

HOMES & COMMUNITIES AGENCY

LIVERPOOL INNOVATION PARK: LANDLORD (CATEGORY A) WORKS AT BUILDINGS 2 AND 16

SCHEDULE OF AMENDMENTS TO THE JCT INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN 2011 EDITION

NOTE TO TENDERERS:

This Schedule of Amendments will be incorporated into (and form part of) the final contract in respect of this project. It will be incorporated by the insertion of manuscript amendments to the published form of contract in the manner prescribed below.

- **Article 10** – a new Article 10 will be inserted as follows:

"Article 10: Incorporation of the Schedule of Amendments

The Recitals, Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Schedule of Amendments annexed hereto."

BOTH PARTIES MUST INITIAL THESE MANUSCRIPT AMENDMENTS IN THE EXECUTION VERSION OF THE CONTRACT.

This is a Contract Document

Signed on behalf of the **Employer**

.....

Signed on behalf of the **Contractor**

.....

SCHEDULE OF AMENDMENTS

JCT INTERMEDIATE BUILDING CONTRACT WITH CONTRACTOR'S DESIGN 2011 EDITION

This Contract shall incorporate the published form of JCT Intermediate Building Contract With Contractor's Design 2011 Edition (as published by Sweet & Maxwell) (the "**Published Form**"), as amended by the amendments set out in this Schedule of Amendments (the "**SOA**"). For the avoidance of doubt, in the event of any error, inconsistency or divergence between the Published Form and the SOA, the SOA shall take precedence over the Published Form.

The Articles of Agreement and Conditions are amended as follows:

RECITALS:

Seventh Recital

Delete the wording of the Recital in its entirety and insert the following:

"The Contractor has examined the Employer's Requirements and is satisfied that the Contractor's Proposals and the CDP Analysis meet the Employer's Requirements. The Employer's Requirements, the Contractor's Proposals and the CDP Analysis have each for identification been signed or initialled by or on behalf of each Party and particulars of each are given in the Contract Particulars."

Tenth Recital

In this Recital, replace "2007" with "2015".

Eleventh Recital

Delete the wording of the Recital in its entirety and insert the following:

- "A. The division of the Works into Sections is shown in the Employer's Requirements or such other documents as identified in the Contract Particulars. The Contractor acknowledges and agrees that the Employer may, prior to the Employer authorising the Contractor to commence work in respect of a Section, omit the whole or part of a Section at its sole discretion and that in such a circumstance:
- (a) the Contract Sum shall be reduced to reflect such omitted Section (or part) of the Works, calculated by reference to the provisions of clause 5, the Priced Document and/or the CDP Analysis; and
 - (b) (notwithstanding any other provision in this Contract) the Employer shall have no liability whatsoever to the Contractor in respect of such omission (whether in contract, tort (including negligence) or otherwise) and any such omission shall not give rise to any entitlement by the Contractor to claim for abortive costs, actual or expected loss of payment or profit (including but not limited to any reduction in the value of any prices in the Priced Document and/or the CDP Analysis and the Contractor's entitlement to payment for completing the Works), loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses or for any other amount under this Contract.
- [B. For the avoidance of doubt and notwithstanding anything to the contrary in the Contract Particulars, following Practical Completion of Section 1:
- (a) the Contractor shall not commence any Works in relation to Section 2 until such time as it has received written authorisation from the Employer to do so;
 - (b) the Employer shall provide the Contractor with one (1) week's notice in writing of the date on which the Contractor shall have a right of possession (in accordance with this Contract) of that part of the Site at which any Works comprising Section 2 are to be undertaken (the "**Section 2 Access Date**"); and

- (c) the Date for Completion of the Works comprising Section 2 shall thereafter (unless extended in accordance with the terms of this Contract) be twenty-one (21) days from the Section 2 Access Date.]"

ARTICLES:

Article 5 – CDM Co-ordinator

Change the heading of this Article from "CDM Co-ordinator" to "Principal Designer".

Replace the wording "or, if he ceases to be the CDM Co-ordinator, such other person as the Employer shall appoint pursuant to regulation 14(3) of those regulations" with "or such replacement as the Employer at any time appoints to fulfil that role".

Article 6 – Principal Contractor

Delete the wording "and the SWMP Regulations" from Article 6.

Replace "or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint pursuant to regulation 14(3) of the CDM Regulations and/or regulation 4 of the SWMP Regulations" with "or such replacement as the Employer at any time appoints to fulfil that role".

Footnote "[12]"

Delete the wording of footnote "[12]" in its entirety and insert the following:

"Insert the name of the Principal Designer in Article 5 if the Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 6 if that is to be a person other than the Contractor. Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors."

Article 7 – Adjudication

Delete and replace with:

"Where pursuant to this Contract or Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) a dispute or difference is referred to adjudication, that adjudication shall be governed by and conducted in accordance with the Adjudication Rules of the Technology and Construction Solicitors Association, which are incorporated herein by reference. The decision of the Adjudicator shall be binding on the parties until the dispute or difference is finally determined by a court or judge thereof."

Article 8 – Arbitration

Delete and insert "Not used."

Article 9 – Legal proceedings

Delete the words "and (where it applies) to Article 8".

At the end of Article 9 add:

"and a court or judge thereof shall have jurisdiction to open up, review and revise any decision or opinion or certificate under the Contract. Any reference in the Contract to Arbitration or to an Arbitrator shall be deleted and substituted with a reference to the English courts or a judge thereof."

Article 10 – Incorporation of Schedule of Amendments

Insert a new Article 10 as follows:

"The Recitals, Articles, Contract Particulars, Conditions and Schedules include and shall be subject to the Schedule of Amendments annexed hereto."

CONTRACT PARTICULARS:

Part 1: General

"1.1 CDM Planning Period"

Delete this entry and corresponding footnote in its entirety.

Footnote "[16]"

Delete the wording of footnote "[16]" in its entirety and insert the following:

"Under the CDM Regulations 2015 a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days."

Part 2: Collateral Warranties

Delete this part of the Contract Particulars in its entirety.

ATTESTATION:

The Contract is to be executed as a Deed.

CONDITIONS:

SECTION 1 DEFINITIONS AND INTERPRETATION

Definitions

- | | |
|------------|--|
| Clause 1.1 | Delete the definition of "Adjudicator" and substitute:

"means any individual appointed pursuant to the procedure contained in Article 7". |
| Clause 1.1 | Delete the word and definition of "Arbitrator". |
| Clause 1.1 | At the end of the definition of "Conditions", insert "and the Additional Conditions annexed hereto". |
| Clause 1.1 | Delete the definition of "CDM Co-ordinator" in its entirety. |
| Clause 1.1 | Delete the definition of "CDM Planning Period" in its entirety. |
| Clause 1.1 | In the definition of "CDM Regulations," replace "2007" with "2015" and, at the end of the definition, insert "and the related guidance issued by the Health and Safety Commission". |
| Clause 1.1 | In the definition of "Construction Phase Plan," delete the existing text of the definition in its entirety and insert the following:

"the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions" |

Clause 1.1	In the definition of Employer after the word "Agreement" add the words "or its successors, transferees and assigns".
Clause 1.1	In the definition of "Employer's Persons", after "Quantity Surveyor" insert ", the CDM Co-ordinator (where appropriate)".
Clause 1.1	Delete the words and definition of "Finance Agreement".
Clause 1.1	Delete the words and definition of "Funder".
Clause 1.1	Insert a new definition of "Asbestos" as follows: "has the meaning given to it in the Control of Asbestos Regulations 2012".
Clause 1.1	Insert a definition of "Practical Completion" as follows and amend "practical completion" to "Practical Completion" throughout the Conditions: (i) a state in which the Works are (or any Section is) complete in all respects and free from apparent defects, save for any minor items of incomplete work or minor defects the existence, completion or rectification of which would not prevent or interfere with the use and enjoyment (or the fitting out for use) of the Works or Section; (ii) the relevant Statutory Requirements have been complied with and any necessary consents or approvals obtained; (iii) any stipulations identified by the Contract (including but not limited to the Employer's Requirements) as being preconditions to practical completion taking place have been satisfied; (iv) the health and safety file and all "as built" information and operating and maintenance information required by the Contract and/or the Statutory Requirements to be delivered at practical completion has been so delivered to the Employer; and (v) all manufacturer warranties and guarantees (including but not limited to the roofing installation guarantees) have been delivered to the Employer (in the name of the Employer, or assigned to it where the Contractor is the original named party to a manufacturer warranty or a guarantee)."
Clause 1.1	Insert a new definition of "Principal Designer" as follows: "the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer"
Clause 1.1	Delete the words and definition of "Purchaser".
Clause 1.1	Insert a new definition of "Site" as follows: "means the site at which the Works are to be undertaken, as more particularly described in the Contract Documents."
Clause 1.1	In the definition of "Statutory Requirements", in line 4 after "regulation", insert "rule". In lines 4-5, after "statutory undertaker", insert "or equivalent or relevant public body". At the end of the definition, insert: "and in particular so as to comply with any requirements relating thereto which may be stipulated as pre requisites for the adoption of any services, drains, sewers, pipes, wires, cables, or other service transmission media by any such authority or body (where the same are to be adopted)".
Clause 1.1	Delete the definition of "SWMP Regulations" in its entirety.

Interpretation

Clause 1.2 In lines 1 and 2, after "Schedule", insert "or Appendix".

At the end of the clause, insert a new sentence as follows:

"All references to Recitals, Articles, Contract Particulars, Conditions, Contract Documents, Agreement or any other part of this Contract means the same as amended by the Schedule of Amendments."

Clause 1.4.4 In line 2, after "corporate" insert "or any entity having legal capacity".

Contracts (Rights of Third Parties) Act 1999

Clause 1.6 Delete and substitute with:

"This Contract does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is a successor to or an assignee of the rights of the Employer is deemed to be a party to this Contract."

Effect of Final Certificate

Clause 1.9.1.1 Delete and insert "Not used."

Clause 1.9.4 Insert a new clause 1.9.4:

"The Final Certificate shall not be conclusive evidence that any works, any materials or goods or any design are in accordance with this Contract."

