

DATED

2024

**(1) THE SECRETARY OF STATE FOR EDUCATION**

-and-

**(2) ISG CONSTRUCTION LIMITED**

**CONTRACT**

relating to the design and construction of  
re-fit and refurbishment works to St Paul's Place, 125 Norfolk Street, Sheffield S1 2JF  
incorporating the conditions of the JCT Design  
and Build Contract 2016 Edition

## AGREEMENT

THIS CONTRACT is made on

2024

### BETWEEN:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the “**Employer**”); and
- (2) **ISG CONSTRUCTION LIMITED** (company number 00450103) whose registered office is situated at Aldgate House, 33 Aldgate High Street, London EC3N 1AG (the “**Contractor**”)

### RECITALS

Whereas:

- |         |   |
|---------|---|
| First   | the Employer wishes to have the design and construction of re-fit and refurbishment works and associated MEP works carried out at St Paul’s Place, 125 Norfolk Street, Sheffield S1 2JF (the “ <b>Works</b> ”) in accordance with the conditions of JCT Design and Build Contract 2016 including sections 1 to 9 and the Schedules annexed thereto subject to the additional clauses and further amendments set out in Appendix 1 to this Contract (hereinafter referred to as the “ <b>Conditions</b> ”) and this Agreement (including the Recitals, Articles and Contract Particulars) and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the “ <b>Employer’s Requirements</b> ”); |
| Second  | in response to and having examined the Employer’s Requirements the Contractor has supplied to the Employer: <ul style="list-style-type: none"><li>• documents showing and describing the Contractor’s proposals for the design and construction of the Works (the “<b>Contractor’s Proposals</b>”); and</li><li>• an analysis of the Contract Sum (the “<b>Contract Sum Analysis</b>”);</li></ul>   |
| Third   | the Contractor has examined the Employer’s Requirements and subject to the Conditions, is satisfied that the Contractor’s Proposals and the Contract Sum Analysis meet the Employer’s Requirements and has also agreed to accept full responsibility for any design contained in the Employer’s Requirements;   |
| Fourth  | for the purposes of the Construction Industry Scheme ( <b>CIS</b> ) under the Finance Act 2004 the status of the Employer as at the Base Date is that stated in the Contract Particulars;   |
| Fifth   | the division of the Works into Sections is shown in the Employer’s Requirements or in such other documents as are identified in the Contract Particulars;   |
| Sixth   | where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;  |
| Seventh | whether any of Supplemental Provisions 1 to 12 apply is stated in the Contract Particulars.   |

## ARTICLES


IT IS HEREBY AGREED as follows:

### 1. CONTRACTOR'S OBLIGATIONS

The Contractor shall carry out and complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents and agrees to accept responsibility for any design contained within the Employer's Requirements.

### 2. CONTRACT SUM

The Employer shall pay the Contractor at the times and in the manner specified

 "Contract Sum") or such other sum as shall become payable under this Contract.

### 3. EMPLOYER'S AGENT

For the purpose of this Contract the "Employer's Agent" is Lucas Whitworth of Mace Consult Limited or such other person as the Employer nominates in his place (which person may, for the avoidance of doubt, be an employee of the Employer). Save to the extent that the Employer may otherwise specify by written notice to the Contractor, (i) all notices, applications, requests or statements submitted by the Contractor to the Employer must at the same time also be submitted to the Employer's Agent; and (ii) the Employer's Agent shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and to otherwise act for the Employer under any of the Conditions.

### 4. EMPLOYER'S REQUIREMENTS AND CONTRACTOR'S PROPOSALS

The Employer's Requirements, the Contractor's Proposals, the Contract Sum Analysis and the BIM Protocol are those referred to in the Contract Particulars.

### 5. PRINCIPAL DESIGNER

The Principal Designer for the purpose of the CDM Regulations and the Building Regulations is the Contractor or such replacement as the Employer at any time appoints to fulfil that role and the person with responsibility for carrying out such role is Martin McGoldrick or such other person as the Employer shall approve.

### 6. PRINCIPAL CONTRACTOR

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

### 7. ADJUDICATION

Notwithstanding anything else contained in this Contract, if any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

## **8. LEGAL PROCEEDINGS**

Subject to a referral pursuant to Article 7 if any dispute or difference as to any matter or thing of whatsoever nature arising under this Contract or out of or in connection therewith shall arise between the Contractor and the Employer either during the progress of the Works or after the completion or abandonment of the Works or after the determination of the employment of the Contractor it shall be determined by legal proceedings and the English courts shall have jurisdiction over any such dispute or difference.

## **9. COLLATERAL WARRANTIES: CONTRACTOR**

**9.1** The Contractor shall execute as deeds collateral warranties in the form set out in Annex 1 to this Contract in favour of:

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

and shall deliver the same duly executed to the Employer:

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

**9.2** Should the collateral warranties from the Contractor not be delivered to the Employer by the date of this Contract or within 10 Business Days of a written request from the Employer (as relevant) then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant collateral warranties have been provided to the Employer.

**9.3** The Employer's right to withhold payment under Article 9.2 shall not apply once the Contractor satisfies his obligations under Article 9.

## **10. PRINCIPAL SUB-CONTRACTORS**

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

Mechanical and electrical services

Kitchen contractor

**10.2** Without prejudice to clause 3.4, each of the Principal Sub-Contractors shall be appointed by deed, and within 5 Business Days of the appointment of a Principal Sub-Contractor the Contractor shall supply to the Employer a complete certified copy of the sub-contract, appointment or contract (as relevant).

**10.3** The Contractor shall procure as deeds collateral warranties in the form of Annex 2 to this Contract in favour of:

10.3.1 the Employer;

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

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

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

Principal Sub-Contractor	Level of PI Insurance
Mechanical and electrical services	a minimum of ten million pounds (£10,000,000) any one claim
Kitchen Contractor	a minimum of five million pounds (£5,000,000) any one claim

provided that such insurance is generally available in the market to members of the relevant Principal Sub-Contractor's trade at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Principal Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

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

## **11. DESIGN CONSULTANTS**

**11.1** Within 15 Business Days of executing this Contract, the Contractor shall appoint the following consultants (or such other consultants as the Employer shall approve) for the purposes of the Works:

Architect;

Structural;

Mechanical, Electrical and Plumbing;

Acoustic Consultant; and

Fire Engineering Consultant;

(together the “**Design Consultants**”).

**11.2** The Design Consultants shall be appointed by deed in the terms of the respective draft appointments contained in Annex 3 to this Contract with such amendments as the Employer shall approve.

**11.3** Within 5 Business Days of the appointment of a Design Consultant the Contractor shall supply to the Employer a complete certified copy of the Design Consultant's deed of appointment.

**11.4** The Contractor shall not dismiss any of the Design Consultants or vary the terms of their appointment without the written approval of the Employer.

**11.5** If the employment of any Design Consultant is terminated or ceases its duties and/or obligations before the completion of the services allocated to him, the Contractor shall provide details of his proposed replacement to the Employer for his approval. Subject to the Employer's approval (which approval shall not be unreasonably withheld or delayed), the Contractor shall as soon as is reasonably practicable appoint such replacement consultant to complete those services. The foregoing provisions of this Article 11 shall apply to such replacement consultant.

**11.6** The Contractor shall procure as deeds collateral warranties in the form of Annex 4 to this Contract in favour of:

11.6.1 the Employer;

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

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

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

- 11.7** Should the collateral warranties from the Design Consultant, or appointment of the relevant Design Consultant not be delivered to the Employer by the date of this Contract or within 10 Business Days of a written request from the Employer (as relevant) then the Employer will be entitled to withhold all future payments to the Contractor in respect of that particular Design Consultant work until such time as the relevant collateral warranty or appointment has been delivered.
- 11.8** The Employer's right to withhold payment under Article 11.7 shall not apply once the Contractor satisfies his obligations under this Article 11.
- 11.9** The Contractor shall procure that each Design Consultant takes out and maintains until the expiry of twelve (12) years after the date of Practical Completion PI Insurance which covers at a minimum all of the Design Consultant's design and professional obligations under the relevant appointment (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) not less than the relevant limits of indemnity of the types and in amounts as set out in the table below:

<b>Design Consultant</b>	<b>Level of PI Insurance</b>
Architect	a minimum of ten million pounds (£10,000,000) any one claim
Structural	a minimum of ten million pounds (£10,000,000) in the aggregate plus unlimited round the clock reinstatements but in the aggregate in respect of asbestos, silica and fungi or microbes
Mechanical, Electrical and Plumbing	a minimum of ten million pounds (£10,000,000) in the aggregate plus unlimited round the clock reinstatements but in the aggregate in respect of asbestos, silica and fungi or microbes
Acoustic Consultant	a minimum of five million pounds (£5,000,000) any one claim
Fire Engineering Consultant	a minimum of five million pounds (£5,000,000) in the aggregate
Any other Design Consultant	a minimum of ten million pounds (£10,000,000) each and every claim

provided that such insurance is generally available in the market to members of the relevant consultant's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Design Consultant's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

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

**12. PARENT COMPANY GUARANTEE**

**12.1** The Contractor shall procure the execution as a deed and delivery to the Employer by his Parent, on or before the date of this Contract, a parent company guarantee in the form set out in Annex 6 to this Contract with such amendments as the Employer may approve. In the event of any change of ownership or control in the Contractor, the Contractor shall immediately provide a replacement parent company guarantee in the form set out in Annex 6 to this Contract with such amendments as the Employer may approve from the replacement parent company. Should the parent company guarantee not be delivered to the Employer in accordance with this Article 12 then the Employer shall be entitled to withhold all future payments to the Contractor until such time as the relevant parent company guarantee has been delivered. The Employer's right to withhold payment shall not apply once the Contractor satisfies his obligations under this Article 12.

