

Signed by:

For and on behalf of the Employer

.....

For and on behalf of the Contractor

Part D

Schedule of Contract Amendments

Schedule of Amendments to JCT Minor Works Building Contract (2016 edition) entered into between Harbury Parish Council and []

relating to construction of a car park extension at Queen Elizabeth II Playing Fields, Constance Drive, Harbury, CV33 9JA

Project: 6541

Date: 23rd November 2023

On behalf of:
Harbury Parish Council
Unit 2 Bull Ring Business Centre
Harbury
Warwickshire
CV33 9HL

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All tender documents and submissions will be treated as strictly private and confidential

Schedule of Amendments to JCT Minor Works Building Contract 2016 edition

The contract will comprise the JCT Minor Works Building Contract 2016 edition subject to the following amendments:

Articles

Article 7

Delete the text of article 7 and insert "Not Applicable"

Article 8

In line 1 delete "and (where it applies) to Article 7"

Article 9

Insert new article 9:

"Incorporation of Amendments

The Employer and the Contractor agree that the modification in the schedule of amendments attached to this Contract (as initialled by the Employer and the Contractor) shall be incorporated into this Contract and the provisions of the Agreement, the Contract Particulars and the Conditions shall have effect as modified by the schedule of amendments."

[Note that Article 9 will be handwritten or typed in the JCT MW 2016 booklet and this note in square brackets will be deleted when the Contract is engrossed for execution.]

Article 11

Insert new article 11:

"Retrospective effect and letters of intent

Notwithstanding the date of this Contract it shall have effect as if it had been executed upon the date the Contractor first performed any work (including without limitation design, enabling works, temporary or other preliminary works, demolition works or permanent works) or activities in relation to the Works (whether under any letter or letters of intent or otherwise) and accordingly the duties and obligations contained in this Contract shall be deemed to have applied to the carrying out of any of those works and/or the Works prior to the date of this Contract. All payments made in respect of works carried out prior to the date of this Contract shall be treated as payments on account of sums due under this Contract."

Contract Particulars

Delete the entries relating to **Article 7 (Arbitration)**, **clauses 4.3 and 4.8 (Fluctuations provision)** and **schedule 1 (paragraph 2.1) (Arbitration)** and in each case insert "Not Applicable".

Insert the following new Contract Particulars:

Clause 2.9B

Documents and items to be provided before issue of the certificate of practical completion

1. One (1) hard-copy set of as-built drawings and three (3) copies in electronic format to be provided on a USB memory stick or other format as agreed by the Employer;
2. three (3) sets of keys for each lock;
3. Health and Safety File

Clause 3.3A

Sub-Contractor professional indemnity insurance

Level of indemnity required relates to claims or series of claims arising out of one event and is [**£2,000,000**].

[Note that if different PI requirements apply to different Sub-Contractors then this Contract Particular will need to be amended to reflect that.]

Conditions

Section 1 – Definitions and Interpretation

Clause 1.1

Delete the definition of **Agreement**.

Insert the following new definitions:

Agreement: the Articles of Agreement to which these conditions are annexed consisting of the Recitals, the Articles, the Contract Particulars and Appendices 1 to 7.

Anti-corruption Policy: the Employer's ethics, anti-bribery and anti-corruption policy or policies as referred to in the Contract Particulars and as the same may be amended from time to time and notified to the Contractor in writing.

Anti-Slavery Policy: the Employer's anti-slavery policy (if any) as the same may be amended from time to time.

Associated Person: a person (including an employee, agent or subsidiary) who performs services for or on the Contractor's behalf.

Best Environmental Practice: best practice generally as followed by contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws.

Bribery Act: the Bribery Act 2010.

Contractor's Report: the report prepared by the Contractor containing such information as set out in the Employer's Requirements and such other information as the Employer may from time to time reasonably require.

Corrupt Activity: extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act if such practice or conduct had been carried out in the United Kingdom whether in connection with the Works or otherwise.

Documents: all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Contractor in the course of the carrying out of the Works whether in existence or to be made or produced and including all amendments and additions to them;

EIR: the Environmental Information Regulations 2004 and any re-enactments and amendments.

EIR Code: the Code of Practice on the Discharge of Public Authorities' Functions under Section 16 of the EIR and any re-enactments and amendments.

Employment and Skills Strategy: the Employer's "Employment and Skills Strategy" as referred to in the Contract Particulars.

Environment: all and any of the following media being water (wherever situate), air (wherever situate) as well as humans and their property, plants, animals and eco-systems.

Environmental Laws: all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment.

Environmental Report: the report or reports, if any, referred to in the Contract Particulars.

ESP: the Works-specific "Employment and Skills Plan" produced by the Contractor and forming part of the Contractor's Proposals to be complied with and implemented by the Contractor in order to execute the Employment and Skills Strategy.

FOIA: the Freedom of Information Act 2000 and any re-enactments, amendments and relevant regulations.

FOIA Code: the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under Section 45 of the FOIA and any re-enactments and amendments.

Funder: a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide interim or other finance for the carrying out of the Works itself and / or for the acquisition of the Site and "Funders" shall be construed accordingly.

Information: 'information' as defined in section 84 of the FOIA and/or 'environmental information' as defined in section 2 of the EIR.

KPIs: the key performance indicators referred to in the Contract Particulars.

Latent Defects Insurance Documents: the documents referred to in the Contract Particulars.

Manufacturers' and Suppliers' Warranties: warranties in favour of the Employer from manufacturers and suppliers of materials and equipment installed as part of the Works as particularised in the Contract Particulars.

Master Programme: the master programme produced in accordance with clause 2.24 and as amended from time to time.

Method Statement: the Works-specific method statement produced by the Contractor and forming part of the Contractor's Proposals which sets out in detail how the Contractor shall implement the ESP.

Purchaser: a person who has acquired or has agreed to acquire or may later acquire or agree to acquire a freehold interest in the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) and "Purchasers" shall be construed accordingly.

Requests for Information: has the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR, the FOIA Code or the EIR Code.

Site: the site specified in the Contract Particulars and all references to "site" in this Contract shall be deemed to be Site.

Skill and Care: all the reasonable skill and care to be expected of a properly qualified and competent contractor experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Works.

Sub-Contractor: any sub-contractor whose obligations include, in the Employer's opinion, a material contribution to the Works.