Effect of certificates other than Final Certificate

Clause 1.10 In line 1 delete "Save as stated in clause 1.9 no" and insert "No".

SECTION 2 CARRYING OUT OF THE WORKS

Contractor's Obligations

Clause 2.1 After "Construction Phase Plan," replace "(where applicable) and other" with "and".

Clause 2.1.1 Insert at the beginning of the clause, "adopt and".

Clause 2.1.2 In line 2 delete "subject to the provisions of clause 3.8.2".

Clause 2.1.3 Replace "11, 12 and 18" with "8 to 10".

Clause 2.1A Insert a new clause 2.1A as follows:

"2.1A The Contractor shall register the site with the Considerate Constructors Scheme and comply with the Scheme's Code of Considerate Practice. The Contractor must achieve a 'Certificate of Compliance' and maintain this standard throughout the duration of the Works. For details of the Scheme the Contractor shall apply to the Considerate Constructors Scheme Office, PO Box 75, Great Amwell, Ware, Hertfordshire, SG12 0YX (Tel: 01920 485959/Fax: 01920 485958.)"

Clause 2.1B Insert new clauses 2.1B to 2.1E as follows:

"2.1B During the Contractor's possession of the site, the Contractor shall have the

right of non-exclusive access to and from the site as more particularly described in the Employer's Requirements (the "**Access Area(s)**"). The Contractor acknowledges that such access shall not be uninterrupted access and the Contractor shall recognise and make due allowance for sharing access areas with the Employer or others as necessary and appropriate. The Contractor shall at all times comply with the Employer's requirements and procedures in respect of site access and the interfacing with other contractors and third parties as specified in the Employer's Requirements.

- 2.1C For the avoidance of doubt, the Contractor shall at all times be responsible for all aspects of the use of the Access Area(s) by the Contractor and any Contractor's Persons, including (but without limitation) the repair of any damage caused to the Access Area(s), adjacent property and the health and safety of all persons on or adjacent to such areas. The Contractor shall make good all damage caused to the Access Area(s) and all services serving the same or serving the adjoining lands arising from the Contractor's carrying out of the Works and/or operations thereon, to the reasonable satisfaction of the Employer.
- 2.1D The Employer reserves the right to vary the Access Area(s) and/or the Contractor's rights of access within the Access Area(s). The Contractor shall not be entitled to any additions to the amount due to the Contractor under this Contract nor to claim, whether as damages or otherwise, any amendment to the Contract Sum or any loss and/or expense if any means of access to the site or the Works as given to the Contractor from time to time is altered as envisaged by this clause 2.1D.
- 2.1E The Architect/Contract Administrator and any person authorised by him or by the Employer (including but without any limitation) any Purchasers/Tenants/Landlords and their respective representatives shall at all reasonable times have access to the Works and/or other premises of the Contractor where work is being prepared for this Contract. When work is to be prepared in workshops or other premises of a sub-contractor the Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Architect/Contract Administrator and any other person authorised by him or by the Employer, and shall do all things reasonably necessary to make that right effective. Access under this clause 2.1E shall be subject to such reasonable restrictions as are necessary to protect proprietary rights."

Clause 2.2.1 Delete and substitute with:

- "2.2.1 All materials and goods for the Works other than the parts of the Works comprised in the Contractor's Designed Portion shall be of the kinds and standards described in the Contract Documents. All materials and goods for the Contractor's Designed Portion shall be of the kinds and standards described in the Employer's Requirements, or, if not there specifically described, the Contractor's Proposals or documents referred to in clause 2.10.2.1 provided that the Contractor shall not substitute anything without the Architect/Contract Administrator's consent in writing, which consent shall not be unreasonably delayed or withheld, but no such consent shall relieve the Contractor of his other obligations. Subject to the foregoing, all materials and goods shall be new, of satisfactory quality and reasonably suitable for their purposes."

Clause 2.2.3 Add as clause 2.2.3:

- "2.2.3 All workmanship for the Works other than the parts of the Works comprised in the Contractor's Designed Portion shall be of the standards described in the Contract Documents. All workmanship for the Contractor's Designed Portion shall be of the standards described in the Employer's Requirements, or, if not

there specifically described, the Contractor's Proposals. Subject to the foregoing, all workmanship shall be of a satisfactory quality and reasonably suitable for its purposes."

Clause 2.2.4 Add as clause 2.2.4:

2.2.4 The Contractor undertakes, represents and warrants to the Employer that to the extent that it is obliged to select or approve substances or materials for use in the Works:

.1 it shall act in accordance with the guidance contained in the publication, "Good Practice in the Selection of Construction Materials" (2011, published by the British Council for Offices); and

.2 that no other substances or materials generally known to be deleterious at the time of use and no other materials or substances which are prohibited by the Employer's Requirements and/or this Contract, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be used by or on behalf of it (unless specifically instructed in writing to the contrary by the Employer),

and if in the performance of its duties under this Contract the Contractor becomes aware that he or any other person has specified or used or authorised or approved the specification or use by others of any such products or materials as are referred to in this clause 2.2.4, the Contractor will notify the Employer in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by this Contract."

Possession

Clause 2.4 In line 4, after "Completion Date," insert "or until the determination or purported determination of the Contractor's employment."

Work not forming part of the Contract

Clause 2.7 Delete the wording of clause 2.7 and insert the following:

"The Contractor hereby acknowledges and agrees that the Employer or persons employed or otherwise engaged by him may carry out work not forming part of this Contract, including, but without limitation, fitting-out Works by third parties of the Works or any part thereof. The Employer may issue instructions to the Contractor as to access arrangements and co-ordination of such work. The Employer shall ensure that both he and other persons employed or otherwise engaged by him do not unreasonably interfere with the progress of the Works carried out by the Contractor provided always that the third party's Works will not entitle the Contractor to claim loss and expense or delay and disruption."

Supply of Documents, Setting Out etc.

Clause 2.8.2 Delete the words ", certified on behalf of the Employer,"

Clause 2.8.4 Add as clause 2.8.4:

"2.8.4 Within 7 days after the execution of this Contract, the Contractor shall provide to the Architect/Contract Administrator (unless he has already done so) two copies of a suitable programme for the execution of the Works. Within 14 days after it becomes apparent that the progress of the Works is being delayed by any circumstance, or that a change of programme is necessary to avoid or minimise the delay, the Contractor shall supply the Architect/Contract Administrator with

two copies of a suitably revised programme."

Clause 2.10.2 Replace "regulations 11, 12 and 18 of the CDM Regulations" with "clause 2.1".

Errors, Inconsistencies and Divergences

Clause 2.13.1 In line 2, after "clause 2.12" delete the rest of the sub-clause.

Clause 2.13.3 In line 2, delete "or 2.13.1".

Clause 2.13.3.2 Add to the end of clause 2.13.3.2:

"and the discrepancy shall be dealt with at no cost to the Employer. For the avoidance of doubt, the Contractor shall not be entitled to an extension of time in respect of any discrepancy arising out of or in connection with this clause 2.13.3"

Clause 2.14.1 Line 2, delete "other than" and insert "and".

Clause 2.14.2 Replace "regulations 11, 12 and 18 of the CDM Regulations" with "clause 2.1.3".

Clause 2.15.2.1 After "Statutory Requirements" in line 1, insert the words "which were not reasonably foreseeable by the Contractor at the Base Date".

In line 4 after "the Contractor's Designed Portion," delete the remainder of the sub-clause and insert "the Contractor shall notify the Employer of its proposed alteration or modification and with the Employer's consent (which shall not be unreasonably delayed or withheld) the Contractor (entirely at its own cost unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date of which the Contractor could not reasonably have had notice before the Base Date) shall complete the design and construction of the Works in accordance with the alteration or modification unless instructed by the Employer not to do so".

Clause 2.15.3 Delete and insert "Not used."

Adjustment of Completion Date

Clause 2.19.5 In line 2, after "delay" insert ", notice".

In line 2, same entry after "further delay" insert ", further notice".

Clause 2.20.5 Insert before the words, "suspension by the Contractor" the words, "due and proper".

Clause 2.20.7 At the end of the clause add "provided that the Contractor has taken all reasonable steps to avoid or minimise the delay and shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract as soon as reasonably practicable in respect of such work so as not to delay or disrupt the Statutory Undertaker in relation to such work;"

Clause 2.20.10 Insert after "commotion" the words, "(not involving the Contractor or the Contractor's Persons)".

Clause 2.20.11 Insert after the word "workmen" the words "(not involving the Contractor or the Contractor's Persons)".

Clause 2.20.12 Insert at the end of the clause but before ";" "which such delay could not have been reasonably foreseen by a competent and diligent design & build contractor at the date of entering this Contract."

Clause 2.20A Add as clause 2.20A:

"2.20A Notwithstanding any other provision of this Contract, save where clause 2.20.9 (Specified Perils) applies, the Contractor shall not become entitled to any extension of time for the completion of the Works or any part of the Works on account of any circumstance arising by reason of any error, omission, negligence or default of the Contractor or of any sub-contractor or supplier, or any of his or their employees or agents."

Clause 2.21 Replace "3.18.4 " with "3.18 in respect of the supply of documents and information".

Practical Completion, Lateness and Liquidated Damages

Clause 2.23.1.2 Delete and substitute with:

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

Defects

Clause 2.30 In line 4 after "Contract" but before "," insert "(or frost occurring before Practical Completion of the Works or the relevant section)"

Clause 2.31 At the end of the clause add:

"provided that the Employer shall not be required to issue any such certificate any earlier than the expiry of the relevant Rectification Period."

Clause 2.31A Add as clause 2.31A:

"In cases of emergency the Employer's instructions under clause 2.30 may require any matter to be made good within such period of time specified in the instruction as the circumstances shall require."

Clause 2.31B Add as clause 2.31B:

"Clauses 2.30 and 2.31 shall apply mutatis mutandis to any defects, shrinkages or other faults and to any items of incomplete work remaining at Practical Completion."