**13. COMPLETION CERTIFICATE**

**13.1** The Contractor shall be responsible for obtaining a completion certificate under Regulation 17 of the Building Regulations 2010 in respect of the Works or any Section.

**13.2** The Employer shall not be required to give a statement to the effect that the Works or any Section has reached Practical Completion until the Contractor has complied with Article 13.1 in respect of the Works or such Section.

**14. EMPLOYER'S POLICIES**

Subject to the provisions of clause 2.17 the Contractor shall ensure the Works fully comply with all applicable Employer's Policies.

**15. AUDIT**

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



## **16. ENTIRE AGREEMENT**

**16.1** The terms and conditions of this Contract and the obligations, warranties and undertakings which it contains are deemed to apply to all the Works both before and after the date of this Contract and this Contract supersedes any previous, agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter between the Parties with regard to the same unless the Parties have expressly agreed to the contrary. For the avoidance of doubt the Contractor acknowledges that the terms and conditions of this Contract are deemed to apply to any Works undertaken under the Pre-Construction Services Agreement.

**16.2** The Contractor confirms that in entering into this Contract he has not relied upon any warranty, representation, agreement, statement or undertaking other than as are expressly set out in this Contract and that (in the absence of fraud) he will not have any claim, right or remedy whatsoever arising out of such warranty, representation, agreement, statement or undertaking including, without limitation, any claim for rescission or damages in respect of innocent or negligent misrepresentation.

**16.3** Notwithstanding any other provision of this Contract, the Contractor's obligations and/or liabilities under this Contract shall not be removed, reduced, qualified or limited by any enquiries, approvals, admissions, comments, consents, confirmations, sanctions, acknowledgement, advice, inspections, attendance at meetings or any failure in relation to the same by the Employer or his agents or representatives or persons authorised by the Employer to access the Sites including for the avoidance of doubt any comments and/or responses issued to the Contractor pursuant to clause 2.8, 2.8A and/or the Design Submission Procedure and/or any interim or final payments and/or any programme. Approval of drawings shall not constitute an acceptance of any changes and/or variations incorporated in any drawings, and only changes and/or variations specifically instructed or sanctioned by the Employer in accordance with clause 5 shall constitute a Change for the purposes of this Contract.

## **17. SCHEDULE OF AMENDMENTS**

The conditions of JCT Design and Build Contract (2016 edition) including sections 1 to 9 and the Schedules annexed thereto ("**DB 2016**") are intended to be and are hereby incorporated into and amended and supplemented by the Schedule of Amendments contained in Appendix 1 to this Contract and this Contract shall be read and construed accordingly.

## **18. COUNTERPARTS**

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

## CONTRACT PARTICULARS

Clause	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS.
Fifth Recital	Description of Sections (if any) <i>(if not shown or described in the Employer's Requirements state the reference numbers and dates or other identifiers of documents in which they are shown)</i>	<p>Section 1 - Site establishment, Hoist Installation and Basement refurbishment works to create a new Reflection Room and Wudu's.</p> <p>Section 2a - First Floor office refurbishment, including works in the Risers, Basement Plant Rooms, Roof Plant, Seventh Floor Plant Room (West AHU replacement) and commissioning.</p> <p>Section 2b - Second Floor office refurbishment, including commissioning.</p> <p>Section 3a - Third Floor office refurbishment, including works in the Seventh Floor Plant Room (East AHU replacement) and commissioning.</p> <p>Section 3b - Fourth Floor office refurbishment, including commissioning.</p> <p>Section 4 - Ground Floor and Mezzanine Floor refurbishment of a vacant unit to create a new Kitchen, Canteen &amp; WC's, including forming a new access from the main reception area and a new lift stopping point and commissioning.</p> <p>Section 5a - Fifth Floor office refurbishment, including commissioning.</p> <p>Section 5b - Sixth Floor office refurbishment, including commissioning.</p> <p>Section 5c - Seventh Floor office refurbishment, including the</p>

removal of redundant riser pipes & ducts and commissioning.

Section 6 - Decant welfare & make good to Bills, remove of Hoist, Scaffolding, Site Hoarding & make good to building façade and Commissioning Validation Period of MEP systems.

Sixth Recital	Framework Agreement	CCS RM6088 Lot 2.1: Construction Works and Associated Services – North England Crown Commercial Service Framework
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions <i>(Where neither entry against Supplemental Provisions 1 to 3 below is deleted, that Supplemental Provision does not apply.)</i>	
	Named Sub-Contractors	Supplemental Provision 1 does not apply
	Valuation of Changes - Contractor's estimates	Supplemental Provision 2 applies
	Loss and Expense - Contractor's estimates	Supplemental Provision 3 applies
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions <i>(Where neither entry against one of Supplemental Provisions 4 to 10 below is deleted, that Supplemental Provision applies.)</i>	
	Acceleration Quotation	Supplemental Provision 4 applies
	Collaborative working	Supplemental Provision 5 applies
	Health and safety	Supplemental Provision 6 applies
	Cost savings and value improvements	Supplemental Provision 7 applies
	Sustainable development and environmental considerations	Supplemental Provision 8 applies

	Performance Indicators and monitoring	Supplemental Provision 9 does not apply
	Notification and negotiation of disputes	Supplemental Provision 10 applies
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee: James Hughes (DfE Estates, Security and People Deputy Director)  Contractor's nominee: Paula Brown  or such replacement as each Party may notify to the other from time to time
	Transparency	Supplemental Provision 11 does not apply
	The Public Contracts Regulations 2015	Supplemental Provision 12 applies
Article 4	Employer's Requirements including the BIM Protocol ( <i>State reference numbers and dates or other identifiers of the relevant documents.</i> )	Comprise the following documents: see Annex 24
Article 4	Contractor's Proposals ( <i>State reference numbers and dates or other identifiers of the relevant documents.</i> )	Comprise the following documents: see Annex 24
Article 4	Contract Sum Analysis ( <i>State reference numbers and dates or other identifiers of the relevant documents.</i> )	The document identified as the Contract Sum Analysis: see Annex 24
1.1	Base Date	The date of this Contract
1.1	BIM Protocol (where applicable) ( <i>State title, edition, date or other identifiers of the relevant documents.</i> )	Is the Project's Information Protocol (including the Information Particulars within the Project's Information Protocol) and the following documents – DfE's Exchange Information Requirements, DfE's Detailed Exchange Information Requirements, Project's Information Standard and Project's Information Production Methods and Procedures

1.1	<p>Date for Completion of the Works <i>(Where completion by Sections does not apply)</i></p> <p>Sections: Dates for Completion of Sections</p>	<p>Section 1: 17/01/25</p> <p>Section 2a: 16/05/25</p> <p>Section 2b: 23/05/25</p> <p>Section 3a: 07/11/25</p> <p>Section 3b: 21/11/25</p> <p>Section 4: 30/01/26</p> <p>Section 5a: 15/05/26</p> <p>Section 5b: 29/05/26</p> <p>Section 5c: 19/06/26</p> <p>Section 6: 10/07/26</p>
1.7	<p>Addresses for service of notices etc. by the Parties <i>(If none is stated, the address in each case, unless and until otherwise agreed and subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)</i></p>	<p>Employer: James Hughes (DfE Estates, Security and People Deputy Director) 5<sup>th</sup> Floor, 1 Unity Square, Queensbridge Road, Nottingham NG2 2GD James.HUGHES@education.gov.uk</p> <p>Contractor: Jonathan Chadwick (Commercial Manager) Woodland House, Woodland Park, Bradford Road, Bradford, BD19 6BW jonathan.chadwick@isgltd.com</p>
2.3	<p>Date of Possession of the Sites <i>(where possession by Sections does not apply)</i></p> <p>Sections: Dates of Possession of Sections</p>	<p>Section 1: 07/10/2024</p> <p>Section 2a: 25/11/2024</p> <p>Section 2b: 02/12/2024</p> <p>Section 3a: 09/06/2025</p> <p>Section 3b: 23/06/2025</p>