Tenant: a person who has taken or has agreed to take or may later take or agree to take a lease of the whole or any part of the Site (and/or any premises constructed or to be constructed on the Site) (other than a person who has taken or takes a lease of an individual unit) and "Tenants" shall be construed accordingly.

Third Party Agreements: any and all agreements relating to or affecting the Works or the completed Works which have been entered into or may be entered into by the Employer including without limitation any agreements referred to as such in the Contract Particulars and any agreements for lease."

Clause 1.5

Delete clause 1.5 and insert:

"1.5 Nothing in this Contract confers or purports to confer on any person any rights pursuant to the Contracts (Rights of Third Parties) Act 1999."

Clause 1.8

Delete clause 1.8 and insert:

"This Contract 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 laws of England and Wales."

Clause 1.9

Insert new clause 1.9:

"All references to arbitration, fluctuations and fluctuation provisions in the Contract (including the relevant definitions in clause 1.1) shall be deemed to be deleted."

Section 2 – Carrying out the Works

Clause 2.1.1

In line 1 after "workmanlike manner" insert ", in accordance with good building practice"

Clause 2.1.4

Insert new clause 2.1.4:

"2.1.4.1 The Contractor warrants that it has not used and shall not use and has not and shall not specify, authorise, cause or allow to be used in the Works any products or materials which:

- .1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
- .2 are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- .3 do not comply with the guidance set out in the "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices; and/or
- .4 are specifically prohibited by this Contract.

2.1.4.2 The Contractor will immediately notify the Employer if it becomes aware of any proposed or actual specification and/or use in the Works of any products and/or materials which do not comply with clause 2.1.4.1."

Clause 2.1.5

Insert new clause 2.1.5:

"Where the Contractor has a discretion in relation to the selection of materials or manufacturer under the Contract Documents, the Contractor shall in each case:

- .1 make a presentation to the Employer including both the product, material or manufacturer specified in the Contract Documents and any alternative product, material or manufacturer proposed by the Contractor, it being accepted (for the avoidance of doubt) by the Contractor that the Contractor is not entitled, in any circumstances, to propose or select a product or material (irrespective of the manufacturer) which does not comply with the requirements of clause 2.1.4.1; and
- .2 in such presentations made by the Contractor to the Employer referred to under clause 2.1.5.1, the Contractor shall include all relevant information regarding the supply and order times for such products and/or materials and any replacement parts in relation to such products and materials; and
- .3 comply with the instructions of the Employer (acting reasonably) in respect of the choice of product, material or manufacturer.

The Contractor shall not be entitled to any adjustment of the Contract Sum nor to an extension of time by reason of any substitution and/or variation as referred to in this clause 2.1.5. Nothing in this clause 2.1.5 shall relieve or reduce the Contractor's obligations, liabilities or warranties under this Contract."

Clause 2.7

Delete clause 2.7 and insert:

"If it becomes apparent that the Works will not be completed by the Date for Completion stated in the Contract Particulars (or any later date fixed in accordance with the provisions of this clause 2.7) for reasons beyond the control of the Contractor, including compliance with any variation

agreed with the Employer in accordance with clause 3.6 and/or any proper instruction of the Architect/Contract Administrator the issue of which is not due to a default of the Contractor, then the Contractor shall forthwith so notify the Architect/Contract Administrator who shall make, and notify the Contractor of, such extension of time for completion of the Works as may be reasonable **provided always** that the Contractor shall use its best endeavours at all times to minimise any delay. For the avoidance of doubt, the Contractor shall not be entitled to any extension of time under this clause for reasons which are within the control of the Contractor, including any default of the Contractor or of others employed or engaged by or under him for or in connection with the Works (including any Sub-Contractor howsoever appointed) and of any supplier of goods or materials of the Works or where delays are caused by any impediment, prevention or default whether by act or omission by the Contractor or any person for whom the Contractor is responsible."

Clause 2.9

At the end of insert:

"For the avoidance of doubt the Architect/Contract Administrator shall be entitled to certify practical completion of the Works notwithstanding the existence of snagging items which for the purposes of this clause 2.9 shall mean any items of a minor nature which do not affect the health and/or safety of any person using the completed Works and/or the site of the completed Works, the beneficial use of the completed Works and/or the beneficial occupation of the site of the completed Works and which it is normal to include in a list of snagging items."

Clause 2.9A

Insert new clause 2.9A:

"Without prejudice to clause 2.9, the Architect/Contract Administrator may attach a schedule of any defects, shrinkages and other faults to the certificate of practical completion issued pursuant to clause 2.9. The Contractor shall maintain sufficient resources to ensure prompt completion of these items following practical completion, and in any event within any time period or periods specified in the schedule attached to the certificate of practical completion or, if not stated therein, the time period or periods stated in the document or documents referred to in the Contract Particulars commensurate with such defects, shrinkages or faults."

Clause 2.9B

Insert new clause 2.9B:

"Notwithstanding anything expressed or implied elsewhere in this Contract the Employer shall not be obliged to certify practical completion in accordance with clause 2.9 and practical completion of the Works shall not for any purpose of this Contract have occurred unless and until the Contractor shall first supply to the Employer all documentation and items listed in the Contract Particulars in relation to the properties forming part of the Works."

Clause 2.10

In line 4 after "own cost" insert "and within any time period specified in the document or documents referred to in the Contract Particulars commensurate with such defect, shrinkage or fault and, in any event, within a reasonable time"

Clause 2.10A

Insert new clause 2.10A:

"The Employer may, at any time, arrange for any defects, shrinkages or other faults to be rectified (other than by the Contractor) for any reason including without limitation in order to meet its obligations to any Funder, any Purchaser or any Tenant and, in such circumstances, all costs and expenses incurred by the Employer in respect of such remedial works shall be deducted from the Contract Sum or be payable as a debt by the Contractor to the Employer."

Clause 2.10B

Insert new clause 2.10B:

"The Contractor shall be responsible for making good any defects in the Works that the Latent Defects Insurance Documents oblige the Employer to make good and such remediation by the Contractor shall be carried out in accordance with the policy at no cost to the Employer."