CDP Design Work

Clause 2.32 Delete the existing wording of clause 2.32 and insert the following:

"The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or relevant Section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as may be specified in the Contract Documents or as the Employer may reasonably require that show or describe the Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations."

Clause 2.33 Delete clause 2.33 and substitute with:

"2.33.1 Copyright and registered and unregistered design right in all Contractor's Design Documents will remain vested in the Contractor but the Contractor hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Employer with effect from the date of this Contract or in the case of Contractor's Design Documents not yet in existence with effect from the creation of them an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor's obligations or termination of its employment under this Contract or any dispute under this Contract) to use and reproduce all Contractor's Design

Documents for any purpose whatsoever connected with the Works (including but without limitation the execution, completion, maintenance, sale, letting, advertisement, modification, extension, reinstatement and repair of the Works). Such licence will carry the right to grant sub-licences and will be transferrable to third parties.

- 2.33.2 The Contractor will not be liable for any use the Employer may make of the Contractor's Design Documents for any purpose other than that for which they were originally provided unless the Contractor authorises such use and confirms that the Contractor's Design Documents are suitable for it.
- 2.33.3 The Contractor warrants that the Contractor's Design Documents (save to the extent that duly authorised sub-contractors or consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person. The Contractor further warrants that where duly authorised sub-contractors and consultants have been used or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 2.33.1.
- 2.33.4 The Contractor agrees that on the Employer's reasonable request at any time and following reasonable prior written notice it will give the Employer or those authorised by it access to the Contractor's Design Documents and will provide copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Employer's expense.
- 2.33.5 The Contractor now waives and agrees to waive and not to assert (and agrees to procure that any sub-contractors and consultants do likewise) all moral rights in the Contractor's Design Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.
- 2.33.6 If the use of the Contractor's Design Documents as specified in clauses 2.33.1 to 2.33.3 (inclusive) is found to infringe the rights of any third person, the Contractor shall indemnify the Employer against all resulting costs, damages and expense.
- 2.33.7 In the event of the determination of the Contractor's employment and notwithstanding that the validity of such determination may be disputed by the Contractor, the Contractor shall provide to the Employer two hard copies and (where they were generated electronically) one electronic copy of all Contractor's Design Documents and draft Contractor's Design Documents."

Clause 2.34 Delete clause 2.34 and substitute with:

- "2.34.1 In respect of any designs or specifications for the Contractor's Designed Portion supplied or to be supplied by or on behalf of the Contractor, the Contractor warrants that there has been exercised and shall be exercised in their preparation all the skill and care reasonably to be expected of duly qualified and experienced designers undertaking work of such scope and character, and that such designs and specifications shall satisfy any applicable performance requirements to be complied with under or pursuant to this Contract.
- 2.34.2 Without derogation from any other provision in this Contract:
 - .1 the Contractor has examined the Employer's Requirements and is satisfied as to the feasibility and practicality of the Employer's Requirements and has agreed to accept full responsibility for any design contained in them; and
 - .2 the Contractor shall be fully responsible in all respects for the design of the Contractor's Designed Portion (including all design work proposed by or on behalf of the Employer prior to the date of this Contract forming part of the

Employer's Requirements and/or the Contractor's Proposals).

- 2.34.3 The Contractor shall not have or make any claim for an extension of time under clauses 2.19 and 2.20 or for damages, loss and/or expense under clause 4.17 or otherwise and clause 8.9 shall not have effect where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended is any mistake, inaccuracy, discrepancy, omission or other inadequacy in the Employer's Requirements and/or Contractor's Proposals or in any work constituting the Contractor's Design Documents referred to in clause 2.10 or any failure by the Contractor to provide necessary drawings or Contractor's Design Documents in due time."

SECTION 3 CONTROL OF THE WORKS

Access and Representatives

- Clause 3.1 In line 1, after "and any person authorised by him", insert "and the Employer and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose".

Add at the end of clause 3.1:

"The Contractor shall permit the Employer and those authorised by the Employer to attend all Site meetings (of which the Contractor shall give not less than five Business Days' notice and which shall be held not less frequently than every four weeks and more if requisite). The Contractor shall prepare full and proper minutes of all such meetings and shall pass copies of such minutes to the Employer and all others who attended within five Business Days of each such meeting."

- Clause 3.4.1 In line 2 after "nominate a replacement." delete the rest of the sub-clause.

Sub-Contracting

- Clause 3.5 In line 5 delete "clause 2.1" and replace with "any provision of this Contract".

- Clause 3.5A Insert a new clause 3.5A as follows:

"The Contractor shall be and remain liable to the Employer for the acts and omissions (including those in tort) of any person to whom the Contractor has sub-let the whole or any part of the Works (including any sub-contractor his agents servants or work people of such persons), and the consent of the Employer to any sub-letting shall not otherwise release or discharge the Contractor from liability to the Employer. The Contractor shall indemnify and hold the Employer harmless for all claims costs and proceedings acts and omissions (including those in tort) arising from or in relation to any sub-contractor. All sub-contractors (whether named sub-contractors or otherwise) shall be deemed to be domestic sub-contractors to the Contractor and not nominated sub-contractors."

- Clause 3.6.2.3 Delete the existing wording of clause 3.6.2.3 and insert the following:

"that each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;"

- Clause 3.6.5 In line 2, delete "14" and insert "7".

Architect / Contract Administrator's Instructions

- Clause 3.8 In line two after "issue" replace "," with "." and delete the wording from "save that" to the end of the clause.

- Clause 3.8.2 Replace "regulations 11, 12 and 18 of the" with "applicable".

- Clause 3.9 Add at the end of the clause insert:
- "or such costs may be recoverable from the Contractor by the Employer as a debt".
- CDM Regulations**
- Clause 3.18 Delete the existing wording of the clause (including the heading "Undertakings to comply") and insert the following:
- "Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:
- 1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
 - 2 the Contractor in addition to any obligations under clause 2.1.3 shall comply with regulation 15 and, where he is the Principal Contractor, with regulations 12 to 14; [44]
 - 3 whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
 - 4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee."

Replace the wording of the existing footnote "[44]" with "Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8."

Clause 3.19 Delete the wording of this clause (including the heading "Appointment of successors") in its entirety and insert "Not used."

SECTION 4 PAYMENT

Contract Sum and Adjustment

Clause 4.1.2 In line 1, delete "Where" and insert "Subject to clause 2.2, where".

Payments, Certificates and Notices

Clause 4.7.1.3 At the end of this clause, after the semi-colon, delete "and".

Clause 4.7.1.4 At the end of this clause, delete "." and insert "; and".

Clause 4.7.1.5 Insert a new clause 4.7.1.5 as follows:

"any right of the Employer to deduct or to set off any amount (whether arising under any term of this Contract or under any rule of law or of equity), whether or not such monies include or consist of any amount which may be deducted and retained by the Employer as Retention."

Clause 4.8.1.2 After the word "prematurely" on the third line add:

"and provided the Contractor has produced to the Employer satisfactory evidence that the terms of any relevant sub-contract and/or supply contract are such as would cause or

permit the passing of property in such materials or goods to the Employer as provided for in clause 4.9".

Clause 4.10.1 Insert at the end of clause 4.10.1:

"The Contractor shall when making such Interim Application, send to the Employer's Agent a detailed statement of the elements of work executed up to the date of such Interim Application and shall provide such assistance to the Employer's Agent as the Employer's Agent may reasonably require."

Clause 4.11.1 Delete "14" and insert "28".

Clause 4.12.3 Delete and substitute with:

"The Employer shall be under no fiduciary obligation with regard to the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.7.2 ("the **Retention**") and shall be under no obligation to set aside in a separate bank account any amount representing the Retention. The Contractor shall have no interest (either legal or equitable) in the retained amount or its produce."

Fluctuations

Clauses 4.15 and Clause 4.16 Delete clauses 4.15 and 4.16 and substitute with:

"Clause 4.15, clause 4.16, Schedule 4 and the Fluctuations Option shall be of no effect."

Loss and Expense

Clause 4.18.2.4 Delete and insert "Not used."

Clause 4.18.4 After the words "or default" insert the words "which could not reasonably have been anticipated by a competent contractor at the date of this Contract".

Clause 4.18A Add as clause 4.18A:

"4.18A Notwithstanding any other provision of clauses 4.17 to 4.19, the Contractor shall not become entitled to the addition of any amount to the Contract Sum or to any other payment (other than any amount which is recoverable by the Employer under any policy of insurance maintained in accordance with this Contract) 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".

SECTION 6 INJURY, DAMAGE & INSURANCE

Injury to Persons and Property

Clause 6.2 Renumber clause 6.2 as clause 6.2.1

Clause 6.2.2 Add a new clause 6.2.2 as follows:

"The Contractor will at all times prevent any nuisance (including, without limitation, any noisy working operations) or other interference with the rights of any adjoining land owner tenant or occupier or any statutory undertaker of which the Contractor is or ought reasonably to have been aware arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation hereto. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses liabilities losses claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 6.2.2."

Clause 6.2.3 Add a new clause 6.2.3 as follows:

"Without prejudice to the obligations of the Contractor under clause 6.2.2 the Contractor shall ensure at all times that there is no trespass by the Contractor, its servants, agents, sub contractors or suppliers (including, without limitation, the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works and shall take all reasonable safety and other measures to prevent damage or injury to any persons including, without limitation, the occupiers of adjoining or neighbouring property and members of the public. If the carrying out of the Works or of any obligation pursuant to clauses 2.21 and/or 2.30 is likely to necessitate any interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining and neighbouring owners or occupiers, then the Contractor shall, at no cost to the Employer obtain the prior written agreement of such owners and/or occupiers thereto and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement."