		Section 4: 16/06/2025
		Section 5a: 01/12/2025
		Section 5b: 15/12/2025
		Section 5c: 09/02/2026
		Section 6: 08/06/2026
2.4	Deferment of possession of the Sites (where possession by Sections does not apply)	Clause 2.4 applies/does not apply.
	Sections: deferment of possession of sections	Maximum period of deferment (if less than 6 weeks) is  Section 1 – 6 weeks Section 2a – 6 weeks Section 2b – 6 weeks Section 3a – 6 weeks Section 3b – 6 weeks Section 4 – 6 weeks Section 5a – 6 weeks Section 5b – 6 weeks Section 5c – 6 weeks Section 6 – 6 weeks
2.17.4	Limit of Contractor's liability	
2.29.2	Liquidated damages (where completion by Sections does not apply)	at the rate of
	Sections: rate of liquidated damages for each Section	Section 1 - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 2a - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 2b - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 3a - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 3b - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 4 - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof Section 5a - <span style="background-color: black; color: black;">[REDACTED]</span> or part thereof

		Section 5b - [REDACTED] or part thereof
		Section 5c - [REDACTED] or part thereof
		Section 6 - [REDACTED] or part thereof
2.34	Sections: Section Sums	<p>Section 1 [REDACTED]</p> <p>Section 2a [REDACTED]</p> <p>Section 2b [REDACTED]</p> <p>Section 3a [REDACTED]</p> <p>Section 3b [REDACTED]</p> <p>Section 4 [REDACTED]</p> <p>Section 5a [REDACTED]</p> <p>Section 5b [REDACTED]</p> <p>Section 5c [REDACTED]</p> <p>Section 6 [REDACTED]</p>
2.35	Rectification Period (where completion by Sections does not apply)	12 months from the date of Practical Completion of the Works
	Sections: Rectification Periods	<p>Section 1 – 12 months</p> <p>Section 2a – 12 months</p> <p>Section 2b – 12 months</p> <p>Section 3a – 12 months</p> <p>Section 3b – 12 months</p> <p>Section 4 – 12 months</p> <p>Section 5a – 12 months</p> <p>Section 5b – 12 months</p> <p>Section 5c – 12 months</p> <p>Section 6 – 12 months</p> <p>from the date of Practical Completion of each Section.</p>
4.2, 4.12 and 4.13	Fluctuations Provision	No Fluctuations Provision applies
	JCT Fluctuations Option A (paragraph A.12) or Option B (paragraph B.13) – percentage addition	No Fluctuations Provision applies
	JCT Fluctuations Option C (paragraph C.1.2) – Formula Rules	No Fluctuations Provision applies
4.6	Advance Payment	Clause 4.6 does not apply
4.6	Advance Payment Bond	Clause 4.6 does not apply

4.7.1	Method of Payment	Periodically in accordance with Alternative B (clause 4.13)
	Alternative A: Stage Payments	Not applicable
	Interim Payments – Interim Valuation Dates ( <i>The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is to be one month after the Date of Possession.</i> )	The first Interim Valuation Date is: the last day or nearest Business Day of the month in which the Date of Possession occurs and thereafter the same date in each month or the nearest Business Day in that month
4.15.4	Listed Items – uniquely identified	Clause 4.15 does not apply and there are no Listed Items
4.15.5	Listed Items – not uniquely identified	Clause 4.15 does not apply and there are no Listed Items
4.17	Contractor's Retention Bond	Clause 4.17 does not apply
4.18.1	Retention Percentage	Three per cent
5.5	Daywork	There are no Percentage Additions
6.4.1	Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than	£10,000,000 for any one event
6.5.1	Insurance – liability of Employer	Required - £10,000,000 in any one event
6.7 and Schedule 3	Works Insurance – Insurance Options applicable	Schedule 3: Insurance Option C applies (as amended in Appendix A)
6.7 and Schedule 3 Insurance Option A (paragraphs A.1 and A.3), B (paragraph B.1) or C (paragraph C.2)	Percentage to cover professional fees ( <i>If no other percentage is stated, it shall be 15 per cent.</i> )	15 per cent
	Where Insurance Option A or Option C (as amended) applies and cover is to be provided under the Contractor's annual policy (paragraph A.2 or C.5), the annual renewal date is ( <i>as supplied by the Contractor</i> )	1 July
	Where Insurance Option C applies, paragraph C.1 ( <i>unless otherwise stated, paragraph C.1 applies. If it is</i>	Applies (as amended)



*not to apply, state the reference number and date or other identifier of the replacement document(s).)*

6.10 and Schedule 3	Terrorism Cover - details of the required cover (Unless otherwise stated, Pool Re Cover is required.)	Pool Re Cover is required
6.15	<p>PI Insurance</p> <p>Level of cover <i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i></p> <p>Expiry of required period of PI Insurance is</p>	<p>Amount of indemnity required: £10,000,000 (ten million pounds) any one claim but separate aggregate limits of the same level for i) pollution/contamination, ii) asbestos and iii) cladding/fire safety</p> <p>12 years</p>
6.17	<p>Joint Fire Code</p> <p>If the Joint Fire Code applies, state whether the insurer under Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':</p>	<p>The Joint Fire Code applies</p> <p>No</p>
6.20	<p>Joint Fire Code – amendments/revisions <i>(The cost shall be borne by the Contractor unless otherwise stated.)</i></p>	<p>The cost, if any, of compliance with amendment(s) or revisions(s) to the Joint Fire Code shall be borne by the Contractor</p>
8.9.2	<p>Period of suspension <i>(If none is stated, the period is 2 months.)</i></p>	2 months
8.11.1.1 to 8.11.1.6	<p>Period of suspension <i>(If none is stated, the period is 2 months.)</i></p>	4 months
9.2.1	<p>Adjudication</p> <p>Nominator of Adjudicator – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <i>(Where an Adjudicator is not named and a nominator has been selected, the nominator shall be one of the nominators listed opposite selected by the Party requiring the reference to adjudication.)</i></p>	<p>The Chairman of the Technology and Construction Solicitors' Association</p>



By signing below, the Contractor confirms that this Contract is irrevocably and unconditionally released to the Employer for completion.

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

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

Authorised by  
the Secretary of  
State .....

Full name (Block  
Capitals) .....

EXECUTED AS A DEED by ISG CONSTRUCTION  
LIMITED acting by an Attorney and a Witness:

.....  
Attorney Signature

.....  
Full name (BLOCK CAPITALS)

.....  
Witness

.....  
Full name (BLOCK CAPITALS)

Occupation

Address

## APPENDIX 1

### Schedule of Amendments to Conditions of Contract

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

#### **CONDITIONS**

##### **1.1 Definitions**

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

<b>Asbestos:</b>	has the meaning given to it in the Control of Asbestos Regulations 2012 SI 2012/632;
<b>Building/Buildings:</b>	any building or other erection at any of the Sites;
<b>Building Regulations:</b>	the Building Regulations 2010 (SI 2010/2214 as amended) and any modification or replacement of the same;
<b>CDM Regulations:</b>	the Construction (Design and Management) Regulations 2015 and any modification or replacement of the same;
<b>Commercially Sensitive Information:</b>	the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Contractor, the charges for the Works, his Intellectual Property Rights or his business or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss, but excluding always the Contract Sum;
<b>Conditions:</b>	delete the definition and substitute "see the <b>First Recital</b> ";
<b>Confidential Information:</b>	the Employer's Confidential Information and/or the Contractor's Confidential Information;
<b>Consents:</b>	any Employer Necessary Consents, Employer Planning Conditions, planning permissions relating to the Works, the approvals of reserved matters relating to the conditions attaching to any planning permissions referred to in the Employer's Requirements or any other planning permissions relating to the Works, any obligation under section 106 Town and Country Planning Act 1990, section 38 and/or section 278 Highways Act 1980 or section 104 and/or section 106 Water Industry Act 1991, and all other permissions, consents, approvals, licences, certificates, authorisations, and permits whether of a public or private nature as may be necessary lawfully to commence, carry out and complete

	the Works and if they are destroyed or damaged the reinstatement of the Works;
<b>Construction Programme:</b>	the programme for the carrying out and completion of the Works in accordance with the terms of the Contract as set out in Annex 10 of this Contract;
<b>Contract:</b>	the Contract Documents and any other document forming part of this Contract;
<b>Contract Documents:</b>	delete “these” and substitute “the”;
<b>Contractor’s Confidential Information:</b>	any information (excluding the Contract Sum), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
<b>Contractor’s Design Documents:</b>	delete and substitute “the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Contractor in relation to the Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by him under the BIM Protocol”;
<b>COVID-19:</b>	the disease known as COVID-19 as caused by severe acute respiratory syndrome coronavirus 2 or any subsequent strain of the same;
<b>COVID-19 Event:</b>	to the extent that the COVID-19 outbreak and/or resulting measures directly affects the execution of the Works at the relevant Site, the Contractor is not aware of the same as at the date of this Contract and/or the same was not existing at the date of this Contract (for the avoidance of doubt if changes occur to the circumstances, additional restrictions are introduced and/or further measures are introduced after the date of this Contract then this shall not be deemed as existing as at the date of this Contract) then the implementation by the UK Government and/or any UK public health authority of measures in