Clause 2.10C

Insert new clause 2.10C:

"The Contractor shall submit to the Employer for approval at least 28 (twenty-eight) days before the Date for Completion a plan for the maintenance of the Works during the Rectification Period (the **Maintenance Plan**). Without prejudice to any other provision of this Contract, the Contractor shall ensure that the Works are fully and properly maintained during the Rectification Period as necessary and in accordance with the Maintenance Plan. The Contractor's compliance with this Clause 2.10C shall be at the Contractor's cost and the Contractor shall not be entitled to any additional payment in respect of such compliance."

Clause 2.13

Insert new clause 2.13:

"2.13.1 The Contractor shall carry out and complete the Works in accordance with Best Environmental Practice, the recommendations of the Environmental Report (if applicable) and Environmental Laws."

2.13.2 The Contractor shall:

- .1 carry out such further environmental investigation works as necessary and, specifically such work as recommended in the Environmental Report;
- .2 provide the Employer with a copy of any report and/or recommendations arising from the carrying out of such further investigations pursuant to clause 2.13.2.1;
- .3 comply with any recommendations arising from the further investigations pursuant to clause 2.13.2.1; and
- .4 provide such reasonable evidence to the Employer that the recommended environmental works have been carried out and completed to the satisfaction of the relevant Statutory Requirements.

- 2.13.3 The Contractor shall be liable for and indemnify and keep indemnified the Employer against any liability, damage, loss, expense, cost, claim or proceedings arising on or after the date of this contract in respect of any act or omission on the Contractor's part which results, whether directly or indirectly, in damage to the Environment and/or a breach of or failure by the Contractor to comply with its obligations under Environmental Laws insofar as such loss, injury or damage arises out of or in the course of or by reason of the carrying out the Works and to the extent that the same is due (wholly or partly) to any act or omission of the Contractor, any of its sub-contractors or their respective employees, servants or agents employed or engaged upon or in connection with the Works or any part or parts of the Works."

Clause 2.14

Insert new clause 2.14:

"The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before the date of this Contract or commencing the Works (whichever is the earlier) as to the nature of the ground, the sub-surface conditions and sub-soil, the form and nature of the Site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. The Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect for have affected the execution of the Works."

Clause 2.15

Insert new clause 2.15:

"Without prejudice to the generality of clause 5.2, the Contractor shall at all times take all reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clauses 2.10 to 2.11 and shall defend or, at the Employer's option, assist the Employer in defending any action or proceeding which may be instituted in relation thereto. The Contractor shall be liable for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing his obligations under this clause 2.15 save only where such nuisance or interference is the consequence of a variation pursuant to clause 3.6 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) and which could not have been avoided by the Contractor using all reasonable and practical means."

Clause 2.16

Insert new clause 2.16:

"Without prejudice to the Contractor's obligations under clause 2.15, if the carrying out of the Works or of any obligation pursuant to clauses 2.10 to 2.11 is likely to necessitate any interference with the rights of adjoining or neighbouring landowners tenants or occupiers then the Contractor shall without cost to the Employer obtain the prior written agreement of such landowner tenants and/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 such agreement."

Clause 2.17

Insert new clause 2.17:

"Without prejudice to the obligations of the Contractor under clauses 2.15 and 2.16, the Contractor shall at all times ensure that there is no trespass by the Contractor, its servants, agents, sub-contractors, design consultants or suppliers (including without limitation the over sailing of tower crane jibs) 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 and shall take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public."

Clause 2.18

Insert new clause 2.18:

- "2.18.1 The Employer gives no warranty or representation as to the condition of the Site or any adjoining property or any services in or under the Site or as to the accuracy or sufficiency of any soils or survey data contained in any document made available to the Contractor by the Employer or as to any recommendations or conclusions made or reached in any such document.
- 2.18.2 The Contractor shall not have or make any claim whether in contract or by way of negligent or innocent misrepresentation or otherwise in respect of information provided or statements made by or on behalf of the Employer in respect of risks contingencies or circumstances relating to the Site **provided that** nothing in this clause shall operate to exclude or limit liability for fraud."

Clause 2.19

Insert new clause 2.19:

"The Contractor shall be supplied, within a reasonable time having due regard to the progress of the Works, with copies of any Third Party Agreements (or such extracts as shall be relevant to the Employer's obligations under those Third Party Agreements) and subject to the Contractor receiving copies of such agreements (or extracts) the Contractor shall use Skill and Care in the discharge of its duties and obligations so as not by any action, inaction or omission by the Contractor cause or contribute towards a breach of the duties and obligations of the Employer under the Third Party Agreements."

Clause 2.20

Insert new clause 2.20:

- "2.20.1 The Contractor acknowledges that the Employer has duties under the Equality Act to have due regard to the need to eliminate discrimination, harassment and any other conduct prohibited by the Equality Act 2010 (the **Equality Act**) and to promote equality of opportunity and foster good relations between persons sharing a protected characteristic and those who do not share it. For the purposes of this duty (the **Equality Duty**) the protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.20.2 The Contractor warrants that it will not and shall procure that its sub-contractors will not through their conduct or practices cause the Employer to be in breach of any of the obligations placed upon the Employer by the Equality Act having due regard to any statutory code of practice issued in relation to those obligations and will indemnify the Employer for any loss, expense or damage incurred as a result of any breach of such obligations.
- 2.20.3 The Employer may having regard to its statutory duties under the Equality Act and having due regard to any statutory code of practice issued in relation to those statutory duties make requests or issue instructions to the Contractor (relating to the supply of information, monitoring and other matters) for the purposes of ensuring that the conduct or practices of the Contractor and/or its sub-contractors will not result in the Employer being in breach of its obligations under the Equality Act. The Contractor agrees that it will and shall procure that its sub-contractors will provide the Employer with all information reasonably requested by the Employer to allow it to monitor compliance with the obligations imposed by this clause 2.20.
- 2.20.4 Without prejudice to the generality of this clause 2.20 the Employer may require the Contractor to comply at no cost to the Employer with the Employer's policies relating to the Equality Duty (which shall be made available on request) or to have policies which have been approved by the Employer and the Contractor will and agrees that it shall procure that its sub-contractors comply with such requirements."