Clause 6.2.4 Add a new clause 6.2.4 as follows:

"Subject to any requirements to the contrary in the Employer's Requirements, the Contractor shall, following consultation with the Employer and at no cost to the Employer, obtain all necessary permissions, approval, licences and consents for the carrying out of the Works including any permissions, approval, consents and licences which may be required from any adjoining owners, tenants or occupiers. Without prejudice to the generality of the foregoing, the Contractor shall carry out all negotiations with adjoining owners, tenants or occupiers, and obtain any permissions, approval, consents or licences which may be required for the oversailing of tower crane jibs and/or erection of scaffolding and/or footpath and/or road closures and shall thereafter comply in all respects with the terms thereof and any conditions contained therein. The Contractor shall not have or make any claim for an extension of time under clause 2.19 or for loss and/or expense under clause 4.17 and the Contractor shall not be entitled to exercise his rights under Section 8 where and to the extent that the course of the progress of the Works or any Section having been delayed, affected or suspended arises from non-compliance by the Contractor with its obligations under this clause 6.2.4 or any failure by the Contractor to provide necessary drawings, information or documents in due time. The Contractor will supply to the Employer copies of all applications made for any permission, approval, licence or consent requisite for the carrying out of the Works and of all grants or refusals which may be made in response to such applications."

Insurance against Personal Injury and Property Damage

Clause 6.4.1 Insert after "take out and maintain" the words "and shall cause any sub-contractor to take out and maintain".

Clause 6.4.2 Insert after "the Contractor" the words "and every sub-contractor (as the case may be)".

Insurance of the Works

Clause 6.8 In the definition of "Joint Names Policy", after "Contractor", insert:

"and any other one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or mortgage or charge over the site."

Joint Fire Code – compliance

Clause 6.14.2 At the end of the clause insert:

"or may be recoverable from the Contractor by the Employer as a debt".

CDP Professional Indemnity Insurance

Clause 6.16 Delete clause 6.16 and insert the following:

- 6.16.1 Without prejudice to the Contractor's obligations under this Contract or otherwise at law, the Contractor undertakes and warrants that it shall forthwith procure and maintain at its own cost professional indemnity insurance for a sum not less than £2,000,000 (two million pounds) in respect of each and every claim to cover the Contractor's obligations relating to this Contract, the insurance to be with a reputable insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent contractors with good claims records and who are of similar size and experience as the Contractor, to be maintained for a period of six (6) years from practical completion and for such period as it may have any liability to the Employer (howsoever arising), and for so long as cover remains available on commercial rates and terms to competent contractors with good claims records and who are of a similar size and experience as the Contractor.
- 6.16.2 The Contractor warrants to the Employer that prior to the execution of this Contract it has made full disclosure to its insurers or brokers of the contents of this Contract, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and that the Contractor has not been advised that the cover required under this Contract is declined.
- 6.16.3 The Contractor shall produce to the Employer on demand (but not less than once in any period of 12 months) a copy of the insurance schedule and receipt for the current premium, alternatively other reasonably satisfactory evidence that the insurance required is in force, and in any event immediately notify the Employer upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance and discuss with the Employer the means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.
- 6.16.4 The Contractor shall in respect of a claim by or on account of the Employer hold any such money received from such insurance on trust for the Employer, and shall not make any deduction from those monies without first obtaining the Employer's consent in writing."

Clause 6.17 Delete clause 6.17 and insert the following:

"The Contractor shall ensure that any sub-contractor and consultant has when appointed and is thereafter obliged to maintain in force during the carrying out of the Works and for 12 years thereafter subject to the same being generally available in the market to sub-contractors and consultants in the relevant field at commercially reasonable rates and terms, professional indemnity (or if approved by the Employer in writing product liability) insurance for a sum not less than £2,000,000 (two million pounds) in respect of each and every claim to cover negligence omission or default on the part of such sub-contractor or consultant and that such sub-contractor or consultant shall be liable to the Contractor in the event of such negligence omission or default. As and when the Contractor is reasonably requested to do so by the Employer, the Contractor shall use reasonable endeavours to procure that such sub-contractor or consultant shall produce for inspection documentary evidence that such professional indemnity (or product liability if so approved) insurance is being maintained".

SECTION 7 ASSIGNMENT AND COLLATERAL WARRANTIES

Assignment

Clause 7.1 Delete clause 7.1 and substitute with:

- "7.1 The Employer shall be entitled to assign the benefit of this Contract by absolute assignment to any person and in this Contract the term "Employer" shall be construed accordingly.
- 7.1A The Contractor shall not be entitled to contend that any person to whom this Contract is assigned in accordance with clause 7.1 is precluded from recovering under this Contract any loss incurred by such assignee resulting from any breach of this Contract (whenever happening), by reason that such person is an assignee and not a named promisee under this Contract.
- 7.1B The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer".

Collateral Warranties

Clauses 7.2 to 7.6 Delete clauses 7.2 to 7.6 in their entirety and substitute them with the following:

"7.2 **Collateral warranties and manufacturer warranties / guarantees**

- 7.2.1 At the request of the Employer or its successor from time to time, whether before or after the completion of the Works, the Contractor shall execute as deeds and deliver to the Employer, within seven days of any such request any or all of the following one or more deeds of warranty in the form set out in Appendix 1 to this Contract with such amendments as the Employer or its successor may reasonably require in favour of:
- 7.2.1.1 a party or parties purchasing the premises comprising the Works or any part thereof;
- 7.2.1.2 a party or parties taking a lease or underlease of the premises comprising the Works or any part thereof;
- 7.2.1.3 a party or parties providing finance to the Employer in connection with the Works;
- 7.2.1.4 a party or parties providing finance to any such purchaser or lessee of any part of the Works;
- 7.2.1.5 a party or parties with an interest in the Works or any part thereof or an interest in the Site or any part thereof; and
- 7.2.1.6 the Employer or its successors, in the event the Employer or its successor assigns or novates the Contract.

If the Contractor shall breach any provision of clause 7.2.1, then without prejudice to the Employer's other rights and remedies, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice then no further payment shall be due to the Contractor hereunder while such breach remains to be rectified.

- 7.2.2 The Contractor shall when requested by the Employer or its successor procure that any sub-contractor employed by it in relation to this Contract shall, whether before or after the completion of the Works, execute as a deed, a deed of

warranty in the form set out in Appendix 2 to this Contract with such amendments as the Employer or its successor may reasonably require and a copy of the relevant sub-contract to which the warranty relates and deliver the same to the Employer within a further fourteen days of any such request the deed to be in favour of the Employer or its successors.

If the Contractor shall breach any provision of this clause 7.2.2, then without prejudice to the Employer's other rights and remedies, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice then no further payment shall be due to the Contractor hereunder while such breach remains to be rectified.

- 7.2.3 The Contractor shall procure that any consultant engaged by it or novated to it to design any part of the Works shall, whether before or after completion of the Works, execute as a deed and deliver to the Employer or its successor a deed of warranty in the form set out in Appendix 3 to this Contract with such amendments as the Employer or its successor may reasonably require and a copy of the relevant consultant's appointment to which the deed of warranty relates within a further fourteen days of such request, the deed to be in favour of the Employer or its successor.

If the Contractor shall breach any provision of this clause 7.2.3, then without prejudice to the Employer's other rights and remedies, the Employer shall be entitled to give the Contractor written notice specifying the breach. If such breach is not rectified by the Contractor within 14 days after service of such notice then no further payment shall be due to the Contractor hereunder while such breach remains to be rectified.

- 7.2.4 Without prejudice to the Employer's any other rights and remedies, if the Contractor fails to execute and deliver any such deed pursuant to clause 7.2.1 above, within a further seven days of the Employer's final request, the Employer may execute such deed on the Contractor's behalf, and the Contractor hereby appoints the Employer as the Contractor's attorney for the purpose of executing any such deed and the Contractor agrees to ratify and confirm any act done by the Employer pursuant to this limited power of attorney, and agrees that this limited power is irrevocable pursuant to Section 4, Powers of Attorney Act 1971.

- 7.2.5 The Contractor shall obtain in the name of the Employer all manufacturer and product guarantees and/or warranties as specified in the Employer's Requirements and shall assign the benefit of such guarantees and/or warranties to the Employer immediately prior to or on Practical Completion or completion of a Section."

SECTION 8 TERMINATION

General

- Clause 8.2.1 At the end of the clause add:

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

Termination by Employer

- Clause 8.4.1.3 In line 2, after "remove", insert "or rectify".
- Clause 8.4.1.4 After "7.1;" delete "or".
- Clause 8.4.1.5 After "3.18", delete the comma and insert "; or".

- Clause 8.4.1.6 Add as clause 8.4.1.6: "fails to comply with clause A18 (Bribery Act); "
- Clause 8.5.1 Delete clause 8.5.1 and insert the following:
- "If the Contractor is Insolvent the Contractor shall be in breach of this Contract, and the Contractor's employment shall determine forthwith and without the need for notice, provided that the Employer may in its absolute discretion reinstate the employment of the Contractor by written notice given within 21 days of the Contractor becoming Insolvent".
- Clause 8.6 After "Local Authority" insert "or public body".
- Clause 8.7.4 Delete sub-clauses 8.7.4.1, 8.7.4.2 and 8.7.4.3 and insert:
- "8.7.4.1 the amount of any direct loss and/or damage and/or additional expense caused to the Employer as a result of the determination;
- 8.7.4.2 the amount of any payment made or otherwise discharged in favour of the Contractor;
- 8.7.4.3 the total value of work properly executed at the date of determination of the employment of the Contractor, ascertained in accordance with the Conditions, together with any amounts due to the Contractor under the Conditions at the date of termination not included in such total value".
- Clause 8.9.1.3 Delete clause 8.9.1.3 and insert "Not used;"

SECTION 9 SETTLEMENT OF DISPUTES

Adjudication

- Clause 9.2 Delete clause 9.2 and insert the following:
- "If any dispute or difference arises under this Contract which either party has the right to refer to adjudication, Article 7 shall apply."
- Clause 9.2.2.2 Add the following sentence at the end of the sub-clause:
- "Copies of the Adjudicator's instructions to any such expert and any written advice or report received from such an expert shall be supplied to the Parties as soon as practicable."
- Clause 9.2.3 Add as clause 9.2.3:
- "The Adjudicator shall give reasons for his decision."

Arbitration

- Clause 9.3 to 9.8 Clauses 9.3 to 9.8 shall be deleted.