	<p>response to COVID-19 including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) shortages of labour or supervision and/or due to infection, or potential infection, and the resulting quarantine, self-isolation or similar required;</li> <li>(b) shortages of plant or materials due to delays in their manufacture, distribution or delivery to Site; or</li> <li>(c) any suspension of the Works, closure, or restricted access to the Site or amended working methods (howsoever arising)</li> </ul> <p>as a result of COVID-19 or measures to contain the COVID-19 outbreak but save where the impact upon the execution of the Works, including any shortages in labour, plant or materials, has arisen as a result of the negligence or default of the Contractor (howsoever arising) and provided that other contractors engaged in projects of a similar size scale and complexity to the Works in the same geographic region are generally affected in the same way;</p>
<b>Crown Body:</b>	any department, office or agency of the Crown;
<b>Decant Protocol:</b>	the protocol set out in Annex 22 identifying the obligations and responsibilities of the parties in relation to the removal of items from the Existing Buildings and their relocation and installation in the Refurbished Buildings;
<b>DOTAS:</b>	the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>Employer:</b>	delete the definition and substitute “see Parties clause in the Agreement”;
<b>Employer’s Confidential Information:</b>	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Employer, including all Intellectual Property Rights, together

	with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>Employer Necessary Consents:</b>	the Consents listed in Annex 17;
<b>Employer Planning Conditions:</b>	the planning conditions listed in Annex 23;
<b>Employer's Policies:</b>	the policies as set out in Annex 7 to this Contract;
<b>Environmental Information Regulations:</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
<b>Existing Buildings:</b>	the buildings shown on the plans in Annex 11 to this Contract prior to the relevant Completion Date but excluding any new facilities comprising the Works;
<b>FOIA:</b>	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;
<b>Force Majeure:</b>	<p>the occurrence, after the date of this Contract, of:</p> <ul style="list-style-type: none"> <li>(a) acts of God, excluding weather conditions;</li> <li>(b) war or insurrection;</li> <li>(c) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity;</li> <li>(d) evacuation due to chemical spillages and toxic emissions, except as may be attributable to any matter for which the Contractor is responsible under section 10;</li> </ul> <p>which</p> <ul style="list-style-type: none"> <li>(i) is beyond a Party's reasonable control;</li> <li>(ii) such Party could not reasonably have provided against before entering into this Contract;</li> <li>(iii) having arisen, such Party could not reasonably have avoided or overcome;</li> <li>(iv) is not attributable to or caused by the relevant Party; and</li> </ul>

	(v) its effects are not confined wholly or principally to the Parties, the Sites or the Works.
	Further and, in addition, all references to force majeure shall be read and construed as references to this definition of “Force Majeure”;
<b>General Anti-Abuse Rule:</b>	<ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013; and</li> <li>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;</li> </ul>
<b>Good Industry Practice:</b>	that degree of skill, care, prudence and foresight which would ordinarily be expected from time to time from a skilled and experienced building contractor under the same or similar circumstances;
<b>Halifax Abuse Principle:</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>Intellectual Property Rights:</b>	<ul style="list-style-type: none"> <li>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction;</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction; and</li> <li>(d) all or any goodwill relating or attached thereto;</li> </ul>
<b>Occasion of Tax Non-Compliance:</b>	<ul style="list-style-type: none"> <li>(a) where any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the</li> </ul> </li> </ul>



General Anti-Abuse Rule or the Halifax Abuse Principle;

- ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or

- (b) where any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion;

**Outages:**

an unplanned power, utilities and/or life safety systems outage resulting in either a partial or full evacuation of the building between the working hours of 8am to 6pm on Monday to Friday and/or prevention of access by departmental staff, lasting 30mins or more, to welfare facilities (e.g. toilets), power and/ or data provided by or from the building;

**Outage Provisional Sum:**

the provisional sums noted in the Contract Sum Analysis and the schedule of clarifications and derogations in respect of Outages;

**Parent:**

ISG Interior Services Group UK Limited (Company Number 2989004);

**Personal Data:**

The meaning given to it in the Data Protection Act 2018;

**Physical Conditions**

means the physical conditions of or affecting the Project and/or Site, including but not limited to the sub-surface conditions and the presence and extent of any: contamination; asbestos; obstructions; antiquities; matters of archaeological interest; ground water; unexploded ordinance; services / wells, cables, conduits, pipes or other (and in respect of all such services etc: whether charted or uncharted and including in respect of defects); the existing structure(s) (including defects)); the support and shoring up of buildings and/or walls and any other conditions of or affecting the site.

**PI Insurance:**

professional indemnity insurance;

**Post Practical Completion Activities:**

those activities to be carried out and completed by the Contractor following Practical Completion and as further set out in the Employer's Requirements;

**Practical Completion:**

the requirements set out in Annex 20 have been complied with and a stage of completeness of the Works has been reached which allows the Sites to be occupied and in which:

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

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

**Pre-Construction Services Agreement:**

the pre-construction services agreement between the Employer and the Contractor dated 27 February 2023 relating to the provision of pre-construction services;

**Prohibited Act:**

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

	reward for improper performance of a relevant function or activity in connection with this Contract;
	(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Employer; or</li> </ul>
	(d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;
<b>Refurbished Buildings:</b>	the Existing Buildings shown in the plans in Annex 11 to be refurbished or remodelled (including any demolition) pursuant to this Contract;
<b>Relevant Requirements:</b>	all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>Relevant Tax Authority:</b>	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;
<b>Request for Information:</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>Schedule of Amendments:</b>	the schedule of additional amendments, modifications and changes to the Conditions as set out in this Appendix 1;
<b>Site Plan(s):</b>	the plan or plans of the Sites set out in Annex 13;
<b>Site Surveys:</b>	the surveys of the Sites set out at Annex 14;
<b>Sites:</b>	the work area or areas edged red on the relevant Site Plan(s) together with the Buildings or relevant part(s) of the Buildings within the aforementioned work areas and the service ducts and media for all utilities and services serving the Buildings or relevant part(s) of the Buildings;
<b>Snagging Items:</b>	minor defects, deficiencies or omissions identified pursuant to clause 2.27B which do not materially impair the Employer's use or

	enjoyment of the Refurbished Buildings or the relevant parts of the Refurbished Buildings and all of which are together capable of being rectified within twenty (20) Business Days;
<b>Sub-Contractor:</b>	any person engaged as an independent contractor, consultant or supplier by the Contractor to carry out and complete all or any part of the Works;
<b>Works Insurance Policy:</b>	delete “under whichever of Insurance Options A, B or C applies” and replace with “by the Contractor”;
<b>VAT:</b>	delete the definition and substitute “value added tax chargeable under the Value Added Tax Act 1994 (as amended, extended or re-enacted) and any similar or replacement tax”.

#### **Agreement etc. to be read as a whole**

1.3A **Insert** new clause 1.3A:

“1.3A Without prejudice to clause 1.3 the documents comprising this Contract are and shall be construed in the following order of precedence in the event of any inconsistency or ambiguity not dealt with by another clause:

- First the Recitals as contained in the Agreement;
- Second the Articles as contained in the Agreement;
- Third the Contract Particulars as contained in the Agreement;
- Fourth the Schedule of Amendments excluding the Annexes;
- Fifth Annexes to the Schedule of Amendments;
- Sixth the conditions of DB 2016;
- Seventh Employer’s Requirements;
- Eighth Contractor’s Proposals;
- Ninth Contract Sum Analysis.”

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

1.6 **Insert** the following in lieu of existing clause 1.6:

“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.”

#### **Notice and other communications**

1.7.3 In line 3 after the word “post” **insert** “or email”.

1.7.4 In line 2 after the word “post” **insert** “or email”; and in line 4 after “posting” **insert** “and when sent by email, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after being sent”.

#### **Effect of Final Statement**

1.8.1.1 **Insert** “Not Used” in lieu of existing clause 1.8.1.1.

**Effect of payments other than payment of Final Statement**

1.9 In line 1 **insert** “No comment, notice, certificate, instruction, statement or” in lieu of “Save as stated in clause 1.8, no”.

In line 1 **delete** “of itself”.

1.12 **Insert** new clause 1.12:

**“Rights and Remedies**

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

1.13 **Insert** new clause 1.13:

**“No double recovery**

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

1.14 **Insert** new clause 1.14:

**“Severability**

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

1.15 **Insert** new clause 1.15:

**“Waiver**

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

1.15.2 No waiver under clause 1.15.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and only to the extent) expressly stated in that waiver.”

**General obligations**

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

In line 3 after “shall” **insert** “carry out and”.

In lines 5/6 **delete** “so far as not described or stated in the Employer’s Requirements or the Contractor’s Proposals”.

2.1.5 **Insert** new clause 2.1.5:

“2.1.5.1 In performing his obligations under this Contract, the Contractor shall, and shall ensure that each of his Sub-Contractors shall, comply with the Modern Slavery Act 2015, have and maintain throughout the term of this Contract his own policies and procedures to ensure compliance.