Clause 2.21

Insert new clause 2.21:

- "2.21.1 The Parties shall ensure that they shall at all times during the period of this Contract comply with the provisions and obligations imposed by the Data Protection Act 1998 (the **DPA**) and shall indemnify each other and keep each other indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause 2.21 by one party which causes the other party to be in receipt of any actions, claims, demands, proceedings and/or incur any damages, costs, charges and/or expenses (including reasonable legal expenses).
- 2.21.2 Each of the Parties shall ensure that, to the extent that it stores and processes data in connection with this agreement, it shall comply with the provisions and obligations imposed on it by the DPA.
- 2.21.3 The Employer will:

- .1 act in the capacity of Data Controller (as defined in the DPA) of any Employer or third party data accessed and/or processed by the Contractor in the performance of the Works; and
 - .2 be responsible to third parties for such data, including the individuals to whom the data relates.
- 2.21.4 As Data Processor (as defined in the DPA) the Contractor shall at all times in respect of data for which the Employer is Data Controller:
 - .1 warrant and undertake to comply with the seventh principle in schedule 1 of the DPA; and
 - .2 process data only in connection with the Works and only in accordance with the lawful and reasonable instructions of the Employer unless the Contractor is of the opinion that to act on such instructions would be unlawful.
- 2.21.5 The Contractor shall also comply fully with all applicable guidelines and codes of practice issued by the Information Commissioner in the UK from time to time.
- 2.21.6 The Employer shall on giving reasonable notice to the Contractor be entitled to audit the procedures of the Contractor (which shall include the right to enter the Contractor's premises and/or view the Contractor's systems) for the purposes of ensuring compliance with this clause 2.21 and to take any reasonable steps to satisfy itself that the Contractor is so complying.
- 2.21.7 The Contractor will at the Employer's request from time to time prepare a report as to the Contractor's technical and organisational procedures in place to protect third party personal data.
- 2.21.8 In the event that the Contractor becomes aware that it, or any of its staff, agents or specialists is processing data in contravention of this clause 2.21 or has breached the DPA in relation to the data it is processing on behalf of the Employer, the Contractor shall promptly give written notice to the Employer with full details of such contravention.
- 2.21.9 The Contractor will provide all data in its possession as requested by the Employer from time to time in accordance with the timescale specified by the Employer in the event of the Employer receiving a data subject access request. Where the Employer requests data for the purpose of complying with a request, including a data subject access request under the DPA, the Contractor will retrieve the relevant data and provide a full copy of such to the Employer as soon as is possible but in any event within five (5) Business Days of such a request being made.
- 2.21.10 The Contractor will co-operate and provide reasonable assistance with any proceedings or inquiry by the Employer, an affected data subject and/or the Information Commissioner or other body authorised by statute which are concerned with the DPA.
- 2.21.11 The Contractor will on termination of the Contractor's employment under this Contract or expiry of this Contract and at the request of the Employer either return to the

Employer or destroy the data (and all copies of such data) in the Contractor's possession or other as directed by the Employer."

Clause 2.22

Insert a new clause 2.22:

2.22.1 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the EIR and is expected to abide by the FOIA Code and EIR Code. The Contractor shall assist and co-operate with the Employer (at the Contractor's expense) to enable the Employer to comply with these information disclosure requirements.

2.22.2 The Contractor shall, and shall ensure that its sub-contractors shall:

- .1 provide the Employer with a copy of all Information in their possession, power or control in the form that the Employer requires within five (5) Business Days (or such other period as the Employer may specify) of the Employer requesting that Information in writing; and
- .2 provide all necessary assistance as is reasonably requested by the Employer to enable the Employer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR,

and the Contractor shall be liable for and hereby indemnifies the Employer from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Employer where and to the extent that the same arises in connection with any breach of this clause 2.22 by the Contractor, its employees, agents and/or sub-contractors and/or their employees and agents.

2.22.3 If the Contractor considers that all or any Information provided to the Employer under clause 2.22 is a "trade secret" in accordance with section 43(1) of FOIA or is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party in accordance with section 43(2) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA or any exception in the EIR, the Contractor shall ensure that the relevant Information, the claimed exemption or exception and if a qualified exemption, its views on where the public interest lies, is clearly identified to the Employer. Notwithstanding any such identification, the Employer shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:

- .1 is exempt from disclosure in accordance with the provisions of the FOIA Code and the FOIA or the EIR Code and the EIR; or
- .2 is to be disclosed in response to a Request for Information.

2.22.4 In no event shall the Contractor respond directly to any requests for information from members of the public.

2.22.5 The Contractor acknowledges that the Employer may, acting in accordance with the recommendations set out in the FOIA Code and/or EIR Code, be obliged under the FOIA and/or the EIR to disclose Information:

- .1 without consulting with the Contractor; or
- .2 following consultation with the Contractor and having considered the Contractor's views."

Clause 2.23

Insert new clause 2.23:

"The Contractor acknowledges that the Contractor's liability under this Contract shall not be released, diminished or in any other way affected by:

- 2.23.1 any direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Employer or the Architect/Contract Administrator;
- 2.23.2 any act omission or delay by or on behalf of the Employer in inspecting approving or informing itself about anything relating to the Works;
- 2.23.3 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Employer or the Architect/Contract Administrator;
- 2.23.4 the inclusion of the value of any work, materials or goods in any interim payment;
- 2.23.5 the appointment or failure to appoint any clerk of works or other person to inspect or otherwise report in respect of the Works or by any act or omission of any clerk of works or other person whether or not such act or omission might give rise to an independent liability to such clerk of works or another person to the Employer, the Architect/Contract Administrator and/or any third party;
- 2.23.6 the issue of the certificate of practical completion pursuant to clause 2.9 and/or the certificate of making good pursuant to clause 2.11."

Clause 2.24

Insert new clause 2.24:

- "2.24.1 At least 7 days prior to the Date of Possession the Contractor shall submit to the Employer for approval a Master Programme showing the critical path, in a format acceptable to the Employer, for the execution of the Works consistent with the orderly and efficient delivery and completion of the Works by or before the Date of Completion. The Contractor shall have due regard to any comments that the Employer may make regarding the Master Programme from time to time and notwithstanding any other provision of this Contract shall keep the Employer advised of any changes or anticipated changes to the Master Programme and or its critical path.
- 2.24.2 Thereafter the Contractor shall from time to time, but at no greater intervals than monthly, update with progress to date and revise the Master Programme, as

appropriate, to minimise or avoid any or any anticipated delay or disruption to the carrying out of the Works.