SCHEDULE 4 FLUCTUATIONS OPTION – CONTRIBUTION, LEVY AND TAX FLUCTUATIONS

- Schedule 4 Delete Schedule 4 in its entirety and insert "Not used."

ADDITIONAL CONDITIONS

The following Additional Conditions shall have effect:

- A1. **Not used.**
- A2. **Not used.**
- A3. **Site conditions**
- A3.1 Subject to clause A3.2 and clause A3.3:
- (a) the Employer gives no warranty or representation as to the condition of the site or any adjoining property or any services in or under the site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the Contractor by the Employer, or as to any recommendations or conclusions made or reached in any such document;
 - (b) the Contractor has been afforded the opportunity to inspect the physical and other conditions (including the sub-surface conditions) of or affecting the Site and its surroundings and all existing structures thereon and the available means of access thereto and shall be deemed to have fully acquainted himself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the design and construction of the Works or the Contract Sum; and
 - (c) the Contractor shall not be entitled to any addition to the Contract Sum or to any adjustment of the Completion Date of the Works or to have or make any claim under this Contract or in tort or otherwise by reason of any failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance referred to in clause (b), or of any information provided or statement made by or on behalf of the Employer in respect of any such condition, risk, contingency or circumstance.
- A3.2 Notwithstanding clause A3.1, the Parties agree that:
- (a) the Employer may from time to time arrange for third parties (accompanied by the Employer or any party acting on its behalf or otherwise) to attend the Site at any time to undertake:
 - (i) surveys and/or inspections that the Employer (at its sole discretion) determines as being reasonable necessary to ascertain the presence (if any) of any Asbestos at the Site;
 - (ii) the removal and/or remediation of Asbestos from the Site; and
 - (b) the Contractor shall:
 - (i) use its best endeavours to plan, programme and integrate into the performance of the Works the activities of the Employer and/or such other third parties appointed by or on behalf of it in accordance with clause A3.2(a) (which may include but shall not be limited to the resequencing of the Works to accommodate any such activities); and
 - (ii) (subject to clause **Error! Reference source not found.**) have no entitlement to an extension of time to the Completion Date and/or loss and expense as a consequence of fulfilling its obligations under clause 0.
- A3.3 If the Contractor encounters Asbestos at any area of the Site at which the Works are to be undertaken, it:
- (a) must notify the Employer of the same as soon as reasonably practicable;
 - (b) use its best endeavours to plan, programme and integrate into the performance of the Works the activities of the Employer and/or such other third parties appointed by or on

behalf of it in accordance with clause A3.2(a) in respect of such notified Asbestos (which may include but shall not be limited to the resequencing of the Works to accommodate any such activities); and

- (c) shall only be entitled to an extension of time to the Completion Date and/or loss and expense where:
- (i) the Contractor did not receive prior written notice from or on behalf of the Employer advising it of the likely presence of Asbestos at or around the relevant area of the Site;
 - (ii) the Contractor has fulfilled its obligations under clause A3.3(a) and clause A3.3(b); and
 - (iii) the Employer determines (acting reasonably) that the presence of such Asbestos (including any further surveys, inspections and/or any remedial works undertaken by or on behalf of the Employer in respect of the same) will have a materially adverse impact upon the ability of the Contractor to complete the Works by the relevant Completion Date (whether by reference to any programme submitted by the Contractor and forming part of the Contract Documents or otherwise).

A4. Not used.

A5. Approvals

- A5.1 No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of the Employer shall diminish any duty or liability hereunder of the Contractor.
- A5.2 Whenever in these Additional Conditions there is a reference to any approval by the Employer, such approval shall not be withheld or delayed without reasonable cause.

A6. Set-off

- A6.1 Nothing contained in this Contract (other than as to giving notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.
- A6.2 If the Contractor fails to comply with any requirement of Section 6 or if the Contractor becomes Insolvent so that its covenant is impaired, then without prejudice to any other remedy it may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection.

A7. Health & Safety

The Contractor in pursuance of its obligations under this Contract shall comply at all times with the provisions of the Health & Safety at Work etc Act 1974 ("the **HS Act**") and in particular the Construction (Design and Management) Regulations 2015 and any amendments thereto (the "**CDM Regulations**"), and insofar as they touch upon or concern its obligations under this Contract (but without prejudice to the generality of the foregoing):

- A7.1 where the Contractor is also the "principal contractor" under the CDM Regulations, the Contractor shall comply with the obligations of the "principal contractor" under the CDM Regulations;
- A7.2 where the Contractor is also a "principal designer" as defined under the CDM Regulations, the Contractor shall comply with the obligations of a "principal designer" under the CDM Regulations;
- A7.3 the Contractor shall co-operate fully with the "principal contractor" and the "principal designer" (if it is not either or both of those people) under the CDM Regulations;

- A7.4 the Contractor shall ensure that it allocates adequate resources to enable it to comply with its obligations in this Contract, the CDM Regulations; and
- A7.5 the Contractor shall co-operate with all other persons involved in the Works as "designers" to consider the prevention of risks and protection of persons who may be exposed to risks,
- and the Contractor shall not by an act or omission do anything that would cause the Employer to breach or be prosecuted under the HS Act, and/or the CDM Regulations.
- A8. **Severance**
- A8.1 If any term, condition or provision of this Contract shall be found by any court or body or authority of competent jurisdiction to be invalid, unlawful or unenforceable, such term, condition or provision shall be severed from the remainder of this Contract which shall remain in full force and effect to the extent permitted by law.
- A8.2 If any provision of this Contract is found to be invalid, unlawful or unenforceable, but would be valid, lawful or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- A9. **Confidentiality**
- The Contractor must at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure of, any provision of this Contract or any information relating to any provision or subject matter of the Works or the site, or any information directly or indirectly obtained from another party under or in connection with the Works or the site, except to the extent:
- A9.1 required by law;
- A9.2 that the parties to this Contract otherwise agree in writing;
- A9.3 necessary to carry out its duties in relation to the Works, or in order to make full frank and proper disclosure to its insurers or intended insurers, or to obtain legal or accounting advice.
- A10. **Early Warning**
- A10.1 Without in any way detracting from or affecting the particular notice requirements of this Contract, the Contractor will promptly warn the Employer in writing of any matter or concern of which he becomes aware which is likely to affect the out-turn cost or programme or the quality or performance of the Works.
- A11. **Works not forming part of the Contract**
- A11.1 The Contractor shall permit the execution of work not forming part of this Contract by any persons (including, but not limited to, any Mortgagee and/or Purchaser and/or Tenant) authorised or engaged by the Employer to carry out work on those parts of the site in the Contractor's possession and the Employer and/or any such persons may at any time enter those parts of the site and any part of the Works for the purposes of executing any work or installing any goods, equipment or other articles.
- A11.2 The Contractor shall ensure proper co-ordination of its works with those of any persons authorised or engaged pursuant to clause A11.1 by the Employer. The Contractor shall use all reasonable endeavours not to interfere with or impede the progress of any works being carried out by or on behalf of any persons authorised or engaged by the Employer and shall observe all reasonable requirements of any such persons in relation to the carrying out of such works.
- A11.3 The Employer shall use reasonable endeavours to procure the co-ordination of works being carried out by any persons authorised or engaged by the Employer pursuant to clause A11.1. The Employer shall use reasonable endeavours to procure that such persons do not interfere with or

impede the progress of the Works of any part and shall observe all reasonable requirements of the Contractor in relation to the carrying out of such works.

A11.4 Every person referred to in clause A11.1 shall for the purposes of Clause 6.4 be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor of the Contractor.

A11.5 The execution of the work referred to in clause A11.1 shall not in any way be deemed to be or treated as taking possession of part or parts of the Works (or any Section) by the Employer and the provisions of clauses 2.25 to 2.29 (inclusive) shall not apply to the execution of such work.

A12. **Co-operation**

A12.1 The Contractor shall in particular be responsible to co-ordinate, communicate with and integrate the work of any contractors or consultants directly engaged by the Employer in providing works or services (including design services) at or in connection with the site or in connection with or related to the Works ("**Direct Contractors**") into or with the Works in a manner which reasonably permits those Direct Contractors to carry out the work or services agreed between those Direct Contractors and the Employer to be provided by the Direct Contractors, provided that the Employer has notified the Contractor of the cost and scope of the said works or services or included such information in any of the Contract Documents. The Contractor hereby acknowledges and accepts that part of the Contract Sum is payable to the Contractor in consideration of his assumption of this risk.

A13. **Anti-Bribery**

A13.1 The Contractor shall discharge all of its obligations under this Contract and shall otherwise conduct all of its activities relating to this Contract in accordance with all applicable laws and regulations including, but not limited to, the Bribery Act 2010 (as may be amended, re-enacted, consolidated or replaced from time to time).

A13.2 Without prejudice to the generality of clause A13.1 the Contractor shall not (whether by act or omission) commit any breach of the Bribery Act 2010 in connection with its activities relating to this Contract nor request that the Employer (whether by act or omission) commit any breach of the Bribery Act 2010 (including, but not limited to, the payment of facilitation payments in order to secure customs clearance for deliveries).

A13.3 Any breach by the Contractor of clause A13.2 shall constitute a material breach by the Contractor of this Contract which is not capable of remedy and in such circumstances, the Employer shall be entitled at its discretion (subject to clause A13.3) to immediately terminate this Contract (together with any or all other agreements from time to time in force between the Employer and the Contractor) by service of written notice on the Contractor.

A13.4 When exercising any right of termination available under clause A13.3, the Employer shall act in a reasonable and proportionate manner having regard to matters such as the gravity of the breach in question; the identity of the person responsible for that breach; and whether in the circumstances, action other than termination of this Contract would be appropriate.

A13.5 The Contractor acknowledges that it has been provided with a copy of the Anti-Bribery and Corruption Code of Conduct of the Employer and warrants that it shall at all times comply with that Code of Conduct (as may be amended, varied or replaced from time to time by written notice from the Employer).

