipment and fittings installed in the Works;
  - 2.37.1.3 a schedule listing the names and addresses of all Sub-Contractors, subconsultants, and suppliers who have been involved in the Works along with confirmation that all collateral warranties have been and/or are being procured from all Sub-Contractors and sub-consultants with design input;
  - 2.37.1.4 the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with; and
  - 2.37.1.5 the health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer's Requirements.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would, but for this provision, become due and payable under this Contract until the provisions of clause 2.37.1 have been complied with provided that the provisions of this clause shall not apply to any Retention payable to the Contractor prior to Practical Completion by virtue of clauses 2.31 and 4.18.2.

- 2.37.2 Within 4 weeks of the date of Practical Completion the Contractor shall without further charge to the Employer supply to the Employer in relation to the Works (save as for where they have already been provided pursuant to clause 2.37.1):
  - 2.37.2.1 one complete reproducible set of the as built drawings together with one electronic set uploaded to a dataroom as notified to the Contractor by the Employer;

- 2.37.2.2 one hard copy of the Construction Phase Plan together with one electronic set uploaded to a dataroom as notified to the Contractor by the Employer;
- 2.37.2.3 the original completion certificate issued by the relevant authority under the Building Regulations;
- 2.37.2.4 all correspondence and documentation relating to obtaining of the Consents together with the originals of the Consents and copies of all associated drawings plans and copies of all applications relative thereto;
- 2.37.2.5 evidence that all Consents have been obtained and complied with in full in relation to the Works;
- 2.37.2.6 the completed health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer's Requirements; and
- 2.37.2.7 written evidence that all appropriate documentation has been submitted to the BREEAM Assessor confirming that in the opinion of the Assessor the Works achieve the BREEAM rating set out in the Employer's Requirements.
- 2.37.3 If during the course of the Rectification Period errors are discovered in the drawings and information supplied by the Contractor in accordance with clauses 2.37.1 and 2.37.2 or if as a result of any adjustment or remedial work carried out during the course of the Rectification Period the said drawings and information no longer show or describe the Works as required by clauses 2.37.1 and 2.37.2 then the Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clauses 2.37.1 and 2.37.2 at no extra cost to the Employer.

## Copyright and use

## 2.38.2 Delete and insert:

"2.38.2 The Contractor grants to the Employer an irrevocable, non-exclusive royalty-free licence to use and reproduce the Contractor's Design Documents for the construction of the development and the advertisement, sale, letting, maintenance, repair, reinstatement, reconstruction and extension of it and to grant sub-licences in the terms of this licence but the copyright in the Contractor's Design Documents shall remain vested in the Contractor. The Contractor will not be liable for any use of the Contractor's Design Documents for any purposes other than those for which the same are or were prepared. The Employer shall on written request and upon paying a reasonable copying charge therefore, be entitled to be supplied by the Contractor with copies of the Contractor's Design Documents."

## 2.38.4 Insert new clause 2.38.5:

"The Contractor agrees on reasonable request that at any time and following reasonable written prior notice to give to the Employer or those authorised by him access to the Contractor's Design Documents and to provide a maximum of three copies (including copy negatives and electronic copies) thereof at the Contractor's expense."

## 2.38.5 Insert new clause 2.38.6:

"The Contractor warrants to the Employer that the Contractor's Design Documents (save to the extent duly appointed Sub-Contractors have been used to prepare the same) are his own original work and that in any event their use or the use of any proprietary designs or products prepared by others in connection with the Works will not infringe the rights of any third party. The Contractor further warrants that where duly appointed Sub-Contractors have been used their work will be original and that the Contractor will obtain the necessary consents in relation to clause 2.38.2. If the use of the Contractor's Design Documents as specified in clause 2.38.2 is found to infringe the rights of any third person, the Contractor shall indemnify the Employer against all resulting costs, damages and expense."

2.38.6 Insert new clause 2.38.7:

"The Contractor hereby waives and agrees not to assert (and to procure that any Sub-Contractors do likewise) any moral rights in the Contractor's Design Documents under Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modifications of it."

Insert new clauses 2.39 - 2.54

2.39 Not used.

## **Conduct of Staff and Security Arrangements**

- 2.40.1 Whilst engaged at the Sites the Contractor shall and shall procure that its staff and the staff of any sub-contractor of any tier shall comply with any Employer's Policies relating to the conduct of staff and security arrangements.
- 2.40.2 The Employer (acting reasonably) may:
  - 2.40.2.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any sub-contractor of any tier involved in the provision of the Works (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Employer shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
  - 2.40.2.2 where the Employer has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Works is undesirable, require the exclusion of the relevant employee from the relevant location(s).

## Admission to the Sites

2.41 Not used.

## **Refusal of Admission**

2.42 The Employer reserves the right to refuse to admit to the Sites or to the Existing Buildings any person employed or engaged by the Contractor or any sub-contractor of any tier, whose admission would, in the opinion of the Employer, present a risk to themselves or an Employer's Person or property, and shall not be obliged to give any reasons for such refusal.

## Decision to Refuse Admission

2.43 The decision of the Employer as to whether any person is to be refused admission to the Sites pursuant to clause 2.42 shall be final and conclusive.

## Removal from Sites

2.44 The Contractor shall comply with and/or procure compliance with any notice issued by the Employer from time to time requiring the removal from the Sites of any person employed thereon who in the opinion of the Employer acting reasonably is not acceptable on the grounds of risk to themselves or any Employer's Person or property and that such persons shall not be employed again in connection with the Works without the written consent of the Employer.

## Minimising Disruption to the Employer

- 2.45 Insofar as the carrying out of the Works affects or may affect the Employer, the Contractor shall procure that (subject to the terms of this Contract) the Works are carried out:
  - 2.45.1 so as to minimise any disruption to the employees and visitors of the Employer working in and around the Site during the Works; and
  - 2.45.2 in compliance, to the extent reasonably practicable, with the Construction Programme.

#### 2.46 Not used.

#### Stop Notices

- 2.47.1 If, in the opinion of the Employer, the Contractor or a Contractor's Person is not at any time complying with its obligations under clause 2.45 and the performance of the Works is causing interference with or otherwise disrupting the people working in and around the Site during the Works, the Employer may give a written instruction to the Contractor (a Stop Notice) to cease such parts of the Works and/or take or refrain from taking such other steps as are necessary to cease interference until such time as reasonably decided by the Employer.
- 2.47.2 The Contractor shall comply immediately with any Stop Notice issued pursuant to clause 2.47.1.
- 2.47.3 If the Employer issues a Stop Notice, the Employer shall, not later than the next Business Day following the day on which such Stop Notice was given, confirm in writing to the Contractor:

2.47.3.1 the fact that the Stop Notice was given and the time at which it was given;

2.47.3.2 the nature and extent of the Stop Notice;

2.47.3.3 what was, in the opinion of the Employer, the nature of the disruption or interference; and

2.47.3.4 any other relevant information.

- 2.47.4 If it is subsequently discovered that the Contractor was not in breach of its obligations under clause 2.45.1, the giving of a Stop Notice shall constitute grounds for an extension of time and loss and expense and the provisions of clauses 2.25, 4.19 and 4.20 of the Contract shall apply, provided always that this shall not absolve the Contractor from its obligations immediately to comply with any such Stop Notice.
- 2.47.5 The Contractor shall take all reasonable steps to mitigate the consequences of service of a Stop Notice on its ability to perform its obligations under this Contract.
- 2.47.6 Any dispute in relation to or arising out of this clause 2.47 may be referred by either Party for resolution under section 9 provided always that any such reference shall not absolve the Contractor from its obligation immediately to comply with any Stop Notice in accordance with this clause 2.47.

#### 2.48 Not used

### 2.49 Not used

### 2.50 Operations on the Sites

- 2.50.1 The Contractor shall provide to the Employer's Agent if and as the Employer's Agent requests in writing, details of the Contractor's proposals for the means of access to the Sites during the construction period, vehicle parking facilities on the Sites, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- 2.50.2 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.
- 2.50.3 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.
- 2.50.4 The Contractor shall:
  - 2.50.4.1 keep all enclosures around the Sites clear of graffiti, posters and other unauthorised attachments, so far as is practicable;
  - 2.50.4.2 implement measures for the regulation of traffic to and from the Sites including wheel-washing procedures and street cleaning and comply with any requirements of the police or highway authorities with regard to local traffic arriving at and departing from the Sites;
  - 2.50.4.3 obtain for itself any licences required to oversail any land outside the Sites boundaries;
  - 2.50.4.4 make good or meet the cost of making good all damage caused to roads, footpaths and property adjoining the Sites and to any services, arising from the carrying out of the Works; and
  - 2.50.4.5 the Contractor shall take all reasonable steps to ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works or of any obligation pursuant to clause 2.35.

### 2.50A As-built data and energy performance

2.50A.1At or before Practical Completion of the Works or any Section, the Contractor shall without charge provide to the Employer an energy performance certificate and a recommendation report for the Works or Section, in conformity with regulation 29 of the Building Regulations 2010 and any modification or replacement of the same.

### 2.51 Duty of confidentiality

The Parties shall treat the details of this Contract and any information made available in relation thereto as private and confidential and neither of them shall publish or disclose the same of any particulars thereof (save in so far as may be necessary for the purposes of the Contract or as expressly required by any statutory or legal obligation) without the previous consent of the other, provided that nothing in this clause shall prevent the publication or disclosure of any such information that has come within the public domain otherwise than by breach of this clause.

### 2.52 Data Protection

- 2.52.1 General
  - 2.52.1.1 Unless the context otherwise requires, the terms "controller", "data processor" and "data controller" have the meanings given in Data Protection Law.
  - 2.52.1.2 The Parties agree in relation to all Personal Data, the Contractor shall process Personal Data as an independent controller in its own right. Nothing in this Contract or the arrangements contemplated by it is intended to construe either party as joint data controllers with one another, with respect to the Personal Data.
  - 2.52.1.3 The Parties acknowledge that for the purposes of Data Protection Law, the Contractor is a data controller and it is the data processor of Personal Data in accordance with its obligations pursuant to carrying out the Works and that it is not anticipated that it will act as a data processor for the Employer under the terms of this Contract.
  - 2.52.1.4 The Contractor will at all times comply with the Data Protection Law as a data controller, if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Law covering the data processing to be performed by it in connection with the Works.
  - 2.52.1.5 The Contractor will, and it will procure that any sub-contractor whose services it uses in order to perform the Works, only undertake such processing of Personal Data as is reasonably required in connection with the Works and it will, and it will procure that any sub-contractor will, at all times comply with Data Protection Law in relation to its, and their, in the case of any sub-contractors, obligations as data processors.

# 2.52.2 No Disclosure

- 2.52.2.1 The Contractor shall not disclose Personal Data to any third parties other than:
- to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works; or
- (b) to the extent required under a court order,

provided that disclosure under clause 2.52.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 2.52.2.1 and that the Contractor shall give notice in writing to the Employer of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under clause 2.52.2.1(b) immediately upon becoming aware of such a requirement.

