



dated [ ]

**Yorkshire Dales National Park Authority**

and

**[Contractor]**

**JCT Intermediate Building Contract (2016 edition) as amended**

in relation to the supply and installation of a Bridleway Bridge, near Sedbergh,  
Cumbria, LA10 5NE

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# Agreement

dated [    ]

## Parties

- (1) Yorkshire Dales National Park Authority of Yoredale, Bainbridge, Leyburn, DL8 3EL (the **Employer**) and
- (2) [                    ] (registration number [                    ]) [of] [whose registered office is at] [                    ] (the **Contractor**)

## Recitals

- First        The Employer wishes to have the supply and installation of a 35 metre bridleway bridge carried out, including the removal of the existing footbridge crossing the River Rawthey at Cross Keys, near Sedburgh, Cumbria, LA10 5NE in the Yorkshire Dales National Park (the **Works**) in accordance with the conditions (comprising the clauses set out in sections 1 to 9 together with and including schedules 1 to 5) annexed to the JCT Intermediate Building Contract (2016 edition) subject to the amendments and insertions set out in Appendix 1 to this Agreement (hereinafter together called the **Conditions**) and has had drawings and bills of quantities or a specification or work schedules prepared which show and describe the work to be done.
- Second     The drawings are listed in the Invitation to Tender dated [15 November 2023] a copy of which is [annexed to this Agreement at Appendix 5] (the **Contract Drawings**) and which has for identification been signed or initialled by or on behalf of each Party.
- Third       The Employer has supplied to the Contractor the Specification.
- Fourth     The Contractor has priced the Specification (as priced, the **Priced Document**), the total of such pricing being the Contract Sum stated in Article 2 (**Pricing Option A**) and has provided the Employer with the priced schedule of activities annexed to this Agreement (the **Activity Schedule**).
- The Priced Document, and the priced Activity Schedule, where provided, have each for identification been signed or initialled by or on behalf of each Party.
- 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       Not used
- Seventh    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.
- Eighth     Not used
- Ninth       Where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars.

Tenth Whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars.

## Articles

Now it is hereby agreed as follows:

### **Article 1 Contractor's obligations**

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

### **Article 2 Contract Sum**

The Employer shall pay to the Contractor at the times and in the manner specified in the Conditions the VAT exclusive sum of [ ] pounds (£[ ]) (the **Contract Sum**) or such other sum as becomes payable under this Contract.

### **Article 3 Contract Administrator**

For the purposes of this Contract, the Contract Administrator is [ ] of [ ] or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.4. of the Conditions.

### **Article 4 Quantity Surveyor**

For the purposes of this Contract the Quantity Surveyor is [ ] of [ ] or, if he ceases to be the Quantity Surveyor, such other person as the Employer nominates in accordance with clause 3.4. of the Conditions.

### **Article 5 Principal Designer**

The Principal Designer for the purposes of the CDM Regulations is [ ] or [ ] of [ ] or such replacement as the Employer at any time appoints to fulfil that role.

### **Article 6 Principal Contractor**

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

### **Article 7 Adjudication**

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 9.2.

### **Article 8 Legal proceedings**

Subject to referral to adjudication in accordance with Article 7 the English courts shall have exclusive jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

## Contract Particulars

| Clause etc                   | Subject  |   |
|------------------------------|--|---|
| Fifth Recital and clause 4.6 | Construction Industry Scheme (CIS)   | Employer at the Base Date [is a 'contractor'] [is not a 'contractor'] for the purposes of the CIS   |
| Seventh Recital              | CDM Regulations  | the project is notifiable   |
| Eighth Recital               | Description of Sections (if any)   | Not used  |
| Ninth Recital                | Framework Agreement (if applicable)  | Not applicable  |
|                              | <i>(State date, title and parties)</i>   |   |
| Tenth Recital and Schedule 5 | <b>Supplemental Provisions</b>   |   |
|                              | Collaborative working  | Supplemental Provision 1 applies/does not apply   |
|                              | Health and safety  | Supplemental Provision 2 applies/does not apply   |
|                              | Cost savings and value improvements  | Supplemental Provision 3 applies/does not apply   |
|                              |  | [The Incentive(s) are as follows:<br><br>[ ]]   |
|                              | Sustainable development and environmental considerations                           | Supplemental Provision 4 applies/does not apply   |
|                              | Performance Indicators and monitoring  | Supplemental Provision 5 applies/does not apply   |
|                              | Notification and negotiation of disputes   | Supplemental Provision 6 applies/does not apply   |
|                              | Where Supplemental Provision 6 applies, the respective nominees of the Parties are | Employer's nominee [ ]<br><br>Contractor's nominee [ ]<br><br>or such replacement as each Party may notify to the other from time to time |
| 1.1                          | Base Date  | [ ]   |
| 1.1                          | BIM Protocol ( where applicable)   | [Not applicable]  |
|                              | <i>(state title, edition, date or other identifiers)</i>                           |   |

| Clause etc | Subject   |  |
|------------|---|--|
|            | <i>of relevant documents)</i>                         |  |
| 1.1        | Date for Completion of the Works                      | [ ]  |
|            | <i>(where completion by Sections does not apply)</i>  |  |
| 1.1        | Sections: Dates for Completion of Sections            | Sectional completion does not apply  |
| 1.7        | Addresses for service of notices by the Parties       | Employer<br>Yorkshire Dales National Park Authority,<br>Yoredale, Bainbridge, Leyburn, DL8 3EL<br><br>Contractor [ ] |
| 2.4        | Date of Possession of the site                        | [ ]  |
|            | <i>(where possession by Sections does not apply)</i>  |  |
| 2.4        | Sections: Date of Possession of Sections              | Sectional completion does not apply  |
| 2.5        | Deferment of possession of the site                   | Clause 2.5 applies/does not apply  |
|            | <i>(where possession by Sections does not apply)</i>  | [Maximum period of deferment (if less than 6 weeks) is [ ]]  |
| 2.5        | Sections: deferment of possession of Sections         | Sectional completion does not apply  |
| 2.23.2     | Liquidated damages                                    | at the rate of £ [ ] per [ ]   |
|            | <i>(where completion by Sections does not apply)</i>  |  |
| 2.32.2     | Sections: rate of liquidated damages for each Section | Sectional completion does not apply  |
| 2.29       | Sections: Section Sums                                | Sectional completion does not apply  |
| 2.30       | Rectification Period                                  | 60 (sixty) months from the date of practical completion of the Works   |
| 4.7        | Advance payment                                       | Clause 4.7 does not apply  |
|            | <i>(Not applicable if the Employer is a local</i>     |  |

| Clause etc | Subject  |   |
|------------|--|---|
|            | <i>or Public Authority)</i>  |   |
| 4.7        | Advance Payment Bond<br><br><i>(Not applicable where the Employer is a Local or Public Authority)</i>  | An advanced payment bond is not required  |
| 4.8.1      | Interim payments – Interim Valuation Dates<br><br><i>(If no date is stated, the first Interim Valuation Date is one month after the Date of Possession)</i>  | The first Interim Valuation Date is [ ] and thereafter the same date in each month or the nearest Business Day in that month    |
| 4.9.1      | Interim payments – percentages of value<br><br>Where the Works, or those works in a Section, have not achieved practical completion, the percentage of the total value in respect of the works that have not achieved practical completion is<br><br><i>(The percentage is 95 per cent unless a different percentage is stated)</i><br><br>Where the Works, or those works in a Section or Relevant Part have achieved practical completion, the percentage in respect of the completed works is<br><br><i>(The percentage is 97.5 per cent unless a different rate is stated)</i> | [95]%<br><br>[97.5]%  |
| 4.10.4     | Listed Items – uniquely identified<br><br><i>(Delete the entry if no bond is required)</i>   | For uniquely identified Listed Items a bond in respect of payment for such items is required for [ ]                            |
| 4.10.5     | Listed Items – not uniquely identified<br><br><i>(Delete the entry if clause 4.10.5 does not apply.)</i>   | For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for £[ ]              |
| 6.4.1.     | Contractor's Public Liability insurance – injury to persons or property – the required level of cover is not less than   | £5,000,000 for any one incident and unlimited in the aggregate  |
| 6.5.1      | Insurance – liability of Employer<br><br><i>(Not required unless it is stated that it may be required and the minimum amount of</i>  | Insurance [may be required/ is not required]<br><br>Minimum amount of indemnity for any one occurrence or series of occurrences |

| Clause etc             | Subject   |                                       |
|------------------------|---|---------------------------------------|
|                        | <i>indemnity is stated)</i>   | arising out of one event £[ ]         |
| 6.7 and<br>Schedule 1  | Works Insurance – Insurance Options   | Schedule 1 Insurance Option A applies |
|                        | Percentage to cover professional fees   | 15%                                   |
|                        | Where insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2) the annual renewal date is                            | [ ]                                   |
|                        | <i>( as supplied by the Contractor)</i>   |                                       |
|                        | Where Insurance Option C applies, paragraph C.1   | Does not apply                        |
|                        | <i>(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)</i> |                                       |
| 6.10 and<br>Schedule 1 | Terrorism Cover – details of the required cover   | [ ]                                   |
|                        | <i>(Unless otherwise stated, Pool Re Cover is required.)</i>  |                                       |
| 6.15                   | Joint Fire Code   | The Joint Fire Code does not apply    |
|                        | If the Joint Fire Code applies, state whether the insurer under Option A, B or C (paragraph C.2) has specified that the Works a "Large Project"                         | No                                    |
| 6.18                   | Joint Fire Code – amendments/revisions  | Not applicable                        |
|                        | <i>(The cost shall be borne by the Contractor unless otherwise stated)</i>  |                                       |
| 7.2.1                  | Performance bond or guarantee from bank or other approved surety.   | is not required                       |
|                        | The required form of bond or guarantee is set out in  | Not applicable                        |