A13.6 The Contractor shall maintain full, accurate and up to date records as necessary to demonstrate its compliance with the requirements of the Bribery Act 2010 and shall make copies of such records available to the Employer on request.

A14. **Computer Systems, Data Protection Obligations, Freedom of Information, Employer Property, Storage and Maintenance of Records**

A14.1 The Contractor shall comply with the provisions of Appendix 5.

A15. **Interpretation**

- A15.1 In the case of any inconsistency between these Additional Conditions and any other term of this Contract the Additional Conditions shall prevail. In the case of any inconsistency between the Conditions and any other term of this Contract (except these Additional Conditions) the Conditions shall prevail.
- A15.2 Any reference in A1 to A15 of these Additional Conditions to a Schedule or Appendix is a reference to such Schedule or Appendix to these Additional Conditions.

APPENDIX 1
(OF THE SCHEDULE OF AMENDMENTS)
CONTRACTOR'S WARRANTY

DATED _____ 20

[CONTRACTOR] (1)

and

[BENEFICIARY] (2)

DEED OF WARRANTY

FROM CONTRACTOR

IN RELATION TO [] WORKS
AT []

Contract, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be used by or on behalf of it.

3 INTELLECTUAL PROPERTY

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Contractor but the Contractor hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of them an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor's obligations or termination of its employment under the Building Contract or any dispute under the Building Contract) to use and reproduce all Documents for any purpose whatsoever connected with the Works (including but without limitation the execution, completion, maintenance, sale, letting, advertisement, modification, extension, reinstatement and repair of the Works). Such licence will carry the right to grant sub-licences and will be transferrable to third parties.
- 3.2 The Contractor will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Contractor authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Contractor warrants that the Documents (save to the extent that duly authorised sub-contractors or consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person. The Contractor further warrants that where duly authorised sub-contractors and consultants have been used or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 3.1.
- 3.4 The Contractor agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Contractor now waives and agrees to waive and not to assert (and agrees to procure that any sub-contractors and consultants do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.
- 3.6 For the purposes of this clause 3, "Documents" means all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever and designs contained in them (and any works executed from them) provided by or on behalf of the Contractor in the course of performing its obligations under the Building Contract.

4 INSURANCE

- 4.1 Without prejudice to the Contractor's obligations under this Deed or otherwise at law, the Contractor undertakes and warrants that it will forthwith procure and maintain at its own cost professional indemnity insurance for a sum not less than £2,000,000 (two million pounds) in respect of each and every claim to cover the Contractor's obligations relating to the Building Contract and this Deed, the insurance to be with a reputable insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent contractors with good claims records and who are of similar size and experience as the Contractor, to be maintained for a period of six (6) years from the practical completion certificate or statement (or equivalent under the Building Contract) or abandonment of the Building Contract, and for so long as cover remains available on commercial rates and terms to competent contractors with good claims records and who are of a similar size and experience as the Contractor.

- 4.2 The Contractor shall produce to the Beneficiary on demand reasonably satisfactory evidence that the insurance required is in force, and in any event notify the Beneficiary as soon as reasonably practicable upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance and discuss with the Beneficiary the means of best protecting the position of the Beneficiary in the absence of such insurance.
- 4.3 The Contractor shall in respect of a claim by or on account of the Beneficiary hold any such money received from such insurance (except for the Contractor's legal costs in respect of that particular claim) on trust for the Beneficiary, and shall not make any deduction from those monies without first obtaining the Beneficiary's consent in writing.]

5 ASSIGNMENT

- 5.1 The benefit of this Deed or any part or interest under it may, without the consent of the Contractor, be assigned by the Beneficiary on no more than two occasions. Any assignment to a funder by way of a charge and re-assignment on redemption shall not count towards the permitted assignments under this clause.
- 5.2 The Contractor cannot assign this Deed or any part or any benefit or interest under it.
- 5.3 The Contractor will not contend that any assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

6 GENERAL

- 6.1 The Contractor shall, in relation to this Deed, have no greater liability to the Beneficiary than if the Beneficiary were named as a co-employer under the Building Contract, but for which purposes any counterclaim or set-off by the Contractor shall be disregarded.
- 6.2 No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of 12 years from the date of practical completion (or equivalent) of the Works (as certified under the Building Contract).

7 SEPARATE OBLIGATIONS

- 7.1 This Deed shall have effect notwithstanding any dispute, including as to payment of monies, or the failure (howsoever arising) of any other person to enter into a similar Deed with the Employer and/or Beneficiary.
- 7.2 No approval or inspection of documents prepared by the Contractor in relation to the Works and no approval inspection or testing of any of the Works or any attendance at site meetings by or on behalf of the Beneficiary or any other party, shall wholly or partly relieve the Contractor from its obligations under this Deed.

8 NOTICE

Any notice given hereunder shall be made in writing and shall be sent by pre-paid first class post, registered post, recorded delivery or delivered by hand addressed to the Contractor or the Beneficiary (as the case may be) at the address or place of business referred to herein or such other address or place of business last notified in writing by the Contractor or the Beneficiary (as the case may) to the other.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Beneficiary and the Contractor do not intend to confer, and nothing in this Deed shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Deed.

10 GOVERNING LAW AND JURISDICTION

This Deed is governed by English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

11 INTERPRETATION

11.1 In this Deed:

- (a) Reference to "Beneficiary" and "Employer" includes their successors in title and assigns.
- (b) Headings are for reference only and are not to be used for the interpretation of this Deed.
- (c) Nothing shall give rise to any liability by the Beneficiary to the Contractor.
- (d) Reference to "a person" includes any company, individual, firm, limited liability partnership, corporation, board, partnership, authority or other body.
- (e) If the Contractor is at any time more than one person any reference to the Contractor shall include each such person (and where the Contractor is a partnership each and all its partners) and any covenants and other obligations expressed or implied shall be deemed to be joint and several covenants and obligations of each such person (and in the case of a partnership joint and several covenants and obligations of each and all its partners).
- (f) Words importing one gender shall include any other gender and words importing the singular include the plural and vice versa.

IN WITNESS whereof the parties have executed this document as a Deed on the date shown on the first page.

[APPROPRIATE EXECUTION BLOCKS TO BE INSERTED INTO EACH WARRANTY]

APPENDIX 2
(OF THE SCHEDULE OF AMENDMENTS)
SUB-CONTRACTOR WARRANTY

DATED _____ 20

[SUB-CONTRACTOR] (1)

and

THE HOMES & COMMUNITIES AGENCY (2)

DEED OF WARRANTY

FROM SUB-CONTRACTOR

IN RELATION TO [] WORKS
AT []

THIS DEED is made and delivered the day of 20

BETWEEN:

- (1) **[The Sub-contractor]** [of] [(Company Number []) [whose registered office is at []]] ("**Sub-Contractor**")
- (2) **The Homes & Communities Agency** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH ("**Beneficiary**")

INTRODUCTION

- A. The Beneficiary has entered or may enter into a building contract ("**Building Contract**") with [] (Company Number []) whose registered office is at [] ("**Contractor**") in relation to [] works ("**Works**") at [].
- B. By a contract ("**Sub-contract**" which definition includes any variations to the contract which from time to time may be agreed between Contractor and Sub-contractor) dated [] the Contractor has appointed the Sub-contractor to carry out [].
- C. The Sub-contractor has agreed to enter into this Deed with the Beneficiary.

THE PARTIES AGREE AS FOLLOWS:

1 WARRANTIES ETC

- 1.1 The Sub-contractor undertakes, represents and warrants to the Beneficiary that it has exercised and shall continue to exercise in carrying out its obligations under the Sub-contract all the reasonable skill, care and diligence to be expected of a properly qualified and competent contractor providing the work and services to be performed under the Sub-contract, and who is experienced in carrying out such work and services for works of a similar size, scope and complexity to the Works.
- 1.2 Without prejudice to clause 1.1, the Sub-contractor undertakes, represents and warrants to the Beneficiary that:
 - (a) it has duly performed and will hereafter duly perform its obligations under and pursuant to the terms of the Sub-contract, that it has not and will not by an act or omission cause the Contractor to breach the Building Contract, and that it has carried out and will continue to carry out that part of the Works as are the subject of the Sub-contract in a good and workmanlike manner using good quality and suitable materials, and so as to meet any performance specifications or other requirements of the Sub-contract; and
 - (b) it owes to the Beneficiary a duty of care in the performance of all the obligations and duties which the Sub-contractor has agreed to carry out under the Sub-contract.

2 MATERIALS NOT TO BE USED

- 2.1 The Sub-contractor undertakes, represents and warrants to the Beneficiary that to the extent that it is obliged to select or approve substances or materials for use in the Works:
 - (a) it shall act in accordance with the guidance contained in the publication, "Good Practice in the Selection of Construction Materials" (2011, published by the British Council for Offices); and
 - (b) that no other substances or materials generally known to be deleterious at the time of use and no other materials or substances which are prohibited by the Building Contract or the Sub-contract, or which do not comply with any applicable British

Standard or European Standard or any applicable Code of Practice, shall be used by or on behalf of it.

3 INTELLECTUAL PROPERTY

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Sub-contractor but the Sub-contractor hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of them an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Sub-contractor's obligations or termination of its employment under the Sub-contract or any dispute under the Sub-contract) to use and reproduce all Documents for any purpose whatsoever connected with the Works (including but without limitation the execution, completion, maintenance, sale, letting, advertisement, modification, extension, reinstatement and repair of the Works). Such licence will carry the right to grant sub-licences and will be transferrable to third parties.
- 3.2 The Sub-contractor will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Sub-contractor authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Sub-contractor warrants that the Documents are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person.
- 3.4 The Sub-contractor agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Sub-contractor now waives and agrees to waive and not to assert all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.
- 3.6 For the purposes of this clause 3, "Documents" means all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever and designs contained in them (and any works executed from them) provided by or on behalf of the Sub-contractor in the course of performing its obligations under the Sub-contract.