2.52.2.2 The Contractor shall bring into effect and maintain all adequate and appropriate technical and organisational measures and controls to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, theft, use or disclosure of Personal Data and shall protect against any anticipated threats or hazards to the security or integrity of the Personal Data, and detect and prevent unauthorised processing of, or unauthorised access to the Personal Data, including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

2.52.2.3 The Employer may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor. Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Employer can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Law.

### 2.52.3 Indemnity by the Contractor

The Contractor shall indemnify and keep indemnified the Employer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 2.52 or failure to comply with Data Protection Law by the Contractor and/or any sub-contractor of the Contractor.

### 2.53 Not used

# 2.54 Contractor's due diligence

The Contractor has had sufficient opportunity to and shall be deemed to have inspected and examined the Sites, its surroundings and generally have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing and affecting the Contract Sum. The Contractor shall not have or make any claim whether in contract, tort or by way of misrepresentation or otherwise in respect of information provided or statements made by or on behalf of the Employer in respect of such risks, contingencies or circumstances relating thereto.

### Access for Employer's Agent

3.1 Delete "so far as possible" in lines 4 and 5.

# Person-in-charge

3.2 Insert at the end of the clause: "Notwithstanding the provisions of clause 2.42 if at any time before the issue of the Notice of Completion of Making Good the Employer shall request the removal of any of the Contractor's personnel from the Works for reasons of negligence, incompetence or misconduct, the Contractor shall promptly remove such personnel and replace him or them with persons acceptable to the Employer".

# **Project meetings**

3.2A Insert as clause 3.2A:

"The Contractor shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals and representatives of the Employer and of the Employer's other consultants (and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings".

### Consent to sub-contracting

3.3.2 Insert "the whole or any part of" following "sub-contract" in line 1.

# Conditions of sub-contracting

- 3.4.2.5.2 In line 3 delete "14" and substitute "7"
- 3.4.2.6 Insert new clause: "that in the case of any sub-contracting of the design of the Works the Sub-Contractor shall throughout the duration of the Works and for a period of 12 years following the date of Practical Completion of the whole of the Works maintain professional indemnity insurance cover with a reputable insurance company with a limit of indemnity of not less than that amount stated in the relevant sub-contract in respect of any claims which may be made against the Sub-Contractor in relation to the design of the Works."

# Non-Compliance with Instructions

3.6 Insert at the end of the clause: "or such costs may be recoverable from the Contractor by the Employer as a debt".

### Instructions requiring Changes

3.9.1 In line 1 delete from the words "and provided that the ....." to the end of clause 3.9.1.

### Instructions requiring Variations

Insert new clause 3.9A: "Where the Employer issues instructions relating to the insertion of any additional Works which are to be valued using the Development Parameters, the Parties shall use the form of variation appended to this Contract at Annex 15 to vary this Contract (with such amendments as may be reasonably agreed between the Parties).

### Instructions on Provisional Sums

3.11 Insert at the end of the clause: "The Contractor shall not be entitled to any extension to the Completion Date for any such instructions."

# Work not in accordance with the Contract

- 3.13.1 After "removal from the Sites" insert "or rectification".
- 3.13.2 Delete "(to which the proviso in clause 3.9.1 applies)" in line 1.
- 3.13.3 In line 6 delete from "but clauses 2.25 and 2.26.2.3" to the end of the clause and substitute "clauses 2.25 and 2.26.2.3 shall not apply to any instructions issued under this clause."

# **CDM Regulations**

3.16.6 Insert new clause:

"Where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before Practical Completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations without charge."

# Items included in adjustment

4.2.5 Insert at the end of the clause "Provided always that the Contractor shall not be entitled to any payment for increased costs of preliminaries arising from the expenditure of any Provisional Sum."

### VAT

- 4.4 Insert the following in lieu of existing clause 4.4:
- 4.4.1 In this clause 4.4, the following definitions shall apply:
  - 4.4.1.1 HMRC means HM Revenue & Customs;
  - 4.4.1.2 Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);
  - 4.4.1.3 Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier;
  - 4.4.1.4 Supply means a supply made for VAT purposes under or in connection with this Contract by the Contractor and Supplies shall be construed accordingly; and
  - 4.4.1.5 Tax Point means the time of supply for VAT purposes as defined in Regulation 93 of Part XI of the VAT Regulations 1995.
- 4.4.2 In respect of the Supplies made with a Tax Point, for VAT purposes, before 1 March 2021, the provisions of clauses 4.4.1 to 4.4.4 (inclusive) only of this clause 4.4 shall apply. In respect of Supplies made with a Tax Point on or after 1 March 2021, the provisions of clauses 4.4.1 to 4.4.6 (inclusive) of this clause 4.4 shall apply.
- 4.4.3 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.4 notwithstanding any other provision of this Contract.
- 4.4.4 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Contract is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:
  - 4.4.4.1 the time for payment or provision of the consideration; and
  - 4.4.4.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.
- 4.4.5 The Employer confirms that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for the Contractor to account for and pay VAT to HMRC.
  - 4.4.6 Where the Contractor has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Employer in writing that:
    - 4.4.6.1 the Reverse Charge did apply in respect of those Supplies, and

4.4.6.2 notwithstanding that the Contractor has accounted for VAT to HMRC in respect of those Supplies, the Employer has to account for VAT under the Reverse Charge on those Supplies.

the Employer shall provide written notification to the Contractor of HMRC's decision that the supply should have been treated as subject to the reverse charge. Any amount of overcharged VAT shall be refunded by the Contractor to the Employer within 28 days following repayment to the Contractor of the overcharged VAT by HMRC (either via a correction in the VAT return or via a voluntary disclosure).

### Interim payments

4.9.1 Insert "21 days" in lieu of "14 days" in line 1.

# Pay Less Notices and other general provisions

4.10.4 Delete and substitute:

"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 of equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies include or consist of any Retention."

# Ascertainment - Alternative B

4.13.1.2 Insert before the semi-colon at the end of the sub-clause:

"and provided further that the Contractor has supplied to the Employer reasonable evidence that property in such materials or goods will pass to the Employer".

- 4.13.3 Insert "and" after "clause 2.13.1 in 4.13.3.2 and insert new limb:
  - ".3 any amount deductible under clause 2.2A."

# **Rules on treatment of Retention**

# 4.16 Delete and substitute:

"The Employer shall be under no fiduciary obligation with regard to any Retention and shall be under no obligation to set aside in a separate account any amount representing Retention."

# Matters materially affecting regular progress

4.19.1 After "subject to clause 4.19.2" insert ",4.19.3 and 4.19A".

4.19.3 Insert new clause:

"The Contractor shall not be entitled to reimbursement for any loss and/or expense that he has not made reasonable and proper efforts to avoid or reduce such loss and expense.

# 4.19A Insert new clause:

"Any delay in the regular progress of the Works caused by a matter or matters referred to in clause 4.21 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account."

### **Relevant Matters**

- 4.21 Insert: "(but only to the extent that such matters are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Sub-Contractor or supplier or their respective servants or agents)" following "Relevant Matters" in line 1.
- 4.21.5 Insert at the end of clause 4.21.5:

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

4.21.6 Insert new clause 4.21.6

"the discovery of Asbestos in accordance with clause 11.4".

4.21.7 Insert new clause 4.21.7

"the discovery of defects in the Refurbished Buildings in accordance with clause 12.3.2".

# Reservation of Contractor's rights and remedies

4.23 Delete clause and insert the following: "Reimbursement of the Contractor for loss and/or expense under clauses 4.20, 4.21 and 4.22 shall be deemed to be full compensation for the Contractor in respect of the matters for which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law."

### **Definition of Changes**

5.1.1.4 Insert new clause: "the acceleration of the Completion Date for the Works or Section"

Valuation of Changes and Provisional Sum work

5.2 Delete text of clause 5.2.3 and replace with "Not used."

Insert new clause 5.2A:

"The value of all work executed by the Contractor in accordance with the Employer's instruction as an expenditure of any Provisional Sum included in the Employer's Requirements shall be such amount as is determined by the Employer in accordance with the methodology set out the Employer's Requirements or, where no methodology is included in the Employer's Requirements, the amount valued (a "Valuation" in accordance with clauses 5.4 to 5.7 ("the Valuation Rules")). The Contractor shall not be entitled to any payment for increased cost of preliminaries arising from the expenditure of any Provision Sum."

### Contractor's liability - personal injury or death

6.1 In line 3, after "Works", insert:

"or of any other obligations pursuant to section 2 or section 3 of the Conditions".

Contractor's liability – loss, injury or damage to property

Renumber clause 6.2 as 6.2.1:

6.2.1 In line 1 delete, "Subject to clause 6.3, the" and insert "The".

Insert "(including any expense, liability, loss or claim arising from but not limited to obstruction, trespass, nuisance or interference with any right of way, light, air or water)" following "personal" in line 3.

In line 4, after "Works", insert:

"or of any other obligations pursuant to section 2 or section 3 of the Conditions".

Insert new clause 6.2.2:

"Without prejudice to the generality of clause 6.2.1 the Contractor shall at all times prevent any public or private nuisance (including any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on a public highway) or other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions and shall defend or at the Employer's option assist the Employer in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise. The Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever and howsoever arising resulting from any such nuisance or interference, save only where such nuisance or interference is a consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Contractor or any Sub-Contractor or supplier) and which could not have been avoided by the Contractor using all reasonable and practical For the avoidance of doubt the Employer may issue to the Contractor such means. instructions as he considers necessary if any injunction is granted or Court Order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Change."

Insert new clause 6.2.3:

"Without prejudice to the Contractor's obligations under clause 6.2.2, if the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions is likely to necessitate any interference (including the oversail of any tower crane jib) with the right of adjoining or neighbouring land owners, tenants or occupiers, then the Contractor shall without cost to the Employer obtain the prior written agreement of such land owners, tenants or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement without cost to the Employer."

### Loss or damage to Existing Structures or their contents

- 6.3.1 Delete clause 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."
- 6.3.2 Delete clause and replace with "Not used".
- 6.3.3 Delete clause and replace with "Not used".

### Contractor's insurance of liability of Employer

6.5.1 Delete "If the Employer's Requirements" and insert "If the Contract Particulars"

### Related definitions

- 6.8 In the definition of Joint Names Policy, after "Contractor", insert: "and any one or more third persons specified in writing by the Employer to the Contractor,
  - being persons having or acquiring an interest in or an organisation providing finance in connection with the Sites or the Works".