| Clause etc           | Subject   |  |
|----------------------|---|--|
|                      | Initial value   | Not applicable   |
|                      | Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be<br><br><i>(If no entry is selected, the date shall be practical completion of the Works)</i>  | Not applicable   |
|                      | Reduction in value - if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is<br><br><i>(If no other percentage is stated, it shall be 50 per cent)</i>        | Not applicable   |
| 7.2.2                | Guarantee from the Contractor's parent company  | is not required  |
|                      | Parent company's name and registration number   | Not applicable   |
|                      | The required form of guarantee is set out in  | Not applicable   |
| 7.3                  | Collateral Warranties – details of the requirements for the grant by the Contractor and Sub-contractors of P&T Rights, Funder Rights and/or (in the case of Sub-contractors) Employer Rights in respect of the Works by collateral warranties ('Rights Particulars') are set out in | See clauses 7.6 to 7.8 inclusive   |
| 7.6                  | Sub-Contractors   | all sub-contractors engaged or to be engaged to carry out the following elements of the Works. |
| 8.9.2                | Period of suspension  | [2] months   |
| 8.11.1.1 to 8.11.1.5 | Period of suspension  | [2] months   |
| 9.2.1                | Adjudication  | The Adjudicator is [                      ]  |

**Clause etc****Subject**

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 nominating body has not been selected, the nominating body shall be one of the nominating bodies listed opposite selected by the Party requiring the reference to adjudication)*

- \* Royal Institute of British Architects
- \* The Royal Institution of Chartered Surveyors
- \* [constructionadjudicators.com](http://constructionadjudicators.com)
- \* Association of Independent Construction Adjudicators
- \* Chartered Institute of Arbitrators

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

THE COMMON SEAL OF the YORKSHIRE )  
DALES NATIONAL PARK AUTHORITY )  
was hereunto affixed under the )  
authentication of: )

The Officer appointed for  
this purpose

Executed as a deed by [name of company] )  
acting by two directors/a director and its )  
company secretary )

Signed:  
Print name:  
Director

Signed:  
Print name:  
Director / company secretary

## Appendix 1

### Amendments and insertions

#### Clause 1.1

At the end of the definition of **Interest Rate** before "." insert "or such other percentage as may be specified in the Specification"

In the definition of "Listed Items" delete "by the Employer in a list supplied to the Contractor" and insert "in a list agreed between the Employer and the Contractor"

Delete the definitions of **Agreement, Arbitrator, Conditions, Employer, Employer Rights, Fluctuations Provision, Funder, Funder Rights, P&T Rights, Purchaser, Schedule of Rates, Standard Method of Measurement, Tenant, Work Schedules** and **VAT**.

Insert:

**"Access / Works Licences:** [definition TBC once exact nature of licences known]

**Agreement:** the Agreement to which these Conditions are annexed including its Recitals, Articles, Contract Particulars and appendices 1 to [5].

**Anti-fraud, bribery and corruption Policy:** the Employer's fraud, ethics, anti-bribery and anti-corruption policy dated September 2022 a copy of which has been provided to the Contractor as may be amended from time to time and notified to the Contractor.

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

**Best Environmental Practice:** best practice generally as followed by contractors skilled and experienced in development on environmental sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws and if, applicable, any agri-environment scheme.

**Bribery Act:** the Bribery Act 2010.

**Conditions:** the conditions as defined in the First Recital to the Agreement.

**Corrupt Activity:** extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act and/or would constitute a UK or foreign tax evasion offence or UK or foreign tax evasion facilitation offence under sections 45 and 46 Criminal Finances Act whether in connection with the Works or otherwise.

**Criminal Finances Act:** the Criminal Finances Act 2017.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including but not limited to the General Data Protection Regulation (EU)

2016/679) (the **GDPR**); the UK GDPR (as such term is defined in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (such legislation being referred to in this Agreement as the UK GDPR), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), along with any associated guidance and Codes of Practice, in each case as may be amended, updated or supplemented from time to time.

**Data Subject's Rights:** any rights of individuals under the Data Protection Legislation.

**Data Controller, Data Subjects, Personal Data and Processing** shall have the meaning as provided in the Data Protection Legislation.

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

**Employer:** the person named as employer in the Agreement and their assigns.

**Employer Policies:** the Employer's health & safety policy and [xxx policy] copies of which has been provided to the Contractor (as amended from time to time)

**Employer Rights:** the rights in favour of the Employer to be granted by Sub-contractors in accordance with clause 7 by way of collateral warranties.

**Environment:** all and any of the following media being water, air or land (wherever situated) as well as any eco-systems; organisms, including (without limitation) humans, and their property, including natural and man-made structures.

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

**Environmental Report:** the ground investigation report of reference number GEO2020-4541, prepared by Curtis R. Evans on behalf of GEO Environmental Engineering Ltd in relation to the Site.

**Funder:** a person (whether acting for himself and/or where leading for a syndicate of persons as agent and trustee for such persons) who is providing or shall provide funding, finance or re-finance for the carrying out of the Works or any part of the Works or for the acquisition of the site.

**Funder Rights:** the rights in favour of a Funder to be granted by the Contractor and those to be granted by Sub-contractors in accordance with clause 7 by way of collateral warranties.

**HMRC:** means HM Revenue & Customs.

**Measurement Rules:** the RICS New Rules of Measurement – Detailed Measurement for Building Works ("NRM"), in the form published at the Base Date, unless otherwise dated in the Contract Documents.

**Modern Slavery Legislation:** the legislation referred to in S.54 of the Modern Slavery Act 2015

**Moral Rights:** moral rights under Chapter IV Part 1 Copyright Designs and Patents Act 1988.

**Order:** means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892).

**Principal Designer:** the person named in Article 5 or any successor appointed by the Employer.

**P&T Rights:** the rights in favour of a Purchaser or Tenant to be granted by the Contractor and those to be granted by Sub-contractors in accordance with clause 7 by way of collateral warranties.

**Purchaser:** a person who has acquired or has agreed to acquire or may later agree to acquire a freehold or long leasehold interest in the whole or any part of the site (and/or any premises constructed or to be constructed on the site).

**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.

**Sub-Contractor:** the sub- contractors (if any) listed in the Contract Particulars.

**Supply:** means a supply made for VAT purposes under or in connection with this Agreement by the Contractor and "Supplies" shall be construed accordingly.

**Tenant:** a person who has taken or has agreed to take or may later take or agree to take a lease of the whole or any part of the site (and/or any premises constructed or to be constructed on the site) other than a long leaseholder.

**Third Party Agreements:** any and all agreements relating to or affecting the Works or the completed Works (including the execution of the Works) or any part of the Works which have been entered into by the Employer before the date of this Contract and disclosed to the Contractor [on or before the date of this Contract] including any agreements referred to as such in the Specification which shall include but not be limited to the funding agreement entered into between the Employer and the Funder dated [TBC] and the [Access / Works Licenses].

**VAT:** means value added tax chargeable under the Value Added Tax Act 1994 and any similar or replacement tax."

### **Clause 1.3**

Delete clause 1.3 and insert:

"1.3.1 The Agreement and these Conditions are to be read as a whole. In the event of any inconsistency occurring between Appendix 1 to the Agreement, the Agreement, the Contract Particulars, the clauses set out in sections 1 to 9 of the printed JCT Intermediate Building Contract 2016 and the schedules thereto, the [Specification] and the Activity Schedule, the contents of the document appearing earlier in the preceding order shall prevail over any document appearing later in the preceding order.

- 1.3.2 This Contract represents the entire agreement between the Employer and the Contractor and supersedes any previous agreement or understanding between them in relation to the Works (including, but not limited to any letter of intent). In entering into this Contract, the Contractor does not rely upon any antecedent or collateral representation or promise made by or on behalf of the Employer, and (in the absence of fraud) the Contractor shall not have any claim, right or remedy (including any claim for rescission or damages for innocent or negligent misrepresentation) arising out of any such antecedent or collateral representation or promise."

#### **Clause 1.6**

Delete clause 1.6 and insert:

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

#### **Clause 1.9.1.1**

Delete clause 1.9.1.1 and insert "Not Used."

#### **Clause 1.10**

In line 1 delete "Save as stated in clause 1.9, no" and insert "No"

#### **Clause 1.12**

Delete clause 1.12 and insert:

"This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales."

#### **Clause 1.13**

Insert new clause 1.13:

"Where Article 3 refers to Contract Administrator the expression Architect shall be deemed to have been deleted throughout this Contract. Where Article 3 refers to Architect the expression Contract Administrator shall be deemed to have been deleted throughout this Contract."