4 INSURANCE

- 4.1 Without prejudice to the Sub-contractor's obligations under this Deed or otherwise at law, the Sub-contractor undertakes and warrants that it will forthwith procure and maintain at its own cost professional indemnity insurance for a sum not less than £[] ([]) in respect of each and every claim to cover the Sub-contractor's obligations relating to the Sub-contract and this Deed, the insurance to be with a reputable insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent contractors with good claims records and who are of similar size and experience as the Sub-contractor, to be maintained for a period of six (6) years from the practical completion certificate or statement (or equivalent under the Sub-contract), and for so long as cover remains available on commercial rates and terms to competent contractors with good claims records and who are of a similar size and experience as the Sub-contractor.
- 4.2 The Sub-contractor shall produce to the Beneficiary on demand reasonably satisfactory evidence that the insurance required is in force, and in any event notify the Beneficiary as soon as reasonably practicable upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance and discuss with the Beneficiary the means of best protecting the position of the Beneficiary in the absence of such insurance.

- 4.3 The Sub-contractor shall in respect of a claim by or on account of the Beneficiary hold any such money received from such insurance (except for the Sub-contractor's legal costs in respect of that particular claim) on trust for the Beneficiary, and shall not make any deduction from those monies without first obtaining the Beneficiary's consent in writing.

5 ASSIGNMENT

- 5.1 This Deed or any part or any benefit or interest under it may, without the consent of the Sub-contractor, be assigned by the Beneficiary on no more than two occasions. Any assignment to a funder by way of a charge and re-assignment on redemption shall not count towards the permitted assignments under this clause.
- 5.2 The Sub-contractor cannot assign this Deed or any part or any benefit or interest under it.
- 5.3 The Sub-contractor will not contend that any assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

6 GENERAL

- 6.1 The Sub-contractor shall, in relation to this Deed, have no greater liability to the Beneficiary than if the Beneficiary were named as a co-employer under the Sub-contract, but for which purposes any counterclaim or set-off by the Sub-contractor shall be disregarded.
- 6.2 No action or proceedings for any breach of this Deed shall be commenced against the Sub-contractor after the expiry of 12 years from the date of practical completion (or equivalent) of the Works (as certified under the Building Contract).

7 SEPARATE OBLIGATIONS

- 7.1 This Deed shall have effect notwithstanding any dispute, including as to payment of monies, or the failure (howsoever arising) of any other person to enter into a similar deed with the Beneficiary and/or the employer and/or the Contractor.
- 7.2 No approval or inspection of documents prepared by the Sub-contractor in relation to the Works and no approval inspection or testing of any of the Works or any attendance at site meetings by or on behalf of the Beneficiary or any other party, shall wholly or partly relieve the Sub-contractor from its obligations under this Deed.

8 NOTICE

Any notice given hereunder shall be made in writing and shall be sent by pre-paid first class post, registered post, recorded delivery or delivered by hand addressed to the Sub-contractor or the Beneficiary (as the case may be) at the address or place of business referred to herein or such other address or place of business last notified in writing by the Sub-contractor or the Beneficiary (as the case may be) to the other.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Beneficiary and the Sub-Contractor do not intend to confer, and nothing in this Deed shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Deed.

10 GOVERNING LAW AND JURISDICTION

This Deed is governed by English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

11 INTERPRETATION

11.1 In this Deed:

- (a) Reference to "Beneficiary" and "Contractor" includes their successors in title and assigns.
- (b) Headings are for reference only and are not to be used for the interpretation of this Deed.
- (c) Nothing shall give rise to any liability by the Beneficiary to the Sub-contractor.
- (d) The Sub-contractor shall be deemed, for all purposes, to have been provided with and be fully aware of the terms of the Building Contract.
- (e) Reference to "a person" includes any company, individual, firm, corporation, board, partnership, authority or other body.
- (f) If the Sub-contractor is at any time more than one person any reference to the Sub-contractor shall include each such person (and where the Sub-contractor is a partnership each and all its partners) and any covenants and other obligations expressed or implied shall be deemed to be joint and several covenants and obligations of each such person (and in the case of a partnership joint and several covenants and obligations of each and all its partners).
- (g) Words importing one gender shall include any other gender and words importing the singular include the plural and vice versa.

IN WITNESS whereof the parties have executed this document as a Deed on the date shown on the first page.

[APPROPRIATE EXECUTION BLOCKS TO BE INSERTED INTO EACH WARRANTY]

APPENDIX 3
(OF THE SCHEDULE OF AMENDMENTS)
CONSULTANT WARRANTY

DATED _____ 20

[CONSULTANT] (1)

THE HOMES & COMMUNITIES AGENCY (2)

DEED OF WARRANTY

FROM CONSULTANT

IN RELATION TO [] WORKS
AT []

Appointment, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be specified or approved by the Consultant for use in the Works.

3 INTELLECTUAL PROPERTY

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Consultant but the Consultant hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation of them an irrevocable royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant's obligations or termination of its employment under the Appointment or any dispute under the Appointment) to use and reproduce all Documents for any purpose whatsoever connected with the Works (including but without limitation the execution, completion, maintenance, sale, letting, advertisement, modification, extension, reinstatement and repair of the Works). Such licence will carry the right to grant sub-licences and will be transferrable to third parties.
- 3.2 The Consultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Consultant authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Consultant warrants that the Documents (save to the extent that duly authorised sub-consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person. The Consultant further warrants that where duly authorised sub-consultants have been used or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 3.1.
- 3.4 The Consultant agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Consultant now waives and agrees to waive and not to assert (and agrees to procure that any sub-consultants do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.
- 3.6 For the purposes of this clause 3, "Documents" means all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever and designs contained in them (and any works executed from them) provided by or on behalf of the Consultant in the course of performing its obligations under the Appointment.

4 INSURANCE

- 4.1 Without prejudice to the Consultant's obligations under this Deed or otherwise at law, the Consultant undertakes and warrants that to the extent it has not already done so it will forthwith procure at its own cost professional indemnity insurance for a sum not less than £[] ([]) in respect of each and every claim to cover the Consultant 's obligations arising from or relating to the Appointment and this Deed.
- 4.2 The insurance required hereunder is to be with a reputable and authorised insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent consultants of the same discipline as the Consultant with a good claims record.
- 4.3 The Consultant further undertakes and warrants that the insurance cover required hereunder will be maintained from the date of this Deed for a period of six (6) years from the practical completion certificate or statement (or equivalent) under the Building Contract, or if there is no Building Contract at the date of completion of the Services, then 12 years from the date of completion or abandonment of the Services, and for so long as cover remains available in the market at commercially

reasonable rates to competent consultants with a good claims record of the same profession as the Consultant.

- 4.4 The Consultant shall produce to the Beneficiary, whenever requested and without delay such documentary evidence as the Beneficiary may reasonably require and such other satisfactory evidence that the insurance required is in force, and in any event notify the Beneficiary forthwith upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance and discuss with the Beneficiary the means of best protecting the position of the Beneficiary in the absence of such insurance. The Consultant shall in respect of a claim by or on account of the Beneficiary hold any money received from such insurance (except for the Consultant's legal costs in respect of that particular claim) on trust for the Beneficiary, and shall not make any deduction from those monies without first obtaining the Beneficiary's consent in writing.

5 ASSIGNMENT

- 5.1 This Deed or any part or any benefit or interest under it may, without the consent of the Consultant, be assigned by the Beneficiary on no more than two occasions. Any assignment to a funder by way of a charge and re-assignment on redemption shall not count towards the permitted assignments under this clause.
- 5.2 The Consultant cannot assign this Deed or any part or any benefit or interest under it.
- 5.3 The Consultant will not contend that any assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

6 GENERAL

- 6.1 The Consultant shall in relation to this Deed, have no greater liability to the Beneficiary than if the Beneficiary were named as a co-employer under the Appointment, but for which purposes any counterclaim or set-off by the Consultant shall be disregarded.
- 6.2 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion (or equivalent) of the Works (as certified under the Building Contract) or if there is no Building Contract at the date of completion of the Services, then 12 years from the date of completion or abandonment of the Services.

7 SEPARATE OBLIGATIONS

- 7.1 This Deed shall have effect notwithstanding any dispute, including as to fees, or the failure (howsoever arising) of any other person to enter into a similar Deed with the Beneficiary and/or the Employer and/or the Contractor.
- 7.2 No approval or inspection of the documents prepared by the Consultant in relation to design of the Works and no approval inspection or testing of any of the Works or any attendance at site meetings by or on behalf of the Beneficiary or any other party shall wholly or partly relieve the Consultant from its obligations under this Deed.

8 NOTICE

Any notice given hereunder shall be made in writing and shall be sent by pre-paid first class post, registered post, recorded delivery or delivered by hand addressed to the Beneficiary or the Consultant (as the case may be) at the address or place of business referred to herein or such other address or place of business last notified in writing by the Beneficiary or the Consultant (as the case may be) to the other.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Beneficiary and the Consultant do not intend to confer, and nothing in this Deed shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Deed.

10 GOVERNING LAW and JURISDICTION

This Deed is governed by English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

11 INTERPRETATION

11.1 In this Deed:

- (a) Reference to "Beneficiary", "Employer" and "Contractor" includes their successors in title and assigns.
- (b) Headings are for reference only and are not to be used for the interpretation of this Deed.
- (c) Nothing shall give rise to any liability by the Beneficiary to the Consultant.
- (d) Reference to a "person" includes any company, individual, firm, corporation, board, partnership, authority or other body.
- (e) If the Consultant is at any time more than one person any reference to the Consultant shall include each such person (and where the Consultant is a partnership each and all its partners) and any covenants and other obligations expressed or implied shall be deemed to be joint and several covenants and obligations of each such person (and in the case of a partnership joint and several covenants and obligations of each and all its partners).
- (f) Words importing one gender shall include any other gender and words importing the singular shall include the plural and vice versa.

IN WITNESS whereof the parties have executed this document as a Deed on the date shown on the first page.