### 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"

### 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"

### Terrorism Cover - non-availability - Employer's options

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

### Loss or damage – insurance claims and reinstatement

- 6.13.3 In line 3 delete ", and from any policies covering Existing Structures or their contents that are effected by the Employer"
- 6.13.5 Delete "Where Insurance Option A applies:" and replace with "In respect of the Works Insurance Policy"
- 6.13.6 In line 1 delete "Insurance Option B or paragraph C.2 of Insurance Option C applies or where" and insert the word "not" between the words 'shall' and 'be' in the second line.

### Loss or damage to Existing Structures - right of termination

6.14 In line 2 delete "either Party may, if it is just and equitable" and replace with "the Employer may"

In line 3 delete "other" and replace with "Contractor"

### 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"

## Professional Indemnity Insurance

### 6.15 Delete and substitute:

"6.15.1 The Contractor shall maintain PI Insurance covering (amongst others) all its liability hereunder in respect of defects or insufficiency in design 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

beginning on the earlier of the Date of Possession or, the date of this Contract and ending twelve (12) years after the date of Practical Completion of the Works pursuant to clause 2.27, provided always that such insurance is available at commercially reasonable rates and terms. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

- 6.15.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates and terms.
- 6.15.3 The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Employer can discuss means of best protecting the respective positions of the Employer and the Contractor in respect of the Works in the absence of such insurance.
- 6.15.4 The Contractor shall 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 commercially reasonable rates if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 6.15.5 As and when reasonably required to do so by the Employer, the Contractor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained."

### 6.16 Delete.

# **Breach of Joint Fire Code**

6.19.2 At the end of the clause insert: "or may be recoverable from the Contractor by the Employer as a debt."

# Assignment

- Delete the whole of Section 7 and substitute:
- "7.1 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer.
- 7.2 The Employer's rights under this Contract may be assigned without the consent of the Contractor by absolute assignment on two occasions.
- 7.3 The Contractor shall not be entitled to contend that any person to whom this Contract is assigned in accordance with clause 7.2 is precluded from recovering under this Contract any

loss incurred by such assignee resulting from any breach of this Contract, (whenever happening) by reason that such person is an assignee and not a named promisee under this Contract."

# Notices under Section 8

8.2.1 At the end of the clause insert:

"provided always that this clause 8.2.1 shall not apply to any notice or notices given pursuant to clause 8.5."

### Default by Contractor

8.4.1.3 In line 2, after "remove", insert "or rectify".

8.4.1.5 After "3.16" delete the comma and insert ";"

8.4.1.6 Insert new clause: "fails to comply with clause 6.15."

8.4.1.7 Insert new clause: "fails to comply with Articles 10 to 17 (inclusive)."

# Corruption and regulation 73(1)(b) of the PC Regulations

Delete clause 8.6 and insert clause 8.6.1.

### "8.6.1 Corrupt gifts and fraud

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act."

Insert a new clause 8.6.2 as follows:

### "8.6.2 Termination for corrupt gifts and fraud

- 8.6.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, the Employer shall be entitled to act in accordance with the provisions of this clause 8.6.2.
- 8.6.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, the Employer may terminate this Contract by giving notice to the Contractor.
- 8.6.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate unless, within 20 Business Days of receipt of such notice, the Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.2.4 If the Prohibited Act is committed by a Sub-Contractor of the Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the relevant subcontract and procures the carrying out of such part of the Works by another person.

- 8.6.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor of the Contractor acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.2.6 If the Prohibited Act is committed by any other persons not specified in clauses 8.6.2.2 to 8.6.2.5, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.2.7 Any notice of termination under this clause 8.6.2 shall specify:
- 8.6.2.7.1 the nature of the Prohibited Act;
- 8.6.2.7.2 the identity of the party whom the Employer believes has committed the Prohibited Act; and
- 8.6.2.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this clause.
- 8.6.2.8 In this clause 8.6.2 the expression "not acting independently of" (when used in relation to the Contractor or any Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or any of its Sub-Contractors."
- 8.6.3 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the circumstances set out in Regulation 73(1)(b) of the PC Regulations apply.

### Termination - Contractor to vacate the Sites

8.6A Insert as clause 8.6A:

"Upon the termination of the Contractor's employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Sites."

# Consequences of termination under clauses 8.4 to 8.6

8.7.2.1 At the end of the clause insert:

"If within a reasonable time after such requirement has been made the Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to him, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor."

- 8.7.4 Delete sub-clauses 8.7.4.1, 8.7.4.2 and 8.7.4.3, and insert:
  - "8.7.4.1 the amount of any direct loss and/or damage and/or additional expense caused to the Employer as a result of the determination;

	8.7.4.2	the amount of any payment made or otherwise discharged in favour of th Contractor;
	8.7.4.3	the total value of work properly executed at the date of determination of the employment of the Contractor, ascertained in accordance with the Conditions together with any amounts due to the Contractor under the Conditions at the date of termination not included in such total value".
Insolven	cy of Emp	loyer
8.10.3 In:	sert at the	end of clause 8.10.3:
	nd an exte suspensio	nsion of time for completion shall be given under clause 2.25 equal to the perio n."
Consequ	ences of	Termination under Clauses 8.9 to 8.11
8.12.3.3	at the en	nd of the clause insert "and"
8.12.3.4	Delete "	" and Insert "."
8.12.3.5	Delete	
8.12.4	Delete	
Adjudica	tion	
9.2.2.2	Insert th	e following sentence at the end of the sub-clause:
		of the Adjudicator's instructions to any such expert and any written advice of eceived from such an expert shall be supplied to the Parties as soon a ble;"
9.2.3	Insert a	new clause 9.2.3 as follows:
	Contract matter ra	udicator shall have power to determine more than one dispute under the at the same time, and if requested to do so by either Party shall determine an aised by such Party in the nature of set-off, abatement or counterclaim at the as he determines any other matter referred to him; and
9.2.4	Insert a	new clause 9.2.4 as follows:
		udicator shall give reasons for his decision in writing and shall deliver h to the Parties as soon as practicable and within 2 Business Days of making h and"
9.2.5	Insert a	new clause 9.2.5 as follows:
	he becom	idicator shall notify the Contractor and the Employer as soon as practicable, mes aware that he has any interest in the Works, the subject matter of th ion or the Parties."
Arbitratio	n	
clauses 9	.3 to 9.8 st	nall be deleted.
SECTION	10 – SITE	CONDITIONS, ASBESTOS AND DEFECTS
Site Cond	ditions	

- 10.1 Subject to other terms of this Contract, the conditions of the Sites shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor shall be deemed to have:
  - 10.1.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
  - 10.1.2 satisfied itself as to the nature of the site conditions, the ground and the subsoil, the form and nature of the Sites, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;
  - 10.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Sites);
  - 10.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Employer) with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites; and
  - 10.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.
- 10.2 Subject to other terms of this Contract, the Contractor accepts full responsibility for all matters referred to in clause 10.1 and shall be responsible for, and hold the Employer harmless from cleaning up or otherwise dealing with any Contamination on the Sites in accordance with and so that it shall at all times comply with its obligations under this Contract.
- 10.3 To the extent that unforeseeable ground conditions and/or Contamination exist in any parts of the Sites which are under Existing Buildings as at the Base Date, the Contractor shall not be responsible for them, unless they were discovered by the site survey or would have been discovered 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. If the Contractor is not responsible for such ground conditions and/or Contamination under this clause 10.3 then the Employer shall be so responsible.
- 10.4 Where pursuant to clause 10.3 the Employer is responsible for any of the matters referred to, it shall be deemed to be a Relevant Event and Relevant Matter subject to and in accordance with clauses 2.25 and 4.20, and any work which is required or instructed to be carried out in consequence of it shall be deemed, without double counting, to be a Change.

### SECTION 11 - ASBESTOS

- 11 Insert new clause 11 as follows:
- 11.1 The Contractor accepts, in relation to any New Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos.
- 11.2 Unless the exposure arises directly or indirectly as a result of any act or omission of the Contractor or any Contractor's Person, the Employer accepts, in relation to Buildings other than the New Buildings, full responsibility (including any financial or other consequences which arise directly or indirectly) for death and personal injury in

respect of exposure to Asbestos in such Buildings, where exposure takes place prior to the date on which the Contractor takes control of the Sites.

11.3 The Employer accepts a Provisional Sum for the treatment and/or removal of Asbestos in Refurbished Buildings.

# SECTION 12 - DEFECTS IN EXISTING BUILDINGS

- 12 Insert new clause 12 as follows:
- 12.1 The Contractor accepts, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any defect caused by the Contractor carrying out the Works.

# SECTION 13 - SET OFF AND OTHER REMEDIES

- 13.1 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.
- 13.2 If the Contractor fails to comply with any requirement of clause 6.15 or if the Contractor becomes Insolvent so that its covenant is impaired, then without prejudice to any other remedies the Employer may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection.

### SCHEDULE 1 – DESIGN SUBMISSION PROCEDURE

Insert at the end of paragraph 7:

"Where the Contractor acknowledges the Contractor's Design Document was not in accordance with the Employers Requirements, the re-submission shall be treated as a first submission of the Contractor's Design Documents as described in paragraph 5.1"

Insert as new paragraph 9:

"For the avoidance of doubt, no commentary made in the processes described in paragraph 5 shall be treated as a Change unless instructed by the Employer as such."

# SCHEDULE 2 - SUPPLEMENTAL PROVISIONS

Supplemental Provision 11

- 11.1 Insert "the Employer's Requirements, Contract Sum and" at line 1 after "the Contractor hereby consents to the Employer publishing".
- 11.3 Insert as new paragraph 11.3

"The Contractor shall assist and cooperate with the Employer (at the Contractor's expense) to enable the Employer to comply with the information disclosure requirements under the FOIA and in doing so will comply with any timescale prescribed by the Employer."

11.4 Insert as new paragraph 11.4:

"If the Contractor fails to provide any legitimate comment or objection in relation to the proposed disclosure of information within the timescale suggested, the Employer will not be held responsible for any resulting loss, damage or harm or other detriment. The Contractor acknowledges that the Employer has a statutory duty to respond to requests within prescribed timescales."

# Schedule 3 – Insurance Options

### Insurance Option C

Delete the heading "(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)"

# Paragraph C.1

Delete paragraph C.1 and replace with the following:

### "Existing Structures and contents – cover for Specific Perils

C.1 In respect of the Existing Structures together with the contents of them owned by the Employer or for which he is responsible, the Employer shall effect cover (but without the obligation to insure) for the full cost of reinstatement or repair of loss or damage due to any of the Specified Perils up to and including the date of issue of the Practical Completion Certificate or (where applicable) last Sectional Completion Certificate or (if earlier) the date of termination of the Contractor's employment (whether or not the validity of that termination is contested)."