#### **Clause 1.14**

Insert new clause 1.14:

"All references to arbitration, fluctuations and fluctuations provisions or options in this Contract shall be deemed to be deleted."

#### **Clause 1.15**

Insert new clause 1.15:

"Liability period

Save in respect of any indemnity provision set out herein, neither Party shall commence any action or proceedings against the other under this Contract after 12 years from the date of practical completion of the Works, and any adjudicator's decision under clause 9.2 shall be finally binding on them unless either Party has referred that dispute for final determination by legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

## **Clause 2.1**

In line 2 after "Contract Documents" insert "(including any Third Party Agreements and, to the extent relevant, the requirements of the Building Safety Act 2022 (and all associated legislation or regulations supplementing or implementing that Act)) and"

## **Clause 2.1A**

Add new clause 2.1A

"In performing his obligations under this Contract, the Contractor shall and shall ensure that each of his sub-contractors shall comply with the Anti-slavery Policy."

## **Clause 2.2.1**

Delete second sentence and insert:

"Subject as prescribed in the Contract Documents or stated in the Contract Documents to be a matter for the opinion or satisfaction of the Architect/Contract Administrator all materials and goods shall be new and appropriate for their use and all materials, goods and workmanship shall be of a satisfactory quality."

## **Clause 2.2.3**

Insert new clause 2.2.3:

"The Contractor shall ensure that any materials used in the project are to the highest environmental standards and further warrants that it has not used, shall not use and shall not authorise, cause or allow to be used in the Works any products or materials which:

- 2.2.3.1 do not conform with UK Designated standards (where appropriate) or codes of practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
- 2.2.3.2 are generally known to the construction industry to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
- 2.2.3.3 do not comply with the guidance set out in the publication "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices; and/or
- 2.2.3.4 are specifically prohibited under this Contract."

## **Clause 2.2.4**

Insert new clause 2.2.4:

"The Contractor will as soon as reasonably practicable notify the Employer if it becomes aware of any proposed or actual specification and/or use in the Works of any materials which do not comply with clause 2.2.3."

## **Clause 2.8A**

Insert new clause 2.8A:

"On or before the Date of Possession (or, if there are Sections, on or before the first of the Dates of Possession) the Contractor shall provide to the Contract Administrator/Architect a programme for the carrying out of the Works, and if and whenever there is any material delay to the execution of the Works, the Contractor shall provide to the Contract Administrator/Architect a revised programme for the carrying out of the Works forthwith."

## **Clause 2.8.2**

Delete clause and insert "Not used."

## **Clause 2.17**

In line 4 delete "paid" and insert "paid or discharged"

## **Clause 2.18**

In line 2 delete "paid" and insert "paid or discharged"

## **Clause 2.20.2.3**

In line two delete "or 3.15.1"

## **Clause 2.20.4**

Delete clause 2.20.4 and insert "Not used."

## **Clause 2.20.5**

Insert at the end of clause 2.20.5 "or under clause 8.10.3"

## **Clause 2.20.7**

Insert at the end of clause 2.20.7:

"**provided that** the Contractor shall have supplied and diligently pursued any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of such work as soon as reasonably practicable after the date of this Contract so as not to delay or disrupt the Statutory Undertaker in relation to such work"

## **Clause 2.20.8**

Delete clause 2.20.8 and insert "weather conditions which the Met Office records in the area nearest the site say are exceptionally adverse for that time of year;"

## **Clause 2.20.11**

In line 3 after "materials required for them" insert "save where such events arise upon the site or concern the Contractor's employees and do not arise out of or in connection with a national labour dispute"

## **Clause 2.20A**

Insert new clause 2.20A:

"Notwithstanding any other provision of this Contract the Contractor shall not become entitled to any extension of time for completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of their employees or agents."

## **Clause 2.23.1**

In line 1 of the final paragraph delete "5 days" and insert "one day"

### **Clause 2.23.1.2**

In line 1 delete "before the date of the Final Certificate"

### **Clause 2.23.2**

Delete clause 2.23.2 and insert:

"2.23.2 A notice from the Employer under clause 2.23.1 shall state that for the period between the Completion Date until the date of practical completion of the Works (or the relevant Section) by the Contractor, or the date of termination of the Contractor's employment under this Contract (whichever is the earlier):

2.23.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or

2.23.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor."

## **Clause 2.24**

In line 2 after "pay or repay" insert "or allow"

## **Clause 2.30**

In line 3 after "Rectification Period" insert "or at any time during that period"

In line 4 after "by the Contractor" insert "within 28 days of the issue of the schedule of defects by the Architect/Contract Administrator"

Insert at the end of clause 2.30:

"In the event that the Contractor fails to make good within 28 days of the issue of any schedule of defects the Employer may engage another contractor to complete the outstanding works. The cost of these works together with the reasonable additional fees of the Architect/Contract Administrator will be deducted from any monies withheld by the Employer pursuant to clause 4 or

otherwise due to the Contractor and any shortfall shall be due to the Employer from the Contractor as a debt"

#### **Clause 2.30A**

Insert new clause 2.30A:

"In cases of urgency the Architect/Contract Administrator may require any matter notified under clause 2.30 to be made good within such period of time specified by the Architect/Contract Administrator as the circumstances require."

#### **Clause 2.30B**

Insert new clause 2.30B:

"The provisions of clause 2.30 apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at practical completion."

#### **Clause 2.31**

Insert at the end of clause 2.31:

**"provided that** the Architect/Contract Administrator shall not be required to issue any certificate to that effect any earlier than 14 days after the end of the relevant Rectification Period."

#### **Clause 2.32**

Insert new clause 2.32:

- "2.32.1 The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use, copy and reproduce the Documents for any purpose whatsoever connected with the Works and/or the site including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Works and/or the site **provided always** that the Contractor shall not be liable for any such use by the Employer of the Documents for any purpose other than that for which the same were prepared and provided by the Contractor;
- 2.32.2 The licence referred to in clause 2.32.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Contract and/or the Contractor's employment under the Contract;
- 2.32.3 The Contractor waives absolutely all Moral Rights the Contractor may have in the Documents and/or the Works and where it is not the author warrants that the author has not asserted its Moral Rights and has waived any Moral Rights they may have in respect of the Documents and/or the Works;
- 2.32.4 The Contractor warrants that the use of the Documents for the purposes of the Works and/or pursuant to the licence granted pursuant to clause 2.32.1 shall not infringe the rights of any third party."

### **Clause 2.33**

Insert new clause 2.33:

- "2.33.1 The Contractor shall carry out and complete the Works in accordance with Best Environmental Practice, the recommendations of the Environmental Report and Environmental Laws.
- 2.33.2 The Contractor shall:
- 2.33.2.1 carry out such further environmental investigation works as necessary and, specifically such work as recommended in the Environmental Report;
- 2.33.2.2 provide the Employer with a copy of any report and/or recommendations arising from the carrying out of such further investigations pursuant to clause 2.33.2.1;
- 2.33.2.3 comply with any recommendations arising from the further investigations pursuant to clause 2.33.2.1;
- 2.33.2.4 provide the Employer with a copy of its environmental policy.
- 2.33.3 The Contractor shall be liable for and indemnify and keep indemnified the Employer against any liability, damage, loss, expense, cost, claim or proceedings arising on or after the date of this Contract in respect of any act or omission on the Contractor's part which results, whether directly or indirectly, in damage to the Environment and/or a breach of or failure by the Contractor to comply with its obligations under Environmental Laws insofar as such loss, injury or damage arises out of or in the course of or by reason of the carrying out the Works and to the extent that the same is due (wholly or partly) to any act or omission of the Contractor, any of its sub-contractors or their respective employees, servants or agents employed or engaged upon or in connection with the Works or any part or parts of the Works."

### **Clause 2.34**

Insert new clause 2.34:

- "2.34.1 The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before the date of this Contract or commencing the Works (whichever is the earlier) as to the nature of the ground, the sub-surface conditions and sub-soil, the form and nature of the site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the site, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. The Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under this Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works.
- "2.34.2 The Employer gives no warranty or representation as to :

- 2.34.2.1 the condition of the site or any adjoining property or any services in or under the site; or as to
- 2.34.2.2 the accuracy or sufficiency of any surveys, tests or investigations and/or any soils or survey data contained in any document made available to the Contractor by the Employer or on the Employer's behalf or any recommendations or conclusions made or reached in any such document."

#### **Clause 2.35**

Insert new clause 2.35:

"No inspection, testing, approval or review and no omission to inspect, test, approve or review on the part of the Employer shall diminish any duty or liability on the Contractor hereunder."

#### **Clause 2.36**

Insert new clause 2.36

- "2.36.1 The Parties will each act in the capacity of Data Controller in respect of the Personal Data processed under this Contract and each will Process the Personal Data as independent Data Controllers.
- 2.36.2 The Parties (including their employees, agents or officers) shall at all times during the period of this Contract comply with the provisions and obligations imposed by this clause 2.36 and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Contract.
- 2.36.3 The Parties warrant and represent that they each have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 2.36.4 Each Party shall notify the other without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data Processed under this Contract.
- 2.36.5 Whilst each Party shall be responsible for responding to any complaint in relation to the Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's Rights, the Parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under this Contract.
- 2.36.6 The provisions of this clause 2.36 shall apply during the continuance of the Contract and indefinitely after its termination."