[APPROPRIATE EXECUTION BLOCKS TO BE INSERTED INTO EACH WARRANTY]

APPENDIX 4

NOT USED

APPENDIX 5

COMPUTER SYSTEMS, DATA PROTECTION OBLIGATIONS, FREEDOM OF INFORMATION, EMPLOYER PROPERTY, STORAGE AND MAINTENANCE OF RECORDS

(Additional Condition A14)

1 DEFINITIONS

For the purposes of this Appendix 5, the following words and expressions have the following meanings unless the context otherwise requires:

- (a) **"Contractor Personnel"** means all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractors;
- (b) **"DPA"** means the Data Protection Act 1998;
- (c) **"EIR"** means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- (d) **"EIR Exception"** means any applicable exemption to EIR;
- (e) **"Employer Data"** means:
 - (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Contractor by or on behalf of the Employer; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
 - (b) any Personal Data for which the Employer is the Data Controller;
- (f) **"Employer Property"** means all property of the Employer including without limitation, all Records, keys, security passes, credit cards, equipment, documents, papers, magnetic discs, tapes or other software storage media, film, videos and photographs which belong to the Employer or relate to its business or affairs issued to or otherwise in the Contractor's custody;
- (g) **"Exempted Information"** means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.
- (h) **"FOIA"** means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- (i) **"FOIA Exemption"** means any applicable exemption to FOIA;
- (j) **"Information"** means in relation to:
 - (i) FOIA, the meaning given under section 84 of the FOIA and which is held by the Employer at the time of receipt of an RFI; or
 - (ii) EIR, has the meaning given under the definition of "environmental information" in section 2 of EIR and which is held by the Employer at the time of receipt of an RFI;

- (k) **"Law"** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- (l) **"Process/Processed/Processing"** has the meaning ascribed to the term in Section 1, Part 1 of the DPA;
- (m) **"Records"** means all deeds, records, plans, drawings, specifications, reports, calculations and technical documentation together with related correspondence, files, electronically stored data and other papers relating to the Employer and its activities;
- (n) **"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Employer and "Regulatory Body" shall be construed accordingly;
- (o) **"Request for Information/RFI"** shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Site, this Contract, or any activities or business of the Employer.

2 COMPUTER SYSTEMS

- 2.1 The Contractor warrants to the Employer that all computer systems to be used by the Contractor in and about the performance of its obligations under this Contract will protect data being or to be transferred between the parties, that the Contractor will use industry recognised and regularly updated virus checking software, will use all reasonable endeavours not to transfer virus infected data, has a responsible firewall policy and such is communicated regularly to the Employer.
- 2.2 The Contractor warrants to the Employer that all computer systems which will be used by the Contractor in and about the performance of its obligations under this Contract are, and shall remain for the duration of the Contract, compatible with the Employer's systems to such a degree as reasonably required to fully and effectively transfer data and comply with recognised industry standards in this regard.
- 2.3 The Contractor shall ensure, so far as it is reasonably practicable to do so, that it adheres to the Employer's IT and communication procedures and IT policy statement as issued from time to time and notified by the Employer to the Contractor.

3 DATA PROTECTION OBLIGATIONS

- 3.1 For the purposes of this Appendix "Personal Data", "Data Processor", "Data Subject", "Data Controller" and "Process" shall have the meanings ascribed to them in the DPA as amended or re-enacted from time to time.
- 3.2 The Contractor warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Contract.
- 3.3 The Contractor undertakes that to the extent that the Contractor and/or any of its employees (or agents or sub-contractors approved by the Employer) receives, has access to and/or is required to process Personal Data on behalf of the Employer (the **"Employer's Personal Data"**) for the purpose of providing the Works, it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Contractor agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:
 - (a) the Contractor shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to

the Employer's Personal Data and any person it authorises to have access to any the Employer's Personal Data will respect and maintain the confidentiality and security of the Employer's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Employer, when providing the Works on the Employer's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

- (b) the Contractor shall only process Personal Data for and on behalf of the Employer for the purpose of performing the Works in accordance with this Contract, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the Employer to ensure compliance with the DPA;
- (c) the Contractor shall allow the Employer to audit the Contractor's compliance with the requirements of this Clause 3 on reasonable notice and/or, at the Employer's request, provide the Employer with evidence of the Contractor's compliance with the obligations within this Clause 3.

3.4 The Contractor undertakes not to disclose or transfer any of the Employer's Personal Data to any third party without the prior written consent of the Employer save that without prejudice to Clause 3.3 the Contractor shall be entitled to disclose the Employer's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works, or to the extent required under a court order.

3.5 The Contractor shall:

- (a) take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- (b) ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 3;
- (c) ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer;
- (d) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Employer); and
- (e) not Process Personal Data outside the European Economic Area without the prior written consent of the Employer and, where the Employer consents to a transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Employer.

3.6 The Contractor agrees to use all reasonable efforts to assist the Employer to comply with such obligations as are imposed on the Employer by the DPA. For the avoidance of doubt, this includes the obligation to:

- (a) provide to the Employer such access as may be reasonably required from time to time to all Personal Data stored or processed in the provision of the Works under this Contract in order to enable the Employer to meet its obligations to respond to access requests from Data Subjects under the DPA;

- (b) provide the Employer with reasonable assistance in complying with any request for information served on the Employer under Section 7 of the DPA;
- (c) notify the Employer (within five Working Days) about the receipt of any such request received by the Contractor under Section 7 of the DPA or complaint or request relating to the Employer's obligations under the DPA and not disclose or release any information (including the Employer's Personal Data) in response to such a request or complaint without first consulting with the Employer, where the information sought relates to the Employer, its employees, agents, approved sub-contractors and/or its business operations;
- (d) provide the Employer with full co-operation and assistance in relation to any complaint of request made, including by:
 - (i) providing the Employer with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Employer's instructions;
 - (iii) providing the Employer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Employer); and
 - (iv) providing the Employer with any information requested by the Employer.

3.7 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Employer to breach any of its applicable obligations under the DPA.

3.8 The Contractor shall indemnify the Employer against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Employer as a result of the Contractor's destruction of and/or damage to any of the Employer's Personal Data processed by the Contractor, its employees, agents or sub-contractors, or any breach of or other failure to comply with the obligations in the DPA and/or this Clause 3 by the Contractor, its employees, agents or sub-contractors.

3.9 The Contractor shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Employer concerning the Contractor's Processing of the Employer's Personal Data and will deal with all enquiries from the Employer relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Employer's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

3.10 The Contractor undertakes to include obligations no less onerous than those set out in this Clause 3, in all contractual arrangements with agents engaged by the Contractor to provide the Works to the Employer.

4 FREEDOM OF INFORMATION

4.1 The Contractor acknowledges that the Employer is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Employer may be under an obligation to provide Information subject to a Request for Information.

4.2 The Employer shall be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; or
- (b) any Information is to be disclosed in response to a Request for Information.

and in no event shall the Contractor respond directly to a Request for Information to which the Employer is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Employer.

- 4.3 Subject to clause 4.4 below, the Contractor acknowledges that the Employer may be obliged under FOIA or EIR to disclose Information:
- (a) without consulting the Contractor; or
 - (b) following consultation with the Contractor and having taken (or not taken, as the case may be) its views into account.
- 4.4 Without in any way limiting Clauses 4.2 and 4.3, in the event that the Employer receives a Request for Information, the Employer will, where appropriate, as soon as reasonably practicable notify the Contractor.
- 4.5 The Contractor will assist and co-operate with the Employer as requested by the Employer to enable the Employer to comply with its obligations to disclose Information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:
- (a) transfer any Request for Information received by the Contractor to the Employer as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - (b) provide all such assistance as may be required from time to time by the Employer to enable the Employer to comply with its obligations to disclose Information; and
 - (c) provide the Employer with any Information already in its possession or power in such form that the Employer requires within five Working Days (or such other period as the Employer may specify) of the Employer requesting that Information.
- 4.6 Nothing in this Contract will prevent the Employer from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

5 EMPLOYER PROPERTY

- 5.1 Neither the Contractor, nor any other person, shall have a lien or other rights over any Employer Property, and the Contractor shall take all such steps as may be reasonably necessary to ensure that the Employer's title in the Employer Property and the existence of any such lien or other right, are brought to the notice of any other person dealing with the Employer Property.
- 5.2 Upon the Employer's written request and in any event upon termination of this Contract, the Contractor will immediately deliver up to the Employer, at the expense and risk of the Contractor, all Employer Property, and the Contractor will not, without the prior written consent of the Employer, retain any copies thereof.

6 STORAGE AND MAINTENANCE OF THE RECORDS

- 6.1 The Records are and shall remain Employer Property. The Contractor shall have no lien or other rights in respect of the Records.
- 6.2 The Contractor shall request such Records as it requires for the purposes of carrying out work and/or services in accordance with this Contract and will hold them to the order of the Employer and shall return the Records to the Employer on demand at any time.
- 6.3 The Contractor shall keep the Records in a safe and secure place at the Contractor's premises.

- 6.4 The Contractor shall maintain and up-date the Records to ensure that the Records properly reflect at any given time the current state of Programmes or projects on which the Contractor is involved.
- 6.5 The Contractor shall, if required, allow the Employer or any person acting on its authority access, at any time, to the Contractor's premises for the purpose of inspecting or removing the Records. The Contractor shall provide the Employer with such copies of the Records as may reasonably be required.
- 6.6 The Contractor shall return the Records to the Employer on demand at any time.

7 TRANSPARENCY

- 7.1 Except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Contract, the Contractor hereby consents for the Employer to publish the Contract to the general public in its entirety (but with any information, which is exempt from disclosure in accordance with the provisions of the FOIA, redacted), including from time to time agreed changes to the Contract.
- 7.2 The Employer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA either:
 - (a) following consultation with the Contractor and having taken (or not taken, as the case may be) its views into account; or
 - (b) without consulting the Contractor.
- 7.3 The Contractor shall assist and cooperate with the Employer to enable the Employer to publish this Contract.

This Contract 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 **HOMES & COMMUNITIES AGENCY** was hereunto affixed in the presence of:

Authorised signatory:

SIGNED as a **DEED** by **[CONTRACTOR]** acting by a director and its secretary or two directors:

Director:

Director / Secretary: