

(1) THE SECRETARY OF STATE FOR EDUCATION

- and -

(2) WILLMOTT DIXON CONSTRUCTION LIMITED

CONTRACT

relating to

Sanctuary Buildings Refurbishment (Second Phase)
incorporating the conditions of the JCT Minor Works Building Contract
with contractor's design 2016 Edition

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 “**Employer**”); and
- (2) **WILLMOTT DIXON CONSTRUCTION LIMITED** (company number 00768173) whose registered office is at Suite 201, The Spirella Building, Bridge Road, Letchworth Garden City, Hertfordshire, SG6 4ET (the “**Contractor**”).

RECITALS

Whereas:

First the Employer wishes to have the following work carried out: strip out works to Levels 7 & 8, preliminaries and early procurement of long lead plant and equipment items, together with high level MEP services installation to Levels 7 and 8, at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (“the **Works**”) under the direction of the Architect/Contract Administrator referred to in Article 3 and has had a specification and work schedules prepared which show and describe the work to be done;

Second the Works include the design and construction of:

(a) hoist, backing scaffold, and overhead gantry design;

(the “**Contractor’s Designed Portion**”);

Third the Employer has had the following documents prepared which show and describe the work to be done:

(a) the drawings numbered/listed in Schedule 11 of this Contract (the “**Contract Drawings**”);

(b) a Specification (the “**Contract Specification**”);

(c) Work Schedules;

(d) other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractor’s Designed Portion (the “**Employer’s Requirements**”),

which for identification have been signed or initialled by or on behalf of each Party and those documents together with this Agreement, the Conditions and, if applicable, a Schedule of Rates as referred to in the Fourth Recital (collectively “**Contract Documents**”) are annexed to this Contract at Schedule 7 and Schedule 11;

Fourth the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or provided a Schedule of Rates;

Fifth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

- Sixth** for the purposes of the Construction (Design and Management) Regulations 2015 (the “**CDM Regulations**”) the status of the project that comprises or includes the Works is stated in the Contract Particulars;
- Seventh** where so stated in the Contract Particulars, this Contract is supplemented by the DfE Construction Framework Agreement identified in those particulars;
- Eighth** whether any of Supplemental Provisions 1 to 8 apply is stated in the Contract Particulars;
- Ninth** the division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars.

ARTICLES

IT IS HEREBY AGREED as follows:

1. CONTRACTOR’S OBLIGATIONS

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

2. CONTRACT SUM

[REDACTED]

3. ARCHITECT/CONTRACT ADMINISTRATOR

For the purposes of this Contract the “**Architect/Contract Administrator**” is Arcadis LLP or, if they cease to be the Architect/Contract Administrator, such other person as the Employer nominates (which person may, for the avoidance of doubt, be an employee of the Employer) within a reasonable time but in any case no later than 10 Business Days after such cessation, not being a person whom the Contractor no later than 5 Business Days after such nomination shall object to for reasons considered to be sufficient by a person appointed pursuant to the procedures under this Contract relevant to the resolution of disputes or differences. Provided always that no person subsequently appointed to be the Architect/Contract Administrator under this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

4. PRINCIPAL DESIGNER

The “**Principal Designer**” for the purposes of the CDM Regulations is Arcadis LLP or, such replacement as the Employer at any time appoints to fulfil that role and the person with responsibility for carrying out such role is [REDACTED] or such other person as the Employer shall approve.

5. PRINCIPAL CONTRACTOR

The “**Principal Contractor**” for the purposes of the CDM Regulations is the Contractor, or such replacement as the Employer at any time appoints to fulfil that role.

6. ADJUDICATION

Notwithstanding anything else contained in this Contract, if any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 7.2.

7. LEGAL PROCEEDINGS

Subject to a referral pursuant to Article 6, if any dispute or difference as to any matter or thing of whatsoever nature arising under this Contract or out of or in connection therewith shall arise between the Contractor and the Employer either during the progress of the Works or after the completion or abandonment of the Works or after the determination of the employment of the Contractor it shall be determined by legal proceedings and the English courts shall have jurisdiction over any such dispute or difference.

8. SCHEDULE OF AMENDMENTS

The conditions of JCT Minor Works Building Contract with contractor's design 2016 including sections 1 to 7 and the Schedules annexed thereto ("**MWD 2016**") are intended to be and are hereby incorporated into and amended and supplemented by the Schedule of Amendments contained in Appendix A to this Contract ("**the Conditions**") and this Contract shall be read and construed accordingly.

9. COLLATERAL WARRANTIES AND PARENT COMPANY GUARANTEE: THE CONTRACTOR

9.1 The Contractor shall execute as deeds collateral warranties in the form set out in Schedule 4 to this Contract in favour of:

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

9.1.2 

and deliver the same duly executed to the Employer:

- a) on or before the date of this Contract, where such beneficiary's identity has been made known to the Contractor on or before the date of this Contract; and
- b) within 10 Business Days of a written request from the Employer, where such beneficiary's identity has been made known to the Contractor after the date of this Contract.

9.2 Should the collateral warranties from the Contractor not be delivered to the Employer by the date of this Contract or within 10 Business Days of a written request from the Employer (as relevant) then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant collateral warranties have been provided to the Employer. The Employer's right to withhold payment shall not apply once the Contractor satisfies his obligations under this Article 9.2.

9.3 The Contractor shall procure the execution as a deed and delivery to the Employer by his parent company, within 10 Business Days of a written request from the Employer, a parent company guarantee in the form set out in Schedule 4 to this Contract with such amendments as the Employer may approve. Should the parent company guarantee not be delivered to the Employer in accordance with this Article 9.3 then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant parent company guarantee has been delivered. The Employer's right to withhold payment shall not apply once the Contractor satisfies his obligations under this Article 9.3.

10. COLLATERAL WARRANTIES: PRINCIPAL SUB-CONTRACTORS

10.1 In this Article 10 'Principal Sub-Contractors' means any Sub-Contractor appointed by the Contractor in relation to the following elements of the Works:

hoist design and deposit; and

scaffolding and hoist design.

10.2 Without prejudice to clause 3.3, each of the Principal Sub-Contractors shall be appointed by deed, and within 5 Business Days of the appointment of a Principal Sub-Contractor the Contractor shall supply to the Employer a complete certified copy of the sub-contract, appointment or contract (as relevant).

10.3 The Contractor shall procure as deeds collateral warranties in the form of Schedule 4 to this Contract in favour of:

10.3.1 the Employer;

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

10.3.3 [REDACTED]

and deliver the same as deeds duly executed by the relevant Principal Sub-Contractor (and Contractor as relevant) to the Employer within 10 Business Days of a written request from the Employer.

10.4 The Contractor shall procure that each Principal Sub-Contractor takes out and maintains until the expiry of twelve (12) years after the date of Practical Completion PI Insurance which covers at a minimum all of the Principal Sub-Contractor's design and professional obligations under the relevant sub-contract, appointment, contract (as relevant) (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) not less than the relevant limits of indemnity of the types and in amounts as set out in the table below:

Principal Sub-Contractor	Level of PI Insurance
Hoist design and deposit	[REDACTED]
Scaffolding and hoist design	[REDACTED]
Any other Principal Sub-Contractor	[REDACTED]

provided that such insurance is generally available in the market to members of the relevant Principal Sub-Contractor's trade at commercially reasonable rates and provided further that

payment of any increased or additional premiums required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

- 10.5 For the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending twelve (12) years after the date of Practical Completion, the Contractor shall provide reasonable evidence to the Employer (as and when reasonably required by the Employer) that the PI Insurance of the relevant Principal Sub-Contractor complies with this Article 10.
- 10.6 Should the collateral warranties from the Principal Sub-Contractor, sub-contract, appointment or contract (as relevant) of the relevant Principal Sub-Contractor not be delivered to the Employer within 10 Business Days of a written request from the Employer (as relevant) then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular Principal Sub-Contractor's work until such time as the relevant collateral warranty, sub-contract, appointment or contract (as relevant) has been delivered.
- 10.7 The Employer's right to withhold payment under Article 10.6 shall not apply once the Contractor satisfies his obligations under Article 10.

11. DESIGN CONSULTANTS

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

(together the "**Design Consultants**")
- 11.4 The Design Consultants shall be appointed by deed, such terms to be approved by the Employer.
- 11.5 Within 5 Business Days of the appointment of each Design Consultant the Contractor shall supply to the Employer a completed certified copy of the Design Consultant's deed of appointment.
- 11.6 The Contractor shall not dismiss any of the Design Consultants or vary the terms of their appointment without the written approval of the Employer.
- 11.7 If the employment of any Design Consultant is terminated or ceases its duties and/or obligations before the completion of the services allocated to him, the Contractor shall provide details of his proposed replacement to the Employer for his approval. Subject to the Employer's approval (which approval shall not be unreasonably withheld or delayed), the Contractor shall as soon as is reasonably practicable appoint such replacement consultant to complete those services. The foregoing provisions of this Article 11 shall apply to such replacement consultant.
- 11.8 The Contractor shall procure as deeds collateral warranties in the form of Schedule 4 to this Contract in favour of:

11.8.1 the Employer;

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

11.8.3 [REDACTED]

and deliver the same as deeds duly executed by the relevant Design Consultant (and Contractor as relevant) to the Employer:

a) on or before the date of this Contract, where such beneficiary's identity has been made known to the Contractor on or before the date of this Contract; and

b) within 10 Business Days of a written request from the Employer, where such beneficiary's identity has been made known to the Contractor after the date of this Contract.

11.9 Should the collateral warranties from the Design Consultant or appointment of the relevant Design Consultant not be delivered to the Employer by the date of this Contract or within 10 Business Days of a written request from the Employer (as relevant) then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular Design Consultant work until such time as the relevant collateral warranty or appointment has been delivered.

11.10 The Employer's right to withhold payment under Article 11.9 shall not apply once the Contractor satisfies his obligations under this Article 11.

11.11 The Contractor shall procure that each Design Consultant takes out and maintains until the expiry of twelve (12) years after the date of Practical Completion PI Insurance which covers at a minimum all of the Design Consultant's design and professional obligations under the relevant appointment (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) not less than the relevant limits of indemnity of the types and in amounts as set out in the table below:

Novated/Design Consultant	Level of PI Insurance
Civil and structural engineer	[REDACTED]
Any other Design Consultant	[REDACTED]

provided that such insurance is generally available in the market to members of the relevant consultant's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Design

Consultant's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

- 11.12 For the period beginning on the earlier of the Date of Possession or, the date of this Contract and ending twelve (12) years after the date of Practical Completion, the Contractor shall provide reasonable evidence to the Employer (as and when reasonably required by the Employer) that the PI Insurance of the relevant Design Consultant complies with this Article 11.

12. ENTIRE AGREEMENT

- 12.1 The terms and conditions of this Contract and the obligations, warranties and undertakings which it contains are deemed to apply to all the Works both before and after the date of this Contract and this Contract supersedes any previous, agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter between the Parties with regard to the same unless the Parties have expressly agreed to the contrary. For the avoidance of doubt the Contractor acknowledges that the terms and conditions of this Contract are deemed to apply to any Works undertaken under the Pre-Construction Services Agreement.
- 12.2 The Contractor confirms that in entering into this Contract he has not relied upon any warranty, representation, agreement, statement or undertaking other than as are expressly set out in this Contract and that (in the absence of fraud) he will not have any claim, right or remedy whatsoever arising out of such warranty, representation, agreement, statement or undertaking including, without limitation, any claim for rescission or damages in respect of innocent or negligent misrepresentation.
- 12.3 Notwithstanding any other provision of this Contract, the Contractor's obligations and/or liabilities under this Contract shall not be removed, reduced, qualified or limited by any enquiries, approvals, admissions, comments, consents, confirmations, sanctions, acknowledgement, advice, inspections, attendance at meetings or any failure in relation to the same by the Employer or his agents or representatives or persons authorised by the Employer to access the Sites including for the avoidance of doubt any comments and/or responses issued to the Contractor pursuant to clause 2.1 and/or any interim or final payments and/or any programme. Approval of drawings shall not constitute an acceptance of any variations incorporated in any drawings, and only variations specifically instructed or sanctioned by the Employer in accordance with clause 3.6 shall constitute a variation for the purposes of this Contract.

