

2022

JCT Consultancy Agreement (Public Sector) 2016 (CA 2016) Schedule of  
Amendments  
relating to  
the refurbishment of Sanctuary Buildings (Second Phase)

The Secretary of State for Education <sup>(1)</sup> and  
Arcadis LLP <sup>(2)</sup>

**Schedule of Amendments to the  
JCT Consultancy Agreement (Public Sector) 2016 (CA 2016)**

The Contract shall comprise the JCT Consultancy Agreement (Public Sector) 2016 (CA 2016), subject to the amendments in this Schedule of Amendments, and shall be construed accordingly.

**Agreement**

**THIS CONTRACT** is made on 2022

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Client**")
- (2) **ARCADIS LLP** (company number OC368843) whose registered office is situated at 80 Fenchurch Street, London, EC3M 4BY (the "**Consultant**")

**Recitals**

- First            the Client wishes to have the following construction project carried out: Internal refurbishment of existing levels 8, 7, 6, 4, 3 and 2 together with replacement of core infrastructure services at Sanctuary Buildings, 20 Great Smith Street, Westminster, London, SW1P 3BT (the "**Project**") as more particularly described in the Client's Brief;
- Second        for the purposes of the Project, the Client has requested the Consultant to act in the capacity specified in the Contract Particulars and, for the fee specified in Annex A (the "**Fee**") to provide the services set out in Annex B (the "**Services**"), which the Consultant has agreed to do on the terms of this Agreement;
- Third         Delete.

**Articles**

**Article 1: Consultant's obligations**

After "Conditions" insert "and this Contract".

**Article 2: Payment**

After "Conditions" insert "and this Contract".

**Article 3A: BIM Information Manager**

The BIM Information Manager is

**Chan Panchal** of Arcadis LLP

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

**Article 3B: BIM Co-ordinator**

The BIM Co-ordinator is

**Rosielyn Mariano** of Arcadis LLP

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

## **Article 5: Arbitration**

Not used – Arbitration does not apply

## **Article 6: Legal proceedings**

Delete and insert "Without prejudice to Article 4 and clause 12.2, 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 settle any dispute or claim which may arise out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)."

## **Article 7: The Consultant's Deeds of Collateral Warranty**

Insert a new Article 7:

- "7.1 The Consultant shall execute as a deed and deliver to the Client within 10 Business Days of a written request from the Client a deed or deeds of collateral warranty in the form set out in Annex C to this Contract with only such amendments as the Client may approve and/or reasonably require in favour of:
- 7.1.1 any organisation providing finance in connection with the Project and/or site or any part of the Project and/or site;
  - 7.1.2 any purchaser of the whole or any part of the Project and/or site;
  - 7.1.3 any organisation providing finance to a purchaser of the whole or any part of the Project and/or site;
  - 7.1.4 any first tenant of the whole or any part of the Project and/or site; and
  - 7.1.5 Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA.
- 7.2 Not used.
- 7.3 Notwithstanding any other terms of this Contract, the Consultant and Client agree that should any deed or deeds of collateral warranty from the Consultant, to be provided pursuant to this Article 7, not be executed as a deed and delivered to the Client within 10 Business Days of a written request from the Client then the Client shall (subject to the payment provisions in clause 7) be entitled to withhold all future payments to the Consultant until such time as the relevant deed and/or deeds of collateral warranty have been executed and delivered to the Client in accordance with the provisions of this Article 7."

## **Article 8: Sub-consultants, Sub-contracts and Deeds of Collateral Warranty**

Insert a new Article 8:

- "8.1 Each of the sub-consultants shall be appointed by deed prior to them carrying out any design or services in relation to the Project, the form and terms of such sub-contract to be subject to the Client's prior written approval. Within 5 Business Days of the appointment of a sub-consultant the Consultant shall supply a certified copy of the sub-contract to the Client in the form approved by the Client.
- 8.2 Upon the appointment of every sub-consultant, the Consultant shall immediately upon that appointment (in respect of Article 8.2.1) and/or within 10 Business Days of a written request from the Client (in respect of Articles 8.2.2 to 8.2.6 inclusive) deliver to the Client a deed or deeds of collateral warranty from such sub-consultant in the form set out in Annex D to this Contract, executed as deeds by the Consultant and the sub-consultant as appropriate, with only such amendments as the Client may approve and/or reasonably require in favour of:
- 8.2.1 the Client;
  - 8.2.2 any organisation providing finance in connection with the Project and/or site or any part of the Project and/or site;
  - 8.2.3 any first purchaser of the whole or any part of the Project and/or site;

- 8.2.4 any organisation providing finance to a purchaser of the whole or any part of the Project and/or site;
  - 8.2.5 any first tenant of the whole or any part of the Project and/or site; and
  - 8.2.6 Legal and General Assurance (Pensions Management) Limited (CRN: 01006112) of One Coleman Street, London, EC2R 5AA.
- 8.3 Should any deed or deeds of collateral warranty from the sub-consultant, to be provided pursuant to this Article 8, not be executed and delivered to the Client within 10 Business Days of a written request from the Client then the Client shall (subject to the payment provisions in clause 7) be entitled to withhold all future payments to the Consultant in respect of that particular sub-consultant's work until such time as the relevant deed and/or deeds of collateral warranty have been executed and delivered to the Client in accordance with the provisions of this Article 8.
- 8.4 If the employment of any sub-consultant is terminated before the completion of the services allocated to him, the Consultant shall as soon as is practicable but on 5 Business Days' notice from the Client appoint another sub-consultant to complete those services (save any sub-consultant to whom the Client shall make reasonable objection in writing). The foregoing provisions of this Article 8 shall apply to such replacement sub-consultant, mutatis mutandis."

### Article 9: Incorporation of Schedule of Amendments

Insert a new Article 9:

"The Schedule of Amendments attached hereto is hereby incorporated into this Contract and the Agreement, Conditions and Schedules set out in the standard form shall take effect as amended by the Schedule of Amendments. If there is any discrepancy between the Agreement, Conditions and Schedules and the Schedule of Amendments, the wording contained in the Schedule of Amendments shall prevail."

### Contract Particulars

Amend the Contract Particulars as follows:

<b>Clause etc</b>	<b>Subject</b>	
Article 5	Arbitration	Do not apply – legal proceedings apply
1.1	BIM Protocol	<p>Delete and insert:</p> <p>1.1 / BIM Documentation (<i>Not applicable unless it is stated to apply, with the title, edition, date or other identifiers of the relevant documents stated, and the identified protocol is included in the Client's Brief.</i>)</p> <p>/</p> <p>Applies, as set out within the Client's scope of works documents included in the disc of technical documents appended to this Contract at Annex G, stating BIM level 2 process and procedures are to be fully implemented (by the Consultant)</p>

		throughout the project.
2.11.1	Consultant's aggregate liability (excluding liability for personal injury or death) is limited to	£10,000,000 (ten million pounds)
2.11.2	Consultant's liability in respect of pollution or contamination damage (excluding liability for personal injury or death) is limited to	£10,000,000 (ten million pounds)
8.1.1	Professional Indemnity insurance	See clause 8.1.1
8.2.1	Professional Indemnity insurance – expiry of the required period of insurance is	See clause 8.2.1
10.2	Novation  Clause 10.2 <i>(if neither entry is deleted, clause 10.2 will not apply)</i>  Where 10.2 applies, the form of Novation Agreement <i>(Identify the form or the document in which it is set out)</i>	Does not apply
11.2	Suspension: Remobilisation – period for recommencement instructions	12 months
12.3	Arbitration - appointor of Arbitrator (and of any replacement)	Not used – legal proceedings apply
Part 2	Third Party Rights and Collateral Warranties	Not used – see Articles 7 and 8

## Attestation

Execution as a Deed by the Client and Consultant.

The CORPORATE SEAL of the SECRETARY )  
OF STATE FOR EDUCATION herewith affixed )  
and authenticated )  
)

Authorised by the  
Secretary of State .....

Full name (Block  
Capitals) .....

EXECUTED AS A DEED by ARCADIS LLP acting by a  
member of the LLP in the presence of a witness:

Member Signature:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

## CONDITIONS

### SECTION 1: DEFINITIONS AND INTERPRETATION

- 1.1 Delete the definitions "**Arbitrator**", "**Beneficiary**", "**BIM Protocol**", "**Funder**", "**Information Release Schedule**", "**Purchaser**", "**Tenant**", and "**Third Party Rights**".

Amend the definitions in clause 1.1 as follows:

<b>Agreement</b>	at the end of the definition insert ", as amended by the Schedule of Amendments"
<b>Article</b>	at the end of the definition insert ", as amended by the Schedule of Amendments"
<b>Conditions</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Consultant's Design Information</b>	delete "BIM Protocol" and insert "BIM Documentation".
<b>Contract</b>	after "Conditions" insert ", the Schedule of Amendments".
<b>Contract Particulars</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Design Information</b>	After "other material" insert "and/or information".
<b>Interest Rate</b>	delete "5%" and insert "3%".
<b>Recitals</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Services</b>	at the end of the definition insert ", and all services, duties and obligations to be provided and performed by the Consultant as set out in the Contract".
<b>Statutory Requirements</b>	in line 4 after "regulation" insert "rule". In line 5, after "undertaker" insert "or equivalent or relevant public body". At the end of the definition insert "(and in particular so as to comply with any requirements relating thereto which may be stipulated as pre-requisites for the adoption of any services, drains, sewers, pipes, wires, cables, or other service transmission media by any such authority or body (where the same are to be adopted)) and any Statutory Agreements".
<b>Third Party Agreement</b>	After "or the use of it" insert ", or any other third party agreement,".