- 2.24.3 The Master Programme shall contain the information which the Employer reasonably requires from time to time. The Contractor shall keep on Site and available for inspection one copy of the Master Programme and each revision thereto and an up-to-date record of the progress.
- 2.24.4 Each month, on a date to be determined by the Employer, the Contractor shall provide to the Employer the Contractor's Report for the preceding month together with copies of the Master Programme and any revisions thereto (dates and format of such programme to be agreed with the Employer in writing).
- 2.24.5 The Contractor shall attend all meetings called by the Employer and the cost to the Contractor associated with all such meetings shall be deemed included in the Contract Sum.
- 2.24.6 The Contractor shall ensure that all Sub-Contractors (as are required by the Employer) attend all such meetings called pursuant to clause 2.24.5.
- 2.24.7 The Contractor's compliance with clause 2.24.4 shall be a precondition to the Contractor's entitlement to payment under this Contract."

Clause 2.25

Insert new clause 2.25:

- "2.25.1 The Contractor hereby grants to the Employer an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Works **provided always** that the Contractor shall not be liable for any such use by the Employer for any purpose other than that for which the same were prepared and provided by the Contractor.
- 2.25.2 The licence referred to in clause 2.25.1 carries the right to grant sub-licences, shall be transferable to third parties and shall subsist notwithstanding the termination (for any reason) of the Contractor's employment under this Contract."

Clause 2.26

Insert new clause 2.26:

"In performing its obligations under this Contract, the Contractor shall and shall ensure that each of its sub-contractors shall comply with the Modern Slavery Legislation and the Anti-Slavery Policy (if any)."

Clause 3.1

Delete clause 3.1 and insert:

- "3.1.1 The Employer may assign its entire rights and benefits under this Contract to any person having or acquiring an interest in the Works and the Employer's said rights and benefits may be charged and/or assigned by way of security and may be re-assigned

on redemption. The Contractor may not assign the benefit of this Contract without the written consent of the Employer.

- 3.1.2 The Contractor undertakes with the Employer not to contend that any person to whom this Contract may be assigned will be precluded from recovering under this Contract any loss resulting from any breach of this Contract either by reason that the person is an assignee and not the original party to this Contract or by reason that the Employer named in this Contract or any intermediate owner of the Employer's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works."

Clause 3.3A

Insert new clause 3.3A:

"The Contractor shall ensure that any Sub-Contractor engaged in accordance with the terms of this Contract shall take out and maintain for a period of 12 (twelve) years from date of issue of the certificate of practical completion pursuant to clause 2.9 professional indemnity insurance in the amounts and on the basis specified in the Contract Particulars or, if not specified therein, such amounts and basis which the Employer may approve."

Clause 3.3B

Insert new clause 3.3B:

"The Architect/Contract Administrator shall not be deemed to be unreasonably withholding or delaying consent to a request by the Contractor to sub-contract pursuant to Clause 3.3 where the relevant sub-contract with the proposed sub-contractor includes proposed terms which:

- .1 restrict, limit or diminish the duty of care owed to the Employer, the extent of the copyright licence, the liability of the sub-contractor and/or the required insurances; and/or
- .2 seek to include a net-contribution clause, an express financial limit on liability and/or an exclusion of particular losses."

Clause 3.6.4

Insert new clause 3.6.4:

"Where any instruction issued in accordance with clause 3.6.1 has the effect of substantially increasing or decreasing the Contract Sum, the Contractor may propose a corresponding and proportionate amendment to the employment and skills output figures contained in the ESP, the Method Statement and any relevant performance indicators. The Employer and the Architect/Contract Administrator shall consider any such proposal made by the Contractor and shall seek to agree any amendments with the Contractor."

Clause 3.9

At the end of the clause insert "The Contractor hereby agrees to indemnify and indemnifies the Employer against all costs expenses proceedings and/or claims howsoever arising as a result of non-compliance by the Contractor of its obligations under this clause 3.9."

Clause 3.9.1

Delete clause 3.9.1 and insert "Not Applicable"

Clause 3.10

Insert new clause 3.10:

"The Contractor shall execute as deeds and deliver to the Employer within ten (10) Business Days of a written request to do so from or on behalf of the Employer from time to time collateral warranties in favour of any:

- (a) Purchaser; and/or
- (b) Tenant; and/or
- (c) Funder.

Such collateral warranty or warranties shall be in the appropriate form set out at Appendix 1 to the Agreement with only such changes as the Employer may approve.

It shall be a precondition to the Contractor's entitlement to payment under this Contract that the Contractor has delivered to the Employer all collateral warranties in accordance with this clause 3.10."

Clause 3.11

Insert new clause 3.11:

"3.11.1 The Contractor shall procure that each and every Sub-Contractor shall execute as deeds and deliver to the Employer within 15 (fifteen) Business Days of a request to do so from or on behalf of the Employer from time to time a collateral warranty or warranties in favour of:

- (a) the Employer; and/or
- (b) any Purchaser; and/or
- (c) any Tenant; and/or
- (d) any Funder.

Such collateral warranty or warranties shall be in the appropriate form set out in Appendix 2 to the Agreement with only such changes as the Employer may approve (such approval not to be unreasonably withheld or delayed).

3.11.2 The Contractor shall provide to the Employer within five (5) Business Days of completion of the same a certified copy of the completed terms of engagement or sub-contract of any Sub-Contractor **provided that** the Contractor shall be entitled to delete any commercially sensitive information from such certified copy.

- 3.11.3 If not already provided pursuant to clause 3.11.2, the Contractor shall provide at the same time as the deed or deeds of warranty requested pursuant to clause 3.11.1 a certified copy of the associated completed terms of engagement or sub-contract of any Sub-Contractor **provided that** the Contractor shall be entitled to delete any commercially sensitive information from such certified copy.
- 3.11.4 It shall be a precondition to the Contractor's entitlement to payment under this Contract that the Contractor has delivered to the Employer all collateral warranties in accordance with this clause 3.11."

Section 4 – Payment

Clause 4.3

In the final sentence delete "14" and insert "28"

Clause 4.4.1

In line 1 delete "may" and insert "shall"

At end of clause insert:

"A VAT invoice shall be supplied to the Employer not later than 5 days after issue of each interim certificate under clause 4.3 and 4.4 and a final certificate under clause 4.8.1 or, if an interim certificate or final certificate is not issued, at the same time as each payment notice is given under clause 4.4.2 and 4.5.2 and copies of each VAT invoice shall at the same time be submitted to the Architect/Contract Administrator."