# Paragraph C.2

In line 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:

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

# ANNEX 1

### CONTRACTOR WARRANTY

DATED

20[ ]

# [CONTRACTOR] and [ ]

DUTY OF CARE DEED relating to [ ] THIS DEED is dated

20[ ] BETWEEN:

]) whose registered office is at [

- (1)[CONTRACTOR] (Company Number [ ] (the "Contractor"); and
  - ] (the "Beneficiary"), which expression includes ] of [ its permitted successors in title and assigns)

# BACKGROUND

E

(2)

- ] (the "Design and Build (A) By a design and build contract dated [ Contract") the Employer has appointed the Contractor to carry out in relation to the Sites the design and construction of the Works.
- The Contractor is obliged under the Design and Build Contract to give a warranty in this form (B) in favour of the Beneficiary.
- The Contractor has agreed to execute this Deed in favour of the Beneficiary. (C)

#### DEFINITIONS AND INTERPRETATIONS 1.

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the Design and Build Contract.

#### OPERATIVE PROVISIONS 2

In consideration of the payment of by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges:

#### 3. CONTRACTOR'S WARRANTY AND LIABILITY

- The Contractor warrants to the Beneficiary that it has carried out and will continue to 3.1 carry out its duties under the Design and Build Contract and that it has exercised and will continue to exercise, in carrying out the design of the Works, the level of skill and care reasonably to be expected from an appropriately gualified and competent professional designer providing those services in relation to a project of a similar size and scope to In particular and without limiting the generality of the foregoing the the Works. Contractor covenants with the Beneficiary that it has carried out and will carry out and complete the Works in accordance with the Design and Build Contract and duly observe and perform all its duties and obligations thereunder.
- The Contractor shall have no liability under clause 3.1 of this Deed that is greater or of 3.2 longer duration that it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Design and Build Contract as joint employer. Upon the expiration of twelve (12) years from the date of Practical Completion of the Works in accordance with the Design and Build Contract, the liability of the Contractor under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Contractor and notified by the Beneficiary to the Contractor in writing prior thereto.

#### INTELLECTUAL PROPERTY 4.

The Contractor shall make available to the Beneficiary free of charge (and hereby 4.1 irrevocably licences the Beneficiary to use) all of the Contractor's Design Documents that might reasonably be required by the Beneficiary. The Contractor shall obtain all necessary licences, permissions and consents necessary for it to make the Contractor's Design Documents available to the Beneficiary on these terms, for the purposes of:

- 4.1.1 the Beneficiary using the Works for ancillary purposes and/or any statutory duties which the Beneficiary may have; and
- 4.1.2 following termination of the Design and Build Contract or of the Contractor's employment under it, the design or construction of the Works and/or the operation, maintenance or improvement of the Works,

(together, the "Approved Purposes"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 4.2 The Contractor:
  - 4.2.1 hereby grants to the Beneficiary, free of charge, an irrevocable non-exclusive and transferable (subject to the restrictions contained in clause 7 of this Deed) licence to use the intellectual property rights which are or become vested in the Contractor for the Approved Purposes; and
  - 4.2.2 shall (where any intellectual property rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.1.1 above to the Beneficiary,

in both cases, solely for the Approved Purposes.

4.3 The Contractor warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Contractor's Design Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

### 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Contractor hereby covenants with the Beneficiary to:
  - 5.1.1 take out and maintain PI Insurance cover with a limit of indemnity that shall be a

minimum of	f				
		а	ind that it	will maintai	n such

insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after Practical Completion of the Works, provided that such insurance is generally available in the market to members of the Contractor's profession at commercially reasonable rates and terms and provided further that payment of any increased or additional premiums or more onerous terms required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor will be deemed to be within the commercially reasonable rates and terms;

- 5.1.2 provide evidence (as and when reasonably required by the Beneficiary) satisfactory to the Beneficiary of the professional indemnity insurance (referred to in clause 5.1.1) being in full force and effect from the date of the Design and Build Contract (such evidence to include details of the cover);
- 5.1.3 provide the Beneficiary with notice of:
  - (a) any cancellation of the professional indemnity Insurance (referred to in clause 5.1.1) not less than 20 Business Days prior to the relevant cancellation date; and
  - (b) any adverse material change to or suspension of cover relevant to the Works not less than 20 Business Days prior to the relevant change or suspension; and
- 5.1.4 inform the Beneficiary as soon as reasonably practicable of any claim under the professional indemnity insurance referred to in clause 5.1.1 in respect of the Works in excess of **any potential and provide such information** to the Beneficiary as the Beneficiary may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

# 6. NOTICES

Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

### 7. ASSIGNMENT

The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two (2) occasions only and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

### 8. BENEFICIARY'S REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

### 9. INSPECTION OF CONTRACTOR'S DESIGN DOCUMENTS

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

### 10. SUB-CONTRACTORS

Following a written request from the Beneficiary the Contractor will (unless it has already done so) and/ or procure that its sub-contractors execute a Deed of collateral warranty in the relevant form specified in the Design and Build Contract in favour of any person in whose favour the Design and Build Contract obliges the Contractor to give or procure the giving of such a warranty.

# 11. SEVERABILITY

If any term, condition or provision of this Deed 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 Deed.

# 12. WAIVER

- 12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

### 13. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

### 14. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of in connection with this Deed.

### 15. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

### 16. ELECTRONIC EXECUTION

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Deed as if signed by each party's manuscript signature.

The executed signature page of a counterpart of this Deed (in PDF, JPEG or other agreed format), together with the agreed final form of this Deed may be delivered by e-mail to the other party.

Without prejudice to the validity of this Deed, each of the parties shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter. IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by CONTRACTOR acting by a Director and its Secretary/two Directors:

Director Director/Secretary

Ì

EXECUTED AS A DEED by [BENEFICIARY] acting by acting by a Director and its Secretary/two Directors

Director

Secretary/Director

OR

EXECUTED AS A DEED by affixing the Common Seal of [BENEFICIARY] in the presence of:

Authorised Signatory

# ANNEX 2

Sub-Contractor Warranty in favour of the Employer

DATED 20[ ]

# [PRINCIPAL BUILDING SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED relating to [ ] THIS DEED is made on

### 20[ ] BETWEEN:

- [PRINCIPAL BUILDING SUB-CONTRACTOR] (Company Number []) whose registered office is at [] (the "Principal Building Sub-Contractor");
- (2) [EMPLOYER] of [ ] (the "Employer"), (which expression includes its permitted successors in title and assigns); and
- (3) [CONTRACTOR] (registered in England and Wales under Company Number []]) whose registered office is at [] (the "Contractor").

### BACKGROUND

- (A) The Employer has appointed the Contractor (the "Design and Build Contract") to carry out in relation to the Sites therein mentioned (the Sites), the design and construction of the Works.
- (B) The Principal Building Sub-Contractor has been appointed by the Contractor under a subcontract dated [ ] (the "Subcontract") in relation to the [ ] element of the Works (the "Subcontract Works").<sup>1</sup>
- (C) The Principal Building Sub-Contractor is obliged under the Subcontract to give a warranty in this form in favour of the Employer.
- (D) The Principal Building Sub-Contractor and the Contractor have agreed to execute this warranty in this form in favour of the Employer.

### 1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Design and Build Contract.

### 2. OPERATIVE PROVISIONS

In consideration of the payment of by the Employer to the Principal Building Sub-Contractor, receipt of which the Principal Building Sub-Contractor acknowledges:

### 3. PRINCIPAL BUILDING SUB-CONTRACTOR'S WARRANTY AND LIABILITY

- 3.1 The Principal Building Sub-Contractor warrants to the Employer that it has carried out and will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the design of the Subcontract Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to a project of a similar size and scope to the Subcontract Works. In particular and without limiting the generality of the foregoing the Principal Building Sub-Contractor covenants with the Employer that it has carried out and will carry out and complete the Subcontract Works in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- 3.2 The Principal Building Sub-Contractor shall have no liability under clause 3.1 of this Deed that is greater or of longer duration than it would have had, and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability

<sup>1</sup> Insert details of relevant sub-contract package.

(except for set off or counterclaim), if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer. Upon the expiration of twelve (12) years from the date of Practical Completion of the Works in accordance with the Subcontract, the liability of the Principal Building Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Employer against the Principal Building Sub-Contractor where proceedings have been commenced prior to such date.

# 4. INTELLECTUAL PROPERTY

- 4.1 The Principal Building Sub-Contractor shall make available to the Employer free of charge (and hereby irrevocably licences the Employer to use) all the Contractor's Design Documents that might reasonably be required by the Employer. The Principal Building Sub-Contractor shall obtain all necessary licences, permissions and consents necessary for it to make the Contractor's Design Documents available to the Employer on these terms, for the purposes of:
  - 4.1.1 the Employer using the Works its main purposes, for ancillary purposes, its duties under the Design and Build Contract and/or any statutory duties which the Employer may have; and
  - 4.1.2 following termination of the Design and Build Contract or of the Contractor's employment under it, the design or construction of the Works and/or the operation, maintenance or improvement of the Works,

(together, the "Approved Purposes"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 4.2 The Principal Building Sub-Contractor:
  - 4.2.1 hereby grants to the Employer, free of charge, an irrevocable, non-exclusive and transferable [(subject to the restrictions contained in clause 7 of this Deed)] licence to use the intellectual property rights which are or become vested in the Principal Building Sub-Contractor for the Approved Purposes; and
  - 4.2.2 shall (where any intellectual property rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.1.1 above to the Employer.

in both cases, solely for the Approved Purposes.

4.3 The Principal Building Sub-Contractor warrants to the Employer that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Contractor's Design Documents (save to the extent duly appointed Principal Building Sub-Contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Subcontract Works will not infringe the rights of any third party.

### 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Principal Building Sub-Contractor hereby covenants with the Employer to:
  - 5.1.1 take out and maintain PI Insurance cover with a limit of indemnity that shall be a minimum of

with reputable

insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after Practical Completion of the Works, provided that such insurance is generally available in the market to members of the Principal Building Sub-Contractor's profession at commercially reasonable rates and terms and provided further that payment of any increased or additional premiums or more onerous terms required by insurers by reason of the Principal Building Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Building Sub-Contractor will be deemed to be within the commercially reasonable rates and terms;

- 5.1.2 provide evidence (as and when reasonably required by the Employer) satisfactory to the Employer of the professional indemnity insurance [Products Liability insurance] referred to in clause 5.12.1 being in full force and effect from the date of the Subcontract (such evidence to include details of the cover);
- 5.1.3 provide the Employer with notice of:
  - (a) any cancellation of the professional indemnity insurance [Products Liability insurance] referred to in clause 5.1.1 not less than 20 Business Days prior to the relevant cancellation date; and
  - (b) any adverse material changes to or suspension of cover relevant to the Subcontract Works not less than 20 Business Days prior to the relevant change or suspension; and
- 5.1.4 inform the Employer as soon as reasonably practicable of any claim under the professional indemnity insurance referred to in clause 5.1.1 in respect of the Subcontract Works in the Employer as the Employer may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

# 6. NOTICES

Any notice to be given by any party to this Deed will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the Party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

# 7. ASSIGNMENT

The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Principal Building Sub-Contractor on two (2) occasions only and the Employer will notify the Principal Building Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Principal Building Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary has not suffered any, or as much, loss.