#### **Clause 2.37**

Insert new clause 2.37:

"The Employer has provided the Contractor with copies of the Third Party Agreements and the Contractor shall be deemed to have full knowledge of the requirements of the Third Party Agreements and shall perform the Works so as to ensure that the Employer is not put in breach of its obligations in the Third Party Agreements and/or rendered liable to pay compensation under any of the Third Party Agreements.

The Employer may enter into further third party agreements with third parties relating to the Works after the date of this Contract. Upon being supplied with copies of, or relevant extracts from, those agreements the Contractor shall, with effect from the date on which it was provided with copies or extracts, comply with the requirements of such further third party agreements to the extent they affect or relate to the carrying out of the Works and to the extent that they do not conflict with the terms of this Contract. The Contractor's obligation to comply with such further third party agreements may amount to a Variation."

#### **Clause 3.4.1**

Delete second sentence.

#### **Clause 3.8**

In lines 2 – 4 delete ", save that where an instruction requires a Variation of the type referred to in clause 5.1.2, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Architect/Contract Administrator"

#### **Clause 3.11.2**

Delete clause 3.11.2 and insert "Not used."

#### **Clause 3.11A**

Insert new clause 3.11A:

"3.11A.1 Notwithstanding clause 5.2 where the Contractor shall reasonably consider and shall substantiate by evidence that any instructions issued by the Architect/Contract Administrator to the Contractor under clause 3.11 constitutes a Variation the Contractor shall not (save in the case of urgent health and safety matters in respect of which the Contractor shall be required to produce projections as detailed below but shall comply with the Architect's/Contract Administrator's instructions in the meantime) comply with the same (subject to clauses 3.11A.2 and 3.11A.3) but shall first furnish the Employer and the Architect/Contract Administrator within five Business Days (or within such other period as may be agreed between the Contractor and the Employer) of the instruction with written projections of:

3.11A.1.1 the value of the necessary adjustment to the Contract Sum (providing them with all necessary support calculations by reference to the values contained in the Contract Documents);

3.11A.1.2 the length of any extension of time to which he may be entitled under clause 2.20 and the new Completion Date; and

3.11A.1.3 the amount of any direct loss and/or expense to which he may be entitled.

- 3.11A.2 The Contractor and the Architect/Contract Administrator shall then take reasonable steps to agree the Contractor's projections and agreement so reached in writing shall be binding upon the Contractor and the Employer. The Contractor shall thereupon immediately comply with the instruction and the Architect/Contract Administrator shall grant any agreed extension of time and any agreed adjustment shall be made to the Contract Sum to reflect the agreed projections.
- 3.11A.3 If agreement cannot be reached within 5 Business Days of receipt by the Employer and the Architect/Contract Administrator of the Contractor's projections on all or any of the matters set out in them, then (i) the Architect/Contract Administrator may nevertheless instruct the Contractor to comply with the instruction in which case the provisions of clause 5.2 shall apply in place of the Contractor's projections or (ii) the Architect/Contract Administrator may instruct the Contractor not to comply with the instruction.
- 3.11A.4 If the Architect/Contract Administrator instructs the Contractor under clause 3.11A.3 not to comply with the instruction the Contractor shall have no claim resulting from failure to reach agreement under clause 3.11A.2 or compliance with the requirements of this clause 3.11A."

### **Clause 3.13**

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

### **Clause 3.15.1**

Add at the end of the final paragraph:

"Subject to clauses 3.15.2 and 3.15.3, the Contractor shall not be entitled to any extension of time in complying with this clause 3.15.1 notwithstanding whether the Works are in compliance with this Contract or otherwise."

### **Clause 3.16**

In line 1 after "removal from the site" insert "or rectification"

### **Clause 4.4**

Delete clause 4.4.

Delete clause 4.5 and insert:

- "4.5.1 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 notwithstanding any other provision of this Agreement.
- 4.5.2 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement 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:

4.5.2.1 the time for payment or provision of the consideration; and

4.5.2.2 the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.

4.5.3 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.

4.5.4 Notwithstanding clause 4.5.3, 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:

4.5.4.1 the Reverse Charge did apply in respect of those Supplies, and

4.5.4.2 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 Contractor shall, within two Business Days of receipt of a copy of such notice, issue a credit note to the Employer in respect of those Supplies and at the same time pay to the Employer the amount of VAT included in such credit note."

#### **Clause 4.9.1.1**

In line 1 after "work properly executed" insert "and incorporated into the Works"

#### **Clause 4.9.1.2**

Before ";" at end of clause insert "and further **provided that** the Contractor has supplied to the Architect/Contract Administrator reasonable evidence that property in such materials and goods will pass to the Employer after the value of such materials and goods included in an Interim Certificate has been discharged by the Employer, pursuant to clause 2.17"

#### **Clause 4.10.2.1**

Before the end of the semi-colon insert:

"by way of a completed and signed vesting certificate in the form appended at Appendix 4"

#### **Clause 4.11.1**

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

#### **Clause 4.12.1**

In line 2 delete "14" and insert "30"

#### **Clause 4.12.5**

In line 1 of the final paragraph delete "5 days" and substitute "one day".

#### **Clause 4.12.6**

Insert at end of clause:

"The Contractor confirms that the interest paid pursuant to this clause is a substantial remedy for late payment in compliance with section 9 The Late Payment of Commercial Debts (Interest) Act 1998."

#### **Clause 4.13.3**

Delete clause 4.13.3 and insert:

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

4.13.3.1 have no obligation to invest the Retention or any part of the Retention;

4.13.3.2 have no obligation to segregate the Retention or any part of the Retention in a separate bank account or in any other manner;

4.13.3.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of the Retention (including without limitation interest and income arising from the Retention)."

#### **Clause 4.17.3**

Delete clause 4.17.3 and insert "Not used."

#### **Clause 4.17.4**

Insert at the end of clause 4.17.4:

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

#### **Clause 4.17A**

Insert new clause 4.17A:

"Notwithstanding any other provision of this Contract the Contractor shall not become entitled to the addition of any amount to the Contract Sum nor to any other financial adjustment in respect of any cost, loss or expense incurred by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier or of any of his or their employees or agents."

#### **Clause 4.21.1**

In line 1 delete "The Architect/Contract Administrator shall issue the Final Certificate not later than" and insert "The due date for the final payment shall be"

#### **Clause 4.21.1.3**

Delete clause 4.21.1.3 and insert "Not used."

#### **Clause 4.21.2**

In line 1 delete "The Final Certificate" and insert "Within 5 days of the due date the Architect/Contract Administrator shall issue the Final Certificate which"

#### **Clause 4.21.3**

Delete clause 4.21.3 and insert:

"The final date for payment for the final payment shall be 30 days from the due date."

#### **Clause 5.2**

In line 1 delete "The" and insert "Subject to clause 3.11A the"

#### **Clause 6.1**

In line 3 after "Works" insert "or in the performance of the Contractor's obligations under clause 2.30"

#### **Clause 6.2**

In line 4 after "Works" insert "or in the performance or the Contractor's obligations under clause 2.30"

#### **Clause 6.2A**

Insert new clause 6.2A:

"The Contractor shall be liable for, and shall indemnify the Employer against, all liabilities, costs, expenses (including legal expenses on an indemnity basis), damages, losses, actions and claims for breach of statutory duty which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Contract, except to the extent the same is due to any act or neglect of the Employer, any Employer's Persons or any Statutory Undertaker."

#### **Clause 6.4.4**

Insert new clause 6.4.3:

"All insurance required by clause 6.4.1 shall be unlimited in respect of the number of occurrences arising in any period of insurance."

#### **Clause 6.7**

Insert at the end of clause 6.7:

"Option A, B or C whichever is applicable shall not affect the responsibility of the Contractor or the Employer under this Contract for any loss or damage not covered by any Joint Names Policy."

#### **Clause 6.8**

In the definition of "All Risks Insurance" insert in line 1 after the words "damage to" the additional words "(subject to such excess and other customary exclusions and limitations as shall be approved by the Employer)"

#### **Clause 6.11.3**

Delete from "," in line 2 to the end of the clause and insert:

6.11.3.1 (where the Contractor has notified a reduction in the scope or level of cover pursuant to clause 6.11.1) the Contractor shall continue to maintain Terrorism Cover at such reduced level or scope of cover;

6.11.3.2 the Employer may instruct the Contractor to effect and maintain any alternative or additional form of Terrorism Cover then reasonably obtainable by the Contractor, the net additional cost to the Contractor of any such cover and its renewal shall be added to the amounts payable to the Contractor."

#### **Clause 7.1**

Delete clause 7.1 and insert:

"7.1.1 The Employer may assign its entire rights and benefits under this Contract to any person having or acquiring an interest in the Works and the Employer's said rights and benefits may be charged and/or assigned by way of security and may be re-assigned on redemption. The Contractor may not assign the benefit of this Contract without the written consent of the Employer.

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

#### **Clause 7.3.2**

Delete clause 7.3.2.

#### **Clause 7.4**

Delete clause 7.4 and insert "Not used."

#### **Clause 7.5**

Delete clause 7.5 and insert:

"All and any collateral warranties to be entered into or procured pursuant to this clause 7 shall be executed as deeds."