Clause 4.6.1

Insert at the end of the clause "The Parties confirm that the interest paid pursuant to this clause is a substantial remedy for late payment in compliance with Section 9 Late Payment of Commercial Debts (Interest) Act 1998 (the **1998 Act**)."

Clause 4.7.1

In line 5 before "his obligation" insert "any or all of"

Clause 4.8.3

In line 1 delete "14" and insert "28"

Clause 4.9

Delete in the clause heading "and fluctuations provisions"

Delete the content of clause 4.9 and insert:

"The Contract Sum shall be deemed to have been calculated on a fixed price basis (fixed at the Base Date) and shall not be subject to fluctuations in any event."

Clause 4.10

Insert new clause 4.10:

"The Employer's interest in the percentage of the total value not included in the amounts of interim payments to be certified under clause 4.3 and 4.8 (the **Retention**) shall not be fiduciary and the relationship of the Employer and the Contractor with regard to the same shall be solely that of debtor and unsecured creditor. Any right of the Employer to deduct or to set off any amount (whether arising under any express term or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor whether or not such monies consist of or include any Retention. The Employer shall:

- .1 have no obligation to invest the Retention or any part of the Retention;
- .2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner;
- .3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including without limitation interest and income arising from the Retention)."

Clause 4.11

Insert new clause 4.11:

"Any sums due to the Employer pursuant to clauses 2.10A, 2.13.3, 2.15, 2.20.2, 2.21.1, 2.22.2, 3.9, 5.1, 5.2 and/or 6.6.2 shall be due for payment on demand. Such demand to take the form of an invoice from the Employer to the Contractor specifying the sum that the Employer considers to be due on the date of the demand (which for the purposes of this clause shall be the **payment due date**) and the basis on which that sum is calculated. Within 5 days of the payment due date the Contractor shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that is calculated **provided that** if the Contractor fails to serve such notice the Employer's demand shall be treated as the payment notice. The final date for payment for any such sum so demanded shall be 28 days after the payment due date."

Section 5 – Injury, Damage and Insurance

Clause 5.3

Insert at the end of the clause:

"All insurance required by this clause 5.3 shall be unlimited in respect of the number of occurrences arising and claims made in any period of insurance."

Clause 5.4D

Insert new clause 5.4D:

"The application of insurance pursuant to clause 5.4A or clause 5.4B or clause 5.4C as the case may be shall not affect the responsibility of the Contractor hereunder for any loss or damage not covered by any insurance policy described therein."

Section 6 – Termination

Clause 6.6

Delete clause 6.6 and insert:

- "6.6.1 The Contractor undertakes to the Employer that:
- 6.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
- 6.6.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act;
- 6.6.1.3 it shall comply with the Anti-corruption Policy;
- 6.6.1.4 it has and shall maintain and implement:
- (a) procedures to ensure compliance with clauses 6.6.1.1 and 6.6.1.2; and
- (b) adequate procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;
- 6.6.1.5 it shall include undertakings similar to those contained in this clause 6.6.1 in any contract it may enter into with sub-contractors and suppliers and provisions similar to those contained in clause 6.6.1.7;
- 6.6.1.6 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clauses 6.6.1.1 to 6.6.1.5 inclusive and will provide any information reasonably requested by the Employer in support of such compliance;
- 6.6.1.7 it shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 6.6.1 (including without limitation books of account showing all payments made by the Contractor in connection with this Contract) and shall permit the Employer and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 6.6.1.1 to 6.6.1.3 inclusive, to access and take copies of such records and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause 6.6.1. The Contractor shall give all necessary assistance to the conduct of such audits.
- 6.6.2 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach of clause 6.6.1 by the Contractor or any breach of provisions equivalent to clause 6.6.1 in any contract with a sub-contractor or supplier.

- 6.6.3 The Employer may by notice to the Contractor terminate the Contractor's employment under this Contract and (if applicable) any other contract between the Employer and the Contractor:
- 6.6.3.1 in the event of breach of clauses 6.6.1.1 to 6.6.1.5 inclusive; and/or
- 6.6.3.2 if an Associated Person (or anyone employed by or acting on behalf of them) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act;
- 6.6.3.3 where the Employer is a local authority if the Contractor gives or has given any fee or reward the receipt of which is an offence under section 117(2) Local Government Act 1972; and/or
- 6.6.3.4 where this Contract is one to which regulation 73(1)(b) of the PC Regulations apply."

Clause 6.7

In line 1 delete "or 6.6" and insert "or 6.6.3"

Clause 6.12

Insert new clause 6.12:

"Upon any determination of the Contractor's employment under this section 6 or if this Contract is determined repudiated or discharged in any other manner and notwithstanding that the validity of such determination repudiation or discharge may be disputed by the Contractor the Contractor shall immediately deliver to the Employer possession of the Site."

Section 7 – Settlement of Disputes

Clauses 7.3

Delete clause 7.3 and insert "Not Applicable"

Appendix 1
Form of contractor warranty

Construction of a car park extension at Harbury Queen Elizabeth Playing Fields

dated []

[]

and

[]

[and

[]

Contractor warranty

in relation to []

Contractor warranty

Parties

- [User note: the Employer should only be party to the warranty if step in rights are being granted – e.g. to a funder.]*

Introduction

- (A) The Employer has procured the carrying out of the Works at the Property (as defined below).
- (B) The Contractor carries on business as a building contractor and has been appointed as such by the Employer to carry out the Works upon the terms and conditions contained in the Building Contract (as defined below).
- (C) The Beneficiary has an interest/will have an interest in the Property or a part or parts of the Property and/or the Project and has entered into the Agreement (as defined below) in respect of the Property.
- (D) The Contractor has agreed to enter into this warranty in favour of the Beneficiary.

Agreed terms

1 Interpretation and definitions

- 1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

Agreement means the agreement between the Beneficiary and the Employer dated [] whereby the Beneficiary has [agreed to provide finance for the carrying out and completion of the Project] [agreed to purchase the Property] [agreed to acquire a long leasehold interest in the Property] [engaged the Employer as developer to procure the carrying out of the Works];

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

Building Contract means the JCT Minor Works Building Contract (2016 edition) as amended dated [] entered into between the Employer and the Contractor (and any further agreement(s) varying or supplementing it) for the Works;

Contractor's Design Documents means the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Contractor in relation to the design of the Works;

[**Employer** means [] (company number []) of/whose registered office is at [];]

[User note : only required if the Employer is not a party to the warranty]

Project means [] at the Property;

Property means [];

Working Day means any day except Saturday Sunday and bank or other public holidays in England;

Works means the works of design, [demolition, refurbishment,] construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract.