13. COUNTERPARTS

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

CONTRACT PARTICULARS

Clause, etc.	Subject	
Fifth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	The date of this Contract
Fifth Recital and clause 4.2	Construction Scheme (CIS)	Industry Employer at the Base Date is a “contractor” for the purposes of the CIS
Sixth Recital	CDM Regulations	The project is notifiable
Seventh Recital	Framework Agreement (State date, title and parties)	N/A
Eighth Recital and Schedule 3	Supplemental Provisions <i>(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)</i>	
	Collaborative working	Supplemental Provision 1 applies
	Health and safety	Supplemental Provision 2 applies
	Cost savings and value improvements	Supplemental Provision 3 applies
	Sustainable development and environmental considerations	Supplemental Provision 4 applies
	Performance Indicators and monitoring	Supplemental Provision 5 does not apply
	Notification and negotiation of disputes	Supplemental Provision 6 applies

Where paragraph 6 applies, the respective nominees of the Parties are

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transparency Supplemental Provision 7 does not apply

The Public Contracts Regulations 2015 Supplemental Provision 8 applies

Ninth Recital	Description of Sections	<p>Section 1 - Level 7 strip out including all relevant access and acoustic works</p> <p>Section 2 - Level 8 strip out including all relevant access and acoustic works</p> <p>Section 3 - Hoist installation including all scaffolding, hoarding, licenses, and relevant works</p> <p>Section 4 – Mechanical and electrical early orders including pre-fabricated valves and building management system controllers</p> <p>Section 5 - Long lead item order for low voltage boards</p> <p>Section 6 - Long lead item order for fan coil units</p> <p>Section 7 – Level 7 mechanical, electrical, and plumbing installation works</p> <p>Section 8 - Level 8 mechanical, electrical, and plumbing installation works</p>
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Article 2

Section Sums

1.1	BIM Protocol (where applicable) (<i>State title, edition, date or other identifiers of the relevant documents</i>).	Is the Project's Information Protocol (including the Information Particulars within the Project's Information Protocol) and the following documents – DfE's Exchange Information Requirements, DfE's Detailed Exchange Information Requirements, Project's Information Standard and Project's Information Production Methods and Procedures
1.6	Addresses for service of notices etc. by the Parties (<i>If none is stated, the address in each case, unless and until otherwise agreed and subject to clause 1.6.2, shall be that shown at the commencement of the Agreement.</i>)	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
2.3	Works commencement date for each Section of the Works	<div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>

2.3	Date for Completion of each Section of the Works	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	or such later date for completion as is fixed under clause 2.8
2.9	Liquidated damages for each Section of the Works	<div></div> <div></div> <div></div> <div></div>	
2.11	Rectification Period	<div></div>	
2.29.1	Limit of Contractor's Liability	<div></div>	
4.3	Interim payments – Interim Valuation Dates <i>(Unless otherwise stated, the first Interim Valuation Date is one month after the Works commencement date specified in these Particulars (against the reference to clause 2.3) and thereafter at monthly intervals)</i>	The first Interim Valuation Date is at the end of the month following the date of this Contract and thereafter at the end of each subsequent month	

4.3	Payments due prior to Practical Completion of the whole of the Works - percentage of the total value of work etc. <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	
4.3	Payments becoming due on or after Practical Completion of the whole of the Works - percentage of the total amount to be paid to the Contractor <i>(The percentage is 97 ½ per cent unless a different rate is stated.)</i>	
4.3 and 4.8	Fluctuations provision <i>(Unless another provision or entry is selected, Schedule 2 applies.)</i>	No fluctuations provision applies
4.3 and 4.8	Percentage addition for Schedule 2 (paragraph 13) (if applicable)	No fluctuations provision applies
4.8.1	Supply of documentation for computation of amount to be finally certified	three months from the date of Practical Completion of the whole of the Works
5.3	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	
5.4A, 5.4B and 5.4C	Insurance of the Works etc. alternative provisions	Clause 5.4C (Works and existing structures insurance by other means) applies (as amended in Appendix A)
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent)</i>	
5.4C	Insurance arrangements – details of the required policy or policies	Are set out in the following document(s) Appendix A

5.6 PI Insurance – the required level of cover is not less than



7.2 Adjudication

Nominating body where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)
(Where an Adjudicator is not named and a nominator has been selected, the nominator shall be one of the nominators listed opposite selected by the Party requiring the reference to adjudication.)

The Chairman of the Technology and Construction Solicitors' Association

[REDACTED]

[REDACTED]

[REDACTED]

|

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

APPENDIX A

Schedule of Amendments to the Conditions of Contract

Based on printed version, published September 2016. Line references may vary in copies produced from the publisher's digital service.

CONDITIONS

Section 1 Definitions and Interpretation

1.1 Definitions

Amend existing definitions and **insert** new definitions, as follows:

Asbestos:	has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632;
Asbestos Survey:	the Asbestos survey(s) set out in the USB stick of technical documents appended at Schedule 11 to this Contract;
CDM Regulations:	the Construction (Design and Management) Regulations 2015 and any modification or replacement of the same;
Commercially Sensitive Information:	the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Contractor, the charges for the Works, his Intellectual Property Rights or his business or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss, but excluding always the Contract Sum;
Conditions:	delete the definition and substitute " see Article 8 ";
Confidential Information:	the Employer's Confidential Information and/or the Contractor's Confidential Information;
Consents:	any planning permissions referred to in the Contract Documents or any other planning permissions relating to the Works, the approvals of reserved matters relating to the conditions attaching to any planning permissions referred to in the Contract Documents or any other planning permissions relating to the Works, and all other permissions, consents, approvals, licences, certificates, authorisations, and permits whether of a public or private nature as may be necessary lawfully to commence, carry out and complete the Works and if they are destroyed or damaged the reinstatement of the Works;
Construction Programme:	the programme for carrying out the completion of the Works in accordance with the terms of this Contract as set out in Schedule 6 to this Contract;
Contamination:	all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour and which, for the avoidance, shall include Asbestos);
Contract:	the Contract Documents and any other document forming part of

	this Contract;
Contractor's Confidential Information:	any information (excluding the Contract Sum), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
Contractor's Design Documents:	the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Contractor in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by him under the BIM Protocol;
Crown Body:	any department, office or agency of the Crown;
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;
DPA 2018:	Data Protection Act 2018;
Employer's Confidential Information:	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Employer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
Employer's Policies:	the policies notified to the Contractor by the Employer and set out in Schedule 8 to this Contract;
Environmental Information Regulations:	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Existing Buildings:	the buildings at the Site (Existing Buildings) prior to the relevant Completion Date but excluding any new facilities comprising the Works;

FOIA:	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
General Anti-Abuse Rule:	<ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;
Good Industry Practice:	that degree of skill, care, prudence and foresight which would ordinarily be expected from time to time from a skilled and experienced building contractor under the same or similar circumstances;
Halifax Abuse Principle:	the principle explained in the CJEU Case C-255/02 Halifax and others;
Intellectual Property Rights:	<ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (a) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; (b) all other rights having equivalent or similar effect in any country or jurisdiction; and (c) all or any goodwill relating or attached thereto;
Joint Names Policy:	after "Contractor" insert: "and any one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or an organisation providing finance in connection with the Sites or the Works";
Named Employee:	as set out in clause 2.17.1 of this Contract;
Occasion of Tax Non-Compliance:	<ul style="list-style-type: none"> a) where any tax return of the Contractor 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: <ul style="list-style-type: none"> i. a Relevant Tax Authority successfully challenging the Contractor 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; ii. the failure of an avoidance scheme which the Contractor 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

- b) where any tax return of the Contractor 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;

Personal Data: the meaning given to it in the Data Protection Act 2018;

PI Insurance: professional indemnity insurance;

Post Practical Completion Activities: those activities to be carried out and completed by the Contractor following Practical Completion and as further set out in the Contract Documents;

Practical Completion: a stage of completeness of the Works (or any Section of the Works) has been reached which allows the Sites to be occupied and used and in which

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

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

- Prohibited Act:**
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Employer or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a

reward for improper performance of a relevant function or activity in connection with this Contract;

- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Employer; or
- (d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

Refurbished Buildings:	the Existing Buildings to be refurbished or remodelled (including any demolition) pursuant to this Contract;
Relevant Requirements:	all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Tax Authority:	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;
Request for Information:	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
Schedule of Amendments:	the schedule of additional amendments, modifications and changes to the Conditions as set out in this Appendix A to this Contract;
Sections	the sections into which the Works have been divided, as referred to in the Contract Particulars and the Ninth Recital;
Site Plan(s):	the plan or plans of the Sites set out in Schedule 5 to this Contract;
Site Surveys:	the surveys of the Sites set out in the USB stick of technical documents appended at Schedule 11 of this Contract;
Sites:	Sanctuary Buildings, Great Smith Street, London, SW1P 3BT upon which the Works are to be carried out and the extent of which is shown, for identification purposes only, edged red on the plan annexed at Schedule 5 to this Contract and all references in this Contract to "the site" shall be read and construed as references to "the Sites";.
Snagging Items:	minor defects, deficiencies or omissions identified pursuant to clause 2.10A which do not materially impair the Employer's use or enjoyment of the Refurbished Buildings or the relevant parts of the Refurbished Buildings and all of which are together capable of being rectified within twenty (20) Business Days;
Sub-Contractor:	any person engaged as an independent contractor, consultant or supplier by the Contractor to carry out and complete all or any part

of the Works;

UK GDPR:

the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

Works Insurance Policy:

Delete “under whichever of clauses 5.4A, 5.4B and 5.4C applies” and replace with “by the Contractor under this Contract”;

VAT:

delete the definition and substitute “value added tax chargeable under the Value Added Tax Act 1994 (as amended, extended or re-enacted) and any similar or replacement tax”.

Agreement to be read as a whole

1.2A **Insert** new clause 1.2A:

“1.2A Without prejudice to clause 1.2 the documents comprising this Contract are and shall be construed in the following order of precedence in the event of any inconsistency or ambiguity not dealt with by another clause:

First the Recitals as contained in the Agreement;

Second the Articles as contained in the Agreement;

Third the Contract Particulars as contained in the Agreement;

Fourth the Schedule of Amendments excluding the annexed Schedules;

Fifth Schedules annexed to the Schedule of Amendments;

Sixth the conditions of MWD 2016;

Seventh the Employer’s Requirements;

Eighth the priced Contract Specification/priced Work Schedules;

Ninth the Contract Drawings;

Tenth a Schedule of Rates (if any).”

Contracts (Rights of Third Parties) Act 1999

1.5 **Insert** the following in lieu of existing clause 1.5:

“A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of a person which exists or is available otherwise than pursuant to that Act.”

Notices and other communications

1.6.2 In line 3 **delete** “Agreement” and **insert** “Contract Particulars”.

1.6.3 **Insert** new clause 1.6.3:

“1.6.3 Any notice sent by post in accordance with clause 1.6.2 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.”

1.9 **Insert** new clause 1.9:

“Rights and Remedies

1.9 Where this Contract provides specifically for any right of a Party on breach of the other Party's obligations under this Contract, the entitlement to exercise (and conferring of) that right will be to the exclusion of all other rights of the first mentioned Party howsoever arising at common law, under statute or in equity (other than specific performance of any obligation under this Contract or injunctive relief) in respect of the circumstances constituting such breach.”

1.10 **Insert** new clause 1.10:

“No double recovery

1.10 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that he has incurred to the extent that he has already been compensated in respect of that loss pursuant to this Contract or otherwise.”

1.11 **Insert** new clause 1.11:

“Severability

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

1.12 **Insert** new clause 1.12:

“Waiver

1.12.1 No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

1.12.2 No waiver under clause 1.12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and only to the extent) expressly stated in that waiver.”

1.13 **Insert** new clause 1.13:

“UK GDPR

1.13 The Employer and the Contractor shall comply with the provisions of Schedule 10.”

Contractor's obligations

2.1 In line 2 after “Plan” **insert** “, Consents,”.

In lines 3/4 after “and shall give all notices required by the Statutory Requirements.” **delete** the remainder of the clause and in lieu **insert**:

“In relation to the Contractor’s Designed Portion:

- 2.1.1 without prejudice to any other express or implied warranties in this Contract, the Contractor warrants and undertakes to the Employer that:
 - 2.1.1.1 he has exercised and will continue to exercise in the design of the Contractor’s Designed Portion the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under this Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Contractor’s Designed Portion;
 - 2.1.1.2 without derogation from any other provision in this Contract, he is fully responsible for the entire design of the Contractor’s Designed Portion of the Works including any design contained in the Employer’s Requirements (whether or not prepared by or on behalf of the Employer) (and will notify the Employer if the Employer’s Requirements are inadequate or inconsistent immediately upon such inadequacy or inconsistency becoming apparent), all design contained in the Contractor’s Proposals and all design which he prepares or has prepared on his behalf by the Design Consultants or any Sub-Contractors;
 - 2.1.1.3 without derogation from sub-clause 2.1.1.1, the design of the Contractor’s Designed Portion and each part thereof will, when completed, comply with any performance specification or performance-related requirement included or referred to in or forming part of the Employer’s Requirements as varied (if at all) pursuant to the provisions of this Contract;
 - 2.1.1.4 he shall comply with the directions of the Architect/Contract Administrator for the integration of the design of the Contractor’s Designed Portion with the design of the Works as a whole and each part thereof will, when completed, be properly co-ordinated and integrated with the remainder of the Works;
 - 2.1.1.5 he shall without charge and within 10 Business Days’ of any request provide the Architect/Contract Administrator with two copies of such drawings or details and specification of materials, goods and workmanship and (if requested) related calculations and information, as are reasonably necessary to explain the Contractor’s Designed Portion; and
 - 2.1.1.6 he shall not commence any works to which the documents in clause 2.1.1.5 relate before the expiration of seven days from the date of their delivery.
- 2.1.2 The Contractor shall not be excused liability under the above-mentioned warranties, in clause 2.1, by reason of the fact that he may have exercised all

due skill care and diligence in the selection of those to whom he has delegated his design responsibilities in relation to the Contractor's Designed Portion."

2.1A **Insert** new clause 2.1A:

- "2.1A.1 In performing his obligations under this Contract, the Contractor shall, and shall ensure that each of his Sub-Contractors shall, comply with the Modern Slavery Act 2015 and shall have and maintain throughout the term of this Contract his own policies and procedures to ensure compliance.
- 2.1A.2 The Contractor shall notify the Employer as soon as he becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 2.1A.3 In the event that the Contractor fails to comply with this clause 2.1A and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Employer are acceptable, then the Employer reserves the right to terminate the employment of the Contractor under this Contract in accordance with clause 6.4."

2.1B **Insert** new clause 2.1B:

"2.1B Subject to clause 2.1C, the Contractor shall:

- 2.1B.1 obtain and maintain all Consents;
- 2.1B.2 be responsible for implementing each Consent (which he is required to obtain pursuant to clause 2.1C.1) within the period of its validity in accordance with its terms;
- 2.1B.3 supply to the Employer a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;
- 2.1B.4 comply with the conditions attached to any Consents and procure that no such Consent is breached by him or any person under his control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works; and
- 2.1B.5 not (and shall use all reasonable endeavours to procure that any other person over whom he has control shall not) without the prior consent of the Employer (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with his obligations under this clause

and references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived."

2.1C **Insert** new clause 2.1C:

"2.1C.1 Not used."

2.1D **Insert** new clause 2.1D:

- “2.1D The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Works:
- 2.1D.1 be responsible for determining the location of such services and utilities as may be at the Sites and for the maintenance of access to such services and utilities at the Sites;
 - 2.1D.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Sites;
 - 2.1D.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Sites;
 - 2.1D.4 pay to all relevant authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Sites;
 - 2.1D.5 make connection into services and utilities outside the Sites; and
 - 2.1D.6 otherwise do all that is required in relation to the utilities required for the purpose of carrying out of the Works.”

Materials, goods and workmanship

- 2.2.1 **Delete** the existing clause 2.2.1 and in lieu **insert**:

- “2.2.1 Unless otherwise specified in the Contract Documents or agreed between the Parties:

- 2.2.1.1 all materials and goods for the Works shall be new, appropriate for use in the Works, of a satisfactory quality and fit for the purpose or purposes stated or otherwise reasonably to be inferred from the Contract Documents; and
- 2.2.1.2 workmanship for the Works shall be of a satisfactory quality and standard appropriate for the Works.”

- 2.2.3 **Insert** new clause 2.2.3:

- “2.2.3 The Contractor shall not use in connection with the Works and, subject to the standard of skill, care and diligence set out in clause 2.1.1.1, nor permit, specify or approve for use in connection with the CDP Works, any materials which at the time of use:

- 2.2.3.1 are known to be deleterious (either to health and safety or to the durability of the Works); or
- 2.2.3.2 contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- 2.2.3.3 do not accord with the guidelines contained in the edition of the publication *Good Practice in Selection of Construction Materials* (British Council for Offices (BCO)), current at the date of use.”

Correction of inconsistencies

- 2.5.1 In lines 1 and 2 **delete** “, the Work Schedules and the Employer’s Requirements” and

substitute “and the Work Schedules”; and at the end of the clause **insert** “and in the event of any inconsistency in the Employer’s Requirements or between the Employer’s Requirements and any other Contract Document the Architect/Contract Administrator shall decide how to deal with the inconsistency and the Contractor shall be obliged to comply with the decision without any additional payment nor any extension of time.”

2.5.2 In line 2 after “expense” **insert** “and without any extension of time”.

2.5.3 **Insert** new clause 2.5.3:

“2.5.3 The Employer will not be liable for any error, omission, defect, inadequacy, deficiency, omission, unavailability or otherwise whatsoever in or of any information, detail, design, drawing, goods, materials or specification forming part of the Employer’s Requirements (whether or not prepared by on behalf of the Employer)”.

2.6.2 In line 4 **delete** “Contract Documents” and substitute “Contract Drawings, Contract Specification, Work Schedules and/or Schedule of Rates.”

Extension of time

2.8 After "Works" in the first line, **insert** "(or any Section of the Works)".

Before "Date for Completion" in the first line, **insert** "relevant".

At the end of the second sentence, after “notify the Parties accordingly” **insert** “provided always that the Contractor shall use constantly his best endeavours to prevent or minimise any disruption or delay and shall do all that may be reasonably required to the satisfaction of the Architect/Contract Administrator to proceed with the Works and to mitigate any loss or expense incurred by him.”

At the beginning of the third sentence, after the words “Reasons within the control of the Contractor include any”, **insert** “negligence or”.

Damages for non-completion

2.9.1 After "Works" in the first line, **insert** "(or any Section of the Works)".

Before "Date for Completion" in the first line, **insert** "relevant".

In line 4, **delete** “practical completion” and **replace** with “Practical Completion”.

2.9.2 In line 3, **delete** “or” before “recover” and in lieu **insert** “and/or”.

Practical completion

2.10 **Change** the heading from “Practical completion” to “Practical Completion”.

After "Works" in the first line, **insert** "(or any Section of the Works)".

In line 2, **delete** “practical completion” and **replace** with “Practical Completion”.

2.10A **Insert** new clause 2.10A:

“Snagging items

- 2.10A.1 The Architect/Contract Administrator may at his discretion certify Practical Completion notwithstanding that there are any Snagging Items. Where there are Snagging Items, the Architect/Contract Administrator shall, within five (5) Business Days of the date of certification of Practical Completion, issue a notice specifying the Snagging Items together with an estimate of the cost of rectifying such Snagging Items.
- 2.10A.2 The Contractor shall, in consultation with the Architect/Contract Administrator and in such manner as to cause as little disruption as reasonably practicable to any ongoing commissioning and the Employer's use of the Site, rectify all Snagging Items within a reasonable period not exceeding twenty (20) Business Days from the date of certification of practical completion.
- 2.10A.3 If, by the end of the period referred to in clause 2.10A.2, the Contractor has failed to rectify the Snagging Items to the reasonable satisfaction of the Employer, the Employer may, by himself, or by the engagement of others, carry out the works necessary to rectify the Snagging Items, at the risk and cost of the Contractor."

Defects

- 2.11 **Insert** a new second paragraph to clause 2.11 as follows: "Any such defects, shrinkages or faults shall be notified by the Architect/Contract Administrator to the Contractor in writing at any time or from time to time no later than 10 Business Days after the expiry of the Rectification Period and the Contractor shall make good the same within a reasonable period not later than 10 Business Days, or such longer period as the Parties may, acting reasonably agree, after the date of such notification; save that the Architect/Contract Administrator may in cases of urgency require any matter notified under this clause 2.11 to be made good within such period of time specified by the Employer as the circumstances require."
- 2.11A **Insert** new clause 2.11A:
- "2.11A The provisions of clause 2.11 apply to any defects, shrinkages or other faults and to any items of incomplete work and/or omissions remaining at practical completion. If the Contractor does not make good any defects, shrinkages and other faults and any items of incomplete work and/or omissions in accordance with clause 2.11, the Employer may employ and pay other persons to execute any work whatsoever as may be necessary to remedy such defects, shrinkages and other faults. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment, which for the avoidance of doubt shall include all costs and losses incurred by the Employer in rectifying and making good any such defects, shrinkages, other faults or incomplete works, and an appropriate deduction shall be made from the Contract Sum or the Employer may recover the same from the Contractor as a debt."
- 2.11B **Insert** new clause 2.11B:
- "2.11B Notwithstanding any other provision of this Contract, the Contractor shall carry out and complete the Post Practical Completion Activities. To the extent that the Contractor is unable to or fails to complete all or any part of the Post Practical Completion Activities as required by the Contract Documents, then such Post Practical Completion Activities, or any incomplete part of the Post Practical Completion Activities, shall be deemed to be defects, shrinkages, other faults or incomplete works as referred to in clauses 2.11 and 2.11A. For the avoidance of doubt matters referred to in this clause 2.11B shall not prevent the release of the applicable retention at Practical Completion, but shall apply to the remaining retention to be released upon the issue of the certificate of making good in accordance with clause 2.12."

Insert new clauses 2.13 to 2.35:

“Nuisance and trespass

- 2.13.1 Without prejudice to the generality of clause 5.2, the Contractor shall:
- 2.13.1.1 at all times prevent any trespass, public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on a public highway) or other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any local authority or statutory undertaker arising out of the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions;
 - 2.13.1.2 defend or at the Employer’s option assist the Employer in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise; and
 - 2.13.1.3 be responsible for and liable to the Employer for all reasonably foreseeable expenses, liabilities, losses, claims and proceedings whatsoever and howsoever arising resulting from any such nuisance or interference, save only where such nuisance or interference is a consequence of an instruction of the Architect/Contract Administrator (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Contractor or any Sub-Contractor or supplier) and which could not have been avoided by the Contractor using all reasonable and practical means to avoid the same.
- 2.13.2 Without prejudice to the Contractor’s obligations under clause 2.13.1, if the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions is likely to necessitate any interference (including the oversail of any tower crane jib) with the right of adjoining or neighbouring land owners, tenants or occupiers, then the Contractor shall without cost to the Employer obtain the prior written agreement of such land owners, tenants or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement without cost to the Employer.