#### **Clause 7.6**

Delete clause 7.6 and insert:

"The Contractor shall execute as a deed and deliver to the Employer within 10 Business Days of a written request to do so from or on behalf of the Employer from time to time a deed or deeds of collateral warranty in favour of any Purchaser and/or any Tenant and/or any Funder and/or any other third party with an interest in the Works, such deed or deeds of collateral warranty shall be in the appropriate form set out in Appendix 2 to the Agreement with only such changes as the Employer may approve (acting reasonably)."

#### **Clause 7.6A**

Insert new clause 7.6A:

"Notwithstanding any other terms of this Contract, if the Contractor does not provide to the Employer the collateral warranties requested pursuant to clause 7.6, the Employer shall be entitled to withhold one hundred per cent (100%) of the value of each and every following Interim Certificate or Final Certificate as the case may be until all collateral warranties requested are so provided. Any amounts so retained shall become due to the Contractor on the due date of the interim payment or the final payment following the provision of the warranties duly executed to the Employer."

#### **Clause 7.7**

Delete clause 7.7 and insert "Not used."

#### **Clause 7.8**

Delete clause 7.8 and insert:

"The Contractor shall procure that every Sub-Contractor shall execute as a deed and deliver to the Employer within 15 Business Days of a request to do so from or on behalf of the Employer from time to time a deed or deeds of collateral warranty in favour of the Employer and/or any Purchaser and/or any Tenant and/or any Funder and/or any other third party with an interest in the Works. Such deed or deeds of collateral warranty shall be in the appropriate form set out in Appendix 3 to the Agreement with only such changes as the Employer may approve."

#### **Clause 7.8A**

Insert new clause 7.8A:

"If the Contractor fails to procure the execution and delivery to the Employer of the collateral warranties requested pursuant to clause 7.8, within 15 Business Days of the request to do so the Employer shall be entitled to withhold any and all sums relating to the work of the relevant Sub-Contractor(s) then in default and which would otherwise be due and payable under the terms of this Contract in each and every following Interim Certificate or Final Certificate as the case may be until all collateral warranties requested are so provided. Any amounts so retained shall become due to the Contractor on the due date of the interim payment or the final payment

following the provision of the warranties from the relevant Sub-Contractor(s) duly executed to the Employer."

#### **Clause 7.9**

Insert new clause 7.9:

"Without prejudice to the generality of clause 7.8 the Contractor shall provide the Employer within 5 Business Days of completion of the same a certified copy of each sub-contract between the Contractor and every Sub-Contractor **provided that** the Contractor shall be entitled to delete the sub-contract sum and any commercially sensitive information from the certified copy of the sub-contract documentation to be provided in accordance with this clause."

#### **Clause 7.10**

Insert new clause 7.10:

"The Contractor shall obtain all warranties available from the manufacturers and suppliers of all goods and equipment forming part of the Works whether or not expressly indicated in the Specification and shall ensure that the same are issued in favour of the Employer and handed over to the Employer as a condition precedent to practical completion of the Works or relevant section."

#### **Clause 8.1.4.1**

Delete "he enters into an arrangement, compromise or composition in satisfaction of his debts" and insert:

"he commences 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 arrangements with any of his creditors"

#### **Clause 8.1.4.2**

Delete the full stop and insert "; or"

#### **Clause 8.1.4.3**

Insert a new clause 8.1.4.3:

"he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986."

#### **Clause 8.2.1**

Delete clause 8.2.1 and insert "Not used."

#### **Clause 8.4.1.3**

In line 2 after "remove" insert "or rectify"

#### **Clause 8.5.1**

Delete clause and insert:

"If the Contractor is or becomes Insolvent either Party may at any time by notice to the other Party terminate the Contractor's employment under this Contract."

#### **Clause 8.5.3.4**

Insert new clause 8.5.3.4:

"ownership in all existing Documents shall transfer from the Contractor to the Employer immediately prior to the Contractor becoming Insolvent."

#### **Clause 8.6**

Delete clause 8.6 and insert:

- "8.6.1 The Contractor undertakes to the Employer that:
- 8.6.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
  - 8.6.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act or sections 45(1) or 46(1) Criminal Finances Act;
  - 8.6.1.3 it shall comply with the Employer's Anti-fraud, bribery and corruption Policy;
  - 8.6.1.4 it shall include undertakings similar to those contained in this clause 8.6.1 in any contract it may enter into with sub-contractors and suppliers;
  - 8.6.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clauses 8.6.1.1 to 8.6.1.4 inclusive and will provide any information reasonably requested by the Employer in support of such compliance.
- 8.6.2 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of any breach of clause 8.6.1 by the Contractor or any breach of provisions equivalent to clause 8.6.1 in any contract with a sub-contractor or supplier.
- 8.6.3 The Employer may by notice to the Contractor terminate the Contractor's employment under this Contract and (if applicable) any other contract between the Employer and the Contractor:
- 8.6.3.1 in the event of breach of clauses 8.6.1.1 to 8.6.1.4 inclusive; and/or
  - 8.6.3.2 if an Associated Person (or anyone employed by or acting on behalf of them) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Employer in breach of section 7(1) Bribery Act or sections 45(1) or 46(1) Criminal Finances Act; and/or

8.6.3.3 where the Employer is a local authority if the Contractor gives or has given any fee or reward the receipt of which is an offence under section 117(2) Local Government Act 1972; and/or

8.6.3.4 where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply."

#### **Clause 8.7**

In line 1 delete "8.6" and insert "8.6.3"

#### **Clause 8.7.4**

Insert at end of clause:

"**provided that** if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding works then for the purposes of this clause 8.7.4 the Employer shall be deemed to have paid the same amount to procure the completion of outstanding Works under clause 8.7.1 as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract."

#### **Clause 8.7.6**

Insert new clause 8.7.6:

"Notwithstanding that the validity of any such termination may be disputed by the Contractor the Contractor shall vacate the site and shall immediately deliver possession of the site and the Works to the Employer."

#### **Clause 8.7.7**

Insert new clause 8.7.7:

"The Contractor shall deliver to the Employer copies of the Documents, plans, drawings, documents, schedules, specifications and the like relating to the Works in its possession and/or control within 7 days."

#### **Clause 8.9.1.3**

Delete clause 8.9.1.3 and insert "Not used."

#### **Clause 8.9.2**

In the last 4 lines after "Contractor's Person" insert:

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

#### **Clause 8.10.1**

In line 1 after "notice to the Employer" insert "or the Employer may by notice to the Contractor"

#### **Clause 8.10.3**

In line 2 before "." insert:

"and an extension of time for completion shall be given under clause 2.19 equal to the period of suspension"

### **Clause 8.11.3**

In line 3 delete "or 73 (1)(c)"

### **Clauses 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8**

Delete clauses 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8 and in each case insert "Not used."

## **"Section 10 Compliance with Modern Slavery Legislation**

### **10 Modern Slavery Legislation**

#### **10.1 The Contractor undertakes to the Employer that:**

10.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

10.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Employer in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;

10.1.3 it has and shall maintain and implement:

10.1.3.1 procedures to ensure compliance with the Modern Slavery Legislation; and

10.1.3.2 adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;

10.1.4 it shall include undertakings similar to those contained in these clauses 10.1 and 10.2 in any contract it may enter into with sub-consultants and/or sub-contractors and provisions similar to those contained in clauses 10.3 and 10.4;

10.1.5 from time to time, at the reasonable request of the Employer, it will confirm in writing that it has complied with its undertakings under clause 10.1 and will provide any information reasonably requested by the Employer in support of such compliance.

10.2 The Contractor shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 10 and shall permit the Employer and its third party representatives, immediately upon request during normal business hours to access and take copies of such records and to meet with the Contractor's personnel to audit

- the Contractor's compliance with its obligations under this clause 10. The Contractor shall give all necessary assistance to the conduct of such audits.
- 10.3 Audit access by any third party representative of the Employer in accordance with clause 10.2 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those set out in this Contract in respect of the information obtained provided that all information obtained may be disclosed to the Employer.
- 10.4 In the event of breach of clauses 10.1.1, 10.1.2 or 10.1.3 by the Contractor and/or breach by any sub-consultant or sub-contractor of equivalent clauses required under clause 10.1.4 and/or if the Contractor, sub-consultant or sub-contractor is convicted of an offence under the Modern Slavery Legislation in relation to this Contract or any other contract (whether or not the Employer is a party to that contract), the Parties agree that the Employer may at its sole discretion terminate the Contractor's employment under:
- 10.4.1 this Contract and the provisions of clause 8.7 shall apply; and
- 10.4.2 (if applicable) any other contract between the Parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for default by the Contractor.
- 10.5 The Contractor further undertakes to the Employer that:
- 10.5.1 If required by law to do so, it shall, for each and every financial year of the Contractor, comply with its obligations under S.54 of the Modern Slavery Act;
- 10.5.2 It shall include an undertaking similar to that contained in this clause 10.5 in any contract it may enter into with sub-consultants, sub-contractors and/or suppliers.
- 10.6 In the event of breach of clause 10.1.4, 10.1.5, 10.2 and/or 10.5, the Parties agree that the Employer may by notice in writing to the Contractor require that such breaches will be rectified within 7 days of receipt. If the Contractor fails to rectify such breaches in accordance with the notice the Employer may in its sole discretion terminate the Contractor's employment under:
- 10.6.1 this Contract and the provisions of clause 8.7 shall apply; and
- 10.6.2 (if applicable) any other contract between the Parties (whether in relation to the Works or otherwise) and any such termination shall be deemed to be termination for Contractor default.
- 10.7 The Contractor shall indemnify the Employer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Employer as a result of:
- 10.7.1 any breach of clauses 10.1, 10.2 or 10.5 by the Contractor;
- 10.7.2 any breach of provisions equivalent to clauses 10.1, 10.2 or 10.5 in any contract with a sub-consultant or sub-contractor; or

10.7.3 any act or omission by a sub-consultant or sub-contractor which would have amounted to a breach of the relevant sub-contract had the Contractor complied with its undertaking set out in clause 10.1.4."