- 1.1 Insert the following new definitions in clause 1.1:

<b>BIM Co-ordinator</b>	the person identified as the BIM Co-ordinator in Article 3B or such other person as may be notified to the Consultant from time to time.
<b>BIM Documentation</b>	the documents identified as such in the Contract Particulars (against reference to clause 1.1) along with any other documentation prepared after the date of this Contract to facilitate the delivery of the Model.
<b>BIM Information</b>	the person identified as the BIM Information Manager in Article 3A or such other person as may be notified to the Consultant from time to

<b>Manager</b>	time.
<b>BIM Standards</b>	<p>the following standards:</p> <ul style="list-style-type: none"> <li>(a) BS 1192-4:2014: Collaborative production of information: Fulfilling employer's information exchange requirements using COBie – code of practice;</li> <li>(b) PAS1192-3:2014: Specification for information management for the operational phase of assets using building information modelling;</li> <li>(c) PAS1192-5:2015: Specification for security-minded building information modelling, digital built environments and smart asset management;</li> <li>(d) PAS1192-6:2018: Specification for collaborative sharing and use of structured Health and Safety information using BIM;</li> <li>(e) BS EN ISO 19650-1: 2018: Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) - Information management using building information modelling: Concepts and principles;</li> <li>(f) BS EN ISO 19650-2: 2018: Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) - Information management using building information modelling: Delivery phase of the assets;</li> <li>(g) any other recognised BIM standards notified to the Contractor and/or recognised by the industry from time to time,</li> </ul> <p>and any amendments to, re-publication of or replacement of any or all of these standards.</p>
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Change of Control</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.
<b>Client</b>	<b>the Client</b> as identified in the Agreement, which expression shall include permitted assignees and successors in title.
<b>Construction Products Regulations</b>	the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).
<b>Data Protection Laws</b>	<p>means, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract:</p> <ul style="list-style-type: none"> <li>(a) the GDPR;</li> <li>(b) the Data Protection Act 2018;</li> <li>(c) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003;</li> </ul>

(d) any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract;

(e) any laws which implement any such laws; and

(f) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

**DOTAS**

the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

**Federated Model**

a shared Model representing the completed Project consisting of connected but distinct individual Models and incorporating the Specified Models.

**GDPR**

the General Data Protection Regulation, Regulation (EU) 2016/679.

**General Anti-Abuse**

· the legislation in Part 5 of the Finance Act 2013; and

**Rule**

· any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.

**Group Company**

any subsidiary company or holding company of an assignor, or another subsidiary or holding company of such company, as 'subsidiary' and 'holding company' are defined in the Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a).

**Halifax Abuse Principle**

the principle explained in the CJEU Case C-255/02 Halifax and others.

**Material**

means:

(a) all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or other documents or materials produced or prepared by or on behalf of the Consultant or the Client in relation to and/or connection with the Project and/or the site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Project and/or the site; and

	(b) all information in any electronic medium in relation to the Project and/or the site and/or the completed Project comprised in the Specified Models.
<b>Model</b>	a digital representation of part of the physical and/or functional characteristics of the Project.
<b>Moral Rights</b>	moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988.
<b>Non-Performance Deductions</b>	see Annex A
<b>Occasions of Tax Non-Compliance</b>	<p>where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>- A Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>- The failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or</li> <li>- Where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion.</li> </ul>
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Prohibited Act</b>	<p>(a) offering, giving or agreeing to give any servant of the Client any gift or consideration of any kind as an inducement or reward:</p> <ul style="list-style-type: none"> <li>(i) 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</li> <li>(ii) for showing or not showing favour or disfavour to any person in relation to this Contract;</li> </ul> <p>(b) entering into this Contract in connection with which commission has been paid or has been agreed to be paid by the Consultant 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 Client;</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation creating offences in respect of fraudulent</li> </ul>

acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract; or

(d) defrauding or attempting to defraud or conspiring to defraud the Client.

<b>Project Team Members</b>	the members identified in Annex E and their sub-consultants and/or sub-contractors or such other professionals as the Client or the Consultant may from time to time engage in connection with the Project.
<b>Schedule of Amendments</b>	this Schedule of Amendments.
<b>Specified Models</b>	the Model or Models which the Consultant or any Project Team Member is to produce and deliver in accordance with the BIM Documentation.
<b>Statutory Agreements</b>	an agreement pursuant to section 38 and/or 278 of the Highways Act 1980 and/or an agreement pursuant to section 104 of the Water Industry Act 1991 and/or an agreement pursuant to section 106 of the Town and Country Planning Act 1990 and/or section III of the Local Government Act 1972.

1.2.4 After "body corporate" insert "or any legal entity having legal capacity".

1.2.6 Delete "a BIM Protocol or other protocol" and insert "any BIM Documentation" and delete "protocol" from the last line and insert "documentation".

1.3 Insert a new final paragraph "All payments made by the Client to the Consultant pursuant to any such interim agreement, letter of intent and/or other arrangement shall be deemed to have been made as part of the Fee. For the avoidance of doubt, the Client shall have no further liabilities (including any liability to make any payments) under such interim agreement, letter of intent and/or other arrangement."

1.4 Delete and insert: "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 Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause shall not affect or prevent any assignees who take the benefit of this Contract pursuant to clause 10 or successors in title to the Client from enforcing the provisions of this Contract."

1.6 Delete 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 law of England and Wales."

1.7 Insert a new clause 1.7:

**"Freedom of Information**

1.7.1 The Consultant recognises that the Client is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (**the Act**) and that the Client shall be/is under an obligation to provide information on request. Such information may include matters relating to, arising under or out this Contract.

1.7.2 The Consultant recognises that each request for information must be considered individually and that any decision to disclose information shall be the decision of the Client.

- 1.7.3 The Client shall not be liable to the Consultant for any loss, damage, harm or other detriment, however caused arising from the disclosure of any information under the Act or other similar legislation or equivalent codes.
- 1.7.4 The Consultant shall provide such assistance to the Client as the Client requires to enable it to comply with its obligations under the Act or other similar legislation or equivalent codes.
- 1.7.5 The Consultant shall promptly pass any requests for information under or in relation to the Act or other similar legislation or equivalent codes which it receives to the Client. The Consultant shall not respond directly to any such requests for information unless instructed to do so by the Client."

1.8 Insert a new clause 1.8:

**"GDPR**

Each Party shall comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under this Contract".

1.9 Insert a new clause 1.9:

**"Tax Compliance**

1.9.1 The Consultant represents and warrants that as at the date of this Contract, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

1.9.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Consultant shall:

1.9.2.1 notify the Client in writing of such fact within 5 days of its occurrence; and

1.9.2.2 promptly provide to the Client:

1.9.2.2.1 details of the steps which the Consultant is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

1.9.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require."

1.10 Insert a new clause 1.10:

**"Publicity and Branding**

1.10.1 The Consultant shall not:

- a. make any press announcements or publicise this contract in any way; or
- b. use the Client's name or brand in any promotion or marketing or announcement of the contract;

without the prior written approval of the Client.

1.10.2 The Client is entitled to publicise the contract in accordance with any legal obligation upon the Client, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise."

1.11 Insert a new clause 1.11:

## **"Change of Control**

1.11.1 The Consultant shall notify the Client immediately in writing and as soon as the Consultant is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The Consultant shall ensure that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

1.11.2 The Client may terminate the Consultant's obligation to perform the Services (which shall take effect as termination under clause 11.5.1) within six months from:

- a. being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- b. where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Control."

1.12 Insert a new clause 1.12:

## **"Financial Standing**

The Client may terminate the Consultant's obligation to perform the Service (which shall take effect as termination under clause 11.5.1) where in the reasonable opinion of the Client there is a material detrimental change in the financial standing and/or the credit rating of the Consultant which:

- a. adversely impacts on the Consultant's ability to perform its obligations under this Contract; or
- b. could reasonably be expected to have an adverse impact on the Consultant's ability to perform its obligations under this Contract."

1.13 Insert a new clause 1.13:

## **"Records, audit access and open book data**

1.13.1 The Consultant shall keep and maintain for twelve years full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the Client.

1.13.2 The Consultant shall:

- a. keep the records and accounts referred to in clause 1.13.1 in accordance with law;
- b. afford any auditor access to the records and accounts referred to in clause 1.13.1 at the Consultant's premises and/or provides records and accounts (including copies of the Consultant's published accounts) or copies of the same, as may be required by any auditor from time to time during the Consultant performing the Services and the liability period under the contract in order that the auditor may carry out an inspection to assess compliance by the Consultant and/or its Sub-contractors of any of the Consultant's obligations under this contract including in order to:
  - i. verify the accuracy of any amounts payable by the Client under this contract (and proposed or actual variations to them in accordance with this Contract);
  - ii. verify the costs of the Consultant (including the costs of all Sub-contractors and any third party suppliers) in connection with performing the Services;

- iii. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Client has no obligation to inform the Consultant of the purpose or objective of its investigations;
  - iv. obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; and
  - v. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
- c. subject to the Consultant's rights in respect of confidential information, the Consultant provides the auditor on demand with all reasonable co-operation and assistance in respect of:
- i. all reasonable information requested by the Client within the scope of the audit;
  - ii. reasonable access to sites controlled by the Consultant and to any Consultant's equipment used to perform the Services; and
  - iii. access to the Consultant's personnel.

1.13.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 1.13, unless the audit reveals a default by the Consultant in which case the Consultant reimburses the Client for the Client's reasonable costs incurred in relation to the audit.

1.13.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Consultant and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Consultant is not a function exercisable under this contract."

1.14 Insert a new clause 1.14:

**"Equality and diversity**

1.14.1 The Consultant shall perform its obligations under this contract in accordance with

- a. all applicable equality law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- b. any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality law;

1.14.2 The Consultant shall take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)."

1.15 Insert a new clause 1.15:

**"Conflicts of interest**

1.15.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its personnel are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or its personnel and the duties owed to the Client under this contract.

1.15.2 The Consultant shall promptly notify and provide full particulars to the Client if such conflict referred to in the clause above arises or may reasonably be foreseen as arising.