Work not forming part of the Contract

- 2.14.1 The Contractor shall permit the execution of work not forming part of this Contract by the Employer and/or any persons authorised or licensed by the Employer to carry out such work on those parts of the Sites in the Contractor’s possession (including statutory undertakers and any other authorities) and the Employer and/or any such persons may at any time re-enter the Sites for the purposes of executing such work or to install any goods equipment or other articles for fitting-out provided always that the Employer shall use reasonable endeavours to procure that the execution of such work does not obstruct, interfere with or delay the Contractor in carrying out the Works.
- 2.14.2 The Contractor shall use all reasonable endeavours not to interfere with or impede the progress of any works being carried out by the Employer and/or any person authorised or licensed by the Employer to carry out such works and shall observe all reasonable requirements of the Employer in relation to the carrying out of such works.
- 2.14.3 Every person referred to in clause 2.14.1 shall for the purposes of clauses 5.1 and 5.4A or 5.4B as applicable be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor of the Contractor.

- 2.14.4 For the avoidance of doubt the execution of any works pursuant to clause 2.14 shall not constitute the taking of possession by the Employer nor that practical completion of the Works or part of the same has been achieved.

Inspection, tests, etc.

- 2.15.1 Where under this Contract the Contractor is to provide to the Architect/the Contract Administrator drawings details or other documents (including any such drawings details or other documents to be supplied to the Contractor by his Sub-Contractors) for review comment on and/or approval by the Architect/the Contract Administrator the Contractor shall provide such drawings details or other documents to the Architect/the Contract Administrator in sufficient time to allow the Architect/Contract Administrator to properly review comment on and/or approve the same without any delay being caused to the carrying out of the Works.

Copyright and use

- 2.16.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to this Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Sites. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.
- 2.16.2 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 2.16.1 to a Crown Body or to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 2.16.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any Contractor's Design Document the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 2.16.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 2.16.5 In the event that any act unauthorised by the Employer infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 2.16.6 The Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit

the Contractor's Design Documents.

- 2.16.7 The Contractor shall supply copies of the Contractor's Design Documents to the Architect/Contract Administrator and to the Employer's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.
- 2.16.8 After the termination or conclusion of the Contractor's employment hereunder, the Contractor shall supply the Architect/Contract Administrator with copies and/or computer discs of such of the Contractor's Design Documents as the Architect/Contract Administrator may from time to time request and the Employer shall pay the Contractor's reasonable costs for producing such copies or discs.
- 2.16.9 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.
- 2.17.1 NOT USED

Conduct of Staff and Security Arrangements

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

Admission to the Sites

- 2.19.1 Not used.

Refusal of Admission

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

Decision to Refuse Admission

- 2.21 The decision of the Employer as to whether any person is to be refused admission to the Sites pursuant to clause 2.20 shall be final and conclusive.

Removal from Sites

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

Minimising Disruption

- 2.23 Insofar as the carrying out of the Works affects or may affect the Employer's use of the Site, the Contractor shall procure that (subject to the terms of this Contract) the Works are carried out:
- 2.23.1 so as to minimise any disruption to the Employer's use of the Site; and
- 2.23.2 in compliance, to the extent reasonably practicable, with the Construction Programme.

Operations on Sites

- 2.24.1 The Contractor shall provide to the Architect/Contract Administrator if and as the Architect/Contract Administrator requests in writing, details of the Contractor's proposals for the means of access to the Sites during the construction period, vehicle parking facilities on the Sites, loading and unloading areas for materials, site compounds, temporary warning and direction signs on adjacent highways and any other similar information as to the Contractor's working arrangements. If necessary the Contractor shall amend such details to obtain the approval of the local planning authority or other relevant public authority having jurisdiction with respect to the Works.
- 2.24.2 The Contractor shall be wholly responsible for the design, adequacy, stability and safety of all temporary works required in and about the construction of the Works, save insofar as it is provided in any Contract Document that the design of any temporary works is to be provided by any member of the Employer's design team, in which case the Contractor shall not be responsible for the production or the adequacy of such design.
- 2.24.3 In and about the execution of the Works the Contractor shall maintain and not cause any interference to any support enjoyed by any adjoining land or any structures, other than any structures which are to be demolished as part of the Works.
- 2.24.4 The Contractor shall:
- 2.24.4.1 keep all enclosures around the Sites clear of graffiti, posters and other unauthorised attachments, so far as is practicable;
- 2.24.4.2 implement measures for the regulation of traffic to and from the Sites including wheel-washing procedures and street cleaning and comply with any requirements of the police or highway authorities with regard to local traffic arriving at and departing from the Sites;
- 2.24.4.3 obtain for himself any licences required to oversail any land outside the Sites' boundaries; and
- 2.24.4.4 make good or meet the cost of making good all damage caused to roads, footpaths and property adjoining the Sites and to any services, arising from the

carrying out of the Works.

As-built data and energy performance

- 2.25.1 At or before Practical Completion of the Works, the Contractor shall without charge provide to the Employer an energy performance certificate and a recommendation report for the Works, in conformity with regulation 29 of the Building Regulations 2010 and any modification or replacement of the same.
- 2.25.2 At or before Practical Completion of the Works, the Contractor shall without charge provide to the Architect/Contract Administrator draft as-built or final issue drawings, specifications (in 3 copies) and draft operating and maintenance manuals (in 3 copies) and other documents and such details (in 3 copies) as specified in the Contract Documents, containing sufficient information to enable the Works to be properly maintained and operated.
- 2.25.3 Within 4 weeks after Practical Completion of the whole of the Works, the Contractor shall without charge provide to the Architect/Contract Administrator 3 copies of all as-built or final issue drawings, specifications and such other details and service manuals as are specified in the Contract Documents.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of any retention that would, but for this provision, become due and payable under this Contract until the provisions of this clause 2.25 have been complied with.

Confidentiality and Information Sharing

- 2.26.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
 - 2.26.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly;
 - 2.26.1.2 not disclose the other party's Confidential Information to any other person without prior written consent;
 - 2.26.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and
 - 2.26.1.4 notify the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 2.26.2 Clause 2.26.1 shall not apply to the extent that:
 - 2.26.2.1 such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 2.32 (Freedom of Information);
 - 2.26.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 2.26.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 2.26.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 2.26.2.5 it is independently developed without access to the other party's Confidential Information.
- 2.26.3 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who are directly involved in the carrying out of the Works and who need to know the information, and shall ensure that such Contractor's Persons are aware of and shall comply with these obligations as to confidentiality.
- 2.26.4 The Contractor shall not, and shall procure that the Contractor's Persons do not, use any of the Employer's Confidential Information received otherwise than for the purposes of this Contract.
- 2.26.5 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who need to know the information, and shall ensure that such Contractor's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor's Persons causes or contributes (or could cause or contribute) to the Contractor breaching his obligations as to confidentiality under or in connection with this Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by his own obligations of confidentiality to any Contractor's Persons, the Contractor shall provide such evidence to the Employer as the Employer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause 2.26, including copies of any written communications to and/or from Contractor's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor's Persons in connection with obligations as to confidentiality.
- 2.26.6 At the written request of the Employer, the Contractor shall procure that those members of the Contractor's Persons identified in the Employer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 2.26.7 Nothing in this Contract shall prevent the Employer from disclosing the Contractor's Confidential Information:
- 2.26.7.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
 - 2.26.7.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Employer or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract or any person conducting a review in respect of this Contract on behalf of a public body;
 - 2.26.7.3 for the purpose of the examination and certification of the Employer's accounts;
 - 2.26.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used

his resources;

2.26.7.5 for the purpose of the exercise of his rights under this Contract; or

2.26.7.6 to a proposed successor body of the Employer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under this clause 2.26.

2.26.8 The Employer shall use all reasonable endeavours to ensure that any government department, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to the above clause is made aware of the Employer's obligations of confidentiality.

2.26.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

2.26.10 The Employer may disclose the Confidential Information of the Contractor:

2.26.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

2.26.10.2 to the extent that the Employer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

2.26.11 The Contractor shall not by himself, his employees or agents, and shall procure that his sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Works without the prior written approval of the Employer.

2.26.12 No facilities to photograph or film in or upon any property used in relation to the Works shall be given or permitted by the Contractor unless the Employer has given his prior written approval.

2.26.13 The Contractor shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of the Employer, save where otherwise required to comply with legislation.

Audit

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

Construction Programme

2.28.1 The Contractor shall produce the Construction Programme and deliver the same to the Employer prior to the Works commencement date and shall thereafter revise the

Construction Programme as appropriate from time to time (and if and whenever there is any material delay to the execution of the Works) so as to minimise or avoid any anticipated delay or disruption to the carrying out of the Works, and shall provide the Employer with the revised Construction Programme.

- 2.28.2 Each month the Contractor shall report to the Employer in writing comparing the progress of the Works with the Construction Programme current at that time, and promptly advise the Employer of any delay or disruption to the Works, setting out the measures he is taking or proposes to take to minimise or make good such delay or disruption.
- 2.28.3 Without prejudice to clause 2.1B, where the Employer's authorisation or completion of a document in respect of the Consents is required the Contractor shall furnish the relevant documentation to the Employer and take account in his programme that the Employer may require a period of 20 Business Days to authorise or complete it as appropriate.

Limitation on Liability

- 2.29.1 The aggregate liability of the Contractor to the Employer for any matters arising in connection with the performance of his obligations under this Contract shall not except as set out below at clause 2.29.2 exceed the amount, if any, stated in the Contract Particulars.
- 2.29.2 The Contractor shall not exclude or restrict his liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability under clause 2.29.1 has been reached or exceeded:
 - 2.29.2.1 losses which are recovered pursuant to the insurance policies required to be effected and maintained in accordance with section 5 of this Contract (other than PI Insurance) and/or payments made by the Contractor to the extent corresponding payments are either received and/or recovered by the Contractor pursuant to the insurance policies required to be effected and maintained in accordance with section 5 of this Contract (other than PI Insurance) or which would have been received, recovered and/or recoverable but for the failure of the Contractor to maintain or to make a claim under such policies;
 - 2.29.2.2 the Contractor's liability under clause 2.9;
 - 2.29.2.3 the Contractor's liability in the event he abandons the Works;
 - 2.29.2.4 the Contractor's liability in the event of any fraud, wilful misconduct of direct employees of the Contractor or of his Design Consultants and Sub-Contractors, in each case to the extent employed or directed by the Contractor, fraudulent misrepresentation, abandonment, corruption or criminal conduct on the part of the Contractor;
 - 2.29.2.5 the Contractor's liability in respect of any employer's liability; and
 - 2.29.2.6 the Contractor's liability in respect of personal injury or death.

Judicial Proceedings

- 2.30.1 Not used.

Freedom of information

- 2.31.1 The Contractor acknowledges that unless the Employer has notified the Contractor that the Employer is exempt from the provisions of the FOIA, the Employer is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The Contractor shall co-operate with and assist the Employer so as to enable the Employer to comply with his information disclosure obligations.
- 2.31.2 The Contractor shall:
- 2.31.2.1 transfer to the Employer all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receiving a Request for Information;
 - 2.31.2.2 provide the Employer with a copy of all information in his possession, or power in the form that the Employer shall require within 5 Business Days (or such other period as the Employer may specify) of the Employer's request;
 - 2.31.2.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
 - 2.31.2.4 procure that his sub-contractors do likewise.
- 2.31.3 The Employer is responsible for determining in his absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 2.31.4 The Contractor shall not respond directly to a Request for Information unless authorised to do so by the Employer.
- 2.31.5 The Contractor acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Contractor or despite the Contractor having expressed negative views when consulted.
- 2.31.6 The Contractor shall ensure that all information is retained for disclosure for twelve (12) years and shall permit the Employer to inspect such records as and when reasonably

Prevention of Fraud and Bribery

- 2.32.1 The Contractor represents and warrants that neither he, nor to the best of his knowledge any of his employees, have at any time on or before the date of this Contract:
- 2.32.1.1 committed a Prohibited Act or been formally notified that he is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 2.32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 2.32.2 During the carrying out of the Works the Contractor shall not:

- 2.32.2.1 commit a Prohibited Act; and/or
- 2.32.2.2 do or suffer anything to be done which would cause the Employer or any of the Employer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 2.32.3 During the carrying out of the Works the Contractor shall:
 - 2.32.3.1 establish, maintain and enforce, and require that his sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 2.32.3.2 keep appropriate records of his compliance with this Contract and make such records available to the Employer on request; and
 - 2.32.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent him and any Contractor's Persons or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 2.32.4 The Contractor shall notify the Employer immediately in writing if he becomes aware of any breach of clause 2.32.1, or has reason to believe that he has or any of his employees or Sub-Contractors have:
 - 2.32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 2.32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 2.32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 2.32.5 If the Contractor shall make a notification to the Employer pursuant to clause 2.32.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 2.32.6 If the Contractor breaches clause 2.32.3, the Employer may by notice require the Contractor to remove from carrying out the Works any Contractor's Person whose acts or omissions have caused the Contractor's breach.