- 2.1.5.2 The Contractor shall notify the Employer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 2.1.5.3 In the event that the Contractor fails to comply with this clause 2.1.5 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Employer are acceptable, then the Employer reserves the right to terminate the employment of the Contractor under this Contract in accordance with clause 8.4.1.7.”
- 2.1.6 **Insert** new clause 2.1.6:
- “2.1.6 Subject to clause 2.1.7, the Contractor shall:
- 2.1.6.1 obtain and maintain all Consents;
  - 2.1.6.2 be responsible for implementing each Consent (which he is required to obtain pursuant to clause 2.1.6.1) within the period of its validity in accordance with its terms;
  - 2.1.6.3 supply to the Employer a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;
  - 2.1.6.4 comply with the conditions attached to any Consents and procure that no such Consent is breached by him or any person under his control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works; and
  - 2.1.6.5 not (and shall use all reasonable endeavours to procure that any other person over whom he has control shall not) without the prior consent of the Employer (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with his obligations under this clause,
- and references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.”
- 2.1.7 **Insert** new clause 2.1.7:
- “2.1.7.1 The Parties agree and acknowledge that the Contractor is not legally entitled to enter into the Employer Necessary Consents and/or discharge the Employer Planning Conditions.
- 2.1.7.2 The Contractor agrees to undertake any negotiations with any third party and any preparation of documentation required to enable the Employer to enter into the Employer Necessary Consents, or where the Employer is not the landowner of the Sites, procure that the landowner of the Sites enters into the Employer Necessary Consents.
- 2.1.7.3 Subject to the Contractor undertaking his obligations under clause 2.1.7.2, the Employer shall enter into, or where the Employer is not the landowner of the Sites, the Employer shall procure that the landowner enters into, the Employer Necessary Consents by the dates set out in Annex 17 to this Contract provided always that:
- 2.1.7.3.1 the Employer Necessary Consents are in a form previously approved by the Contractor, the Employer and the third party (each acting reasonably);
  - 2.1.7.3.2 the Employer shall pay the legal and surveyor’s costs reasonably and properly incurred in approving the Employer Necessary Consents and the Contractor shall pay and be responsible for all other costs in relation to the Employer Necessary Consents.

- 2.1.7.4 The Contractor agrees to use reasonable endeavours to assist the Employer to discharge, or procure the discharge of, the Employer Planning Conditions.
- 2.1.7.5 Subject to the Contractor undertaking his obligations under clause 2.1.7.4, the Employer shall discharge, or procure the discharge of, the Employer Planning Conditions.”
- 2.1.8 **Insert** new clause 2.1.8:
- 2.1.8 The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Works:
  - 2.1.8.1 be responsible for determining the location of such services and utilities as may be at the Sites and for the maintenance of access to such services and utilities at the Sites;
  - 2.1.8.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Sites;
  - 2.1.8.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Sites;
  - 2.1.8.4 pay to all relevant authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Sites;
  - 2.1.8.5 make connection into services and utilities outside the Sites; and
  - 2.1.8.6 otherwise do all that is required in relation to the utilities required for the purpose of carrying out of the Works.

#### **Materials, goods and workmanship**

- 2.2.1 In lines 2/3 **insert** “shall be new and of such kinds and of such quality to enable the Contractor to comply with the Contract Documents” in lieu of “as described in the Contractor’s Proposals or other Contractor’s Design Documents”.
- 2.2.2 In lines 2/3 **insert** “shall be of such quality to enable the Contractor to comply with the Contract Documents” in lieu of “as described in the Contractor’s Proposals or other Contractor’s Design Documents”.
- 2.2.5 In line 1 **insert** “ensure that” in lieu of “encourage”.  
In line 1 **insert** “are” in lieu of “to be”.

#### **Prohibited materials**

- 2.2.6 **Insert** new clause 2.2.6:
- “2.2.6 The Contractor shall not use, and subject to the standard of skill, care and diligence set out in clause 2.17, nor permit, specify or approve for use in connection with the Works any materials which at the time of use:
  - 2.2.6.1 are known to be deleterious (either to health and safety or to the durability of the Works); or
  - 2.2.6.2 contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - 2.2.6.3 do not accord with the guidelines contained in the edition of the publication *Good Practice in Selection of Construction Materials* (British Council for Offices (BCO)), current at the date of use.”

#### **Outages**

- 2.2A **Insert** new clause 2.2A:

- "2.2A.1 Notwithstanding any other provision of this Contract, the Contractor shall, in carrying out and completing the Works take all reasonable but commercially prudent endeavours to avoid causing any Outages.
- 2.2A.2 The Contractor agrees and accepts that, in the event of an Outage caused directly by the Contractor's or its Sub-Contractor's error, negligence or omission, the Employer shall be entitled to deduct a sum from the Contract Sum calculated as £5,025.00 (five thousand and twenty five pounds) per occurrence.
- 2.2A.3 The maximum total sum that the Employer is able to deduct for the total of all Outages is limited to a total sum of £50,000.00 (fifty thousand pounds). This limit is for the full duration of the project, including any programme extensions, and is the maximum total that can be deducted.
- 2.2A.4 Where an Outage occurs and the Employer is entitled to deduct a sum from the Contract Sum pursuant to clause 2.2A.2 above, the Employer shall issue an instruction to the Contractor to expend the relevant Outage Provisional Sum and the Contractor shall comply with such instruction, provided always that the Contractor shall not be entitled to any extension to the Completion Date for any such instruction and provided further that the maximum total sum that the Employer is able to deduct for the total of all Outages shall in no circumstances exceed the limit set out in clause 2.2A.3 above. Any other provisional sums under the Contract shall be dealt with in accordance with clause 3.11."

#### **Date of Possession - progress**

- 2.3 In line 2 **insert** "on licence" after "Contractor".

#### **Work not forming part of the Contract**

- 2.6A **Insert** new clause 2.6A:

- "2.6A.1 Subject to clause 2.6A.2, the Contractor shall permit the execution of work not forming part of this Contract by any Employer's Person authorised by the Employer to carry out work on those parts of the Site in the Contractor's possession in accordance with this clause 2.6A and afford reasonable facilities for such Employer's Persons and their workmen.
- 2.6A.2 The Employer and the Contractor have agreed an access regime as set out in Annex 23 which describes the extent and location of and other relevant matters relating to such access (including programme and arrangements for the co-ordination of activities on site). The Employer and the Contractor (both acting reasonably) can agree revisions to the access regime to the extent required during the course of the Works. Where the Employer or any Employer's Person does not comply with any access regime (including any agreed changes to it) agreed pursuant to this clause 2.6A.2, such failure to comply shall be deemed to be a Change."

#### **Contract Documents**

- 2.7.1 **Insert** "Not Used" in lieu of existing clause 2.7.1.
- 2.7.2 **Insert** "Not Used" in lieu of existing clause 2.7.2.

#### **Construction information**

- 2.8A **Insert** new clause 2.8A:

- "2.8A.1 The Contractor shall produce the Construction Programme and deliver the same to the Employer prior to the Date of Possession (or, if there are Sections, prior to the first of the Dates of Possession) and shall thereafter revise the Construction Programme as appropriate from time to time (and if and whenever there is any material delay to the execution of the Works) so as to minimise or avoid any anticipated delay or disruption to



the carrying out of the Works, and shall provide the Employer with the revised Construction Programme.

- 2.8A.2 The Construction Programme will include possession dates and completion dates for each Section, the order and timing of the operations which the Contractor plans to do in carrying out the Works, the dates when the Contractor will need access to a part of the Site and/or will need any information or other things to be provided by the Employer or the Employer's Agent and any additional information required by the Employer to clarify the order in which the Contractor proposes to carry out the supply, installation, construction and completion of the Works. In preparing, reviewing and revising the Construction Programme the Contractor shall observe, respect and comply with any restrictions as regards possession of and access to the Site and any covenants binding upon the Employer in respect thereof and any conditions concerning the order in which the Works are to be completed contained in the Contract.
- 2.8A.3 Each month the Contractor shall report to the Employer in writing comparing the progress of the Works with the Construction Programme current at that time, and promptly advise the Employer of any delay or disruption to the Works, setting out the measures he is taking or proposes to take to minimise or make good such delay or disruption.
- 2.8A.4 Without prejudice to clause 2.1.6, where the Employer's authorisation or completion of a document in respect of the Consents is required the Contractor shall furnish the relevant documentation to the Employer and take account in his programme that the Employer may require a period of 20 Business Days to authorise or complete it as appropriate."

#### **Site boundaries**

- 2.9 In line 1 after "boundaries of the site." **insert** "The Contractor shall be deemed to have carried out a site survey, the accuracy of which is entirely the Contractor's responsibility. The setting out of the survey and all aspects of the Works dependent thereon shall be the Contractor's responsibility and no costs will be borne by the Employer in connection with correcting any errors therein."

#### **Divergence in Employer's Requirements and definition of Sites' boundaries**

- 2.10.1 **Insert** the following in lieu of existing clause 2.10.1:
- "Where there is a divergence between the Employer's Requirements and the definition of the Sites' boundaries given as provided in clause 2.9 it is to be corrected by the Contractor at his own cost and without an extension of time."

#### **Preparation of Employer's Requirements**

- 2.11 **Insert** "Not Used" in lieu of existing clause 2.11.