1.15.3 The Client may terminate the Consultant's obligation to perform the Services immediately under clause 11.5.2 (as if insolvency applied) and/or to take such other steps the Client deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under this contract."

1.16 Insert a new clause 1.16:

**"Financial distress**

The Consultant complies with the provisions of Annex F (Financial Distress) in relation to the assessment of the financial standing of the Consultant and the consequences of a change to that financial standing."

## **SECTION 2: CONSULTANT'S GENERAL OBLIGATIONS**

2.1 After "the Client's Brief" insert "and the Contract". After "expected of a" insert "properly qualified". After "size, scope" insert ", nature, value, character, timescale". After "complies with" insert "the terms of this Contract and".

At the end of 2.1 insert the following new paragraphs:

"The Consultant shall comply and procure compliance with the BIM Documentation in place for the time being, and in doing so shall have due regard to the relevant requirements and recommendations of the BIM Standards.

In performing his obligations under this Contract, the Consultant shall and shall ensure that each of his sub-consultants shall comply with the Modern Slavery Act 2015.

The Consultant warrants that in entering into this Contract it has not and shall not (and shall procure that anyone employed or acting on behalf of it or any of its agents shall not) commit any Prohibited Act."

2.1A Insert a new clause 2.1A:

**"Client's obligations**

The Client shall comply with its obligations under the BIM Documentation."

2.1B Insert a new clause 2.1B:

**"Admittance to the Site**

2.1.B.1 The Consultant shall submit details of people who are to be employed by it and its sub-contractors in connection with the Services to the Client. The details shall include a list of names and addresses, the capabilities in which they are employed, and other information required by the Client.

2.1.B.2 The Client may instruct the Consultant to take measures to prevent unauthorised persons being admitted to site. The instruction shall be valued as a variation under clause 3.6.1 if the measures are additional to those required by the Client's Requirements.

2.1.B.3 Consultant's Representative and Key Personnel are to carry a Client's pass and comply with all conduct requirements from the Client whilst they are on the parts of the site identified in the Client's Brief.

2.1.B.4 The Consultant shall submit to the Client for acceptance a list of the names of the people for whom passes are required. On acceptance, the Client will issue the passes to the Consultant. Each pass shall be returned to the Client when the employee no longer requires access to that part of the site or after the Client has given notice that the employee is not to be admitted to the site.

2.1.B.5 The Consultant shall not take photographs of the site or of work carried out in connection with the Services unless it has obtained the acceptance of the Client.

2.1.B.6 The Consultant shall take the measures needed to prevent any Consultant's employee taking, publishing or otherwise circulating such photographs."

2.1C Insert a new clause 2.1C:

**"Official secrets**

2.1.C.1 The Consultant shall comply with the law in relation to official secrets in the carrying out of the Services.

2.1.C.2 The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this Contract.

2.1.C.3 The Consultant shall notify its employees and its sub-contractors of their duties under these Acts."

2.2 Delete ", subject only to clause 6.5"

2.4 Delete and insert: "The Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Project any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's profession and/or the construction industry:

2.4.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;

2.4.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Project or any part thereof and/or to other structures, finishes, plant and/or machinery;

2.4.3 to reduce or possibly reduce the normal life expectancy of works of a type comparable to the Project;

2.4.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the Project;

2.4.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or

2.4.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

The Consultant shall immediately notify the Client and Lead Consultant if it becomes aware of any such use, permission or specification or failure to comply with this clause."

- 2.7 After "prior consent" insert "and the Consultant shall ensure that it complies with the provisions of Article 8 in relation to any sub-contracting".

Insert new subclauses 2.7A to 2.7C as follows:

"2.7A Each sub-contract shall include:

2.7A.1 period for payment of the amount due to the sub-contractor not greater than 5 days after the final date for payment in this Contract. The amount due shall, but shall not be limited to, payment for work which the sub-contractor has completed from the previous application date up to the current application date in this Contract;

2.7A.2 a provision requiring the sub-contractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this Contract);

2.7A.3 a provision requiring the sub-contractor to assess the amount due to a subsubconsultant without taking into account the amount paid by the Consultant, and.

2.7A.4 terms and conditions that are no less favourable than those of this Contract. The Client shall be entitled to reject sub-contract conditions proposed by the Consultant that are unduly disadvantageous to the sub-contractor.

2.7B.1 The Consultant shall take all reasonable steps to engage SMEs as sub-contractors and to seek to ensure that no less than the percentage of the sub-contractors stated in the Client's Requirements (the "**SME Percentage**") are SMEs or that a similar proportion of the Fee is undertaken by SMEs.

2.7B.2 The Consultant shall report to the Client on a monthly basis the numbers of SMEs engaged as sub-contractors and the value of the Fee that has been undertaken by SMEs.

2.7B.3 Where available, the Consultant shall tender its sub-contracts using the same online electronic portal as was provided by the Client for the purposes of tendering this Contract.

## **2.7C Apprenticeships**

2.7C.1 The Consultant shall take all reasonable steps to employ apprentices, and report to the Client the numbers of apprentices employed and the wider skills training provided, during the carrying out of the Services.

2.7C.2 The Consultant shall take all reasonable steps to ensure that no less than the percentage of its employees stated in the Client's Requirements (the "**Apprenticeship Percentage**") are on formal apprenticeship programmes or that a similar proportion of hours worked in carrying out the Services, (which may include support staff and sub-Contractors) are provided by employees on formal apprenticeship programmes.

2.7C.3 The Consultant shall make available to its employees and sub-contractors working on the Contract, information about the Government's Apprenticeship programme and wider skills opportunities.

2.7C.4 The Consultant shall provide any further skills training opportunities that are appropriate for its employees engaged in carrying out the Services.

2.7C.5 The Consultant shall provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the Client:

- the number of people during the reporting period employed on the Contract, including support staff and sub-Contractors;
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract;
- the percentage of all employees taking part in an apprenticeship programme;
- if applicable, an explanation from the Consultant as to why it is not managing to meet the specified percentage target;
- actions being taken to improve the take up of apprenticeships;
- other training/skills development being undertaken by employees in relation to this Contract, including:
  - (a) work experience placements for 14 to 16 year olds;
  - (b) work experience /work trial placements for other ages;
  - (c) student sandwich/gap year placements;
  - (d) graduate placements;
  - (e) vocational training;
  - (f) basic skills training; and
  - (g) on site training provision/ facilities."

2.9 After "subject to clause" insert " 2.1 and".

2.9.1 Delete this sub-clause.

2.9.2 Delete "sub-contractors" and insert "sub-consultants".

2.9.3 After "his control" insert "save where such event cause failure or delay arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

2.12 Insert a new clause 2.12:

"The Consultant shall provide all relevant information to and cooperate and coordinate with all duty holders under the CDM Regulations to enable all such duty holders to comply with their duties and obligations under the CDM Regulations.

The Consultant warrants that it shall comply with the duties and obligations of a designer as set out in the CDM Regulations. As and when requested by the Client, the Consultant shall provide to the Client such evidence as the Client may require which demonstrates the Consultant's competency to act as designer under the CDM Regulations.

Without prejudice to the generality of the foregoing the Consultant warrants that it shall comply with all of the duties and obligations as set out in the CDM Regulations which apply to the Consultant in the performance of the Services."

### **SECTION 3: LEAD CONSULTANTS AND CONTRACT ADMINISTRATION**

- 3.2.2 After "beyond his control" insert "provided that the Consultant shall remain responsible for failure to issue the Design Information and other information at the times required where such failure arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

### **SECTION 4: CLIENT'S GENERAL OBLIGATIONS**

- 4.1 Delete ", or likely to be useful,". After "Statutory Requirements" insert "provided that such information is not confidential or subject to obligations relating to confidentiality". Delete "promptly" and insert "as soon as reasonably practicable".
- 4.2 Delete.
- 4.4 At the end of the clause insert "provided that the Consultant has clearly requested such decisions approvals and instructions in writing and included details of any date or deadline by which the Consultant requires such decisions approvals and/or instructions."
- 4.5 In the final paragraph after "unless it is agreed" insert "at the Client's sole discretion".

### **SECTION 5: REPRESENTATIVES AND KEY PERSONNEL**

No amendments.

### **SECTION 6: FURTHER SERVICES, CHANGES AND FEE ADJUSTMENTS**

- 6.3 At the end of 6.3, insert a new final paragraph: "Notwithstanding the foregoing or any other provision of this Contract, the Consultant shall not be entitled to any adjustment of the Fee or any other additional payment or reimbursement where (a) a Change arises by reason of any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant and/or (b) the Consultant has not complied with clause 6.4.

- 6.4 Delete ", resolution of any objection under clause 6.5".

- 6.5 Delete.

- 6.6 In the first paragraph after "within clause 6.3.4" insert "(and subject to the other provisions of clause 6.3)".

In clause 6.6.5 line two after "Incentive Payment" insert "or Non-Performance Deduction".

Insert a new final paragraph " Adjustment of the Fee or any other additional payment or reimbursement to the Consultant under this clause 6.6 shall be deemed to be full payment for the Consultant in respect of the matters for which the adjustment, payment or reimbursement is paid and the Client shall have no further liability to the Consultant in respect of such matters arising under the Contract or generally at law."

- 6.7 Delete "a default by the Consultant" and insert " any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

- 6A Insert a new clause 6A as follows:

## **"6A Adjustment for events outside of the Consultant's control**

If at any time the Consultant is prevented or delayed in the performance of the Services because of an event entirely outside of their control, it shall promptly so notify the Client giving the specific reason for the delay or prevention, together with its best estimate of its effect on the programme. In such circumstances the Consultant shall use all reasonable endeavours to expedite the Services as soon as practicable. The Consultant shall not be treated as being in breach of this agreement to the extent that it is delayed in the performance of the Services for reasons covered in this clause 6A."