Tax compliance

- 2.33.1 The Contractor represents and warrants that as at the date of this Contract, he has notified the Employer in writing of any Occasions of Tax Non-Compliance or any litigation that he is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 2.33.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-

Compliance occurs, the Contractor shall:

- 2.33.2.1 notify the Employer in writing of such fact within 5 Business Days of its occurrence; and
- 2.33.2.2 promptly provide to the Employer:
 - 2.33.2.2.1 details of the steps which the Contractor 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
 - 2.33.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Employer may reasonably require.

Contractor's records

- 2.34.1 The Contractor shall maintain, or procure that detailed records relating to the performance of the Works are maintained, in accordance with Good Industry Practice and any applicable legislation.
- 2.34.2 Without prejudice to clause 2.34.1, the Contractor shall maintain or procure that the following are maintained:
 - 2.34.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
 - 2.34.2.2 full records of all maintenance procedures carried out during the term of this Contract as part of the Works,and the Contractor shall have the items referred to in clauses 2.34.2.1 and 2.34.2.2 available for inspection by the Employer upon reasonable notice, and shall present a report of them to the Employer as and when requested.
- 2.34.3 The records referred to in this clause 2.34 shall be retained for a period of at least five (5) years after the Contractor's obligations under this Contract have come to an end.

Assignment

- 3.1 **Delete** existing clause 3.1 and **insert**:
 - "3.1.1 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer.
 - 3.1.2 The Employer's rights under this Contract may be assigned without the consent of the Contractor by absolute assignment on 2 occasions.
 - 3.1.3 The Contractor shall not be entitled to contend that any person to whom this Contract is assigned in accordance with clause 3.1.2 is precluded from recovering under this Contract any loss incurred by such assignee resulting from any breach of this Contract (whenever happening), by reason that such person is an assignee and not a named promisee under this Contract."

Sub-contracting

3.3.2.3 **Insert** “;” in lieu of “.” at the end of clause 3.3.2.3.

3.3.2.4 **Insert** new clause 3.3.2.4:

“3.3.2.4 the sub-contract shall include:

3.3.2.4.1 a 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;

3.3.2.4.2 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;

3.3.2.4.3 a provision requiring the Sub-Contractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor; and

3.3.2.4.4 terms and conditions that are no less favourable than those of this Contract. The Employer shall be entitled to reject sub-contract conditions proposed by the Contractor that are unduly disadvantageous to the Sub-Contractor.”

3.3.3 **Insert** new clause 3.3.3:

“3.3.3 the Contractor shall procure that the sub-contracts for the Sub-Contractors shall in all respects be compatible with the terms of this Contract and in a form previously approved by the Employer.”

Architect/Contract Administrator’s Instruction

3.4.2 **Insert** “Not Used” in lieu of existing clause 3.4.2.

Variations

3.6.1 In line 2 **insert** “order” after “or period”.

3.6.3 In line 1 **insert** “(and save where the instruction is an instruction pursuant to clause 2.11 to remedy any defect, shrinkage or other fault outside the normal working hours of the Contractor which instruction shall be complied with by the Contractor at his own cost)” after “Failing any agreement under clause 3.6.2”.

3.6.4 **Insert** new clause 3.6.4:

“3.6.4 There shall be no addition to the Contract Sum in respect of any variation to the extent that the same is required by reason of any breach of this Contract by the Contractor or any negligence or default of the Contractor, or his servants or agents, the Design Consultants or any Sub-Contractor or their respective servants or agents save where a variation is necessary as a result of the occurrence of a Specified Peril which is covered by the Specified Perils insurance policy taken out pursuant to clause 5.4C of this Contract.”

Provisional Sums

- 3.7 In lines 2/3 **delete** “failing agreement on price, such instructions shall be valued on the basis set out in clause 3.6.3” and in lieu **insert** “such instructions shall be valued in accordance with the methodology set out in the Contract Documents or, where no methodology is included in the Contract Documents, shall be valued on the basis set out in clause 3.6.3.”

CDM Regulations

- 3.9 **Insert** new clause 3.9A:

“3.9A Where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer’s appointment concludes before Practical Completion of the whole of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations without charge.”

VAT

- 4.1A **Insert** new clause 4.1A:

- 4.1A.1 In this clause 4.1A, the following definitions shall apply:

- 4.1A.1.1 HMRC means HM Revenue & Customs;
- 4.1A.1.2 Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);
- 4.1A.1.3 Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier’s behalf, to account for and pay VAT on the supply and not for the supplier; and
- 4.1A.1.4 Supply means a supply made for VAT purposes under or in connection with this Contract by the Contractor and Supplies shall be construed accordingly.
- 4.1A.1.5 Tax Point means the time of supply for VAT purposes as defined in Regulation 93 of Part XI of the VAT Regulations 1995.

- 4.1A.2 In respect of the Supplies made with a Tax Point, for VAT purposes, before 1 March 2021, the provisions of clauses 4.1A.1 to 4.1A.4 (inclusive) only of this clause 4.1A shall apply. In respect of Supplies made with a Tax Point on or after 1 March 2021, the provisions of clauses 4.1A.1 to 4.1A.6 (inclusive) of this clause 4.1A shall apply.

- 4.1A.3 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.1A notwithstanding any other provision of this Contract.

- 4.1A.4 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Contract is to be treated as exclusive of any VAT. If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:

- 4.1A.4.1 the time for payment or provision of the consideration; and

4.1A.4.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.

4.1A.5 The Employer confirms that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for the Contractor to account for and pay VAT to HMRC.

4.1A.6 Where the Contractor has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Employer in writing that:

4.1A.6.1 the Reverse Charge did apply in respect of those Supplies; and

4.1A.6.2 notwithstanding that the Contractor has accounted for VAT to HMRC in respect of those Supplies, the Employer has to account for VAT under the Reverse Charge on those Supplies,

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

Interim payments – dates and certificates

4.3.2 In line 2 **insert** “and in respect of which the Contractor has provided the Architect/Contract Administrator reasonable evidence that property in such materials or goods is vested in the Contractor and that no third party has validly retained title to the same and that the property in the same will pass to the Employer” after “casualties”.

4.3 In line 16 **insert** “21 days” in lieu of “14 days”.

Contractor's applications and payment notices

4.4.3 **Insert** new clause 4.4.3:

“4.4.3 A payment application may be an electronic invoice provided it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.”

Failure to pay amount due

4.6.1 At the end of the sub-clause **insert**: “The Parties agree that this clause 4.6 constitutes a substantial remedy for late payment of any sum payable under this Contract in accordance with the provisions of section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.”

4.6.3 **Insert** new clause 4.6.3:

“4.6.3 Neither the issue by the Employer of any valuation nor the payment of any amount by the Employer to the Contractor under any valuation shall:

4.6.3.1 prejudice or adversely affect the right of either the Contractor or the Employer to contend that the Works have not been properly valued and that any amount has been improperly paid or withheld. In making any evaluation the Employer shall be entitled to reconsider and if necessary adjust the assessments made in arriving at any previous valuation; and/or

- 4.6.3.2 constitute or imply or be evidence of the Employer's approval or acceptance of any design, work, materials or equipment forming part of the Works nor shall in any way lessen or otherwise affect the Contractor's responsibilities and liabilities under this Contract."

Final certificate and final payment

- 4.8.1 In line 1 **insert** "Practical Completion" in lieu of "practical completion".

- 4.10 **Insert** new clause 4.10:

"Retention

- 4.10 The Employer's interest in the percentage of total value not included in the amounts of interim payments to be certified under clause 4.3 shall be as beneficial owner and shall not be fiduciary as trustee and the Employer shall be under no obligation to set aside the same in a separate account."

Contractor's liability - personal injury or death

- 5.1 In line 3 **insert** "or of any other obligations pursuant to section 2 or section 3 of the Conditions" after "Works".

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

- 5.2 In line 1 **delete** "Subject to clauses 5.2.1 to 5.2.3, the" and in lieu **insert** "The".

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

In line 5 **insert** after "Works", insert "or of any other obligations pursuant to section 2 or section 3 of the Conditions".

In lines 6/7 **delete** "In respect of existing structures and their contents:"

- 5.2.1 **Delete** clause 5.2.1 and in lieu **insert** "The Contractor's liability and indemnity under clause 5.2 in respect of any property real or personal shall include any loss or damage to existing structures and to any of their contents".

- 5.2.2 **Delete** clause 5.2.2 and in lieu **insert** "Not used".

- 5.2.3 **Delete** clause 5.2.3 and in lieu **insert** "Not used".

- 5.3.2 In lines 3 and 4 **delete** "for any one occurrence or series of occurrences arising out of one event".

In line 4 **insert** "of the type and" before "sum".

Joint Names Insurance of the Works by Contractor

- 5.4A **Delete** clause 5.4A and in lieu **insert** "Not used".

Joint Names Insurance of the Works and existing structures by Employer

- 5.4B **Delete** clause 5.4B and in lieu **insert** "Not used".

Insurance of the Works and existing structures by other means

5.4C **Delete** clause 5.4C and in lieu **insert**:

- “5.4C.1 In respect of the existing structures together with the contents of them owned by the Employer or for which he is responsible, the Employer shall procure that cover is effected (but without the obligation to insure) for the full cost of reinstatement or repair of loss or damage due to any of the Specified Perils up to and including the date of Practical Completion or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).
- 5.4C.2 The Contractor shall effect and up to the date of Practical Completion of the whole of the Works, maintain a Joint Names Policy for All Risks Insurance with insurers approved by the Employer for the full reinstatement value of the Works plus 15% to cover professional fees.
- 5.4C.3 The Contractor shall send to the Architect/Contract Administrator for deposit with the Employer the Joint Names Policy referred to in clause 5.4C.2, each premium receipt for it and any relevant endorsements of it. If the Contractor defaults in taking out or maintaining the Joint Names Policy as required by clause 5.4C.2, the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of premiums may be deducted by him from any sums due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.

Use of Contractor’s annual policy – as alternative

- 5.4C.4 If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works:
1. provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in clause 5.4C.2; and
 2. is a Joint Names Policy,
- then that policy shall satisfy the Contractor’s obligations under clause 5.4C.2. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.”

Evidence of insurance

- 5.5 In line 2 **delete** “clause 5.3” and in lieu **insert** “clauses 5.3 and 5.8”.

Loss or damage – insurance claims and reinstatement

- 5.6.3 In lines 2/3 **delete** “, and from any policies covering existing structures or their contents that are effected by the Employer”.
- 5.6.5 **Delete** “Where clause 5.4A applies or where clauses 5.4C applies and the Contractor is responsible for effecting the Works information Policy” and replace with “In respect of the Works Insurance Policy:”.
- 5.6.6 **Delete** “clause 5.4B applies, where clause 5.4C applies and the Employer is responsible for effecting the Works Insurance Policy or where”.

Loss or damage to existing structures – right of termination

- 5.7 In line 2 **delete** “either Party may, if it is just and equitable” and in lieu **insert** “the Employer may”.