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.
- 1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 **Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges) the Contractor covenants to the Beneficiary as set out in this warranty.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

3 **Duty of care**

The Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Building Contract; and
- 3.2 in relation to the design of the Works (including any design carried out by any design consultant or any sub-contractor with design responsibility or by any other person whether or not employed or engaged by the Contractor) it has been and will be carried out using all the reasonable skill and care to be expected of a professionally qualified and competent design and build contractor experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Works; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project provided that the Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as employer instead of the Employer in the Building Contract; and
- 3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Contractor's skill and judgement in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project.

4 **Prohibited materials**

The Contractor shall not specify or authorise for use any materials or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.

5 **[Step-in**

[User note : If not relevant, delete.]

- 5.1 The Contractor covenants with the Beneficiary that if any event of default shall occur under the Agreement at any time the Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer upon the terms and conditions of the Building Contract and the Employer acknowledges that the Contractor shall be entitled to rely on the notice given to the Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

[User note : only relevant if the Agreement allows the Beneficiary to step into the Employer's shoes in the event the Agreement is breached. Delete clause 5.1 if this is not the case.]

- 5.2 The Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Building Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Building Contract without first giving to the Beneficiary prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract and/or its employment and/or discontinuing or suspending its performance under the Building Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given the Contractor shall give 7 days' notice otherwise the Contractor shall give 15 working days notice.
- 5.3 Compliance by the Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Contractor:
- 5.4.1 acknowledging that it assumes all the obligations of the Employer;
 - 5.4.2 requiring the Contractor to continue with the performance of its duties and obligations under the Building Contract;
 - 5.4.3 undertaking unconditionally to the Contractor to pay to the Contractor within 15 working days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Contractor under the Building Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Contractor from the appointee[;] [.]
- [provided that** the rights of [] under clause 5 of the warranty given or to be given by the Contractor to [] shall have priority over the rights of the Beneficiary under this clause whether such are exercised by [] before or after the exercise by the Beneficiary of its rights under this clause.]
- 5.5 In the event of the Beneficiary or their appointee giving notice to the Contractor in accordance with clause 5.4 the Building Contract shall continue in full force and effect and in all respects as if the Building Contract had been made between the Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Employer (but without prejudice to any rights of recovery as between the Contractor and the

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

Employer) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

- 5.6 The Employer confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.]

6 Copyright

- 6.1 Subject to any rights in any design, drawings and other documents supplied to the Contractor for the purposes of the Building Contract by or on behalf of the Employer, the copyright in all the Contractor's Design Documents shall remain vested in the Contractor.

- 6.2 The Beneficiary shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Beneficiary to copy and use the Contractor's Design Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.

- 6.3 The Contractor shall not be liable for any use by the Beneficiary of any of the Contractor's Design Documents for any purpose other than that for which they were prepared.

- 6.4 When requested to do so by the Beneficiary the Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Contractor's reasonable copying charges in connection with complying with such request.

7 Insurance

- 7.1 The Contractor shall:

7.1.1 take out (unless the Contractor has already done so) a professional indemnity insurance policy for not less than [] pounds (£[]) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event];

7.1.2 provided that it remains generally available at commercially reasonable rates, maintain such insurance until the expiry of 12 years from the date of practical completion of the Works; and

7.1.3 as and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such has been effected and/or is being maintained.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

- 7.2 If the insurance referred to in clause 7.1 ceases to be generally available at commercially reasonable rates, the Contractor shall immediately give notice to the Beneficiary so that the Contractor and the Beneficiary can discuss the means of best protecting the respective positions of the Beneficiary and the Contractor in the absence of such insurance.

8 Assignment

- 8.1 The Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

- 8.2 The Beneficiary may (without the consent of the Contractor [and the Employer]) assign its rights under this warranty:

8.2.1 [to any mortgagee and by way of re-assignment on redemption;]

8.2.2 to any subsidiary or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary or holding company are defined in section 1196 Companies Act 2006

8.2.3 on two other occasions only.

[User note: clause 8.2.1 is not relevant for a funder so should be deleted in any funder warranty.]

- 8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.

- 8.4 The Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 Delay

The Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works [unless and until the Beneficiary has given notice to the Contractor under clause 5.4.]

10 Notices

- 10.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

- 10.2 Notices may be served by:
- 10.2.1 personal delivery; or
 - 10.2.2 pre-paid registered or recorded delivery mail; or
 - 10.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
- 10.3 Notices and communications shall be deemed to have been served or received in the case of:
- 10.3.1 personal delivery on the date of delivery;
 - 10.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;
 - 10.3.3 facsimile transmission sent in accordance with clause 10.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.
- 11 **Continuing effect**
- Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.
- 12 **Miscellaneous**
- 12.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this warranty.
- 12.2 The Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:
- 12.2.1 the appointment by the Beneficiary of any person to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or
 - 12.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 13 **Contracts (Rights of Third Parties) Act 1999**
- Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

14 Law

This warranty shall 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) be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

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

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

Appendix 2

Form of sub-contractor warranty

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

Sub-Contractor warranty

in relation to []

Grass Concrete Limited

and

Harbury Parish Council

[and

[]

dated []

Sub-Contractor warranty

Parties

Introduction

Agreed terms

1 Interpretation and definitions

- 1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

Agreement means the agreement between the Beneficiary and the Employer dated [] whereby the Beneficiary has agreed to [provide finance for the carrying out and completion of the Project].

[User note : delete this definition in any warranty in favour of the Employer.]

Building Contract means the JCT Minor Works Building Contract (2016 edition) as amended dated [] entered into between the [Employer] [Beneficiary] and the Contractor (and any further agreement(s) varying or supplementing it) for the Works;

[**Contractor** means [] (company number []) of/whose registered office is at [];]

[User note : only relevant if the contractor is not a party to the warranty. If the contractor is named in the parties clause delete this reference.]

Sub-Contract means the terms of engagement entered into between the Contractor and the Sub-Contractor [by way of a deed of novation] dated [] (and any further agreement(s) varying or supplementing it) under which the Sub-Contractor has agreed to provide the Services;

Documents means the drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Sub-Contractor in relation to the design of the Works;

[**Employer** means **Harbury Parish Council** (company number []) of/whose registered office is at [];]

[User note : delete if the warranty is being given to the Employer.]