### 8. EMPLOYER'S REMEDIES

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Principal Building Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

### 9. INSPECTION OF CONTRACTOR'S DESIGN DOCUMENTS

The Principal Building Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Contractor's Design Documents or attendance at site meetings or other enquiry or inspection which the Employer may make or procure to be made for its benefit or on its behalf.

### 10. STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER

- 10.1 Without prejudice to the Principal Building Sub-Contractor's statutory rights the Principal Building Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to:
  - 10.1.1 terminate or treat as terminated or repudiated the Subcontract or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or
  - 10.1.2 discontinue or suspend the performance of any duties or obligations under the Subcontract without first giving to the Employer not less than 7 Business Days' prior written notice.
- 10.2 Any notice given by the Principal Building Sub-Contractor pursuant to clause 10.1 above shall:
  - 10.2.1 specify the Principal Building Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
  - 10.2.2 specify any other breaches by the Contractor; and
  - 10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Principal Building Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or suspend the performance of any duties or obligations under the Subcontract (as applicable)).
- 10.3 Within the period of any notice given by the Principal Building Sub-Contractor pursuant to clause 10.1:
  - 10.3.1 the Employer may give written notice to the Principal Building Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Principal Building Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;

- 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer, and
- 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Principal Building Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Principal Building Sub-Contractor, the Employer will not be under any obligation to the Principal Building Sub-Contractor nor will the Principal Building Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Principal Building Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Principal Building Sub-Contractor further covenants with the Employer that if employment of the Contractor under the Design and Build Contract is determined, the Principal Building Sub-Contractor, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.
- 10.6 The Contractor acknowledges that the Principal Building Sub-Contractor will be entitled to rely on a notice given to the Principal Building Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Design and Build Contract has been determined or the Design and Build Contract is terminated.
- 10.7 The Employer may by notice in writing to the Principal Building Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.8 Upon request by the Employer the Principal Building Sub-Contractor agrees to cooperate with the Employer in determining the duties performed or to be performed by the Principal Building Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the Design and Build Contract.
- 10.9 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the Design and Build Contract, the Subcontract shall be administered and construed as though the Design and Build Contract was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Design and Build Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

# 11. SUB-CONTRACTORS

Following a written request from the Employer the Principal Building Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a Deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Building Sub-Contractor to give or procure the giving of such a warranty.

### 12. SEVERABILITY

If any term, condition or provision of this Deed 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 Deed.

### 13. WAIVER

- 13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 13.2 No waiver under clause 13.1 shall be a waiver of a past of future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

### 14. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

### 15. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

### 16. CONTRACTOR ACKNOWLEDGEMENT

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Principal Building Sub-Contractor to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

# 17. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

### 18. ELECTRONIC EXECUTION

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Deed as if signed by each party's manuscript signature. The executed signature page of a counterpart of this Deed (in PDF, JPEG or other agreed format), together with the agreed final form of this Deed may be delivered by e-mail to the other parties.

Without prejudice to the validity of this Deed, each of the parties shall provide the others with the original of such counterpart as soon as reasonably practicable thereafter.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by

[PRINCIPAL BUILDING SUB-CONTRACTOR] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

THE	CORPO	RATE	SE/	AL	of	the
SECR	ETARY	OF	ST	ATE		FOR
EDUCATION		herewith		affixed		is
authe	nticated b	y:				

Authorised by the Secretary of State

AND A REPORT OF A DESCRIPTION OF A DESCR

Full name (BLOCK CAPITALS)

OR

EXECUTED AS A DEED (but not delivered until the date hereof) by affixing the Common Seal of [EMPLOYER] in the presence of:

Authorised Signatory

# OR

EXECUTED AS A DEED by [EMPLOYER] acting by a Director and its Secretary/two Directors:

# Director

Director/Secretary

# EXECUTED AS A DEED by

[CONTRACTOR] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

Subcontractor Warranty in favour of a third party

DATED 20[ ]

# [PRINCIPAL BUILDING SUB-CONTRACTOR]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is made on

### 20[ ] BETWEEN:

- [PRINCIPAL BUILDING SUB-CONTRACTOR] (Company Number [ ]) whose registered office is at [ ] (the "Principal Building Sub-Contractor"); and
- (2) [BENEFICIARY] of [ ] (the "Beneficiary"), (which expression includes its permitted successors in title and assigns).

### BACKGROUND

- (A) The Employer has appointed the Contractor (the "Design and Build Contract") to carry out in relation to the Sites therein mentioned (the Sites), the design and construction of the Works.
- (B) The Principal Building Sub-Contractor has been appointed by the Contractor under a subcontract dated [ ] (the "Subcontract") in relation to the [ ] element of the Works (the "Subcontract Works").<sup>2</sup>
- (C) The Principal Building Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.
- (D) The Principal Building Sub-Contractor and the Contractor have agreed to execute this warranty in this form in favour of the Beneficiary.

### 1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Design and Build Contract.<sup>3</sup>

# 2 OPERATIVE PROVISIONS

In consideration of the payment of by the Beneficiary to the Principal Building Sub-Contractor, receipt of which the Principal Building Sub-Contractor acknowledges:

# 3 SUB-CONTRACTOR'S WARRANTY AND LIABILITY

- 3.1 The Principal Building Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the design of the Subcontract Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to a project of a similar size and scope to the Subcontract Works. In particular and without limiting the generality of the foregoing the Principal Building Sub-Contractor covenants with the Beneficiary that it has carried out and will carry out and complete the Subcontract Works in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.
- 3.2 The Principal Building Sub-Contractor shall have no liability under clause 3.1 of this Deed that is greater or of longer duration than it would have had, and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor under the Subcontract, and shall have no liability under this Deed that is of greater or of longer

<sup>&</sup>lt;sup>2</sup> Insert details of relevant sub-contract package.

<sup>&</sup>lt;sup>3</sup> To be used as appropriate.

duration than it would have had if the Beneficiary had been a party to the Subcontract as joint employer. Upon the expiration of twelve (12) years from the date of Practical Completion of the Works in accordance with the Subcontract, the liability of the Principal Building Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Principal Building Sub-Contractor and notified by the Beneficiary to the Principal Building Sub-Contractor in writing prior thereto.

# 4. INTELLECTUAL PROPERTY

- 4.1 The Principal Building Sub-Contractor shall make available to the Beneficiary free of charge (and hereby irrevocably licences the Beneficiary to use) all the Contractor's Design Documents that might reasonably be required by the Beneficiary. The Principal Building Sub-Contractor shall obtain all necessary licences, permissions and consents necessary for it to make the Contractor's Design Documents available to the Beneficiary on these terms, for the purposes of:
  - 4.1.1 the Beneficiary using the Works for ancillary purposes, its duties under the Design and Build Contract and/or any statutory duties which the Beneficiary may have; and
  - 4.1.2 following termination of the Design and Build Contract or of the Contractor's employment under it, the design or construction of the Works and/or the operation, maintenance or improvement of the Works,

(together, the "Approved Purposes"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 4.2 The Principal Building Sub-Contractor:
  - 4.2.1 hereby grants to the Beneficiary, free of charge, an irrevocable, non-exclusive and transferable [(subject to the restrictions contained in clause 7 of this Deed)] licence to use the intellectual property rights which are or become vested in the Principal Building Sub-Contractor for the Approved Purposes; and
  - 4.2.2 shall (where any intellectual property rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.1.1 above to the Beneficiary,

in both cases, solely for the Approved Purposes.

4.3 The Principal Building Sub-Contractor warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Contractor's Design Documents (save to the extent duly appointed Principal Building Sub-Contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Subcontract Works will not infringe the rights of any third party.

# 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Principal Building Sub-Contractor hereby covenants with the Beneficiary to:
  - 5.1.1 take out and maintain PI Insurance cover with a limit of indemnity that shall be a minimum of

and that it will maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after Practical Completion of the Works, provided that such insurance is generally available in the market to members of the Principal Building Sub-Contractor's profession at commercially reasonable rates and terms and provided further that payment of any increased or additional premiums or more onerous terms required by insurers by reason of the Principal Building Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Building Sub-Contractor will be deemed to be within the commercially reasonable rates and terms;

- 5.1.2 provide evidence (as and when reasonably required by the Beneficiary) satisfactory to the Beneficiary of the professional indemnity insurance [Products Liability insurance] referred to in clause 5.12.1 being in full force and effect from the date of the Subcontract (such evidence to include details of the cover);
- 5.1.3 provide the Beneficiary with notice of:
  - (a) any cancellation of the professional indemnity insurance referred to in clause 5.1.1 not less than 20 Business Days prior to the relevant cancellation date; and
  - (b) any adverse material changes to or suspension of cover relevant to the Subcontract Works not less than 20 Business Days prior to the relevant change or suspension; and
- 5.1.4 inform the Beneficiary as soon as reasonably practicable of any claim under the professional indemnity insurance referred to in clause 5.1.1 in respect of the Subcontract Works in and provide such information to the Beneficiary as the Beneficiary may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

# 6. NOTICES

Any notice to be given by any party to this Deed will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the Party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

### 7. ASSIGNMENT

The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Principal Building Sub-Contractor on two (2) occasions only and the Beneficiary will notify the Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Principal Building Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site(s) or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

### 8. BENEFICIARY'S REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Principal Building Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

### 9. INSPECTION OF CONTRACTOR'S DESIGN DOCUMENTS

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

### 10. SUB-CONTRACTORS

Following a written request from the Beneficiary the Principal Building Sub-Contractor will (unless it has already done so) procure that its sub-contractors execute a Deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Principal Building Sub-Contractor to give or procure the giving of such a warranty.

### 11. SEVERABILITY

If any term, condition or provision of this Deed 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 Deed.

# 12. WAIVER

- 12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 12.2 No waiver under clause 12.1 shall be a waiver of a past of future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

### 13. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

### 14. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

# 15. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

## 16. ELECTRONIC EXECUTION

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Deed as if signed by each party's manuscript signature.

The executed signature page of a counterpart of this Deed (in PDF, JPEG or other agreed format), together with the agreed final form of this Deed may be delivered by e-mail to the other party.

Without prejudice to the validity of this Deed, each of the parties shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by

[PRINCIPAL BUILDING SUB-CONTRACTOR] acting by

a Director and its Secretary/two Directors:

Director Director/Secretary

EXECUTED AS A DEED by affixing the Common Seal of [BENEFICIARY] in the presence of:

Authorised Signatory

OR

EXECUTED AS A DEED by [BENEFICIARY] acting by a Director and its Secretary/two Directors:

Director Director/Secretary

Design Consultant Appointment



## Appendix A1 - Amendments to form of Deed of Appointment

The following amendments, shown in red and underlined, shall be made to the Appointment:

### Clause 10.1

"The Consultant shall upon request enter into and duly complete and execute Collateral Warranty Agreements in favour of any Interested Party (including, for the avoidance of doubt, in favour of (i) The Secretary of State for Education and (ii) Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA) in respect of the design..."