## **Schedule 1**

### **Paragraph A.1**

In line 4 after the brackets insert "together with appropriate annual adjustments to take account of inflation"

## **Schedule 2**

### **Paragraph 8**

Delete paragraph 8 except the final paragraph and insert:

"The Contractor shall be entitled to no right, relief or remedy whatsoever by reason of the determination of the employment of any named person or by reason of the giving of any instruction pursuant to paragraph 7 in Schedule 2."

### **Paragraph 9**

Delete paragraph 9 and insert "Not used."

### **Paragraph 10**

Delete paragraph 10 and insert "Not used."

### **Paragraph 11**

Delete lines 1 to 3 to ";" in the final paragraph and insert:

"the Contractor shall be responsible to the Employer under this Contract for anything which the above terms relate and through the Contractor the person so named shall also be so responsible;"

## **Schedule 4**

Delete Schedule 4 and insert "Not used."

### **[<sup>1</sup>Schedule 5 – paragraph 3.1**

In line 1 delete "is encouraged to" and insert "shall, when it is reasonably practicable to do so,"

### **Schedule 5 – paragraph 3.2**

In line 3 before "." insert "together with such information as the Employer may reasonably request"

### **Schedule 5 – paragraph 3.3**

Delete paragraph 3.3 and insert:

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<sup>1</sup> Drafting note: to be included if supplemental provision is to apply

- "3.3.1 The Employer shall consider any proposal submitted pursuant to paragraph 3.2 and if the Employer wishes to accept any such proposal shall seek to agree it with the Contractor [within [ ] Business Days of receipt of the same]. Upon agreement the Employer shall issue an instruction (which for the avoidance of doubt shall not be treated as a Change) confirming the change, the amount of any adjustment of the Contract Sum and any adjustment to the Completion Date.
- 3.3.2 If a proposal is not accepted a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of its preparation **provided that** it has been prepared on a fair and reasonable basis.
- 3.3.3 The Incentive(s) set out in the Contract Particulars shall apply to any instruction issued pursuant to paragraph 3.3.1."]

#### **[Schedule 5 –paragraph 4.1**

In line 1 delete "is encouraged to" and insert "shall"]

#### **Schedule 5 – paragraph 5**

Delete paragraph 5.1 and insert "The Contractor shall use reasonable skill and care to achieve the KPIs and shall take all practicable steps to ensure that its sub-contractors, suppliers and sub-consultants are subject to the KPIs. The Employer shall monitor and assess the Contractor's performance by reference to the KPIs."

In lines 2 – 3 of paragraph 5.2 delete "performance indicators" and insert "KPIs"

In line 1 of paragraph 5.3 delete "performance indicators" and insert "KPIs"

#### **Schedule 5 – paragraph 6**

In line 1 delete "With" and insert "The Parties shall each notify the other as soon as they are aware of any matter adversely affecting this Contract or either Party's performance of it. Such notice shall include proposals for avoiding or mitigating such matter. In addition with"

## Contractor warranties

**Dated [      ]**

(1) [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ] (the **Contractor**)

(2) [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ] (the **Beneficiary**)

(3) [[ ] (registration number [ ]) [of]  
[whose registered office is at] [ ] (the **Employer**)]

- (A) The Employer has procured the carrying out of the Project at the Property.
- (B) The Contractor carries on business as a building contractor and has been appointed as such by the Employer to carry out the Works upon the terms and conditions contained in the Building Contract.
- (C) The Beneficiary has an interest or will have an interest in the Property or a part or parts of the Property and/or the Project as [ ] [and has entered into the Agreement in respect of the Property]<sup>1</sup>.
- (D) The Contractor has agreed to enter into this warranty in favour of the Beneficiary.

## 1 Interpretation and definitions

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

**[Agreement]** means the [finance] [forward purchase] agreement between the Beneficiary and the Employer dated [ ] whereby the Beneficiary has agreed to [provide finance for the carrying out and completion of the Project] [purchase the Property [and provide finance for the carrying out and completion of the Project]];<sup>2</sup>

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

**Documents** means all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be

<sup>1</sup> Include only where there are step-in rights.

<sup>2</sup> Include only where there are step-in rights.

prepared by or on behalf of the Contractor in the course of the carrying out of the Works whether in existence or to be made or produced and including all amendments and additions to them;

**[Employer]** means [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ];]<sup>3</sup>

**Group Company** means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

**Moral Rights** means moral rights under Chapter IV Part 1 Copyright Designs and Patents Act 1988;

**Practical Completion** means the date of practical completion of the whole of the Works pursuant to the Building Contract;

**Project** means [ ] at the Property;

**Property** means [ ];

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

**Works** means the works of design and construction to be carried out on the Property pursuant to the Building Contract.

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

## 2 **Consideration**

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

## 3 **Duty of care**

### 3.1 The Contractor warrants and undertakes to the Beneficiary that:

- 3.1.1 the Contractor has performed and shall continue to perform all of the Contractor's duties and obligations under or arising out of the Building Contract; [and

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<sup>3</sup> Only required where the Employer is not a party.

- 3.1.2 the design of the Works has been and shall be carried out using all the reasonable skill and care to be expected of a properly qualified and competent design and build contractor experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Project; and]<sup>4</sup>
  - 3.1.3 the Contractor shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project; and
  - 3.1.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Contractor's skill and judgement in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Project.
- 3.2 Save in respect of its liabilities under clause 14, the Contractor shall have no duty or obligation under clause 3.1 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 warranty the Beneficiary had been a party to the Building Contract as joint employer.
- 4 Prohibited materials**
- 4.1 Without prejudice to the generality of clause 3.1.1 the Contractor warrants that the Contractor has not and shall not specify use authorise cause or allow to be used in the Project any products or materials which:
- 4.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
  - 4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
  - 4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices; and/or
  - 4.1.4 are specifically prohibited under the Building Contract.
- 4.2 The Contractor shall as soon as reasonably practicable notify the Beneficiary if the Contractor becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.
- 5 [Step-in**
- 5.1 [Subject to clause 5.6 the] [The] Contractor covenants with the Beneficiary that if any event of default shall occur under the Agreement at any time the Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1

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<sup>4</sup> Drafting note: N/A if no design obligations

to 5.4.3 inclusive, accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Employer upon the terms and conditions of the Building Contract and the Employer acknowledges that the Contractor shall be entitled to rely on the notice given to the Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that the circumstances have occurred permitting the Beneficiary to give such notice.

- 5.2 [Subject to clause 5.6 the] [The] Contractor hereby covenants that the Contractor shall not exercise nor seek to exercise any right to terminate or treat as terminated the Building Contract and/or the Contractor's employment or discontinue or suspend the performance of any of the Contractor's obligations under the Building Contract without first giving to the Beneficiary prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract and/or the Contractor's employment and/or discontinuing or suspending the Contractor's performance under the Building Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given and the Contractor intends to suspend performance of the Contractor's obligations under the Building Contract then the Contractor shall give 7 days' notice otherwise the Contractor shall give 15 Working Days' notice.
- 5.3 Compliance by the Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Contractor from exercising the Contractor's rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provisions of clause 5.5.
- 5.4 [Subject to clause 5.6, within] [Within] the relevant notice period referred to in clause 5.2 the Beneficiary or the Beneficiary's appointee may give written notice to the Contractor:
- 5.4.1 acknowledging that the Beneficiary assumes all the obligations of the Employer;
- 5.4.2 requiring the Contractor to continue with the performance of the Contractor's duties and obligations under the Building Contract;
- 5.4.3 undertaking unconditionally to the Contractor to pay to the Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Contractor under the Building Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Contractor from the appointee.
- 5.5 In the event of the Beneficiary or the Beneficiary's appointee giving notice to the Contractor in accordance with clause 5.4 the Building Contract shall continue in full force and effect and in all respects as if the Building Contract had been made between the Contractor and the Beneficiary or the Beneficiary's appointee (as applicable) to the exclusion of the Employer (but without prejudice to any rights of recovery as between the Contractor and the Employer) and the provisions of this clause shall apply

notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 <sup>5</sup>[The Contractor and the Beneficiary acknowledge that:

5.6.1 the Contractor has entered into or will enter into a warranty with [*insert name of other third party with step-in rights*] concerning the Works;

5.6.2 that warranty includes similar step-in rights to those in this clause 5; and

5.6.3 the rights of [*insert name of other third party with step-in rights*] referred to in clause 5.6.2 shall have priority over the rights of the Beneficiary under this clause 5 such that on the exercise by [*insert name of other third party with step-in rights*] (or their appointee) of those step-in rights the Contractor shall no longer be bound by, and the Beneficiary may no longer exercise its rights under, this clause 5.]

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

## 6 **Copyright and Moral Rights**

6.1 The Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the Property including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the Property **provided always** that the Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Contractor.

6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Building Contract and/or the Contractor's employment under the Building Contract.

6.3 The Contractor warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.

6.4 The Contractor waives absolutely all Moral Rights the Contractor may have in the Documents and/or the Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Works.

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

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<sup>5</sup> Only relevant if beneficiary has step-in rights but they are to be subservient to another beneficiary with step-in rights.

## 7 Insurance

- 7.1 The Contractor shall effect and maintain [public liability]<sup>6</sup> [professional indemnity] insurance in the sum of [five million pounds (£5,000,000)] for each and every claim without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Works and for a period equivalent to the period for which the Contractor is liable under this warranty pursuant to clause 14 **provided that** such insurance remains available to organisations of equivalent size and type to the Contractor's business at commercially reasonable rates and on commercially reasonable terms.
- 7.2 The Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy the Beneficiary that the insurance required by clause 7.1 is being maintained.
- 7.3 The Contractor shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 7.4 The Contractor shall not compromise settle or waive any insurance claim the Contractor may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Contractor's insurers from taking over (in the Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

## 8 Assignment

- 8.1 The Contractor shall not without the consent of the Beneficiary assign the Contractor's rights under this warranty.
- 8.2 The Beneficiary may (without the consent of the Contractor [and/or the Employer]<sup>7</sup>) assign the Beneficiary's rights under this warranty:
- 8.2.1 by way of security to any person providing or which has agreed to provide finance or re-finance in connection with the whole or any part of the Project, or to any mortgagee and by way of re-assignment on redemption; and/or
  - 8.2.2 to any Group Company; and/or
  - 8.2.3 on two other occasions only.
- 8.3 In this warranty references to the Beneficiary shall include where the context admits the Beneficiary's permitted assignees but not so as to permit more than two assignments under clause 8.2.38.2.3.

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<sup>6</sup> Drafting note: will be public liability only if no design obligations

<sup>7</sup> Include only where the Employer is a party.

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

9 **[Delay**

The Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Works unless and until the Beneficiary has given notice to the Contractor under clause 5.4.]<sup>8</sup>

10 **Notices**

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

- 10.2 Notices shall be delivered by:

10.2.1 hand; or

10.2.2 pre-paid registered or recorded delivery mail.

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

10.3.1 hand delivery on the date of delivery;

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

11 **Continuing effect**

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

12 **Miscellaneous**

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

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

12.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Works or to inspect any documents relating to the Property and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or

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<sup>8</sup> This provision will only be relevant where step-in rights are included.

12.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

**13 Contracts (Rights of Third Parties) Act 1999**

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

**14 Liability period**

Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion.

**15 Law**

This warranty and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

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

**[Insert execution blocks]**

### Sub-Contractor warranties

**Dated [      ]**

(1) [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ]  
[ ] (the **Sub-Contractor**)

(2) [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ]  
[ ] (the **Beneficiary**)

(3) [ ] (registration number [ ]) [of]  
[whose registered office is at] [ ]  
**Contractor**) (the

(A) The Contractor carries on business as a building contractor and has been appointed as such to carry out the Works upon the terms and conditions contained in the Building Contract.

(B) The Sub-Contractor carries on business as a [ ] sub-contractor and has been appointed as such by the Contractor to carry out the Sub-Contract Works upon the terms and conditions contained in the Sub-Contract.

(C) [The Beneficiary has an interest or will have an interest in the Property or a part or parts of the Property and/or the Project or a part or parts of the Project as [ ]<sup>10</sup> ] **or** [The Beneficiary is the Employer for the Project]<sup>11</sup>.

(D) The Sub-Contractor has agreed to enter into this warranty in favour of the Beneficiary.

## 1 Interpretation and definitions

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

<sup>11</sup> This option is where the Beneficiary is the Employer.

**[Contractor]** means [ ] (registration number [ ]) whose registered office is at [ ];<sup>12</sup>

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

**[Employer]** means [ ] (registration number [ ]) [of] [whose registered office is at [ ];]<sup>13</sup>

**Group Company** means any subsidiary company or holding company of the Beneficiary or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006;

**Moral Rights** means moral rights under Chapter IV Part 1 Copyright Designs and Patents Act 1988;

**Practical Completion** means the date of practical completion of the whole of the Works pursuant to the Building Contract;

**Project** means [ ] at the Property;

**Property** means [ ];

**Sub-Contract** means the [ ] entered into between the Contractor and the Sub-Contractor dated [ ] (and any further agreement(s) varying or supplementing it) for the Sub-Contract Works;

**Sub-Contract Works** means the sub-contract works of [ ] to be carried out by the Sub-Contractor under the Sub-Contract in relation to the Project;

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

**Works** means the works of design and construction to be carried out on the Property pursuant to the Building Contract.

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

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<sup>12</sup> Include the definition of Contractor only where the Contractor is not a party to the warranty (i.e. where there are no step-in rights).

<sup>13</sup> Include the definition of Employer only where the Employer is not a party.

## 2 **Consideration**

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

## 3 **Duty of care**

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

3.1.1 the Sub-Contractor has performed and shall continue to perform all of the Sub-Contractor's duties and obligations under or arising out of the Sub-Contract; [and

3.1.2 (to the extent that the Sub-Contractor has carried out any design of the Sub-Contract Works or any part or parts of the Sub-Contract Works) the Sub-Contractor has exercised and shall continue to exercise all the reasonable skill and care to be expected of a properly qualified and competent sub-contractor and designer experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Project; and]

3.1.3 the Sub-Contractor shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub-Contractor's responsibilities in relation to the Project; and

3.1.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Sub-Contractor's skill and judgement in respect of all matters which lie within the scope of the Sub-Contractor's responsibilities in relation to the Project.

3.2 Save in respect of its liabilities under clause 14, the Sub-Contractor shall have no duty or obligation under clause 3.1 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 warranty the Beneficiary had been a party to the Sub-Contract as joint employer.

## 4 **Prohibited materials**

4.1 Without prejudice to the generality of clause 3.1.1 the Sub-Contractor warrants that the Sub-Contractor has not used and shall not use and shall ensure that the Sub-Contractor has not and shall not specify authorise cause or allow to be used in the Project any products or materials which:

4.1.1 do not conform with UK Designated Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or

- 4.1.3 do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices; and/or
- 4.1.4 are specifically prohibited under the Sub-Contract.
- 4.2 The Sub-Contractor shall as soon as reasonably practicable notify the Beneficiary if the Sub-Contractor becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause 4.1.
- 5 **[Step-in**
- 5.1 [Subject to clause **Error! Reference source not found.** the] [The] Sub-Contractor covenants with the Beneficiary that if an event of default by the Contractor shall occur under the Building Contract at any time the Sub-Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive accept the instructions of the Beneficiary or the Beneficiary's appointee to the exclusion of the Contractor upon the terms and conditions of the Sub-Contract and the Contractor acknowledges that the Sub-Contractor shall be entitled to rely on the notice given to the Sub-Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that the circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 [Subject to clause **Error! Reference source not found.** the] [The] Sub-Contractor hereby covenants that the Sub-Contractor shall not exercise nor seek to exercise any right to terminate or treat as terminated the Sub-Contract and/or the Sub-Contractor's employment or discontinue or suspend the performance of any of the Sub-Contractor's obligations under the Sub-Contract without first giving to the Beneficiary prior written notice specifying the Sub-Contractor's ground for terminating or treating as terminated the Sub-Contract and/or the Sub-Contractor's employment and/or discontinuing or suspending the Sub-Contractor's performance under the Sub-Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective pay less notice has been given the Sub-Contractor shall give 7 days' notice otherwise the Sub-Contractor shall give 15 Working Days' notice.
- 5.3 Compliance by the Sub-Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Sub-Contractor from exercising the Sub-Contractor's rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provisions of clause 5.5.
- 5.4 [Subject to clause **Error! Reference source not found.**, within] [Within] the relevant notice period referred to in clause 5.2 the Beneficiary or the Beneficiary's appointee may give written notice to the Sub-Contractor:
- 5.4.1 acknowledging that the Beneficiary assumes all the obligations of the Contractor;

- 5.4.2 requiring the Sub-Contractor to continue with the performance of the Sub-Contractor's duties and obligations under the Sub-Contract;
- 5.4.3 undertaking unconditionally to the Sub-Contractor to pay to the Sub-Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Sub-Contractor under the Sub-Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Sub-Contractor from the appointee.
- 5.5 In the event of the Beneficiary or the Beneficiary's appointee giving notice to the Sub-Contractor in accordance with clause 5.4 the Sub-Contract shall continue in full force and effect and in all respects as if the Sub-Contract had been made between the Sub-Contractor and the Beneficiary or the Beneficiary's appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Sub-Contractor and the Contractor) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination discontinuance or suspension.
- 5.6 <sup>14</sup>[The Sub-Contractor and the Beneficiary acknowledge that:
- 5.6.1 the Sub-Contractor has entered into or will enter into a warranty with [insert name of other third party with step-in rights] concerning the Works;
- 5.6.2 that warranty includes similar step-in rights to those in this clause 5; and
- 5.6.3 the rights of [insert name of other third party with step-in rights] referred to in clause 5.6.2 shall have priority over the rights of the Beneficiary under this clause 5 such that on the exercise by [insert name of other third party with step-in rights] (or their appointee) of those step-in rights the Sub-Contractor shall no longer be bound by, and the Beneficiary may no longer exercise its rights under, this clause 5.]
- 5.7 The Contractor confirms the Contractor's agreement to the terms and conditions of this warranty and the Contractor's concurrence with the arrangements made and contemplated by this warranty.]
- 6 Copyright and Moral Rights**
- 6.1 The Sub-Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project and/or the Property including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project and/or the Property **provided always** that the Sub-Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub-Contractor.

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<sup>14</sup> Include this clause where the beneficiary has step-in rights but they are to be subservient to another beneficiary with step-in rights

- 6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Sub-Contract and/or the Sub-Contractor's employment under the Sub-Contract.
- 6.3 The Sub-Contractor warrants that the use of the Documents for the purposes of the Project and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.
- 6.4 The Sub-Contractor waives absolutely all Moral Rights the Sub-Contractor may have in the Documents and/or the Sub-Contract Works and where the Sub-Contractor is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Sub-Contract Works.
- 6.5 When requested to do so by the Beneficiary the Sub-Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub-Contractor's reasonable copying charges in connection with complying with such request.

## 7 Insurance

- 7.1 The Sub-Contractor shall effect and maintain [professional indemnity] [product liability] insurance in the sum of [ ] pounds (£ [ ]) [for each and every claim] [for each occurrence of series of occurrences arising out of each and every event] [in the aggregate for each year of insurance] **provided that** such limit of indemnity may be [in the aggregate for each year of insurance] [[ ] pounds (£[ ]) in respect of claims for pollution or contamination] without unusual or onerous conditions or excesses with reputable insurers carrying on business in the UK with effect from the date of commencement of the Sub-Contract Works and for a period equivalent to the period for which the Sub-Contractor is liable under this warranty pursuant to clause 14 **provided that** such insurance remains available to organisations of equivalent size and type to the Sub-Contractor's business at commercially reasonable rates and on commercially reasonable terms.
- 7.2 The Sub-Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy the Beneficiary that the insurance required by clause 7.1 is being maintained.
- 7.3 The Sub-Contractor shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 7.4 The Sub-Contractor shall not compromise settle or waive any insurance claim the Sub-Contractor may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Sub-Contractor's insurers from taking over (in the Sub-Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

## 8 **Assignment**

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

8.2 The Beneficiary may (without the consent of the Sub-Contractor [and/or the Contractor]<sup>15</sup>) assign the Beneficiary's rights under this warranty:

8.2.1 by way of security to any person providing or which has agreed to provide finance or re-finance in connection with the whole or any part of the Project, or to any mortgagee and by way of re-assignment on redemption; and/or

8.2.2 to any Group Company; and/or

8.2.3 on two other occasions only.

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

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

## 9 **[Delay<sup>16</sup>**

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

## 10 **Notices**

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

10.2 Notices shall be delivered by:

10.2.1 hand; or

10.2.2 pre-paid registered or recorded delivery mail.

10.3 Notices and communications shall be deemed to have been delivered or received in the case of:

10.3.1 hand delivery on the date of delivery;

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<sup>15</sup> Include only where the Contractor is a party.

<sup>16</sup> This provision will only be relevant where step-in rights are included

- 10.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.
- 11 **Continuing effect**
- Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.
- 12 **Miscellaneous**
- 12.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the Beneficiary would have against the Sub-Contractor in the absence of this warranty.
- 12.2 The Sub-Contractor's liability under this warranty shall not be released, diminished or in any other way affected by:
- 12.2.1 the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Sub-Contract Works or to inspect any documents relating to the Property and/or the Sub-Contract Works on behalf of the Beneficiary or the failure to appoint such a person; or
- 12.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
- 13 **Contracts (Rights of Third Parties) Act 1999**
- Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14 **Liability period**
- Without prejudice to any action or proceedings that arise from a breach of the Defective Premises Act 1972 or section 38 of the Building Act 1984 in respect of which the limitation period for bringing such contractual claims shall be the same as the applicable limitation period if the action or proceedings were commenced under that legislation or under the Civil Liability (Contribution) Act 1978 if later, no action or proceedings shall be commenced under this warranty after 12 years from Practical Completion.
- 15 **Law**
- This warranty and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

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

**[Insert execution blocks]**

**Appendix 4**  
**Vesting Certificate**

## Certificate of Vesting

From : [ ] (registration number [ ]) [of] [whose registered office is at]  
[ ] [the **Contractor**]

To : [ ] (registration number [ ]) [of] [whose registered office is at]  
[ ] (the **Employer**)

Date : [ ] 20

1 This Certificate relates to a contract between us dated [ ] (the **Contract**) for the carrying out of [ ] (the **Works**) at [ ] (the **Site**).

2 We have applied for payment in relation to the Materials (listed in the Schedule attached) in an interim [certificate] [payment] [application] before those Materials have been delivered to or adjacent to the Site.

3 In consideration of the sum of £10.00 (ten pounds) paid by you to us (receipt of which we hereby acknowledge) we warrant and undertake to you that:

3.1 title in the Materials (including but not limited to supplies received by us from a third party for incorporation in the Materials) is vested absolutely in us, the Materials are free from all encumbrances and charges and we are able to pass title in the Materials absolutely;

3.2 title in the Materials (including but not limited to supplies received by us from a third party for incorporation in the Materials) shall unconditionally vest in you upon:

3.2.1 receipt by us of the payment for them from you; or

3.2.2 allowance for them by you in any payment certificate,

such that we, our sub-contractors, suppliers, servants and agents and any other third party shall have no title in any part or all of them, no claim to part or all of them and no lien or charge over part or all of them;

3.3 the Materials are intended for incorporation in the Works;

3.4 nothing remains to be done to the Materials to complete the same up to the point of their incorporation in the Works;

3.5 the Materials are stored at the Premises (as described in the Schedule attached) and will be:

3.5.1 set apart;

3.5.2 clearly and visibly marked [in accordance with the requirements of the Contract] or [as follows [ ]] or [to identify that they are held to your order and that they are to be delivered to or adjacent to the Site]

[individually or in sets] [in a way that such marks will remain legible until the Materials are delivered to or adjacent to the Site];

3.5.3 [stored to your reasonable satisfaction;]

- 3.6 the Materials are in every respect in accordance with the requirements of the Contract;
- 3.7 without prejudice to any obligation in the Contract regarding insurance, we shall at all times from the date of this Certificate until the Materials are delivered to and placed on or adjacent to the Site insure, at our cost but in joint names, the Materials in respect of any loss or damage for their full reinstatement value and we shall, at your reasonable request, provide a broker's letter confirming that such insurance is in place;
- 3.8 the Materials can be inspected at any time upon reasonable notice by the you and/or your [project manager/employer's agent] and/or your duly authorised agents and representatives;
- 3.9 we shall not, except for use on the Works, remove or cause or permit the Materials to be moved or removed from the Premises;
- 3.10 the Materials will be delivered to (or adjacent to) the Site to suit the agreed programme for the Works;
- 3.11 in the event of the termination of the Contract or termination of our employment under the Contract for any reason (including, without limitation, our insolvency or breach of contract), we shall, at our cost, deliver the Materials to (or adjacent to) the Site or to an alternative reasonable location for the purposes of storage, as instructed by you;
- 3.12 if we fail to promptly perform delivery pursuant to paragraph 3.10 or 3.11, you (or a third party acting on your behalf) may enter the Premises (with such equipment and transportation as may be considered necessary) and, at our cost, collect the Materials and take them to (or adjacent to) the Site or to any reasonable location for the purposes of storage; and
- 3.13 the signatory of this Certificate is duly authorised to sign this Certificate and to bind us to the terms of it.
- 4 Nothing contained in this Certificate or the Contract or any payment that may be made or allowed to us in respect of the Materials shall be taken as any approval by you that the Materials are in accordance with the Contract.
- 5 For the purposes of this Certificate, you and we have agreed that:
  - 5.1 nothing in this Certificate confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999;
  - 5.2 you may assign the benefit of this Certificate to any person to whom you assign the benefit of the Contract and any reference to the Employer or to you in this Certificate includes you and your permitted assignees;
  - 5.3 any notice sent under this Certificate shall be sent in accordance with the Contract;

- 5.4 in the event that a dispute or difference arises under or in connection with this Certificate it shall be settled in the same way as a dispute or difference under the Contract and shall be subject to the same governing law and jurisdiction as the Contract;
- 5.5 without prejudice to the foregoing, we shall indemnify you and save you harmless from all costs, claims, demands, losses and expenses of whatsoever nature arising from any loss or damage to the Materials howsoever arising and any breach or non-observance of any of the terms contained in this Certificate.

Signed: .....

Print name: .....

## **Schedule**

Premises:

[include as much detail as you can]

Materials:

[include as much detail as you can]

**Appendix 5**  
**Invitation to Tender**