## **SECTION 7: PAYMENT**

- 7.1 Delete "The" and insert "For the full and proper performance of the Services, the".  
After 7.1.4 insert new paragraph "less any Non-Performance Deductions".
- 7.4 Amend clause heading to "Incentive Payments and Non-Performance Deductions"  
In line one after "Incentive Payment" insert "or Non-Performance Deduction".
- 7.8 Delete the second sentence. At the end of the clause, insert "The Parties agree that this clause 7.8 is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998."
- 7.9.1 After "intention to suspend the performance of" insert "any or all of".
- 7.9.3 Delete the words "or on request" and, at the end of the clause, insert "The Consultant shall, on request, submit such further details as are reasonably requested by the Client."
- 7.10 Insert a new clause 7.10: "Any right of the Client to deduct or to 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 Consultant".

## **SECTION 8: INSURANCE**

- 8.1 In the first sentence after "Consultant shall" insert "effect and". At the end of the clause after "reasonable rates", insert a new final paragraph: "For the purposes of this clause 8.1, "commercially reasonable rates" shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates."
- 8.1.1 Delete and insert "professional indemnity insurance covering (inter alia) all its liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with a limit of indemnity of not less than £10,000,000 (ten million pounds) for any one claim and in the aggregate. The said terms and conditions shall not include any term or condition to the effect that the Consultant 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."
- 8.2.1 Delete "from the date of this Contract until the expiry of the period stated in the Contract Particulars" and insert " at all relevant times during the Project and for a period of 12 (twelve) years from the date of practical completion of the Project".

- 8.3 Delete and insert "As and when reasonably required by the Client, the Consultant shall provide satisfactory documentary evidence of the terms of insurances referred to in clause 8.1 and that the insurances referred to in clause 8.1 are being properly maintained in accordance with the terms of this clause 8, and shall confirm that payment has been made in respect of the last preceding premium due under such insurances."

## **SECTION 9: USE OF CONSULTANT'S DESIGN INFORMATION, CONFIDENTIALITY ETC**

- 9.1 Delete 9.1 in its entirety and insert the following new clauses:

- 9.1.1 "The Consultant, with full title guarantee, grants to the Client an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any Material produced or prepared by the Consultant or on the Consultant's behalf for any purpose connected with the Project and/or the site (including without limitation the design, construction, completion, promotion, advertisement, funding, sale, letting, disposal, fitting out, maintenance, use, occupation, management, repair, reinstatement, re-construction, modification, alteration, refurbishment, re-development, decommissioning, demolition and/or extension) but the intellectual property rights in the Material (produced or prepared by the Consultant or on the Consultant's behalf) shall remain vested in the Consultant. The Consultant shall not be liable for any use by the Client of such Material for any purposes other than those for which the same are or were prepared.
- 9.1.2 This licence carries the right to grant sub-licences and sub-sub-licences and is transferable without the Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of this Contract and/or the Consultant's engagement under this Contract."
- 9.1.3 "Any and all patents, trademarks, service marks, copyright, Moral Rights, rights in a design, database rights, know-how and all other intellectual property rights whether or not registered or capable of registration in the United Kingdom or any other part of the world in any electronic medium produced or prepared by the Consultant or on the Consultant's behalf pursuant to this Contract comprised in the Federated Model (to the extent that these comprise Specified Models produced or prepared by the Consultant or on the Consultant's behalf or to the extent that the Consultant owns any additional rights in any Federated Model) are the property of and shall (as between the Consultant and Client) vest in the Client and the Consultant accordingly hereby assigns to the Client (including by way of present assignment of future rights) all such rights throughout the world for the full term of such rights (including extensions and renewals) together with any accrued rights of action in respect of such rights. The Consultant shall provide to the Client all documentation, licences, information, materials and permissions necessary to allow the Client to maintain, modify and use the Federated Model (to the extent that these comprise Specified Models produced or prepared by the Consultant or on the Consultant's behalf and/or to the extent the Consultant owns any additional rights in any Federated Model).
- 9.1.4 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give to the Client or those authorised by him access to the Material produced or prepared by the Consultant or on the Consultant's behalf and the Federated Model, and to provide copies of such Material and the Federated Model (including copy negatives and electronic copies) thereof at the Consultant's expense.
- 9.1.5 The Consultant warrants to the Client that the Material produced or prepared by the Consultant or on the Consultant's behalf (save to the extent duly appointed sub-consultants 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 Project shall not infringe the rights of any third person. The Consultant further warrants that where duly appointed sub-consultants have been used their work shall be original and that the Consultant shall obtain the necessary consents in relation to clause 9.1.1. If the use of the Material produced or prepared by the Consultant or on the Consultant's behalf as specified in clause 9.1.1 is found to infringe the rights of any third person, the Consultant shall indemnify the Client against all resulting claims, proceedings, costs, damages and expenses.

9.1.6 The Consultant hereby waives and agrees not to assert (and to procure that any sub-consultants do likewise) any Moral Rights in the Material (produced or prepared by the Consultant or on the Consultant's behalf) and the Federated Model under the Copyright, Designs and Patents Act 1988 or any re-enactment or modifications of it.

9.1.7 "The Client grants to the Consultant and agrees to grant to the Consultant a non-exclusive licence or sub-licence (as appropriate) (including the right to grant sub-licences and sub-sub-licences on identical terms to the Consultant's sub-consultants) to use, reproduce and transmit for the purposes of carrying out and completing the Project, performing their obligations under this Contract, and complying with the BIM Documentation:

- (a) the Material produced by the Client or on the Client's behalf or by a Project Team Member or on their behalf;
- (b) any Specified Models which the Project Team Members produce and deliver as specified in the BIM Documentation and any Federated Models (and any part thereof) produced and delivered by the Project Team Members in relation to the Project;
- (c) any Federated Model (and any part thereof); and
- (d) any proprietary work and/or rights contained or subsisting in the same;

to the extent that the same or any rights subsisting therein are owned by the Project Team Members or the Client or any third party.

The licence and sub-licence and any sub-sub-licences (if any) granted in clause 9.1.7 shall not include the right to amend or modify a Model without the written consent of the Client or the Project Team Member who produced and delivered the Model (or the relevant part thereof), save where such amendment or modification is provided for in the BIM Documentation.

The Client shall not be liable for any use of such Material as set out in clause 9.1.7, which shall be used by the Consultant and its sub-consultants at their own risk."

9.1.8 "In the event of any conflict or inconsistency between the BIM Documentation and this clause 9.1, the provisions of this clause 9.1 shall prevail."

9.2.1 Delete "6" and insert "12 (twelve)". After "or termination" insert "or for a period of 12 (twelve) years from the date of practical completion of the Project, whichever is the later".

9.2.3 Delete "but shall not be unreasonably delayed or withheld" and insert "at its sole discretion".

## **SECTION 10: ASSIGNMENT, NOVATION, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**

10.1 Delete and insert:

"10.1 Subject to clause 10.2, where it is stated to apply, the Consultant shall not assign transfer or charge any benefit arising under or out of this Contract without the prior written consent of the Client (at its absolute discretion).

Without prejudice to clause 10.2, where it is stated to apply, the Client may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Contract and/or any benefit arising under or out of this Contract:

- (a) as security to any organisation providing finance in connection with the Project and/or site or any part thereof (and such rights may be re-assigned on redemption);
- (b) by absolute assignment to any Group Company; and
- (c) by absolute assignment on two other occasions only."

10.3 Delete clause 10.3 in its entirety.

## **SECTION 11: SUSPENSION BY THE CLIENT AND TERMINATION**

- 11.1.4 Before the comma insert "provided that the suspension was not as a result of or in connection with any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".
- 11.2 Delete "2 months" and insert "12 months". At the end of the clause insert "provided that the suspension was not as a result of or in connection with any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".
- 11.4 After "do so, may" insert "if the Client still does not instruct the Consultant to recommence such Services".
- 11.5.2 Delete and insert "In the event of the Consultant's bankruptcy, insolvency, winding up, liquidation, administration, administrative receivership, LPA receivership and/or any analogous arrangement or event in this or any other jurisdiction, the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."
- 11.5.3 Delete and insert "If the Consultant commits a material breach of his obligations (including, without limitation, any act, error, omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant), the Client may give notice to the Consultant specifying the breach and requiring its remedy. If the Consultant fails to comply with the notice within 14 days, the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."
- 11.5.5 Delete.
- 11.6.1.2 After "Design Information" insert "and the Materials". Delete from ", provided that in the case of" to "under clause 11.6.2" inclusive.
- 11.6.2 In the final paragraph after "insolvency or material breach" insert "or under clauses 11.5.2 or 11.5.3".
- 11.6.2.3 After "insolvency or material breach" insert "or under clauses 11.5.2 or 11.5.3".
- 11.6.2.4 Delete.
- 11.6.3 Insert a new second sentence "However, in the event of termination under clauses 11.5.2 or 11.5.3, instead of 2 months from the date of termination, the relevant date for invoice shall be 2 months after the date of practical completion of the Project"

## **SECTION 12: SETTLEMENT OF DISPUTES**

- 12.2 At the end of the clause insert the following final paragraphs:

"The Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him.

At the same time as he gives any decision, the Adjudicator shall give reasons for the decision in writing."

Delete clauses 12.3 to 12.8.

## **SCHEDULES**

### **Schedule 1 Third Party Rights**

Delete.

### **Schedule 2 Supplemental Provisions**

Paragraph 1 Delete.