Project means **Car Park Extension** at the Property;

Property means **Harbury Queen Elizabeth II Playing Fields, Constance Drive, Harbury, CV33 9JE.**;

Services means the works, design and/or services which the Sub-Contractor has been retained to carry out under the Sub-Contract;

Working Day means any day except Saturday Sunday and bank or other public holidays in England;

Works means the works of design, [demolition, refurbishment,] construction, completion and defects rectification to be carried out on the Property pursuant to the Building Contract.

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.

Construction of a car park extension at Harbury Queen Elizabeth II Playing Fields

- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include both genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.
- 1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

2 Consideration

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges) the Contractor covenants to the Beneficiary as set out in this warranty.

3 Duty of care

The Sub-Contractor warrants and undertakes to the Beneficiary that:

- 3.1 It has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub-Contract; and
- 3.2 It has exercised and will continue to exercise in the performance of the Services all the reasonable skill and care to be expected of a properly qualified and competent [] experienced in the provision of services and works for projects of a similar size scope value character and complexity to the Project;
- 3.3 It shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub-Contractor's responsibilities in relation to the Project provided that the Sub-Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as contractor instead of the Contractor in the Sub-Contract; and
- 3.4 The Beneficiary shall be deemed to have relied and shall continue to rely upon the Sub-Contractor's skill and judgement in respect of all matters which lie within the scope of the Sub-Contractor's responsibilities in relation to the Project.

4 Prohibited materials

The Sub-Contractor shall not specify or authorise for use any materials or goods which are then known (or generally considered within the construction industry) to be deleterious to health and safety or to durability in the particular circumstances in which they are used.

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5 [Step-in

[User note : step in rights only applicable in case of warranty to Employer, and a Funder.]

- 5.1 [The Sub-Contractor covenants with the Beneficiary that if any event of default shall occur under the Building Contract at any time the Sub-Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor upon the terms and conditions of the Sub-Contract and the Contractor acknowledges that the Sub-Contractor shall be entitled to rely on the notice given to the Sub-Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.]

[User note : only relevant in the warranty in favour of the Employer.]

- 5.2 The Sub-Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Sub-Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub-Contract without first giving to the Beneficiary prior written notice specifying the Sub-Contractor's ground for terminating or treating as terminated the Sub-Contract and/or its employment and/or discontinuing or suspending its performance under the Sub-Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given the Sub-Contractor shall give 7 days notice otherwise the Sub-Contractor shall give 15 working days notice.
- 5.3 Compliance by the Sub-Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Sub-Contractor:
- 5.4.1 acknowledging that it assumes all the obligations of the Contractor;
 - 5.4.2 requiring the Sub-Contractor to continue with the performance of its duties and obligations under the Sub-Contract;
 - 5.4.3 undertaking unconditionally to the Sub-Contractor to pay to the Sub-Contractor within 15 working days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Sub-Contractor under the Sub-Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary

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the Beneficiary shall guarantee all payments due to the Sub-Contractor from the appointee[;] [.]

[**provided that** the rights of [] under clause 5 of the warranty given or to be given by the Sub-Contractor to [] shall have priority over the rights of the Beneficiary under this clause whether such are exercised by [] before or after the exercise by the Beneficiary of its rights under this clause.]

[User note : The Employer should have priority of step-in over others including any Funder.]

5.5 In the event of the Beneficiary or their appointee giving notice to the Sub-Contractor in accordance with clause 5.4 the Sub-Contract shall continue in full force and effect and in all respects as if the Sub-Contract had been made between the Sub-Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Sub-Contractor and the Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 The Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.]

6 Copyright

6.1 Subject to any rights in any design, drawings and other documents supplied to the Sub-Contractor for the purposes of the Sub-Contract by or on behalf of the Contractor, the copyright in all the Documents shall remain vested in the Sub-Contractor.

6.2 The Beneficiary shall have an irrevocable, royalty-free, non exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose relating to the Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall enable the Beneficiary to copy and use the Documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any extension of the Works.

6.3 The Sub-Contractor shall not be liable for any use by the Beneficiary of any of the Documents for any purpose other than that for which they were prepared.

6.4 When requested to do so by the Beneficiary the Sub-Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub-Contractor's reasonable copying charges in connection with complying with such request.

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7 Insurance

7.1 The Sub-Contractor shall:

7.1.1 take out (unless the Sub-Contractor has already done so) a professional indemnity insurance policy for not less than **two million** pounds (£2,000,000.00) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event];

7.1.2 **provided that** it remains generally available at commercially reasonable rates, maintain such insurance until the expiry of 12 years from the date of practical completion of the Works; and

7.1.3 as and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such has been effected and/or is being maintained.

7.2 If the insurance referred to in clause 7.1 ceases to be generally available at commercially reasonable rates, the Sub-Contractor shall immediately give notice to the Beneficiary so that the Sub-Contractor and the Beneficiary can discuss the means of best protecting the respective positions of the Beneficiary and the Sub-Contractor in the absence of such insurance.

8 Assignment

8.1 The Sub-Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Sub-Contractor [and the Contractor]) assign its rights under this warranty:

8.2.1 to any mortgagee and by way of re-assignment on redemption;

8.2.2 to any subsidiary or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary or holding company are defined in section 1196 Companies Act 2006;

8.2.3 on two other occasions only.

[User note : clause 8.2.1 is not relevant for a funder so should be deleted in any funder warranty.]

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.3.

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- 8.4 The Sub-Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Project shall escape loss resulting from such breach by reason of the disposal of its interest in the Project.

9 Notices

- 9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

- 9.2 Notices may be served by:

9.2.1 personal delivery; or

9.2.2 pre-paid registered or recorded delivery mail; or

9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.

- 9.3 Notices and communications shall be deemed to have been served or received in the case of:

9.3.1 personal delivery on the date of delivery;

9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;

9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

10 Continuing effect

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

11 Miscellaneous

- 11.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Sub-Contractor in the absence of this warranty.

- 11.2 The Sub-Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:

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- 11.2.1 the appointment by the Beneficiary of any person to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or
- 11.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

12 Contracts (Rights of Third Parties) Act 1999

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 Law

This warranty shall 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) be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.

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