In line 3 **delete** “other” and in lieu **insert** “Contractor”.

At the end of the clause **insert** “and the provisions of clause 6.11 (except clause 6.11.2.3) shall apply”.

- 5.7.1 Delete clause 5.7.1 and in lieu **insert** “Not used”.

- 5.7.2 Delete clause 5.7.2 and in lieu **insert** “Not used”.

- 5.8 **Insert** new clause 5.8:

“Professional indemnity insurance

- 5.8.1 The Contractor warrants that he has taken out PI Insurance covering all of his design and professional obligations under this Contract (including in connection with any errors or omissions in the performance of his professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity of the type and amount not less than that stated in the Contract Particulars and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the whole of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.
- 5.8.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Contractor’s own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.
- 5.8.3 The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Contractor upon, subject to clause 5.8.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Contractor in respect of the Works.
- 5.8.4 The Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

- 5.8.5 As and when reasonably required to do so by the Employer, the Contractor shall:
- 5.8.5.1 produce for inspection documentary evidence that his PI Insurance is being maintained in accordance with this clause 5.8; and
 - 5.8.5.2 provide confirmation that any occurrence or claim, or of circumstances likely to give rise to a claim, have been properly notified to his insurer in accordance with the requirements of his policy.”

Meaning of insolvency

- 6.1.3 **Delete** “entering into an arrangement, compromise or composition in satisfaction of his debts” and replace with:
- “commencing negotiations with all or any class of his creditors with a view to rescheduling any of his debts, or makes a proposal for or enters into any compromise or arrangement with any of his creditors”.
- 6.1.4 At the end of sub-clause 6.1.4, **delete** the full stop and **replace** with “; or”.
- 6.1.5 **Insert** a new clause 6.1.5:
- “6.1.5 he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.”

Default by Contractor

- 6.4.1.4 **Insert** new clause 6.4.1.4:
- “6.4.1.4 fails to comply with Articles 9, 10 and/or 11 and/or clause 2.1.6.”

Insolvency of Contractor

- 6.5.1 **Delete** and **substitute**: “If the Contractor is or becomes insolvent, the Contractor shall so notify the Employer forthwith and either Party may at any time by notice to the other, terminate the Contractor’s employment under this Contract.”
- 6.5.2 **Delete** “the Employer” and in lieu **insert** “either Party”.
- 6.5.2.2 **Delete** “suspended” and in lieu **insert** “terminated”.

Consequences of termination under clauses 6.4 to 6.6

- 6.7.4 **Insert** at the end of clause 6.7.4: “Provided that if the Employer elects not to procure the completion of the Works, then the amount to be allowed under clause 6.7.3.3 shall be the portion of the Contract Sum earned by the Contractor.”

Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations

Termination at will

- 6.10A **Insert** new clause 6.10A as follows:
- “6.10A.1 The Employer may terminate the Contractor’s employment under this Contract at any time by complying with his obligations under clause 6.10A.2.
- 6.10A.2 If the Employer wishes to terminate the Contractor’s employment under this Contract under this clause 6.10A he must provide written notice (hereinafter called a Termination Notice) to the Contractor stating:
- 6.10A.2.1 that the Employer is terminating the Contractor’s employment under this Contract under this clause 6.10A.1; and

6.10A.2.2 that the Contractor's employment under this Contract will terminate on the date specified in the Termination Notice which must be a minimum of twenty (20) Business Days after the date of the Termination Notice.

6.10A.2 The Contractor's employment under this Contract will terminate on the date specified in the Termination Notice referred to in clause 6.10A.2."

Consequences of Termination under Clauses 6.8 to 6.10A, etc.

6.11.1 In the first line **insert** "6.10A" in lieu of "6.10".

Adjudication

7.2 **Insert** at the end of clause 7.2:

"and provided that:

7.2.1 the Adjudicator shall have power to determine more than one dispute 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; and

7.2.2 the Adjudicator shall give reasons for his decision in writing and shall deliver his decision to the Parties as soon as practicable and within 2 Business Days of making his decision."

Arbitration

7.3 **Delete** existing clause and **insert** "Not Used."

Section 8 Sites Conditions

8 **Insert** new clause 8:

"Sites conditions

8.1 Subject to clauses 8.2, 9 and 10, the conditions of the Sites shall be the sole responsibility of the Contractor and the Contractor shall not be entitled to additional payment and/or extensions of time arising out of or in connection with the same and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor:

8.1.1 shall be deemed to have carried out a ground physical and geophysical investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;

8.1.2 shall be deemed to have satisfied himself as to the nature of the site conditions, the ground and the subsoil, the form and nature of the Sites, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;

8.1.3 shall be deemed to have satisfied himself as to the adequacy of the means and rights of access to and through the Sites and any accommodation he may require for the purposes of fulfilling his obligations under this Contract (such as additional land or buildings outside the Sites);

8.1.4 shall be deemed to have satisfied himself as to the possibility of interference by persons of any description whatsoever (other than the Employer) with access to

or use of the Sites and shall ensure that the Sites are properly secured at all times;

8.1.5 shall be deemed to have satisfied himself as to the precautions, times and methods of working necessary to prevent any trespass, nuisance or interference, whether public or private, being caused to third parties;

8.1.6 shall not be entitled to rely on any survey, report, document or other information (including, without limitation, ground surveys, soil investigation reports), prepared by or on behalf of the Employer regarding any matter referred to in this clause 8.1 that is not expressly warranted. The Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document; and

8.1.7 shall be responsible for, and hold the Employer harmless from, cleaning up or otherwise dealing with any Contamination on the Sites in accordance with and so that he shall at all times comply with his obligations under this Contract.

8.2 To the extent that unforeseeable ground conditions and/or Contamination exist in any parts of the Sites which are under Existing Buildings as at the Base Date, the Contractor shall not be responsible for them, unless they were discovered by the Site Survey or would have been discovered had the Contractor carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances. If the Contractor is not responsible for such ground conditions and/or Contamination under this clause 8.2 then the Employer shall be so responsible.

8.3 Any work which is instructed by the Employer to be carried out in consequence of the discovery of any unforeseeable ground conditions and/or Contamination for which the Employer is responsible pursuant to clause 8.2 shall be deemed, without double counting, to be a variation for the purposes of clause 3.6.”

SECTION 9 - ASBESTOS

9 **Insert** new clause 9:

“Asbestos

9.1 Unless the exposure arises directly or indirectly as a result of any act or omission of the Contractor or any Contractor’s Person, the Employer accepts full responsibility (including any financial or other consequences which arise directly or indirectly) for death and personal injury in respect of exposure to Asbestos in such Buildings, where exposure takes place prior to the date on which the Contractor takes control of the Sites.

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

9.2.1 any Asbestos identified in the Asbestos Survey; and

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

9.3 In the event any work is instructed by the Architect/Contract Administrator to be carried out in consequence of the discovery of any Asbestos in the Refurbished Buildings which has not been identified in the Asbestos Surveys (other than liabilities and matters referred to in clause 9.2.2) such work shall be deemed, without double counting, to be a variation for the purposes of clause 3.6.”

Section 10 Defects in Existing Buildings

10 **Insert** new clause 10:

“Defects in Existing Buildings

- 10.1 The Contractor accepts, in relation to the Refurbished Buildings, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any defects caused by the Contractor carrying out the Works.”

Section 11 Set off and other remedies

11 **Insert** new clause 11:

“Set off and other remedies

- 11.1 Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.
- 11.2 If the Contractor fails to comply with any requirement of clause 5.8 or if the Contractor becomes insolvent so that his covenant is impaired, then without prejudice to any other remedies the Employer may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection.”

Schedules

Schedule 1 Arbitration

Insert "Not Used" in lieu of existing Schedule 1.

Insert "Not Used" in lieu of existing Schedule 2.

Schedule 2 Fluctuations Option - contribution, levy and tax changes

Delete and **insert** "Not Used."

Insert new schedules:

Schedule 4 Forms of Collateral Warranties and Parent Company Guarantee

Schedule 5 Site Plan

Schedule 6 Construction Programme

Schedule 7 Contract Sum Analysis, Notes, and Clarifications

Schedule 8 NOT USED

Schedule 9 NOT USED

Schedule 10 UK GDPR

Schedule 11 Contract Documents

**SCHEDULE 4: FORMS OF COLLATERAL WARRANTIES AND PARENT COMPANY
GUARANTEE**

Part 1 – Contractor’s Collateral Warranty

CONTRACTOR WARRANTY

DATED _____ 20[]

[CONTRACTOR]

and

[]

DUTY OF CARE DEED

relating to []

THIS DEED is dated
20[] BETWEEN:

- (1) [CONTRACTOR] (Company Number [] whose registered office is at [] (the “**Contractor**”); and
- (2) [] of [] (the “**Beneficiary**”, which expression includes its successors in title and permitted assigns).

BACKGROUND

- (A) By a building contract dated [] (the “**Building Contract**”) the Employer has appointed the Contractor to carry out and complete the Works in relation to the Sites.
- (B) The Contractor is obliged under the Building Contract to enter into this Deed in favour of the Beneficiary.
- (C) The Contractor has agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

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

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges.

3. CONTRACTOR'S WARRANTIES AND LIABILITIES

3.1 The Contractor warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Works and its duties and obligations under the Building Contract in accordance with the Building Contract;
- 3.1.2 where there is a Contractor's Designed Portion, in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under the Building Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works in relation to:
- (a) any design of the Works;
 - (b) the selection and standards of all goods, materials, equipment or plant for the Works;
- 3.1.3 it has not and shall not use in connection with the Works and, subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or

approve for use in connection with the CDP Works, any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.

3.2 The Contractor shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Building Contract as joint employer.

3.3 For the avoidance of doubt the Contractor warrants to the Beneficiary that the Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Employer or that the Employer has suffered no loss. The Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Employer of any monies due under the Contract.

4. **COPYRIGHT**

4.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to the Building Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.

4.2 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.

4.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.

4.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and

any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.

- 4.5 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.6 The Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 4.7 The Contractor shall supply copies of the Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.8 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 Where there is a Contractor's Designed Portion, in relation to the CDP Works the Contractor hereby covenants with the Beneficiary that it:
 - 5.1.1 has taken out PI Insurance covering its design and professional obligations under the Contract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom [REDACTED] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and
 - 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.
- 5.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.
- 5.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity

and the widest cover which is available to the Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Contractor in respect of the Works.

6. **ASSIGNMENT**

6.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two (2) occasions only and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

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

7. **NOTICES**

7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

7.1.1 Contractor: [e-mail address]¹

7.1.2 Beneficiary: [e-mail address]²

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

7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

¹ Insert e-mail address

² Insert e-mail address

10. **SUB-CONTRACTORS**

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

11. **SEVERABILITY**

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

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act..

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of in connection with this Deed.

15. **COUNTERPARTS**

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

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

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

Director

Director/Secretary

EXECUTED AS A DEED by

[BENEFICIARY] acting by

acting by a Director and

its Secretary/two Directors

Director

Secretary/Director

OR

EXECUTED AS A DEED by

affixing the Common Seal of [BENEFICIARY]

in the presence of:

Authorised Signatory

Part 2 – Design Consultant Collateral Warranty

Consultant Warranty in favour of Employer

DATED _____ 20[]

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to []

THIS DEED is dated
BETWEEN:

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

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Consultant has been appointed by the Contractor under an appointment (the “**Appointment**”) to provide [] services (“**Services**”) in relation to the Works.
- (C) The Consultant is obliged under the Appointment to enter into this Deed in favour of the Employer.
- (D) The Consultant and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

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

This Deed is made in consideration of the payment of one pound (£1.00) by the Employer to the Consultant, receipt of which the Consultant acknowledges:

- 3.1 The Consultant warrants to the Employer that:
- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Appointment in accordance with the Appointment;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the performance of the Services the professional skill, care and diligence to be expected of a properly qualified and competent member of the Consultant's profession experienced in carrying out duties the like of those undertaken by the Consultant under the Appointment for works of a similar size, scope, nature, complexity, location, timescale and value to the Works;

3.1.3 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use;

3.1.4 if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Employer in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

3.2 The Consultant shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Appointment as joint employer.

3.3 For the avoidance of doubt the Consultant warrants to the Employer that the Consultant shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Consultant shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Appointment.