## **ANNEXURES**

### **Annex A Fee and Other Payments**

At paragraph 3 amend clause heading to "Incentive Payments and Non-Performance Deductions"

### **Annex B The Services**

### **Annex C Consultant Deeds of Collateral Warranty**

### **Annex D Sub-consultant Deeds of Collateral Warranty**

### **Annex E Project Team Members**

### **Annex F Financial Distress**

### **Annex G Contract Documents**

## Annex A

### Fee and Other Payments

1. The Fee is a fixed fee which is calculated and paid in instalments in accordance with the commercial envelope 'Stage 2 Commercial Envelope TA reduced contract – updated 7.7.22' (included in the disc of technical documents appended to Annex G of this Contract) for the fixed sum of **two million, six hundred and ninety-six thousand, eight hundred and seventy-eight pounds (£2,696,878)**.
2. The Fee shall be payable in accordance with section 7 in the following amounts or percentages:

<b>Milestone</b>	<b>Percentage of Fee or amount</b>
Upon full completion of RIBA stage per floor or core infrastructure works	Fixed percentage fee paid in instalments in accordance with the appended commercial envelope included in the disc of technical documents appended to Annex G of this Contract

3. Incentive Payments are:

In accordance with the KPI pain/gain share schedule 'Stage 2 Commercial KPIs Arcadis TA FINAL' included in the disc of technical documents appended to Annex G of this Contract.

4. The following comprise the Additional Services (over and above the agreed scope of works / Client's requirements) which, where required, shall be for the following amounts or calculated and charged on the following basis over and above the Fee as stated above:

<b>Additional Service</b>	<b>Amount / basis of calculation</b>
FM / Kier Supervision	£660.00 day rate / calculated on approved timesheets to a maximum amount of £141,750
Additional Moves Management Support	£572.00 day rate / calculated on approved timesheets to a maximum amount of £75,000
Fire Services Engineer	£575.00 day rate on approved timesheets to a maximum amount of £6,325 (including 10% risk)
Security Specialist	£605.48 day rate
Additional Core Services (Time charge)	In accordance with (or lower than) the agreed RM6165 Framework Day Rates document 'RM6165 – ARCADIS LLP – Lot 1 Pricing'  To be agreed on quotation basis.
Additional Non-Core Services (Time charge)	To be agreed on quotation basis
Note: Any additional service is to be formally instructed by the Client prior to any works / service being undertaken.	

6. The rates specified above shall apply (so far as properly applicable) for the purposes of any Additional Services instructed or other Changes within Clause 6.3.
7. Subject to their being properly and necessarily incurred for the purposes of the Project, the following expenses / disbursements of the Consultant shall be reimbursable by the Client up to any maximum amount or rate specified below or as otherwise agreed in writing from time to time:

Type	Maximum amount / rate
N/A	N/A

Save as otherwise agreed in writing, all other expenses and disbursements shall be deemed to be included in the Fee.

8. Each invoice that includes any of the following types of charge or expenditure should be accompanied by the following documents:

Charge / expenditure	Documentation
For the Fee	<p>Client approval email confirming invoice to be raised with DfE Finance Team – approval to be provided by DfE Project Manager or DfE Contract Manager only.</p> <p>Clear distinction between Fee or Additional Service cost and relevant Purchase Order number.</p> <p>Any other relevant documentation or supporting information that may be requested by the Client to support settling of the invoice.</p>
For Additional Services	<p>Client approval email confirming invoice to be raised with DfE Finance Team – approval to be provided by DfE Project Manager or DfE Contract Manager only.</p> <p>Clear distinction between Fee or Additional Service cost and relevant Purchase Order number</p> <p>Any other relevant documentation or supporting information that may be requested by the Client to support settling of the invoice.</p>

The accounting requirements and procedures referred to in clause 2.8 (if any) are:

N/A

9. The amounts and rates shown above are exclusive of VAT.



**Annex B**  
**The Services**

Included in disc of technical documents appended to this Contract and Annex G

Annex C

Consultant Deeds of Collateral Warranty

20[●]

Collateral Warranty from Consultant to [Purchaser Tenant Funder]  
relating to  
refurbishment of Sanctuary Buildings (Second Phase)

[●] (1)

[●] (2) and

[●] (3)

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20[●]

## PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Consultant**).
- (2) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Beneficiary**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Employer**).

## BACKGROUND

- (A) By the Appointment, the Employer has engaged the Consultant to act in the capacity of [●] in relation to the [design, specification, construction and completion of the Development at the Site] on the terms and subject to the conditions set out in the Appointment.
- (B) The Beneficiary has entered into an agreement [to purchase / for lease to take a lease of / to provide finance for] [the whole of / part of] the [Development / Site].
- (C) [The Employer [shall novate / has novated] all of its rights and obligations under the Appointment by a deed of novation [dated [●]] [to [●]].
- (D) The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and assigns.

## AGREED TERMS

In consideration of the payment of £1 by the Beneficiary to the Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

<b>Appointment</b>	the JCT Consultancy Agreement 2016 (as amended) entered into between the Employer and the Consultant dated [●] for the carrying out of services, duties and obligations in relation to the Development including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Development</b>	the development of [●] by the Employer at the Site.
<b>Group</b>	in relation to a company:  (a) that company and any Subsidiary of that company;  (b) the ultimate Holding Company of that company; and

(c) every other company which is a Subsidiary of the same ultimate Holding Company,

in each case from time to time.

<b>Group Company</b>	in relation to a Group any member of that Group.
<b>Holding Company</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>Material</b>	all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or all other documents or materials produced or prepared by or on behalf of the Consultant in relation to and/or connection with the Development and/or Site (including any and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Development and/or Site) created before, on or after the date of this Deed.
<b>Practical Completion</b>	the date of practical completion of the Development as certified or otherwise evidenced as required under the terms of the relevant building contract.
<b>Site</b>	the land at [●] upon which the Development is to be constructed.
<b>Subsidiary</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>UK Construction Products Regulation 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

1.2 In this Deed unless the context requires otherwise:

- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.2 references to this Deed or any other document are to this Deed or that document as amended or novated from time to time;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;

- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication, other than fax where explicitly stated;
- 1.2.7 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;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives; and
- 1.2.9 unless otherwise specified, a reference to legislation or a legislative provision is a reference to it 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 from time to time.

## **2. EXERCISE OF SKILL AND CARE**

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Appointment. Save as expressly provided for in this Deed the duties and liabilities of the Consultant are to be treated as being no greater than they would have been if the Beneficiary had been a party to the Appointment instead of this Deed and the Consultant shall be entitled to rely on any limitations in the Appointment but neither this provision nor any other provision in this Deed shall entitle the Consultant to raise any defence based on set-off or counterclaim and/or prevent the Beneficiary from recovering loss and/or damage from the Consultant as a result of the Consultant's breach of any provisions of this Deed on the basis that the Employer has not suffered any loss and/or damage and/or the same loss and/or damage and the Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the Beneficiary.
- 2.2 Without prejudice to the generality of Clause 2.1 the Consultant warrants and undertakes to the Beneficiary that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Appointment all reasonable skill, care and diligence to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Development.
- 2.3 The Consultant further warrants and undertakes to the Beneficiary that, in observing and performing each and all of its services, duties and obligations contained in or implied by the Appointment, the Consultant shall comply with all applicable statutory and regulatory requirements.
- 2.4 The Consultant acknowledges that the Beneficiary has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.5 The obligations of the Consultant under this Deed shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any matter.

## **3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT**

**[NOTE - Clauses 3 and 4 (step in rights) are usually only used where the Beneficiary is a purchaser or funder. If the Beneficiary is not a purchaser or funder, or if they are not to be given step in rights, delete Clause 3, 4 and 13; delete the Employer details in Clause 9; and delete the Employer from being a signatory to this collateral warranty on the coversheet, parties and execution clauses, and instead insert a new definition of Employer with their details in the table at Clause 1.1]**

- 3.1 The Consultant warrants and undertakes to the Beneficiary that it shall not exercise or seek to exercise any right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Development by reason of breach on the part of the Employer) without giving to the Beneficiary not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Development shall be extended as may be necessary to take account of the period of notice required under Clause 0.
- 3.3 Compliance by the Consultant with the provisions of Clause 0 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination of the Appointment and/or to discontinue the performance of any of the Consultant's services, duties and/or obligations in relation to the Development, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

#### **4. OBLIGATIONS OF THE CONSULTANT TO THE BENEFICIARY**

**[NOTE - Clauses 3 and 4 are usually only used where the Beneficiary is a purchaser or funder – see note under Clause 3 above.]**

- 4.1 The right of the Consultant to terminate the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 0 if the Beneficiary shall give written notice to the Consultant:
- 4.1.1 requiring the Consultant to continue performing its services, duties and obligations under the Appointment in relation to the Development;
  - 4.1.2 acknowledging that the Beneficiary is assuming all the services, duties and obligations of the Employer under the Appointment;
  - 4.1.3 undertaking unconditionally to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment;
- and shall pay to the Consultant any sums which have become due and payable to it under the Appointment but which were then unpaid.
- 4.2 Upon compliance by the Beneficiary with the requirements of Clause 0 the Appointment shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Consultant and the Beneficiary to the exclusion of the Employer.
- 4.3 Notwithstanding that as between the Employer and the Consultant the Consultant's rights of termination of the Appointment and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the Beneficiary gives notice to the Consultant and the Employer to that effect and the Beneficiary complies with the requirements on its part under Clause 0.
- 4.4 The Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Employer and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under Clause 0.
- 4.5 The Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Employer.
- 4.6 Where the Consultant has given rights similar to those contained in Clauses 3 and 4 of this Deed to any other person or persons, then if both the Beneficiary and such other person or persons