Design Consultant Warranty in favour of Employer

DATED 20[ ]

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED relating to [ ] THIS DEED is dated

### 20[ ] BETWEEN:

- (1) <u>THE PARTNERS IN</u> [insert name of partnership] (being the persons listed in the schedule hereto) whose principal place of business is at [ ] OR [ ] LIMITED/PLC (Company Number [ ]) whose registered office is at [ ] (the "Consultant");
- (2) [EMPLOYER] of [ ] (the "Employer"), (which expression includes its permitted successors in title and assigns); and
- (3) [CONTRACTOR] (registered in England and Wales under company number [ ]) whose registered office is at [ ] (the "Contractor").

#### BACKGROUND

- (A) The Employer has appointed the Contractor to carry out in relation to the Sites the design and construction of the Works (the "Design and Build Contract").
- (B) The Consultant has been appointed by the Contractor under an appointment dated [ ] (the "Appointment") to provide services in relation to the Works.
- (C) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Employer.
- (D) The Consultant and the Contractor have agreed to execute this Deed in favour of the Employer.

#### 1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the Design and Build Contract.

### 2. OPERATIVE PROVISIONS

In consideration of the payment of by the Employer to the Consultant, receipt of which the Consultant acknowledges:

#### 3. CONSULTANT'S WARRANTY AND LIABILITY

- 3.1 The Consultant warrants to the Employer that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.<sup>4</sup>
- 3.2 The Consultant shall have no liability under clause 3.1 or clause 11 of this Deed that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the

<sup>&</sup>lt;sup>4</sup> Net contribution clause will only be accepted if it is required by the Consultant's PI insurer and provided a) a letter from the PI insurer confirming this is a condition (rather than a recommendation) that such a clause is contained in the warranty and b) an extract of the relevant policy wording are provided. DfE will then provide agreed drafting to be included in clause 3.1.

Appointment as joint employer. Upon the expiration of twelve (12) years from the date of Practical Completion of the Works in accordance with the Design and Build Contract, the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Employer against the Consultant and notified by the Employer to the Consultant in writing prior thereto.

## 4. INTELLECTUAL PROPERTY

- 4.1 The Consultant shall make available to the Employer free of charge (and hereby irrevocably licences the Employer to use) all the Contractor's Design Documents that might reasonably be required by the Employer. The Consultant shall obtain all necessary licences, permissions and consents necessary for it to make the Contractor's Design Documents available to the Employer on these terms, for the purposes of:
  - 4.1.1 the Employer using the Works for their main purposes and for ancillary purposes, its duties under the Design and Build Contract and/or any statutory duties which the Employer may have; and
  - 4.1.2 following termination of the Design and Build Contract or of the Contractor's employment under it, the design or construction of the Works and/or the operation, maintenance or improvement of the Works.

(together, the "Approved Purposes"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 4.2 The Consultant:
  - 4.2.1 hereby grants to the Employer, free of charge, an irrevocable, non-exclusive and transferable (subject to the restrictions contained in clause 8 of this Deed) licence to use the intellectual property rights which are or become vested in the Consultant for the Approved Purposes; and
  - 4.2.2 shall (where any intellectual property rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.1.1 above to the Employer,

in both cases, solely for the Approved Purposes.

4.3 The Consultant warrants to the Employer that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Contractor's Design Documents<sup>5</sup> (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

## 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant hereby covenants with the Employer to:
  - 5.1.1 take out and maintain PI Insurance cover with a limit of indemnity that shall be a minimum of and that it

<sup>5</sup> This will need to be consistent with the previous sub-clauses.

<sup>6</sup> Limit of indemnity to be as per the building contract and approved by the Employer's insurance advisors.

will maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after Practical Completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and terms<sup>7</sup> and provided further that payment of any increased or additional premiums or more onerous terms required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the commercially reasonable rates and terms;

- 5.1.2 provide evidence (as and when reasonably required by the Employer) satisfactory to the Employer of the professional indemnity insurance (referred to in clause 5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover);
- 5.1.3 provide the Employer with notice of:
  - (a) any cancellation of the professional indemnity insurance referred to in clause 5.1.1 not less than 20 Business Days prior to the relevant cancellation date; and
  - (b) any adverse material changes to or suspension of cover relevant to the Works not less than 20 Business Days prior to the relevant change or suspension; and
- 5.1.4 inform the Employer as soon as reasonably practicable of any claim under the professional indemnity insurance referred to in clause 5.1.1 in respect of the Works in **Constitution of the Employer** as the Employer may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

### 6. LIABILITY OF PARTNERS

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

## 7. NOTICES

Any notice to be given by any party to this Deed will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

#### 8. ASSIGNMENT

The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Employer will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

### 9. EMPLOYER'S REMEDIES

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

### 10. INSPECTION OF CONTRACTOR'S DESIGN DOCUMENTS

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

## 11. STANDARDS OF PRODUCTS AND MATERIALS

- 11.1 The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.
- 11.2 If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Employer in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

#### 12. STEP-IN RIGHTS IN FAVOUR OF THE EMPLOYER

- 12.1 Without prejudice to the Consultant's statutory rights the Consultant will not exercise or seek to exercise any right which may be or become available to it to:
  - 12.1.1 terminate or treat as terminated or repudiated the Appointment or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or
  - 12.1.2 discontinue or suspend the performance of any duties or obligations under the Appointment without first giving to the Employer not less than 7 Business Days' prior written notice.
- 12.2 Any notice given by the Consultant pursuant to clause 12.1 above shall:

- 12.2.1 specify the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
- 12.2.2 specify any other breaches by the Contractor; and
- 12.2.3 state the amount (if any) of monies outstanding under the Appointment (whether or not such amounts result from a breach entitling the Consultant to terminate or treat as terminated or repudiated the Appointment or to discontinue or suspend the performance of any duties or obligations under the Appointment (as applicable)).
- 12.3 Within the period of any notice given by the Consultant pursuant to clause 12.1;
  - 12.3.1 the Employer may give written notice to the Consultant that the Employer will henceforth become the client under the Appointment to the exclusion of the Contractor and thereupon the Consultant will admit that the Employer is its client under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 12.3.2 below;
  - 12.3.2 if the Employer has given such notice as aforesaid or under clause 12.5 below, the Employer shall accept liability for the Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the previous client which is properly specified in such notice and which is capable of remedy by the Employer<sup>®</sup>; and
  - 12.3.3 if the Employer has given such notice as aforesaid or under clause 12.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Appointment.
- 12.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Consultant, the Employer will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Consultant pursuant to clause 12.3.1 or clause 12.5 of this Deed.
- 12.5 The Consultant further covenants with the Employer that if employment of the Contractor under the Design and Build Contract is determined or if the Design and Build Contract is terminated by the Employer the Consultant, if requested by the Employer by notice in writing and subject to clause 12.3.2 and clause 12.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing enter into agreement whereby the Employer is substituted for the Contractor under the Appointment and will if so requested enter into a novation agreement whereby the Employer is substituted for the Contractor under the Appointment.

<sup>&</sup>lt;sup>8</sup> This means the Employer is responsible for remedying all outstanding breaches of the previous client provided they are specified in the notice and not just those which entitle the Contractor to serve the notice.

- 12.6 If the Consultant is requested to enter into a novation agreement pursuant to clause 12.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 12.7 The Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Employer under clause 12.5 as conclusive evidence that the employment of the Contractor under the Design and Build Contract has been determined or the Design and Build Contract is terminated.
- 12.8 The Employer may by notice in writing to the Consultant appoint another person to exercise its rights under this clause 12 subject to the Employer remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.
- 12.9 As from the date of service of notice under clause 12.3.1 or 12.5 to the extent that the Appointment operates by reference to the existence and application of the Design and Build Contract, the Appointment shall be administered and construed as though the Design and Build Contract were continuing and the Appointment shall therefore continue, subject to amendment only as necessary to reflect the fact that the Design and Build Contract have in fact terminated and the Employer has undertaken the obligations set in clause 12.3.2.

### 13. SUB-CONSULTANTS

Following a written request from the Employer the Consultant will (unless it has already done so) procure that its sub-consultants execute a Deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

#### 14. SEVERABILITY

If any term, condition or provision of this Deed 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 provision of or any other documents referred to in this Deed.

## 15. WAIVER

- 15.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 15.2 No waiver under clause 15.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

#### 16. CONTRACTOR ACKNOWLEDGEMENT

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Consultant to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

#### 17. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

### 18. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

#### 19. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

## 20. ELECTRONIC EXECUTION

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Deed as if signed by each party's manuscript signature.

The executed signature page of a counterpart of this Deed (in PDF, JPEG or other agreed format), together with the agreed final form of this Deed may be delivered by e-mail to the other parties.

Without prejudice to the validity of this Deed, each of the parties shall provide the others with the original of such counterpart as soon as reasonably practicable thereafter.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

#### EXECUTED AS A DEED by

[CONSULTANT] acting by

a Director and its Secretary/two Directors:

Director Director/Secretary

THE	COR	PORATE	SE	AL	of	the
SECR	ETARY	OF	ST	ATE		FOR
EDUC.	ATION	herev	vith	affix	ed	is
auther	ticated	by:				

Authorised by the Secretary of State

Full name (BLOCK CAPITALS)

\*\*\*\*\*\*

## OR

EXECUTED AS A DEED by [EMPLOYER] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary OR

EXECUTED AS A DEED by affixing the Common Seal of [EMPLOYER] in the presence of:

Authorised Signatory

EXECUTED AS A DEED by [CONTRACTOR] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

Consultant Warranty in favour of a third party

DATED 20[ ]

[CONSULTANT]

and

[BENEFICIARY]

DUTY OF CARE DEED relating to [ ] THIS DEED is dated

### 20[ ] BETWEEN:

- (1) <u>THE PARTNERS IN</u> [insert name of partnership] (being the persons listed in the schedule hereto) whose principal place of business is at [ ] OR [ ] LIMITED/PLC (Company Number [ ]) whose registered office is at [ ] (the "Consultant"); and
- (2) [BENEFICIARY] of [ ] (the "Beneficiary"), which expression includes its permitted successors in title and assigns).

#### BACKGROUND

- (A) The Employer has appointed the Contractor to carry out in relation to the sites therein mentioned (the Sites) the design and construction of the Works (the "Design and Build Contract").
- (B) The Consultant has been appointed by the Contractor under an appointment dated [ ] (the "Appointment") to provide services in relation to the Works.
- (C) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.
- (D) The Consultant and the Contractor have agreed to execute this Deed in favour of the Beneficiary.

#### 1. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, any defined term in this Deed shall have the same meaning given to such term in the Design and Build Contract.