4. **COPYRIGHT**

4.1 In this clause 4 “**Consultant’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Consultant in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

4.2 The Intellectual Property Rights in the Consultant’s Design Documents prepared by or on behalf of the Consultant in relation to the Appointment and the work executed by it remains the property of the Consultant. The Consultant hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Consultant’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Consultant’s Design Documents or the use of the Intellectual Property Rights in the Consultant’s Design

Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.

- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Employer in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Consultant's Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Employer upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The Consultant hereby covenants with the Employer that it:

- 5.1.1 has taken out PI Insurance covering all its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom [REDACTED] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. 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; and

5.1.2 will provide (as and when reasonably required to do so by the Employer) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

5.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant shall be deemed to be within commercially reasonable rates.

5.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Consultant is unable to maintain and/or is not maintaining such insurance in which case the Consultant shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Consultant upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Works.

6. **NOTICES**

6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

6.1.1 Consultant: [e-mail address]³

6.1.2 Employer: [e-mail address]⁴

6.1.3 Contractor: [e-mail address]⁵

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

6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Employer will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

7.2 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason

³ Insert e-mail address

⁴ Insert e-mail address

⁵ Insert e-mail address

only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

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

10.1 Without prejudice to the Consultant's statutory rights the Consultant will not exercise or seek to exercise any right which may be or become available to it to:

10.1.1 terminate or treat as terminated or repudiated the Appointment or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or

10.1.2 discontinue or suspend the performance of any duties or obligations under the Appointment without first giving to the Employer not less than 7 Business Days' prior written notice.

10.2 Any notice given by the Consultant pursuant to clause 10.1 above shall:

10.2.1 specify the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or for discontinuing or suspending its performance under it (as applicable);

10.2.2 specify any other breaches by the Contractor; and

10.2.3 state the amount (if any) of monies outstanding under the Appointment (whether or not such amounts result from a breach entitling the Consultant to terminate or treat as terminated or repudiated the Appointment or to discontinue or suspend the performance of any duties or obligations under the Appointment (as applicable)).

10.3 Within the period of any notice given by the Consultant pursuant to clause 10.1:

10.3.1 the Employer may give written notice to the Consultant that the Employer will henceforth become the client under the Appointment to the exclusion of the Contractor and thereupon the Consultant will admit that the Employer is its client under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;

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

11. **SUB-CONSULTANTS**

Following a written request from the Employer the Consultant will (unless it has already done so) procure that its sub-consultants execute a deed of collateral warranty in the

relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

12. **SEVERABILITY**

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

13. **WAIVER**

13.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

13.2 No waiver under clause 13.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

14. **LIABILITY OF PARTNERS**

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

15. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 15 shall not affect any right or remedy which exists or is available to any person apart from such Act.

16. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

17. **CONTRACTOR ACKNOWLEDGEMENT**

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

18. **COUNTERPARTS**

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

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

EXECUTED AS A DEED by

[CONSULTANT] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:)

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

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

Director

Director/Secretary

OR

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

Authorised Signatory

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

Director

Director/Secretary

Consultant Warranty in favour of a third party

DATED _____ 20[]

[CONSULTANT]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to []

THIS DEED is dated
BETWEEN:

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

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Consultant has been appointed by the Contractor under an appointment (the “**Appointment**”) to provide [] services (“**Services**”) in relation to the Works.
- (C) The Consultant is obliged under the Appointment to enter into this Deed in favour of the Beneficiary.
- (D) The Consultant and the Contractor have agreed to duly execute and deliver this Deed in favour of the Beneficiary.

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

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges:

- 3.1 The Consultant warrants to the Beneficiary that:
- 3.1.1 it has carried out and completed and will continue to carry out and complete its duties and obligations under the Appointment in accordance with the Appointment;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the performance of the Services the professional skill, care and diligence to be expected of a properly qualified and competent member of the Consultant's profession experienced in carrying out duties the like of those undertaken by the Consultant under the Appointment for works of a similar size, scope, nature, complexity, location, timescale and value to the Works;
- 3.1.3 subject to the standard of skill, care and diligence set out in clause 3.1.2, it has not and shall not permit, specify or approve for use in connection with the Works any materials which at the time of use:

- (a) are known to be deleterious (either to health and safety or to the durability of the Works); or
- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
- (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use;

3.1.4 if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

3.2 The Consultant shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Appointment as joint employer.

3.3 For the avoidance of doubt the Consultant warrants to the Beneficiary that the Consultant shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Consultant shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Appointment.

3.4 The parties agree that:

3.4.1 notwithstanding the Limitation Act 1980 (including the method of execution and/or whether or not this Deed is executed as a deed), any action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from, touching upon or concerning this Deed may be brought or commenced under this Deed at any time until the expiry of 12 (twelve) years from the date of Practical Completion;

3.4.2 they will not rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this Deed; and

3.4.3 any statutory defence provided by the Limitation Act 1980 shall not commence until the expiry of 12 (twelve) years from the date of Practical Completion and no action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from or touching or concerning this Deed may be brought or commenced under this Deed at any time after the expiry of 12 (twelve) years from the date of Practical Completion.

4. **COPYRIGHT**

4.1 In this clause 4 “**Consultant’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding

internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Consultant in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.

- 4.2 The Intellectual Property Rights in the Consultant's Design Documents prepared by or on behalf of the Consultant in relation to the Appointment and the work executed by it remains the property of the Consultant. The Consultant hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Consultant's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Consultant shall not be liable to any licensee for any use of the Consultant's Design Documents or the use of the Intellectual Property Rights in the Consultant's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Consultant.
- 4.3 The Beneficiary may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.
- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Consultant's Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant hereby covenants with the Beneficiary that it:
- 5.1.1 has taken out PI Insurance covering all its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, [REDACTED] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. 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; and
- 5.1.2 will provide (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.
- 5.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant shall be deemed to be within commercially reasonable rates.
- 5.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Consultant is unable to maintain and/or is not maintaining such insurance in which case the Consultant shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Consultant upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Works.
6. **NOTICES**
- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:
- 6.1.1 Consultant: [e-mail address]⁶
- 6.1.2 Beneficiary: [e-mail address]⁷
- or as otherwise specified by the relevant party by notice in writing to the other party.
- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date

⁶ Insert e-mail address

⁷ Insert e-mail address

of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

7.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Beneficiary will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

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

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONSULTANTS**

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

11. **SEVERABILITY**

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

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **LIABILITY OF PARTNERS**

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

14. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 14 shall not affect any right or remedy which exists or is available to any person apart from such Act.

15. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **COUNTERPARTS**

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

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

EXECUTED AS A DEED by

[CONSULTANT] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by

affixing the Common Seal of

[BENEFICIARY] in the presence of:

Authorised Signatory

OR

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

Director

Director/Secretary

Part 3 – Sub-Contractor Collateral Warranty to Employer

DATED _____ 20[]

[PRINCIPAL SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED
relating to []

THIS DEED is made on
BETWEEN:

20[]

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

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Principal Sub-Contractor has been appointed by the Contractor under a subcontract (the “**Subcontract**”) in relation to the [] element of the Works (the “**Subcontract Works**”).⁸
- (C) The Principal Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Employer.
- (D) The Principal Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

1. DEFINITIONS AND INTERPRETATIONS

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

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Employer to the Principal Sub-Contractor, receipt of which the Principal Sub-Contractor acknowledges:

3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Principal Sub-Contractor warrants to the Employer that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Subcontract Works and its duties and obligations under the Subcontract in accordance with the Subcontract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Subcontract Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design experienced in carrying out works of a similar size, scope, nature, complexity, location, timescale and value to the Subcontract Works in relation to:

⁸ Insert details of relevant sub-contract package.

- (a) any design of the Subcontract Works;
 - (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.1.3 it has not and shall not use and subject to the standard of skill, care and diligence set out in clause 3.1.2 nor permit to be used specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
 - (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
 - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
 - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Employer that the Principal Sub-Contractor shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.
- 3.4 The parties agree that:
 - 3.4.1 notwithstanding the Limitation Act 1980 (including the method of execution and/or whether or not this Deed is executed as a deed), any action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from, touching upon or concerning this Deed may be brought or commenced under this Deed at any time until the expiry of 12 (twelve) years from the date of Practical Completion;
 - 3.4.2 they will not rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this Deed; and
 - 3.4.3 any statutory defence provided by the Limitation Act 1980 shall not commence until the expiry of 12 (twelve) years from the date of Practical Completion and no action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from or touching or concerning this Deed may be brought or commenced under this Deed at any time after the expiry of 12 (twelve) years from the date of Practical Completion.

4. **COPYRIGHT**

- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by it remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.
- 4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor’s Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor’s Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor’s Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 4.6 In the event that any act unauthorised by the Employer infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor’s Design Documents the Principal Sub-Contractor undertakes, if the Employer so requests and at the Employer’s expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor’s Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor’s Design Documents to the Employer upon paying a reasonable copying charge.

- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Employer that it:

- 5.1.1 has taken out PI Insurance covering all its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, [REDACTED]

[REDACTED] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

- 5.1.2 will provide (as and when reasonably required to do so by the Employer) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

- 5.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.

- 5.3 The Principal Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

⁹ Limit shall be determined by the Employer taking into account the contract value and relevant circumstances of the project.

6.1.1 Principal Sub-Contractor: [e-mail address]¹⁰

6.1.2 Employer: [e-mail address]¹¹

6.1.3 Contractor: [e-mail address]¹²

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

- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

- 7.1 The benefit of and the rights of the Employer under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Employer will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

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

8. **EMPLOYER'S REMEDIES**

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

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

- 10.1 Without prejudice to the Principal Sub-Contractor's statutory rights the Principal Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to:

¹⁰ Insert e-mail address

¹¹ Insert e-mail address

¹² Insert e-mail address

- 10.1.1 terminate or treat as terminated or repudiated the Subcontract or its engagement under it without first giving to the Employer not less than 30 Business Days' prior written notice; or
 - 10.1.2 discontinue or suspend the performance of any duties or obligations under the Subcontract without first giving to the Employer not less than 7 Business Days' prior written notice.
- 10.2 Any notice given by the Principal Sub-Contractor pursuant to clause 10.1 above shall:
 - 10.2.1 specify the Principal Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);
 - 10.2.2 specify any other breaches by the Contractor; and
 - 10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Principal Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or suspend the performance of any duties or obligations under the Subcontract (as applicable)).
- 10.3 Within the period of any notice given by the Principal Sub-Contractor pursuant to clause 10.1:
 - 10.3.1 the Employer may give written notice to the Principal Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Principal Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;
 - 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
 - 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Principal Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Principal Sub-Contractor, the Employer will not be under any obligation to the Principal Sub-Contractor nor will the Principal Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Principal Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Principal Sub-Contractor further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the Building Contract is terminated, the Principal Sub-Contractor, if requested by the Employer by notice in writing and subject

to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.

- 10.6 If the Principal Sub-Contractor is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Principal Sub-Contractor will be entitled to rely on a notice given to the Principal Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.
- 10.8 The Employer may by notice in writing to the Principal Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.9 Upon request by the Employer the Principal Sub-Contractor agrees to co-operate with the Employer in determining the duties performed or to be performed by the Principal Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the Building Contract.
- 10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the Building Contract, the Subcontract shall be administered and construed as though the Building Contract was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

11. **SUB-CONTRACTORS**

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

12. **SEVERABILITY**

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

13. **WAIVER**

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

14. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 14 shall not affect any right or remedy which exists or is available to any person apart from such Act.

15. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

16. **CONTRACTOR ACKNOWLEDGEMENT**

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

17. **COUNTERPARTS**

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

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

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

Director
Director/Secretary

THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION herewith affixed is)
authenticated by:

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

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

Authorised Signatory

OR

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

Director
Director/Secretary

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

Director
Director/Secretary

Part 4 – Sub-Contractor Collateral Warranty to Third Party

DATED _____ 20[]

[PRINCIPAL SUB-CONTRACTOR]

and

[BENEFICIARY]

DUTY OF CARE DEED
relating to []

THIS DEED is made on
BETWEEN:

20[]

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

BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Principal Sub-Contractor has been appointed by the Contractor under a subcontract (the “**Subcontract**”) in relation to the [] element of the Works (the “**Subcontract Works**”).¹³
- (C) The Principal Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Beneficiary.
- (D) The Principal Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

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

2. OPERATIVE PROVISIONS

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Principal Sub-Contractor, receipt of which the Principal Sub-Contractor acknowledges:

3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

3.1 The Principal Sub-Contractor warrants to the Beneficiary that:

- 3.1.1 it has carried out and completed and will continue to carry out and complete the Subcontract Works and its duties and obligations under the Subcontract in accordance with the Subcontract;
- 3.1.2 in addition to and without derogation to clause 3.1.1, it has exercised and will continue to exercise in the design of the Subcontract Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design experienced in carrying out works of a similar size, scope, nature, complexity, location, timescale and value to the Subcontract Works in relation to:
 - (c) any design of the Subcontract Works;

¹³ Insert details of relevant sub-contract package.

- (d) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
 - (e) the satisfaction of any performance requirement or specification of or for the whole or any portion of the Subcontract Works;
- 3.1.3 it has not and shall not use and subject to the standard of skill, care and diligence set out in clause 3.1.2 nor permit to be used specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
 - (d) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
 - (e) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
 - (f) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Beneficiary that the Principal Sub-Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.
- 3.4 The parties agree that:
 - 3.4.1 notwithstanding the Limitation Act 1980 (including the method of execution and/or whether or not this Deed is executed as a deed), any action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from, touching upon or concerning this Deed may be brought or commenced under this Deed at any time until the expiry of 12 (twelve) years from the date of Practical Completion;
 - 3.4.2 they will not rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this Deed; and
 - 3.4.3 any statutory defence provided by the Limitation Act 1980 shall not commence until the expiry of 12 (twelve) years from the date of Practical Completion and no action or proceedings (whether in contract, tort, statutory duty or otherwise) arising from or touching or concerning this Deed may be brought or commenced under this Deed at any time after the expiry of 12 (twelve) years from the date of Practical Completion.

4. **COPYRIGHT**

- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by him remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.
- 4.3 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.
- 4.4 In the event that the Principal Sub-Contractor does not own the copyright or any Intellectual Property Rights in any of the Principal Sub-Contractor’s Design Documents the Principal Sub-Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Principal Sub-Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Principal Sub-Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Principal Sub-Contractor waives any moral right to be identified as author of the Principal Sub-Contractor’s Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Principal Sub-Contractor’s Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Principal Sub-Contractor in relation to the Principal Sub-Contractor’s Design Documents the Principal Sub-Contractor undertakes, if the Beneficiary so requests and at the Beneficiary’s expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Principal Sub-Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Principal Sub-Contractor’s Design Documents.
- 4.8 The Principal Sub-Contractor shall supply copies of the Principal Sub-Contractor’s Design Documents to the Beneficiary upon paying a reasonable copying charge.

- 4.9 In carrying out the Subcontract Works the Principal Sub-Contractor shall not infringe any Intellectual Property Rights of any third party. The Principal Sub-Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Beneficiary that it:

- 5.1.1 has taken out PI Insurance covering all its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom [REDACTED]

[REDACTED] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

- 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

- 5.2 Any increased or additional premium or more onerous terms required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Principal Sub-Contractor shall be deemed to be within commercially reasonable rates.

- 5.3 The Principal Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates and/or if for any other reason the Principal Sub-Contractor is unable to maintain and/or is not maintaining such insurance in which case the Principal Sub-Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Principal Sub-Contractor upon, subject to clause 5.2, commercially reasonable rates and give notice of the same to the Beneficiary and shall further discuss means of best protecting the respective positions of the Beneficiary and the Principal Sub-Contractor in respect of the Subcontract Works.

6. **NOTICES**

- 6.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

¹⁴ Limit shall be determined by the Employer taking into account the contract value and relevant circumstances of the project.

6.1.1 Principal Sub-Contractor: [e-mail address]¹⁵

6.1.2 Beneficiary: [e-mail address]¹⁶

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

- 6.2 Any notice sent by hand or by post in accordance with clause 6.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

7. **ASSIGNMENT**

- 7.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Principal Sub-Contractor on two (2) occasions only and the Beneficiary will notify the Principal Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.

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

8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Principal Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONTRACTORS**

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

¹⁵ Insert e-mail address

¹⁶ Insert e-mail address

11. **SEVERABILITY**

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

12. **WAIVER**

12.1 No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.

12.2 No waiver under clause 12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.

13. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed provided always that this clause 13 shall not affect any right or remedy which exists or is available to any person apart from such Act.

14. **GOVERNING LAW AND JURISDICTION**

This Deed and the parties' non contractual duties and/or obligations shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

15. **COUNTERPARTS**

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

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

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

Director
Director/Secretary

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

Authorised Signatory

OR

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

Director

Director/Secretary

Part 5 – Parent Company Guarantee

DATED _____ 20[]

[GUARANTOR]

and

[EMPLOYER]

PARENT COMPANY GUARANTEE

THIS AGREEMENT dated

20[] is made

BETWEEN:

(1) [] whose registered office is at [

] (the “**Guarantor**”); and

(2) [] of []

] (the “**Employer**” which expression shall include its successors in title and permitted assignees).

BACKGROUND

- (A) The Employer has entered into a Contract [] (the “**Contract**”) (which expression shall include all plans, specifications, bills of quantities and other documents incorporated therein) with [] whose registered office is at [] (the “**Contractor**”) in relation to the carrying out, construction and completion of certain works by the Contractor as more particularly described as the “**Works**” (and which expression has the same meaning in this Deed).
- (B) The Contractor is a wholly owned subsidiary company of the Guarantor under the Companies Act 2006.
- (C) The Guarantor has agreed to guarantee the performance of all of the Contractor’s obligations under the Contract in the manner appearing below.

IT IS AGREED as follows:

1. GUARANTEE

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

2. PERFORMANCE OBLIGATIONS AND INSOLVENCY

2.1 If, at any time:

2.1.1 any default is made by the Contractor in the performance of any of the Obligations; or

2.1.2 the Contractor is Insolvent (as defined under the Contract),

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

3. LIABILITY

- 3.1 As between the Guarantor and the Employer (but without affecting the Obligations), the Guarantor shall remain liable under this Guarantee as if he were the sole principal obligor and not merely a guarantor.
- 3.2 Subject to the provisions of clause 5, the Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it was the sole principal obligor including, but not limited to:
 - 3.2.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Works or to the Contract or any related documentation;
 - 3.2.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Contractor;
 - 3.2.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
 - 3.2.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor;
 - 3.2.5 any defect in any provision of the Contract or any of the Obligations;
 - 3.2.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Contractor;
 - 3.2.7 any compromise of any dispute with the Contractor;
 - 3.2.8 any failure of supervision to detect or prevent any fault of the Contractor; or
 - 3.2.9 any assignment of the benefit of the Contract.

4. ASSIGNMENT

- 4.1 This Guarantee and the benefit conferred by it may be assigned by the Employer to any party to whom he assigns or novates its interest under the Contract, at any time and references to the Employer shall include its assigns.
- 4.2 Save for the provision of clause 4.1 above, this Guarantee and the benefit conferred by it may not be assigned by either party.
- 4.3 The Guarantor shall not contend that any assignee or person who receives the benefit of and the rights on the part of the Employer pursuant to clause 4.1 is precluded or prevented from recovering any loss resulting from any breach of this Guarantee (whatever the date of such breach) by reason that that person is an assignee or received the benefit of and the rights on the part of the Employer pursuant to clause

4.1 or is otherwise not the original beneficiary under this Guarantee or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or Contract or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

5. LIMIT OF LIABILITY

The Guarantor shall have no greater liability to the Employer under this Guarantee than he would have had had he been named as Contractor under the Contract and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability as if the Guarantor had been a party to the Contract as joint contractor.

6. THIRD PARTY RIGHTS

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

7. NOTICES

- 7.1 Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served or by e-mail to the addresses set out below:

7.1.1 Guarantor: [e-mail address]¹⁷

7.1.2 Employer: [e-mail address]¹⁸

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

- 7.2 Any notice sent by hand or by post in accordance with clause 7.1 shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent.

8. GOVERNING LAW

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

9. COUNTERPARTS

¹⁷ Insert e-mail address

¹⁸ Insert e-mail address

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

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

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

Director
Director/Secretary

[THE CORPORATE SEAL of the)
SECRETARY OF STATE FOR)
EDUCATION] herewith affixed is)
authenticated by:

.....
Authorised by the Secretary of State

.....
Full name (BLOCK CAPITALS)

OR

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

.....
Authorised Signatory]

OR

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

.....
Director

.....
Director/Secretary

SCHEDULE 5 – SITE PLAN

SCHEDULE 6 – CONSTRUCTION PROGRAMME

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

████████████████████

[illegible]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Government	Percentage
Current government	85%
Previous government	15%

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE 8
NOT USED

SCHEDULE 9
NOT USED

SCHEDULE 10 UK GDPR

The Parties do not anticipate that this Contract will involve any processing of Personal Data by the Contractor on behalf of the Employer, and the Contractor is not authorised by the Employer to process Personal Data under the terms of this Contract. The remainder of this Schedule will only be completed and have effect if the Employer instructs the Contractor to process Personal Data under the terms of this Contract.



In this Schedule unless the context otherwise requires, defined terms shall, save where they are defined below, have the meanings ascribed to them in this Contract:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:	take the meaning given in the UK GDPR;
Data Protection Impact Assessment:	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation:	(i) the UK GDPR and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy;
Data Loss Event:	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
Data Subject Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Joint Controllers:	where two or more Controllers jointly determine the purposes and means of processing;
Law:	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
Processor Personnel:	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of his obligations under this Contract;

- Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- Sub-Processor:** any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor unless otherwise specified in the Appendix to this Schedule. The only processing that the Processor is authorised to do is listed in the Appendix to this Schedule by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if he considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services and Works;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with the Appendix to this Schedule, unless the Processor is required to do otherwise by Law. If he is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that he has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Appendix to this Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with his obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting his obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to him in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contractor's employment under this Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at his request, with any Personal Data he holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 1.9 The Processor shall allow for audits of his data processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate his own Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-Processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this paragraph 1.11 such that they apply to the Sub-Processor; and
 - (d) provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this paragraph by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in the Schedule in accordance with UK GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Schedule in replacement of paragraphs 1.1-1.14 for the Personal Data under joint control.

Appendix 1: Schedule of Processing, Personal Data and Data Subjects

1. This Appendix shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix shall be with the Controller at its absolute discretion.
2. The contact details of the Controller's Data Protection Officer are: [Insert contact details]
3. The contact details of the Processor's Data Protection Officer are: [Insert contact details]
4. The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Appendix.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor in accordance with paragraph 1.1.
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</p>
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the	[Describe how long the data will be retained for, how it be returned or destroyed]

<p>processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	
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SCHEDULE 11
CONTRACT DOCUMENTS

The USB stick attached to this page is Schedule 11 comprising the Contract Documents, the Asbestos Surveys, and the Site Surveys.

By signing below each Party agrees and acknowledges that the USB stick is an accurate electronic representation of the paper files comprising the Contract Documents, the Asbestos Surveys, and the Site Surveys.

.....
(Signed by the Employer)

.....
(Signed by the Contractor)