shall serve notice under Clause 0 or its equivalent, the notice served by the Beneficiary [shall prevail over any notice served by any other person or persons / shall not prevail over any notice served by any other person or persons / shall not prevail over any notice served by [●] but shall prevail over any notice served by any other person or persons.] The Consultant acting in accordance with the provisions of this Clause 4.6 shall not be and shall not be deemed to be in breach of the provisions of this Deed by doing so, nor shall the Consultant in doing so incur any liability to the Beneficiary.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Consultant with full title guarantee grants to the Beneficiary, with immediate effect, an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any or all of the Materials produced or prepared by the Consultant or on the Consultant's behalf for any purpose whatsoever relating to the Development and/or the Site including (without limitation) the design, construction, completion, promotion, advertisement, funding, sale, letting, disposal, fitting out, maintenance, use, occupation, management, repair, reinstatement, re-construction, modification, alteration, refurbishment, re-development, decommissioning, demolition and/or extension of the Development and/or the Site. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of the Appointment.
- 5.2 The Consultant shall not be liable for the consequences of any use by the Beneficiary of the Materials for any purposes other than those for which the same are or were prepared.
- 5.3 The Consultant warrants to the Beneficiary that it is authorised to grant the licence set out in Clause 5.1 in respect of any Materials whose intellectual property rights are vested in any third person and that the use of the Materials for any purpose relating to the Development and/or Site shall not infringe the rights of any third person. If the use of the Materials is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting claims, proceedings, damages, costs and expenses.
- 5.4 To the extent that the Consultant is (or at the time of their creation may be) the author of the Materials, the Consultant hereby absolutely waives and agrees not to assert any moral rights which it might otherwise be deemed to possess pursuant to the Copyright, Designs and Patents Act 1988 or any equivalent legislation in respect of the Materials; and to the extent that the Consultant is not the author, the Consultant warrants that the author has not asserted and has waived and agreed to waive any such moral rights which the author might otherwise be deemed to possess.
- 5.5 The Consultant agrees:
- 5.5.1 on request at any time to give the Beneficiary or any persons authorised by the Beneficiary full and sufficient access to the Materials and, at the Beneficiary's expense, to provide full and proper copies of the Materials (including copy negatives and electronic copies); and
- 5.5.2 at the Consultant's expense, to provide the Beneficiary with a set of all Materials on Practical Completion.
- 5.6 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Appointment shall be paid by the Consultant and the Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Appointment.
- 5.7 The Consultant shall (subject to the Beneficiary paying the Consultant's reasonable costs so to do) if reasonably requested by the Beneficiary at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary the rights referred to in this Clause 5.

## 6. INSURANCE

- 6.1 The Consultant warrants to the Beneficiary that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Development and for a period of 12 years following Practical Completion (irrespective of any termination of the Appointment or the Consultant's employment under the Appointment for any reason) professional indemnity insurance with reputable insurers lawfully carrying on such insurance business in the [United Kingdom with a limit of indemnity of not less than £10,000,000 (ten million pounds) for any one claim and in the aggregate to cover any claims made under this Deed against the Consultant in relation to the Development.
- 6.2 The Consultant shall maintain the professional indemnity insurance on terms and conditions that do not require the Consultant to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.
- 6.3 As and when reasonably required by the Beneficiary the Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.4 The Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 6.1 and all of the insurance provisions contained or referred to in the Appointment.
- 6.5 The preceding parts of this Clause 6 shall not apply at times when and to the extent that the insurance referred to in Clause 6.1 is not available in the United Kingdom insurance market at commercially reasonable rates, and the Consultant has notified the Beneficiary accordingly. Upon such notification the Consultant shall make itself available to the Beneficiary to discuss reasonable means of protecting the Beneficiary and the Consultant shall take any reasonable steps requested by the Beneficiary. For the purposes of this Clause 6.5, **commercially reasonable rates** shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, errors, omissions, negligence, breaches, defaults, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

## 7. HEALTH AND SAFETY

The Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Development as set out in the Construction (Design and Management) Regulations 2015.

## 8. EXCLUDED MATERIALS

- 8.1 The Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Development any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Consultant's trade and/or the construction industry:
- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
- 8.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Development or any part thereof and/or to other structures, finishes, plant and/or machinery;

- 8.1.3 to reduce or possibly reduce the normal life expectancy of developments of a type comparable to the Development;
- 8.1.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a development of a type comparable to the Development;
- 8.1.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- 8.1.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

## 9. COMMUNICATIONS

9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when:

- 9.1.1 delivered (in the case of personal delivery or letter); or
- 9.1.2 despatched (in the case of facsimile)

to that party at the address or facsimile number appearing below (or at such other address or facsimile number as that party may hereafter specify for this purpose to the other):

in the case of the Consultant: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Beneficiary: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Employer: [●] [NOTE - name / address / facsimile to be inserted]

9.2 A written notice includes a notice by facsimile. A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

## 10. CONCURRENT LIABILITIES

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.

## 11. ASSIGNMENT

11.1 The Beneficiary may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:

- 11.1.1 by way of security or by way of re-assignment on redemption; and
- 11.1.2 by absolute assignment to any Group Company of the Beneficiary; and
- 11.1.3 by absolute assignment on two other occasions only.

11.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

- 11.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.
- 11.4 The Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the Beneficiary's obligations under this Deed and/or any benefit (if any) arising to the Consultant out of this Deed.

**12. LIMITATION PERIOD**

The liability of the Consultant under this Deed shall cease 12 years following Practical Completion save in relation to any claims made by the Beneficiary against the Consultant and/or notified by the Beneficiary to the Consultant in writing prior thereto. For the avoidance of doubt, the parties agree that any provisions of the Limitation Act 1980 to the contrary will not apply to this Deed.

**13. EMPLOYER**

**[NOTE - delete if Clauses 3 and 4 are deleted]**

The Employer agrees that it shall not take any steps which would prevent or hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in Clauses 3 and 4 override any obligations of the Consultant to the Employer under the Appointment.

**14. GOVERNING LAW AND JURISDICTION**

- 14.1 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) is governed by and construed in accordance with the law of England and Wales.
- 14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**15. RIGHTS OF THIRD PARTIES**

Unless the right of enforcement is expressly provided for, no third party (as defined in the Contracts (Rights of Third Parties) Act 1999) except for any permitted successor or assignee of any party to this Deed has any rights under that Act to enforce any term of this Deed.

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

Executed as a deed by **[insert name of company]**  
 acting by **[insert name of first director]**, a director  
 and **[insert name of second director or secretary]** **[a**  
**director/its secretary]**

.....  
**Director**

.....  
**[Director/Secretary]**

Executed as a deed by **[insert name of company]**  
acting by [insert name of director], a director, in the  
presence of [insert name of witness]:

.....  
Director

*Signature (Witness)* .....

*Print Name* .....

*Address* .....

.....

*Occupation* .....

**Annex D**

**Sub-consultant Deeds of Collateral Warranty**

Collateral Warranty from Sub-Consultant to [Purchaser Tenant Funder  
Employer]  
relating to  
refurbishment of Sanctuary Buildings (Second Phase)

[●] (1)  
[●] (2) and  
[●] (3)

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DATE

20[●]

## PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Sub-Consultant**).
- (2) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Beneficiary**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Consultant**).

## BACKGROUND

- (A) By the Appointment, [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Employer**) has engaged the Consultant to act in the capacity of [●] in relation to the [design, specification, construction and completion of the Development at the Site] on the terms and subject to the conditions set out in the Appointment.
- (B) By the Contract, the Consultant has employed the Sub-Consultant to carry out various services, duties and obligations on the terms and subject to the conditions set out in the Contract.
- (C) The Beneficiary has entered into an agreement [to purchase / for lease to take a lease of / to provide finance for] [the whole of / part of] the [Development / Site].
- (D) The Sub-Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and assigns.

## AGREED TERMS

In consideration of the payment of £1 by the Beneficiary to the Sub-Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

<b>Appointment</b>	the JCT Consultancy Agreement 2016 (as amended) entered into between the Employer and the Consultant dated [●] for the carrying out of services, duties and obligations in relation to the Development including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Contract</b>	the contract between the Consultant and the Sub-Consultant dated [●] for the carrying out of various services, duties and obligations in relation to the Development including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.

<b>Development</b>	the development of [●] by the Employer at the Site.
<b>Group</b>	in relation to a company:  (a) that company and any Subsidiary of that company;  (b) the ultimate Holding Company of that company; and  (c) every other company which is a Subsidiary of the same ultimate Holding Company,  in each case from time to time.
<b>Group Company</b>	in relation to a Group any member of that Group.
<b>Holding Company</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>Material</b>	all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or all other documents or materials produced or prepared by or on behalf of the Sub-Consultant in relation to and/or connection with the Development and/or Site (including any and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Development and/or Site) created before, on or after the date of this Deed.
<b>Practical Completion</b>	the date of practical completion of the Development as certified or otherwise evidenced as required under the terms of the relevant building contract.
<b>Site</b>	the land at [●] upon which the Development is to be constructed.
<b>Subsidiary</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>UK Construction Products Regulation 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

1.2 In this Deed unless the context requires otherwise:

1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;

- 1.2.2 references to this Deed or any other document are to this Deed or that document as amended or novated from time to time;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication, other than fax where explicitly stated;
- 1.2.7 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;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
- 1.2.9 unless otherwise specified, a reference to legislation or a legislative provision is a reference to it 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 from time to time; and
- 1.2.10 if the Sub-Consultant is a partnership each partner shall be jointly and severally liable under this Deed. Where the context so requires and where the Sub-Consultant is a partnership, the term **Sub-Consultant** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Sub-Consultant during the currency of this Deed. This Deed shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership.

## **2. EXERCISE OF SKILL AND CARE**

- 2.1 The Sub-Consultant warrants and undertakes to the Beneficiary that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Contract. Save as expressly provided for in this Deed the duty of the Sub-Consultant is to be treated as being no greater than it would have been if the Beneficiary had been a party to the Contract instead of this Deed but neither this provision nor any other provision in this Deed shall entitle the Sub-Consultant to raise any defence based on set-off or counterclaim and/or prevent the Beneficiary from recovering loss and/or damage from the Sub-Consultant as a result of the Sub-Consultant's breach of any provisions of this Deed on the basis that the Consultant and/or the Employer have not suffered any loss and/or damage and/or the same loss and/or damage and the Sub-Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the Beneficiary.
- 2.2 Without prejudice to the generality of Clause 2.1 the Sub-Consultant warrants and undertakes to the Beneficiary that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Contract all reasonable skill, care and diligence to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Development.
- 2.3 The Sub-Consultant further warrants and undertakes to the Beneficiary that, in observing and performing each and all of its services, duties and obligations contained in or implied by the Contract, the Sub-Consultant shall comply with all applicable statutory and regulatory requirements.