#### **Employer's Requirements – inadequacy**

- 2.12 **Insert** the following in lieu of existing clause 2.12:
- "If either Party finds that any design in the Contract Documents contains any defect or inadequacy (other than a defect or inadequacy in the Employer's Requirements which is corrected by the Contractor's Proposals but including any non-compliance with Statutory Requirements) he shall so notify the other Party and the Contractor shall inform the Employer in writing of his proposals for removing such defect or inadequacy, and with the Employer's consent (which shall not be unreasonably withheld or delayed) the Contractor shall remove such defect or inadequacy in accordance with such proposals, at the Contractor's cost and without an extension of time."

#### **Notification of discrepancies etc**

- 2.13 **Insert** "Not Used" in lieu of existing clause 2.13.

#### **Discrepancies in documents**

- 2.14 **Insert** the following in lieu of existing clause 2.14:
- “2.14.1 If either Party finds any discrepancy in or between any of:
- 2.14.1.1 the Employer’s Requirements;
  - 2.14.1.2 the Contractor’s Proposals;
  - 2.14.1.3 the Contract Sum Analysis;
  - 2.14.1.4 any instruction for a Change;
- he shall immediately give written notice of the discrepancy to the other Party.
- 2.14.2 Where such discrepancy is in the Employer’s Requirements but is resolved by the Contractor’s Proposals, the Contractor’s Proposals shall prevail. Where such discrepancy is not resolved by the Contractor’s Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor’s cost and without an extension of time.
- 2.14.3 Where such discrepancy is between the Employer’s Requirements and the Contractor’s Proposals or within the Contractor’s Proposals, the Contractor shall inform the Employer of his proposals for resolving the discrepancy, and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the discrepancy shall be dealt with in accordance with such proposals, at the Contractor’s cost and without an extension of time.
- 2.14.4 Where the discrepancy results from an instruction for a Change, the Employer shall issue a further instruction for a Change to resolve the discrepancy.
- 2.14.5 Nothing in this clause 2.14 shall relieve the Contractor of the obligation to comply with Statutory Requirements nor of his responsibility for the design of the Works.”

#### **Divergences from Statutory Requirements**

- 2.15.1 In line 3 of the second paragraph, **insert** “and with no extension of time pursuant to clause 2.25” in lieu of “, save as provided in clause 2.15.2,”.
- 2.15.2.1 In line 1 after “Statutory Requirements” **insert** “or the requirements of the fire officer”.
- In line 2 after “the Works” **delete** the remainder of the sub-clause and **insert**: “the Contractor shall inform the Employer in writing of his proposed alteration or modification and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of 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”.
- 2.15.2.2 In line 1 before “Contractor’s Proposals” **insert** “Employer’s Requirements or the”.
- In line 3 after “Development Control Requirements” **delete** the remainder of the sub-clause and **insert**: “the Contractor shall inform the Employer in writing of his proposed alteration or modification and with the Employer’s consent (which shall not be unreasonably withheld or delayed) the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the Contractor could not have reasonably foreseen or had notice of 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”.
- 2.15.2.3 In line 2 after “Requirements” **delete** the remainder of the sub-clause and **insert**: “the Contractor (entirely at his own cost and without an extension of time unless the amendment is necessitated by a change to the Statutory Requirements after the Base Date which the

Contractor could not have reasonably foreseen or had notice of before the Base Date) shall complete the design and construction of the Works in accordance with the amendment”.

### **Design Work – liabilities and limitation**

2.17.1 In line 1 after “comprised in the” **insert** “Employer’s Requirements and”.

In line 3 after “the Contractor” **insert** “has exercised and will continue to exercise in the design of the Works the professional skill, care and diligence reasonably to be expected of a properly qualified and competent designer of the appropriate discipline(s) for such design acting independently under a separate contract with the Employer and experienced in carrying out design such as that required under this Contract in relation to works of a similar size, scope, nature, complexity, location, timescale and value to the Works” in lieu of the remainder of the clause.”

2.17.2 **Insert** the following in lieu of existing clause 2.17.2:

“Without derogation from any other provision in this Contract the Contractor shall be fully responsible in all respects for the design of the Works including all design work proposed by or on behalf of the Employer prior to the date of this Contract and forming part of the Employer’s Requirements.”

2.17.3 **Insert** the following in lieu of existing clause 2.17.3:

“The Contractor shall not be excused liability for breach of any of the warranties set out in clause 2.17.1 by reason of the fact that he may have exercised all due skill, care and diligence in the selection of the persons to whom he delegated his responsibilities.”

2.17.4 **Insert** new clause 2.17.4:

“2.17.4 The aggregate liability of the Contractor to the Employer for any matters arising in connection with the performance of his obligations under this Contract shall not except as set out below at clause 2.17.5 exceed the amount, if any, stated in the Contract Particulars.”

2.17.5 **Insert** new clause 2.17.5:

“2.17.5 The Contractor shall not exclude or restrict his liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability under clause 2.17.4 has been reached or exceeded:

2.17.5.1 losses which are recovered pursuant to the insurance policies required to be effected and maintained in accordance with section 6 of this Contract (other than PI Insurance) and/or payments made by the Contractor to the extent corresponding payments are either received and/or recovered by the Contractor pursuant to the insurance policies required to be effected and maintained in accordance with section 6 of this Contract (other than PI Insurance) or which would have been received, recovered and/or recoverable but for the failure of the Contractor to maintain or to make a claim under such policies;

2.17.5.2 the Contractor’s liability under clause 2.29;

2.17.5.3 the Contractor’s liability in the event he abandons the Works;

2.17.5.4 the Contractor’s liability in the event of any fraud, wilful misconduct, deliberate default of direct employees of the Contractor or of its Design Consultants, Sub-Contractors and sub-consultants, in each case to the extent employed or directed by the Contractor, fraudulent misrepresentation, abandonment, corruption or criminal conduct on the part of the Contractor;

2.17.5.5 the Contractor’s liability in respect of any employer’s liability; and

2.17.5.6 the Contractor’s liability in respect of personal injury or death.”

2.17.6 **Insert** new clause 2.17.6:

- “2.17.6 Notwithstanding any other provision of this Contract (including but not limited to the Employer’s Requirements, Contractor’s Proposals and any Schedule or Appendix to this Contract) the Contractor shall be under no express or implied fitness for purpose obligation in relation to the design of the Works. The Contractor’s design liability under this contract shall be limited to the skill, care and diligence referred to in clause 2.17.1.”

#### **Materials and goods – on site**

- 2.21 In line 3 **delete** “subject to Insurance Options B or C (if applicable)”.

#### **Materials and goods – off site**

- 2.22 **Renumber** clause 2.22 as 2.22.1 and then **insert** new clause 2.22.2:

- “2.22.2 The Contractor shall ensure that the Listed Items are either set apart or have been clearly and visibly marked individually or inset by letters or figures or by reference to a pre-determined code at the premises where they have been manufactured or assembled or stored. The Contractor shall ensure that the Listed Items are identified as being the property of the Employer.”

#### **Related definitions and interpretation**

- 2.23.1 After “to delay” **insert** “, notice”.  
After “further delay” **insert** “, further notice”.

#### **Delay arising out of a COVID-19 Event**

- 2.24A Insert new clause 2.24A:

##### **“Delay arising out of a COVID-19 Event**

- 2.24A Notwithstanding any other provision of this Contract, the Contractor’s sole and exclusive remedy for any delay to the progress of the Works arising directly or indirectly out of a COVID-19 Event or any additional costs or expenses arising directly or indirectly out of a COVID-19 Event shall be the right to apply for an extension of time pursuant to clause 2.24 on the grounds that the delay was caused by the occurrence of a COVID-19 Event. The Contractor waives any rights it may have to make any other claim under this Contract relating indirectly or directly to COVID-19 and, for the avoidance of doubt, the Employer shall have no liability for any additional costs or expenses attributable to a COVID-19 Event.”

#### **Fixing Completion Date**

- 2.25.6.3 At the start of the clause **insert** “save in respect of a Change properly instructed pursuant to clause 5.1.1.4”.

#### **Relevant Events**

- 2.26.2.1 **Insert** “Not Used” in lieu of existing clause 2.26.2.1.  
2.26.2.2 **Delete** “or 3.11”.  
2.26.5 After “under clause 4.11” **insert** “or clause 8.10.3”.  
2.26.6 **Insert** at the end of clause 2.26.6:  
“or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract”.  
2.26.7 At the end of clause **insert** “provided that the Contractor shall have supplied any information required, placed any necessary orders and otherwise performed his obligations under this Contract in respect of such work as soon as is reasonably practicable after the date of this Contract so as not to delay or disrupt the Statutory Undertaker in relation to such works.”

- 2.26.11 At the end of the clause **insert** “save where such events arise upon the Sites or concern the Contractor’s employees and do not arise out of or in connection with a national labour dispute.”
- 2.26.12 At the end of the clause **insert** “provided such exercise of statutory power could not have been reasonably foreseen by the Contractor but save for any COVID-19 Event.”
- 2.26.14 **Insert** “Force Majeure;” in lieu of “force majeure.”
- 2.26.15 **Insert** new clause 2.26.15:  
 “2.26.15 the discovery of Asbestos, subject to the provisions of clause 11.2.”.
- 2.26.16 **Insert** new clause 2.26.16:  
 “2.26.16 a COVID-19 Event”.