#### 2. OPERATIVE PROVISIONS

In consideration of the payment of the by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges:

#### 3. CONSULTANT'S WARRANTY AND LIABILITY

- 3.1 The Consultant warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.<sup>9</sup>
- 3.2 The Consultant shall have no liability under clause 3.1 or clause 11 of this Deed that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Appointment as joint employer. Upon the expiration of twelve (12) years from the date of Practical Completion of the Works in accordance with the Design and Build Contract, the

<sup>&</sup>lt;sup>9</sup> Net contribution clause will only be accepted if it is required by the Consultant's PI insurer and provided a) a letter from the PI insurer confirming this is a condition (rather than a recommendation) that such a clause is contained in the warranty and b) an extract of the relevant policy wording are provided. DfE will then provide agreed drafting to be included in clause 3.1.

liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Consultant and notified by the Beneficiary to the Consultant in writing prior thereto.

### 4. INTELLECTUAL PROPERTY

- 4.1 The Consultant shall make available to the Beneficiary free of charge (and hereby irrevocably licences the Beneficiary to use) all Contractor's Design Documents that might reasonably be required by the Beneficiary. The Consultant shall obtain all necessary licences, permissions and consents necessary for it to make the Contractor's Design Documents available to the Beneficiary on these terms, for the purposes to:
  - 4.1.1 the Beneficiary using the Works for ancillary purposes, its duties under the Design and Build Contract and/or any statutory duties which the Beneficiary may have; and
  - 4.1.2 following termination of the Design and Build Contract or of the Contractor's employment under it, the design or construction of the Works and/or the operation, maintenance or improvement of the Works,

(together, the "Approved Purposes"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 4.2 The Consultant:
  - 4.2.1 hereby grants to the Beneficiary, free of charge, an irrevocable, non-exclusive and transferable (subject to the restrictions contained in clause 8 of this Deed) licence to use the intellectual property rights which are or become vested in the Consultant for the Approved Purposes; and
  - 4.2.2 shall (where any intellectual property rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.1.1 above to the Beneficiary,

in both cases, solely for the Approved Purposes.

4.3 The Consultant warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the [Contractor's Design Documents]<sup>10</sup> (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

## 5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant hereby covenants with the Beneficiary to:
  - 5.1.1 take out and maintain PI Insurance cover with a limit of indemnity that shall be a minimum of maintain such insurance with reputable insurers carrying on business in the United Kingdom from the date hereof until twelve (12) years after Practical

<sup>10</sup> This will need to be consistent with the previous sub-clauses.

<sup>11</sup> Limit of indemnity is to be as per building contract and agreed with the Employer's insurance advisors.

Completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and terms<sup>12</sup> and provided further that payment of any increased or additional premiums or more onerous terms required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the commercially reasonable rates and terms;

- 5.1.2 provide evidence (as and when reasonably required by the Beneficiary) satisfactory to the Beneficiary of the professional indemnity insurance (referred to in clause 5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover);
- 5.1.3 provide the Beneficiary with notice of:
  - (a) any cancellation of the professional indemnity insurance referred to in clause 5.1.1 not less than 20 Business Days prior to the relevant cancellation date; and
  - (b) any adverse material changes to or suspension of cover relevant to the Works not less than 20 Business Days prior to the relevant change or suspension; and
- 5.1.4 inform the Beneficiary as soon as reasonably practicable of any claim under the professional indemnity insurance referred to in clause 5.1.1 in respect of the Works in the Beneficiary as the Beneficiary may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

#### 6. LIABILITY OF PARTNERS

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

#### 7. NOTICES

Any notice to be given by any party to this Deed will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the Party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

#### 8. ASSIGNMENT

The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Beneficiary will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such

<sup>12</sup> To address concerns about potential changes in the terms on which insurance is provided.

assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

### 9. BENEFICIARY'S REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

### 10. INSPECTION OF CONTRACTOR'S DESIGN DOCUMENTS

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

## 11. STANDARDS OF PRODUCTS AND MATERIALS

- 11.1 The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.
- 11.2 If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

## 12. SUB-CONSULTANTS

Following a written request from the Beneficiary the Consultant will (unless it has already done so) procure that its sub-consultants execute a Deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

## 13. SEVERABILITY

If any term, condition or provision of this Deed 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 provision of or any other documents referred to in this Deed.

## 14. WAIVER

- 14.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
- 14.2 No waiver under clause 14.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

## 15 THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed.

## 16. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

## 17. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

### 18. ELECTRONIC EXECUTION

Each party agrees that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Deed as if signed by each party's manuscript signature.

The executed signature page of a counterpart of this Deed (in PDF, JPEG or other agreed format), together with the agreed final form of this Deed may be delivered by e-mail to the other party.

Without prejudice to the validity of this Deed, each of the parties shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written.

EXECUTED AS A DEED by [CONSULTANT] acting by a Director and its Secretary/two Directors:

Director Director/Secretary



ANNEX 5 NOT USED

Parent Company Guarantee

DATED 20[ ]

[GUARANTOR]

and

[EMPLOYER]

## PARENT COMPANY GUARANTEE

womblebonddickinson.com



### THIS AGREEMENT dated BETWEEN:

(1)	L	whose registered offic	ce is at [
		] (the "Guarantor"); an	d
(2)	L	] of [	1
		] (the "Employer").	

# BACKGROUND

(A) The Employer [has entered/is about to enter] into a Contract [

 ] (the "Contract") (which expression shall include all plans, specifications, bills of

quantities and other documents incorporated therein) with [ ] whose registered office is at [ ] (the "Contractor") in relation to the carrying out, construction and completion of certain works by the Contractor as more particularly described in the Contract (hereinafter called the "Works").

- (B) The Contractor is a wholly owned subsidiary company of the Guarantor under the Companies Act 2006.
- (C) The Guarantor has agreed to guarantee the performance of all of the Contractor's obligations under the Contract in the manner appearing below.

IT IS AGREED as follows:

## 1. GUARANTEE

The Guarantor HEREBY irrevocably COVENANTS AND GUARANTEES to the Employer and its successors and assigns, the full, faithful and punctual performance, observance and compliance respectively by the Contractor of each and every of the terms, provisions, conditions, obligations, undertakings and agreements on the part of the Contractor to be performed, observed or carried out by the Contractor as contained or referred to in the Contract as such Contract may, from time to time, be amended (hereinafter called the "Obligations").

## 2. PERFORMANCE OBLIGATIONS

If, at any time, any default is made by the Contractor in the performance of any of the Obligations, the Guarantor will well and truly perform or cause to be so performed each and every one of the Obligations and/or will pay any sum or sums that may be payable in consequence of any default made by the Contractor in the performance of any of the Obligations.

## 3. LIABILITY

3.1 As between the Guarantor and the Employer (but without affecting the Obligations), the Guarantor shall remain liable under this Guarantee as if it were the sole principal obligor and not merely a guarantor.

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- 3.2 Subject to the provisions of clause 5, the Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:
  - 3.2.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Works or to the Contract or any related documentation;
  - 3.2.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Contractor;
  - 3.2.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
  - 3.2.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor;
  - 3.2.5 any defect in any provision of the Contract or any of the Obligations;
  - 3.2.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Contractor;
  - 3.2.7 any compromise of any dispute with the Contractor;
  - 3.2.8 any failure of supervision to detect or prevent any fault of the Contractor; or
  - 3.2.9 any assignment of the benefit of the Contract.

### 4. ASSIGNMENT

- 4.1 This Guarantee and the benefit conferred by it may be assigned by the Employer to any party to whom it assigns or novates its interest under the Contract, at any time and references to the Employer shall include its assigns.
- 4.2 Save for the provision of clause 4.1 above, this Guarantee and the benefit conferred by it may not be assigned by either party.

#### 5. LIMIT OF LIABILITY

The Guarantor shall have no greater liability to the Employer under this Guarantee than it would have had had it been named as Contractor under the Contract.

#### 6. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 7. NOTICES

All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, or leaving the same at:

#### Guarantor

Name [insert name] Address [insert address]

Employer

Name [insert name]

Address [insert address]

## 8. GOVERNING LAW

The construction, validity and performance of this Guarantee is subject to English law and the courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection herewith.

## 9. COUNTERPARTS

This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Guarantee, but all the counterparts shall together constitute the same Guarantee.

### 10. ELECTRONIC EXECUTION

Each party agrees that this Guarantee may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of their intention to be bound by this Guarantee as if signed by each party's manuscript signature.

The executed signature page of a counterpart of this Guarantee (in PDF, JPEG or other agreed format), together with the agreed final form of this Guarantee may be delivered by e-mail to the other party.

Without prejudice to the validity of this Guarantee, each of the parties shall provide the other with the original of such counterpart as soon as reasonably practicable thereafter.

EXECUTED AS A DEED by [GUARANTOR] acting by a Director and its Secretary/two Directors:

Director Director/Secretary

THE CORPORATE SEAL of the ) SECRETARY OF STATE FOR

EDUCATION herewith affixed is ) authenticated by:

Authorised by the Secretary of State

Full name (BLOCK CAPITALS)

OR

[EXECUTED AS A DEED (but not delivered until the date hereof) by affixing the Common Seal of [EMPLOYER] in the presence of:

\*\*\*\*\*

Authorised Signatory]

OR

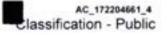
EXECUTED AS A DEED by [EMPLOYER] acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

**Employer Policies** 

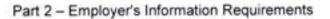
1) Office of Government Commerce Guide to Best "Fair Payment" Practices Policy



#### BIM PROTOCOL

#### Part 1 – General Obligations

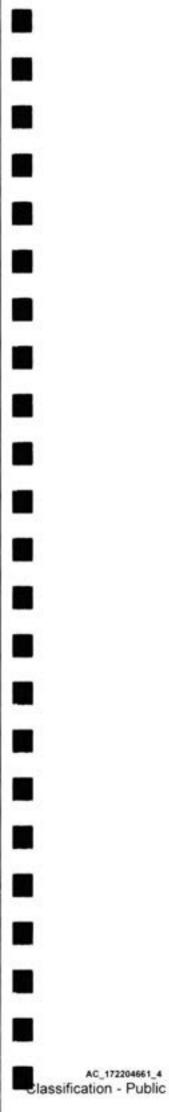
- The Contractor shall, subject to the provisions of clause 2.17.1 of the Agreement, produce or procure the production of the PIM (as defined in Part 2 of this BIM Protocol (the "Employer's Information Requirements")) in accordance with the Employer's Information Requirements.
- The Contractor shall incorporate this BIM Protocol into any sub-contracts that it enters into in relation to the Works (including without limitation the sub-contracts entered into with the Design Consultants and the Principal Building Sub-Contractors) to the extent required to enable the relevant sub-contractor to comply with this BIM Protocol.
- The Contractor acknowledges that this BIM Protocol is also deemed to apply to the production of any part of the PIM either which the Contractor has commenced, provided and completed or which the Contractor has procured the commencement, provision and completion of prior to the date of this Agreement.
- 4. The Contractor acknowledges that the Employer will not always be the end-user of the Buildings and that, to the extent a third party will occupy and/or maintain the Buildings, the Contractor acknowledges and agrees that the Employer will grant a sub-licence to use the intellectual property rights that exist in the BIM and/or PIM.
- 5. As a condition precedent to Practical Completion of the Works or any Section, the Contractor shall provide the models defined in the Employer's Information Requirements or deliverables at the completion of the Works or relevant Section at the level of detail defined in the Employer's Information Requirements.