- 2.4 The Sub-Consultant acknowledges that the Beneficiary has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.5 The obligations of the Sub-Consultant under this Deed shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any matter.

### 3. OBLIGATIONS PRIOR TO TERMINATION OF THE CONTRACT

[NOTE - Clauses 3 and 4 (step in rights) are usually only used where the Beneficiary is a purchaser or funder, or to the Employer. If the Beneficiary is not a purchaser or funder, or if they are not to be given step in rights, delete Clause 3, 4 and 13; delete the Consultant details in Clause 9; and delete the Consultant from being a signatory to this collateral warranty on the coversheet, parties and execution clauses, and instead insert a new definition of Consultant with their details in Background A or the table at Clause 1.1]

- 3.1 The Sub-Consultant warrants and undertakes to the Beneficiary that it shall not exercise or seek to exercise any right of termination of the Contract and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Development by reason of breach on the part of the Consultant) without giving to the Beneficiary not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Contract for the exercise by the Sub-Consultant of a right of termination of the Contract and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Development shall be extended as may be necessary to take account of the period of notice required under Clause 0.
- 3.3 Compliance by the Sub-Consultant with the provisions of Clause 0 shall not be treated as a waiver of any breach on the part of the Consultant giving rise to the right of termination of the Contract and/or to discontinue the performance of any of the Sub-Consultant's services, duties and/or obligations in relation to the Development, nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

### 4. OBLIGATIONS OF THE SUB-CONSULTANT TO THE BENEFICIARY

[NOTE - Clauses 3 and 4 are usually only used where the Beneficiary is a purchaser or funder, or to the Employer – see note under Clause 3 above.]

- 4.1 The right of the Sub-Consultant to terminate the Contract and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 0 if the Beneficiary shall give written notice to the Sub-Consultant:
- 4.1.1 requiring the Sub-Consultant to continue performing its services, duties and obligations under the Contract in relation to the Development;
- 4.1.2 acknowledging that the Beneficiary is assuming all the services, duties and obligations of the Consultant under the Contract;
- 4.1.3 undertaking unconditionally to the Sub-Consultant to discharge all payments which may subsequently become due to the Sub-Consultant under the terms of the Contract;
- and shall pay to the Sub-Consultant any sums which have become due and payable to it under the Contract but which were then unpaid.
- 4.2 Upon compliance by the Beneficiary with the requirements of Clause 0 the Contract shall continue in full force and effect as if the right of termination and/or discontinuance on the part of

the Sub-Consultant had not arisen and in all respects as if the Contract had been made between the Sub-Consultant and the Beneficiary to the exclusion of the Consultant.

- 4.3 Notwithstanding that as between the Consultant and the Sub-Consultant the Sub-Consultant's rights of termination of the Contract and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the Beneficiary gives notice to the Sub-Consultant and the Consultant to that effect and the Beneficiary complies with the requirements on its part under Clause 0.
- 4.4 The Sub-Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Consultant and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under Clause 0.
- 4.5 The Sub-Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Consultant.
- 4.6 Where the Sub-Consultant has given rights similar to those contained in Clauses 3 and 4 of this Deed to any other person or persons, then if both the Beneficiary and such other person or persons shall serve notice under Clause 0 or its equivalent, the notice served by the Beneficiary [shall prevail over any notice served by any other person or persons / shall not prevail over any notice served by any other person or persons / shall not prevail over any notice served by [●] but shall prevail over any notice served by any other person or persons]. The Sub-Consultant acting in accordance with the provisions of this Clause 4.6 shall not be and shall not be deemed to be in breach of the provisions of this Deed by doing so, nor shall the Sub-Consultant in doing so incur any liability to the Beneficiary.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Sub-Consultant with full title guarantee grants to the Beneficiary, with immediate effect, an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any or all of the Materials produced or prepared by the Sub-Consultant or on the Sub-Consultant's behalf for any purpose whatsoever relating to the Development and/or the Site including (without limitation) the design, construction, completion, promotion, advertisement, funding, sale, letting, disposal, fitting out, maintenance, use, occupation, management, repair, reinstatement, re-construction, modification, alteration, refurbishment, re-development, decommissioning, demolition and/or extension of the Development and/or the Site. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the Sub-Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of the Contract.
- 5.2 The Sub-Consultant shall not be liable for the consequences of any use by the Beneficiary of the Materials for any purposes other than those for which the same are or were prepared.
- 5.3** The Sub-Consultant warrants to the Beneficiary that it is authorised to grant the licence set out in Clause 5.1 in respect of any Materials whose intellectual property rights are vested in any third person and that the use of the Materials for any purpose relating to the Development and/or Site shall not infringe the rights of any third person. If the use of the Materials is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting claims, proceedings, damages, costs and expenses.
- 5.4 To the extent that the Sub-Consultant is (or at the time of their creation may be) the author of the Materials, the Sub-Consultant hereby absolutely waives and agrees not to assert any moral rights which it might otherwise be deemed to possess pursuant to the Copyright, Designs and Patents Act 1988 or any equivalent legislation in respect of the Materials; and to the extent that the Sub-Consultant is not the author, the Sub-Consultant warrants that the author has not asserted and has waived and agreed to waive any such moral rights which the author might otherwise be deemed to possess.
- 5.5 The Sub-Consultant agrees:

- 5.5.1 on request at any time to give the Beneficiary or any persons authorised by the Beneficiary full and sufficient access to the Materials and, at the Beneficiary's expense, to provide full and proper copies of the Materials (including copy negatives and electronic copies); and
- 5.5.2 at the Sub-Consultant's expense, to provide the Beneficiary with a set of all Materials on Practical Completion.
- 5.6 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Contract shall be paid by the Sub-Consultant and the Sub-Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Sub-Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract.
- 5.7 The Sub-Consultant shall (subject to the Beneficiary paying the Sub-Consultant's reasonable costs so to do) if reasonably requested by the Beneficiary at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary the rights referred to in this Clause 5.

## 6. INSURANCE

- 6.1 The Sub-Consultant warrants to the Beneficiary that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Development and for a period of 12 years following Practical Completion (irrespective of any termination of the Contract or the Sub-Consultant's employment under the Contract for any reason) professional indemnity insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than £[●] ([●] pounds) for any one occurrence or series of occurrences arising out of any one event to cover any claims made under this Deed against the Sub-Consultant in relation to the Development.
- 6.2 The Sub-Consultant shall maintain the professional indemnity insurance on terms and conditions that do not require the Sub-Consultant to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.
- 6.3 As and when reasonably required by the Beneficiary the Sub-Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.
- 6.4 The Sub-Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 6.1 and all of the insurance provisions contained or referred to in the Contract.
- 6.5 The preceding parts of this Clause 6 shall not apply at times when and to the extent that the insurance referred to in Clause 6.1 is not available in the United Kingdom insurance market at commercially reasonable rates, and the Sub-Consultant has notified the Beneficiary accordingly. Upon such notification the Sub-Consultant shall make itself available to the Beneficiary to discuss reasonable means of protecting the Beneficiary and the Sub-Consultant shall take any reasonable steps requested by the Beneficiary. For the purposes of this Clause 6.5, **commercially reasonable rates** shall mean such level of premium rates at which other consultants and/or sub-consultants of a similar size and financial standing as the Sub-Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Sub-Consultant's own claims record or other acts, errors, omissions, negligence, breaches, defaults, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.

## 7. HEALTH AND SAFETY

The Sub-Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Development as set out in the Construction (Design and Management) Regulations 2015.

## 8. EXCLUDED MATERIALS

8.1 The Sub-Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Development any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the Sub-Consultant's trade and/or the construction industry:

8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;

8.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Development or any part thereof and/or to other structures, finishes, plant and/or machinery;

8.1.3 to reduce or possibly reduce the normal life expectancy of developments of a type comparable to the Development;

8.1.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a development of a type comparable to the Development;

8.1.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or

8.1.6 [o be supplied or placed on the market in breach of the Construction Products Regulations.

## 9. COMMUNICATIONS

9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when:

9.1.1 delivered (in the case of personal delivery or letter); or

9.1.2 despatched (in the case of facsimile)

to that party at the address or facsimile number appearing below (or at such other address or facsimile number as that party may hereafter specify for this purpose to the other):

in the case of the Sub-Consultant: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Beneficiary: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Consultant: [●] [NOTE - name / address / facsimile to be inserted]

9.2 A written notice includes a notice by facsimile. A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

## 10. CONCURRENT LIABILITIES

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 Sub-Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

## 11. ASSIGNMENT

11.1 The Beneficiary may without the consent of the Sub-Consultant assign transfer and/or charge the benefit of all or any of the Sub-Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:

11.1.1 by way of security or by way of re-assignment on redemption; and

11.1.2 by absolute assignment to any Group Company of the Beneficiary; and

11.1.3 by absolute assignment on two other occasions only.

11.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

11.3 The Sub-Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.

11.4 The Sub-Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the Beneficiary's obligations under this Deed and/or any benefit (if any) arising to the Sub-Consultant out of this Deed.

## 12. LIMITATION PERIOD

The liability of the Sub-Consultant under this Deed shall cease 12 years following Practical Completion save in relation to any claims made by the Beneficiary against the Sub-Consultant and/or notified by the Beneficiary to the Sub-Consultant in writing prior thereto. For the avoidance of doubt, the parties agree that any provisions of the Limitation Act 1980 to the contrary will not apply to this Deed.

## 13. CONSULTANT

[NOTE - delete if Clauses 3 and 4 are deleted]

The Consultant agrees that it shall not take any steps which would prevent or hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in Clauses 3 and 4 override any obligations of the Sub-Consultant to the Consultant under the Contract.

## 14. GOVERNING LAW AND JURISDICTION

14.1 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) is governed by and construed in accordance with the law of England and Wales.

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

**15. RIGHTS OF THIRD PARTIES**

Unless the right of enforcement is expressly provided for, no third party (as defined in the Contracts (Rights of Third Parties) Act 1999) except for any permitted successor or assignee of any party to this Deed has any rights under that Act to enforce any term of this Deed.

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

Executed as a deed by **[insert name of company]** acting by **[insert name of first director]**, a director and **[insert name of second director or secretary]** [a director/its secretary]

.....  
Director

.....  
[Director/Secretary]

**OR**

Executed as a deed by **[insert name of company]** acting by **[insert name of director]**, a director, in the presence of **[insert name of witness]**:

.....  
Director

*Signature (Witness)* .....

*Print Name* .....

*Address* .....

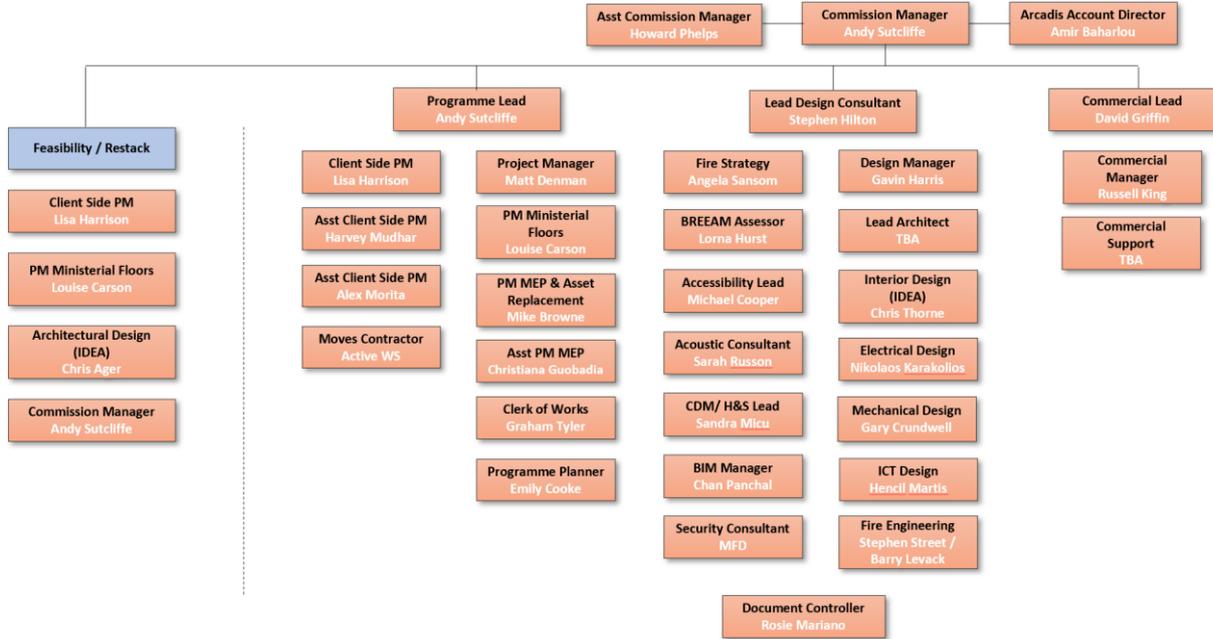
.....

*Occupation* .....

## Annex E

### Project Team Members

DfE – Sanctuary Buildings Delivery Team



#### Other consultants, Contractors, designers etc:

iDEA (SME) provides Interior Design services

MFD (SME) is a security consultant providing Threat Assessment, Risk Analysis and Security Surveys/Audits

Group SCS (SME) is a specialist in Smoke Control and ventilation and will support on fire prevention.

## Annex F

### Financial Distress

#### 1. Definitions

1.1. In this Annex F the following definitions apply:

**"Credit Rating Threshold"** means the minimum credit rating level for the Consultant as set out in Annex 1;

**"Financial Distress Event"** means the occurrence or one or more of the events listed in this Annex F;

**"Financial Distress Service Continuity Plan"** means a plan setting out how the Consultant will ensure the continued performance in accordance with this contract in the event that a Financial Distress Event occurs;

**"Rating Agency"** means the rating agency means Dun & Bradstreet.

#### 2. Credit rating and duty to notify

2.1. The Consultant warrants and represents to the Client for the benefit of the Client that as at the Contract Date the long-term credit ratings issued for the Consultant by the Rating Agency.

2.2. The Consultant promptly notifies (or procures that its auditors promptly notify) the Client if there is any significant downgrade in the credit rating issued by any Rating Agency for the Consultant (and in any event within seven days from the occurrence of the downgrade).

2.3. If there is any downgrade credit rating issued by any Rating Agency for the Consultant, the Consultant ensures that the Consultant's auditors thereafter provide the Client within 14 days of a written request by the Client with written calculations of the quick ratio for the Consultant at such date as may be requested by the Client. For these purposes the "quick ratio" on any date means:

Where

A. is the value at the relevant date of all cash in hand and at the bank of the Consultant;

B. is the value of all marketable securities held by the Consultant determined using closing prices on the working day preceding the relevant date;

C. is the value at the relevant date of all account receivables of the Consultant; and

D. is the value at the relevant date of the current liabilities of the Consultant.

2.4. The Consultant:

- regularly monitors the credit ratings of the Consultant with the Rating Agencies; and
- promptly notifies (or shall procure that its auditors promptly notify) the Client following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, shall ensure that such notification is made within 14 days of the date on which the Consultant first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph, the credit rating of the Consultant shall be deemed to have dropped below the

applicable Credit Rating Threshold if any of the Rating Agencies have rated the Consultant at or below the applicable Credit Rating Threshold.

### **3. Consequences of a financial distress event**

3.1. In the event of:

3.1.1. the credit rating of the Consultant dropping below the applicable Credit Rating Threshold;

3.1.2. the Consultant issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Consultant;

3.1.4. the Consultant committing a material breach of covenant to its lenders;

3.1.5. a Sub-contractor notifying the Client that the Consultant has not satisfied any sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

3.1.6. any of the following:

- commencement of any litigation against the Consultant with respect to financial indebtedness or obligations under this contract;
- non-payment by the Consultant of any financial indebtedness or any financial indebtedness of the Consultant becoming due as a result of an event of default; or
- the cancellation or suspension of any financial indebtedness in respect of the Consultant in each case which the Client reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the Consultant in accordance with this contract;

then, immediately upon notification of the Financial Distress Event (or if the Client becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Consultant), the Consultant shall have the obligations and the Client shall have the rights and remedies as set out in paragraphs 3.2 – 3.6.

3.2. The Consultant:

3.2.1 at the request of the Client meets the Client as soon as reasonably practicable (and in any event within three working days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing) to review the effect of the Financial Distress Event on its continued performance in accordance with this contract; and

3.2.2. where the Client reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the Financial Distress Event could impact on the Consultant's continued performance in accordance with this Contract:

- submits to the Client for approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 14 days from the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing); and
- provides such financial information relating to the Consultant as the Client may reasonably requires.

3.3. The Client does not withhold approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Client does not approve the draft Financial Distress Service Continuity Plan, the Client informs the Consultant of the reasons and the Consultant takes those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which the Consultant resubmits to the Client within seven days of the rejection of the first or subsequent (as the case may be) drafts. This process is repeated until the Financial Distress Service Continuity Plan is approved by the Client or referred to the dispute resolution procedure.

3.4. If the Client considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, the Client may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure.

3.5. Following approval of the Financial Distress Service Continuity Plan by the Client, the Consultant:

- reviews on a regular basis (which shall not be less than monthly) the Financial Distress Service Continuity Plan and assesses whether it remains adequate and up to date to ensure the continued performance in accordance with this Contract;
- where the Financial Distress Service Continuity Plan is not adequate or up to date in, submits an updated Financial Distress Service Continuity Plan to the Client for approval, and the provisions of shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
- complies with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.6. Where the Consultant reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the Consultant notifies the Client and subject to the agreement of the Client, the Consultant is relieved of its obligations under paragraph 3.

#### **4. Termination rights**

4.1. The Client may terminate the Consultant's obligation to perform the Services if

- the Consultant fails to notify the Client of a Financial Distress Event in accordance with paragraph 2.2;
- the Client fails to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3; and/or
- the Consultant fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.

#### **5. Primacy of credit ratings**

5.1. Without prejudice to the Consultant's obligations and the Client's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- the Consultant is relieved automatically of its obligations under paragraph 3; and
- the Client is not entitled to require the Consultant to provide financial information in accordance with paragraph 2.3.

## **ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

Consultant Credit current rating (long term): Graydon rating AA

Credit Rating Threshold: Graydon rating A

Note: Client will review the Consultant's Graydon credit rating every quarter. Should the credit rating drop below the minimum credit rating threshold, a meeting will be held between Client and Consultant to discuss the rationale for such change and may result in a review & action plan being drawn. Any negative change to the credit rating, whether outside of the threshold or not will be an agenda item for discussion at the next Client : Consultant performance / review meeting.

**Annex G**

**Contract Documents**

The CD attached to this page is Annex G comprising the scope provided by the Client to the Consultant and the Services from Annex B.

By signing below each Party agrees and acknowledges that the CD is an accurate electronic representation of the paper files comprising the scope and the Services.

.....

(Signed by the Client)

.....

(Signed by the Consultant)