#### **Delay caused by Contractor’s default**

- 2.26A **Insert** new clause 2.26A:  
 “2.26A Notwithstanding any other provision under these Conditions (except in the circumstances referred to in clause 2.26.9), 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 circumstances arising by reason of any error, omission, negligence or default of the Contractor or of any Sub-Contractor or supplier of any tier, or of any of his or their employees or agents.”

#### **Practical completion**

- 2.27 In lines 1 and 2 **delete** “When practical completion of the Works or a Section is achieved and the Contractor has complied sufficiently with clauses 2.37 and 3.16 in respect of the supply of documents and information, then:” and substitute “Subject to Clause 2.27A, the Contractor shall notify the Employer in writing no later than 4 (four) weeks prior to the date when he considers that the Works or a Section thereof will be practically complete. Provided that the Works or a Section thereof have achieved Practical Completion and the Contractor has complied with clauses 2.37, 3.16 and Article 13:”.
- 2.27A **Insert** new clause 2.27A:

#### **“Snagging items**

- 2.27A.1 The Employer may at his discretion issue a Practical Completion Statement or a Section Completion Statement notwithstanding that there are any Snagging Items. Where there are Snagging Items, the Employer shall, within five (5) Business Days of the issue of the Practical Completion Statement or Section Completion Statement, issue a notice specifying the Snagging Items together with an estimate of the cost of rectifying such Snagging Items.
- 2.27A.2 The Contractor shall, in consultation with the Employer and in such manner as to cause as little disruption as reasonably practicable to any ongoing commissioning and the Employer’s use of the Site, rectify all Snagging Items within a reasonable period not exceeding twenty (20) Business Days from the issue of the Practical Completion Statement or Section Completion Statement.
- 2.27A.3 If, by the end of the period referred to in clause 2.27A.2, the Contractor has failed to rectify the Snagging Items to the reasonable satisfaction of the Employer, the Employer may, by himself, or by the engagement of others, carry out the works necessary to rectify the Snagging Items, at the risk and cost of the Contractor.”

#### **Payment or allowance of liquidated damages**

- 2.29.1.2 **Insert** “the Employer has informed the Contractor in writing that he shall or may require the Contractor to pay or allow liquidated damages,” in lieu of existing clause 2.29.1.2.

- 2.29.2 At the end of the clause delete the full stop and **insert** “, and the Employer’s notice under clause 2.29.2 may also suffice as the Employer’s notification under clause 2.29.1.2 and provided always that where the Employer has deducted liquidated damages in respect of a Section and the delay of such Section directly causes a subsequent Section(s) to be delayed by the same period, then the Contractor’s liability to the Employer for liquidated damages under such subsequent Section(s) for that period shall be deemed to be satisfied such that no further damages are payable.”

#### **Practical completion date**

- 2.31 At the end of the clause delete the full stop and **insert** “provided, however, that the Rectification Period for the Relevant Part shall extend until the issue by the Employer of the Notice of Completion of Making Good in respect of the whole of the Works.”

#### **Defects etc – Relevant Part**

- 2.32 At the end of the clause **insert** “Provided that the Employer shall not be required to issue such notice any earlier than 10 Business Days after the end of the Rectification Period applicable to such Relevant Part.”

#### **Insurance – Relevant Part**

- 2.33 In line 1 **insert** “paragraph C.2 of Insurance Option C” in lieu of “under Insurance Option A, B or C.2 whichever applies”.

#### **Schedules of defects and instructions**

- 2.35 In line 3 after “Contract” **insert** “or frost occurring before Practical Completion of the Works or relevant Section:”.
- 2.35.2 In line 3 **delete** “after delivery of that schedule or”.
- 2.35 In the final paragraph after “Within a reasonable time” **insert** “(and in any event, subject to clause 2.35A, within a period of 10 Business Days or such longer period as the Parties may, acting reasonably, agree)”.

#### **Defects requiring urgent attention**

- 2.35A **Insert** new clause 2.35A:
- “2.35A In cases of urgency the Employer may require any matter notified under clause 2.35 to be made good within such period of time specified by the Employer as the circumstances require.”

#### **Defects etc. at Practical Completion**

- 2.35B **Insert** new clause 2.35B:
- “2.35B The foregoing provisions of this clause 2.35 apply to any defects, shrinkages or other faults and to any items of incomplete work and/or omissions remaining at Practical Completion. If the Contractor does not complete any works and/or comply with an instruction issued by the Employer pursuant to clause 2.35 and/or 2.35A in accordance with the period of time required by the Employer, the Employer may, without further notice, employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment, which for the avoidance of doubt shall include all costs and losses incurred by the Employer in rectifying and making good any such defects, shrinkages, other faults or incomplete works, and an appropriate deduction shall be made from the Contract Sum or the Employer may recover the same from the Contractor as a debt.”

#### **Post Practical Completion Activities**

2.35C **Insert** new clause 2.35C:

“2.35C Notwithstanding any other provision of this Contract, the Contractor shall carry out and complete the Post Practical Completion Activities. To the extent that the Contractor is unable to or fails to complete all or any part of the Post Practical Completion Activities as required by the Employer’s Requirements, then such Post Practical Completion Activities, or any incomplete part of the Post Practical Completion Activities, shall be deemed to be defects, shrinkages, other faults or incomplete works as referred to in clauses 2.35 and 2.35B. For the avoidance of doubt matters referred to in this clause 2.35C shall not prevent the release of the applicable Retention at Practical Completion, but shall apply to the remaining Retention to be released upon the issue of the Notice of Completion of Making Good.”

#### **Notice of Completion of Making Good**

2.36 At the end of the clause **insert** “Provided that the Employer shall not be required to issue any notice to that effect any earlier than 10 Business Days after the end of the relevant Rectification Period.”

#### **As-built Drawings**

2.37 **Insert** the following in lieu of existing clause 2.37:

“2.37.1 On or before and as a condition precedent to Practical Completion of the Works or a Section the Contractor shall without further charge supply to the Employer in relation to the Works or a Section:

2.37.1.1 all operating and maintenance documents in accordance with the Employer’s Requirements;

2.37.1.2 in favour of the Employer, originals of all warranties and guarantees available from the manufacturers and suppliers of all goods and equipment forming part of the Works or a Section whether or not expressly indicated in the Employer’s Requirements and other documents and certificates then available or should properly be available in respect of goods, plant, equipment and fittings;

2.37.1.3 the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with; and

2.37.1.4 the health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer’s Requirements.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would, but for this provision, become due and payable under this Contract until the provisions of clause 2.37.1 have been complied with.

2.37.2 Within 4 weeks of the date of Practical Completion of the Works or a Section the Contractor shall without further charge to the Employer supply to the Employer in relation to the Works or a Section (save where they have already been provided pursuant to clause 2.37.1):

2.37.2.1 three complete reproducible sets of the as built drawings together with one electronic copy on disk/CD-Rom (Microsoft Office compliant);

2.37.2.2 three copies of the Construction Phase Plan together with one electronic copy on disk/CD-Rom (Microsoft Office compliant);

2.37.2.3 the original completion certificate issued by the relevant authority under the Building Regulations;

2.37.2.4 all correspondence and documentation relating to obtaining the Consents together with the originals of the Consents and copies of all associated drawings plans and copies of all applications relative thereto;

- 2.37.2.5 evidence that all Consents have been obtained and complied with in full in relation to the Works or a Section;
- 2.37.2.6 the completed health and safety file pursuant to the CDM Regulations in accordance with the information as set out in the Employer's Requirements; and
- 2.37.2.7 written evidence that all appropriate documentation has been submitted to the BREEAM assessor confirming that in the opinion of the assessor the Works achieve the BREEAM rating set out in the Employer's Requirements.

Notwithstanding any provision to the contrary in this Contract the Contractor shall not be entitled to any payment of Retention that would, but for this provision, become due and payable under this Contract until the provisions of clause 2.37.2 have been complied with provided that the provisions of this clause shall not apply to any Retention payable to the Contractor prior to Practical Completion by virtue of clauses 2.31 and 4.18.2.

- 2.37.3 If during the course of the Rectification Period errors are discovered in the drawings and information supplied by the Contractor in accordance with clauses 2.37.1 and 2.37.2 or if as a result of any adjustment or remedial work carried out during the course of the Rectification Period the said drawings and information no longer show or describe the Works as required by clauses 2.37.1 and 2.37.2 then the Contractor as soon as reasonably practicable shall amend the said drawings and information so that they comply with the requirements of clauses 2.37.1 and 2.37.2 at no extra cost to the Employer."

#### **Copyright and use**

- 2.38 **Insert** the following in lieu of existing clause 2.38:

- "2.38.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to this Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Sites. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.
- 2.38.2 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 2.38.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.
- 2.38.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Employer to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Employer in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.
- 2.38.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Employer or any licensee or assignee of the Employer.