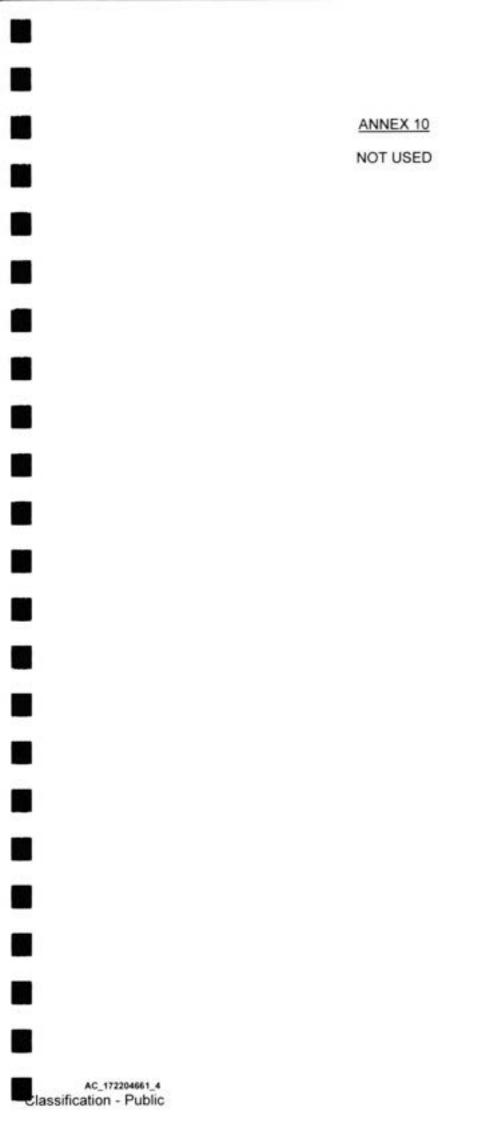
Included in the USB stick of technical documents at Annex 16 of this Contract.

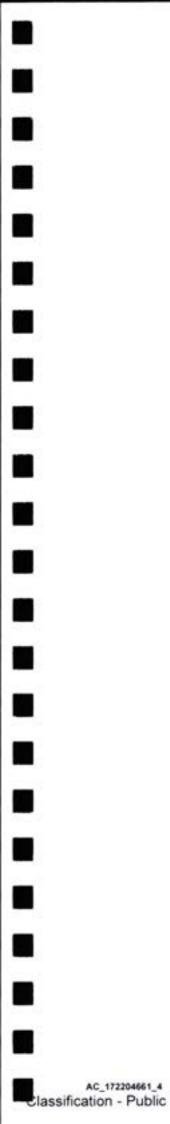
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NOT USED

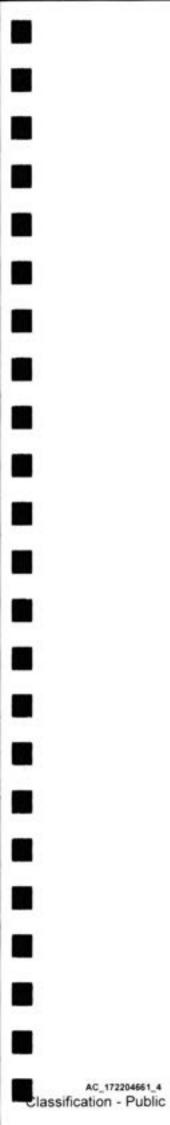


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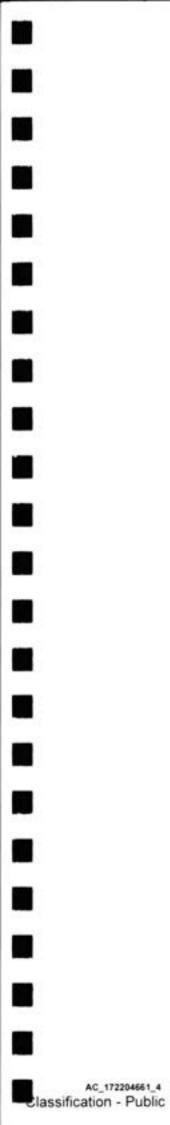




ANNEX 11 NOT USED



ANNEX 12 NOT USED



ANNEX 13 NOT USED



AC\_172204661\_4 Classification - Public ANNEX 14 SITE PLAN

DEED OF VARIATION



Deed of Variation relating to a building contract for the refurbishment of Sanctuary Buildings, 20 Great Smith Street, Westminster, London, SW1P 3BT

The Secretary of State for Education (1) and Willmott Dixon Construction Limited (2)

AC\_172204661\_4 Classification - Public

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	DEFINITIONS AND INTERPRETATION CONTRACT VARIATION OF CONTRACT ANTECEDENT BREACHES CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 GOVERNING LAW AND JURISDICTION

## DATE

## PARTIES

- THE SECRETARY OF STATE FOR EDUCATION whose head office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (Employer).
- (2) WILLMOTT DIXON CONSTRUCTION LIMITED (company number 00768173) whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire, SG6 4ET (Contractor).

## BACKGROUND

- (A) The Employer and the Contractor have entered into a building contract dated [•] (Contract) in relation to the refurbishment of Sanctuary Buildings, 20 Great Smith Street, Westminster, London, SW1P 3BT.
- (B) The Employer and the Contractor have agreed to vary the terms of the Contract as set out in the Schedules to this Deed.

## AGREED TERMS

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:
  - 1.1.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, provided that references to clause numbers in the Schedule are references to clauses in the Contract;
  - 1.1.2 references to this Deed or any other document are to this Deed or that document as amended from time to time;
  - 1.1.3 words denoting the singular include the plural and vice versa;
  - 1.1.4 references to a person include any corporate or unincorporated body;
  - 1.1.5 the table of contents and headings in this Deed do not affect its interpretation;
  - 1.1.6 the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.1.7 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives; and
  - 1.1.8 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it;
  - 1.1.9 if any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or

deletion of a provision or part-provision under this clause 1.1.9 shall not affect the validity legality and/or enforceability of the rest of this Deed; and

1.1.10 if one party gives notice to the other of the possibility that any provision or partprovision of this Deed is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 2. CONTRACT

This Deed is supplemental to the Contract.

## 3. VARIATION OF CONTRACT

- 3.1 With effect from the date of this Deed, the terms and conditions set out in the Contract shall be varied as set out in the Schedules to this Deed.
- 3.2 The Contract shall continue in full force and effect save as modified by this Deed and shall operate as if the provisions contained in this Deed were incorporated as an obligation in lieu of any provisions for which they are substituted. The obligations, terms and conditions of the Contract shall have effect as though the provisions contained in this Deed had been originally contained in it.

## 4. ANTECEDENT BREACHES

This Deed takes effect without prejudice to the rights of either party in respect of any antecedent breaches of the Contract.

## CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 6. GOVERNING LAW AND JURISDICTION

- 6.1 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.
- 6.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or to settle any dispute or claim which may arise out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

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

)

The <u>CORPORATE SEAL</u> of the <u>SECRETARY</u> ) <u>OF STATE FOR EDUCATION</u> herewith affixed ) and authenticated )

Authorised by the Secretary of State

Full name (Block Capitals)

EXECUTED AS A DEED by WILLMOTT DIXON CONSTRUCTION LIMITED acting by a Director and a

.....

.....



### SCHEDULE 1

Clause number in the Contract	Variation/amendment made		
First Recital:	Delete First Recital and replace with the following: [•] <sup>13</sup>		
Article 2: Contract Sum	Delete "[•]" and insert "[•]"		
Contract Particulars, Fifth Recital	Insert the words: "Section [•] - [•]"14		
Contract Particulars, Article 4 (Employer's Requirements)	Insert additional section into the "Employer's Requirements" folder comprising the relevant documents contained in the USB stick attached to Schedule 2 of this Deed of Variation.		
Contract Particulars, Article 4 (Contractor's Proposals)	Insert additional section into the "Contractor's Proposals" folder comprising the relevant documents contained in the USB stick attached to Schedule 2 of this Deed of Variation.		
Contract Particulars, Article 4 (Contract Sum Analysis)	Insert additional section into the "Contract Sum Analysis" folder comprising the relevant documents contained in the USB stick attached to Schedule 2 of this Deed of Variation.		
Contract Particular, clause 1.1 Date for Completion of Sections	Insert the words: "Section [•] - [•] <sup>=15</sup>		
Contract Particulars, clause 2.3 Date of Possession of Sections	Insert the words: "Section [•] - [•] <sup>=16</sup>		
Contract Particulars, clause 2.17.10 Limit of Contractor's liability	Delete "[•]" and insert "[•]"		
Contract Particulars, clause 2.29.2 rate of liquidated damages for	Insert the words: "Section [•] - £[•] per week or pro rata par thereof"17		

13 To be updated where Parties need to amend the description of the Works in First Recital.

<sup>14</sup> Note that additional Works may include Section 12 (Level 4 main works) and Section 13 (Level 6 main works)

15 Note that this may include Section 12 (14 March 2024) and Section 13 (6 December 2023).

<sup>16</sup> Note that this may include Section 12 (27 September 2023) and Section 13 (28 June 2023).

<sup>17</sup> Note that this may include Section 12 (£30,000.00 per week or pro rata part thereof) and Section 13 per week or pro rata part thereof). Note also that the wording relating to compounded LADs being capped may also need updating to reflect any main works Sections).

Clause number in the Contract	Variation/amendment made
each Section	
Contract Particulars, clause 2.34 Section Sums	Insert the words: "Section [•] - [•]"

### SCHEDULE 2

The encrypted USB attached to this page is the additional Employer's Requirements, Contractor's Proposals and Contract Sum Analysis to be added to Annex 16 of the Contract.

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



## CONTRACT DOCUMENTS

The USB stick attached to this page is Annex 16 comprising the Employer's Requirements, Contractor's Proposals, Schedule of Clarifications, Part 2 of Annex 8 (BIM Protocol), and Contract Sum Analysis.

By signing below each Party agrees and acknowledges that the USB stick is an accurate electronic representation of the paper files comprising the Employer's Requirements, Contractor's Proposals, Schedule of Clarifications, Part 2 of Annex 8 (BIM Protocol), and Contract Sum Analysis.