- 2.38.5 In the event that any act unauthorised by the Employer infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 2.38.6 The Contractor warrants to the Employer that he has not granted and shall not (unless authorised by the Employer) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 2.38.7 The Contractor shall supply copies of the Contractor's Design Documents to the Employer's Agent and to the Employer's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.
- 2.38.8 After the termination or conclusion of the Contractor's employment hereunder, the Contractor shall supply the Employer with copies and/or computer discs of such of the Contractor's Design Documents as the Employer's Agent may from time to time request and the Employer shall pay the Contractor's reasonable costs for producing such copies or discs.
- 2.38.9 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Employer against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party."

**Insert** new clauses 2.39 – 2.50:

#### **Conduct of Staff and Security Arrangements**

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

#### **Refusal of Admission**

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

#### **Decision to Refuse Admission**

- 2.41 The decision of the Employer as to whether any person is to be refused admission to the Sites pursuant to clause 2.40 shall be final and conclusive.

## **Removal from Sites**

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

## **Operations on the Sites**

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

## **Energy performance**

- 2.45.1 At or before Practical Completion of the Works or any Section, the Contractor shall without charge provide to the Employer an energy performance certificate and a recommendation report for the Works or Section, in conformity with regulation 29 of the Building Regulations 2010 and any modification or replacement of the same.

## **Confidentiality and Information Sharing**

- 2.46.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- 2.46.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
  - 2.46.1.2 not disclose the other Party's Confidential Information to any other person without prior written consent;
  - 2.46.1.3 immediately notify the other Party if he suspects unauthorised access, copying, use or disclosure of the Confidential Information; and
  - 2.46.1.4 notify the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 2.46.2 Clause 2.46.1 shall not apply to the extent that:
- 2.46.2.1 such disclosure is a requirement of the law of the contract placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 2.53 (Freedom of Information);
  - 2.46.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 2.46.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 2.46.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 2.46.2.5 it is independently developed without access to the other Party's Confidential Information.
- 2.46.3 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who are directly involved in the carrying out of the Works and who need to know the information, and shall ensure that such Contractor's Persons are aware of and shall comply with these obligations as to confidentiality.
- 2.46.4 The Contractor shall not, and shall procure that the Contractor's Persons do not, use any of the Employer's Confidential Information received otherwise than for the purposes of this Contract.
- 2.46.5 The Contractor may only disclose the Employer's Confidential Information to Contractor's Persons who need to know the information, and shall ensure that such Contractor's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor's Persons causes or contributes (or could cause or contribute) to the Contractor breaching his obligations as to confidentiality under or in connection with this Contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by his own obligations of confidentiality to any Contractor personnel, the Contractor shall provide such evidence to the Employer as the Employer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause 2.46, including copies of any written communications to and/or from Contractor's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor's Persons in connection with obligations as to confidentiality.
- 2.46.6 At the written request of the Employer, the Contractor shall procure that those members of the Contractor's Persons identified in the Employer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

- 2.46.7 Nothing in this Contract shall prevent the Employer from disclosing the Contractor's Confidential Information:
- 2.46.7.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
  - 2.46.7.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Employer or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract or any person conducting a review in respect of this Contract on behalf of a public body;
  - 2.46.7.3 for the purpose of the examination and certification of the Employer's accounts;
  - 2.46.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used its resources;
  - 2.46.7.5 for the purpose of the exercise of its rights under this Contract; or
  - 2.46.7.6 to a proposed successor body of the Employer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,
- and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under this clause 2.46.
- 2.46.8 The Employer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to the above clause is made aware of the Employer's obligations of confidentiality.
- 2.46.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 2.46.10 The Employer may disclose the Confidential Information of the Contractor:
- 2.46.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 2.46.10.2 to the extent that the Employer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- 2.46.11 The Contractor shall not by himself, his employees or agents, and shall procure that his Sub-Contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Works without the prior written approval of the Employer.
- 2.46.12 No facilities to photograph or film in or upon any property used in relation to the Works shall be given or permitted by the Contractor unless the Employer has given his prior written approval.
- 2.46.13 The Contractor shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of the Employer, save where otherwise required to comply with legislation.

#### **Freedom of information**

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

## **Tax compliance**

- 2.48.1 The Contractor represents and warrants that as at the date of this Contract, he has notified the Employer in writing of any Occasions of Tax Non-Compliance or any litigation that he is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 2.48.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 2.48.2.1 notify the Employer in writing of such fact within 5 Business Days of its occurrence; and
  - 2.48.2.2 promptly provide to the Employer:
    - 2.48.2.2.1 details of the steps which the Contractor is taking to address the Occasions of Tax Non-Compliance and to prevent the same from

recurring, together with any mitigating factors that it considers relevant; and

- 2.48.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Employer may reasonably require.

### **Contractor's records**

- 2.49.1 The Contractor shall maintain, or procure that detailed records relating to the performance of the Works are maintained, in accordance with Good Industry Practice and any applicable legislation.
- 2.49.2 Without prejudice to clause 2.49.1, the Contractor shall maintain or procure that the following are maintained:
- 2.49.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- 2.49.2.2 full records of all maintenance procedures carried out during the term of this Contract as part of the Works,
- and the Contractor shall have the items referred to in clauses 2.49.2.1 and 2.49.2.2 available for inspection by the Employer upon reasonable notice, and shall present a report of them to the Employer as and when requested.
- 2.49.3 The records referred to in this clause 2.49 shall be retained for a period of at least twelve (12) years after the Contractor's obligations under this Contract have come to an end.

### **Access for Employer's Agent**

- 3.1 In lines 4/5 **delete** "so far as possible".

### **Site Manager**

- 3.2 At the end of the clause **insert** "Notwithstanding the provisions of clause 2.42 if at any time before the issue of the Notice of Completion of Making Good the Employer shall request the removal of any of the Contractor's Persons from the Works for reasons of negligence, incompetence or misconduct, the Contractor shall promptly remove such personnel and replace him or them with persons acceptable to the Employer."

### **Project meetings**

- 3.2A **Insert** new clause 3.2A:
- "3.2A The Contractor shall attend project meetings convened by the Employer's Agent upon reasonable notice and at reasonable intervals and representatives of the Employer and of the Employer's other consultants (and any other persons authorised by the Employer and notified to the Contractor in writing for the purpose) shall be permitted to attend such meetings."

### **Conditions of sub-contracting**

- 3.4.2.5 In line 1 **delete** "the Rights Particulars provide" in lieu **insert** "this Contract provides".

3.4.2.5.1 In lines 1/2 **delete** “if those particulars require” and at the end of the clause **insert** “and have a 12 year limitation period commencing from Practical Completion of the whole of the Works”.

3.4.2.6 **Insert** new clause 3.4.2.6:

“3.4.2.6 that in the case of any sub-contracting of the design of the Works the Sub-Contractor shall throughout the duration of the Works and for a period of 12 years following the date of Practical Completion of the whole of the Works maintain PI Insurance to cover all of the Sub-Contractor’s design and professional obligations under the sub-contract (including (to the extent applicable) professional advice and/or services, any defects and/or insufficiency of design) insurance cover with a licensed insurance company with a limit of indemnity of not less than that amount stated in the relevant sub-contract in respect of any claims which may be made against the Sub-Contractor in relation to the design of the Works;”.

**Insert** new subclauses 3.4.2.7 to 3.4.2.10 as follows:

“3.4.2.7 a period for payment of the amount due to the Sub-Contractor not greater than 5 days after the final date for payment in this Contract. The amount due shall, but shall not be limited to, payment for work which the Sub-Contractor has completed from the previous application date up to the current application date in this Contract;

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

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

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

3.4.3 At the end of the clause **delete** “.” and in lieu **insert** “,”.

3.4.4. **Insert** new clause 3.4.4:

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

### **Non-compliance with instructions**

3.6 At the end of the clause delete the full stop and **insert** “or such costs may be recoverable from the Contractor by the Employer as a debt.”

### **Instructions requiring Changes**

3.9.1 In line 1 **delete** from the words “and provided that the” to the end of the clause.

### **Instructions on Provisional Sums**

3.11 At the end of the clause **insert** “The Contractor shall not be entitled to any extension to the Completion Date for any such instructions.”

**Insert** new clause 3.11A:

“3.11A.1 The Contractor confirms he has:

3.11A.1.1 made an allowance for the Provisional Sum(s) in the Contract Sum; and

3.11A.1.2 included the preliminary costs relating to Provisional Sum(s) in the Contract Sum; and

3.11A.1.3 made due allowance in his programming and planning for the execution of the work.

3.11A.2 Following the issue of an instruction pursuant to clause 3.11 the Employer shall determine the costs of the work to be executed by the Contractor in accordance with the Employer's instruction as to the expenditure of Provisional Sum(s) in accordance with the methodology set out in the Employer's Requirements or, where no methodology is included in the Employer's Requirements, the amount valued (a "**Valuation**" in accordance with clauses 5.4 to 5.7 ("the **Valuation Rules**")). The Contractor shall not be entitled to any payment for increased cost of site administration, site facilities, temporary works or any other preliminary type items of the type referred to in the Standard Method of Measurement arising from the expenditure of any Provisional Sum.

3.11A.3 The Parties agree and acknowledge that the Provisional Sum shall be deducted from the Contract Sum and the cost agreed in accordance with clause 3.11A.2 shall be added to the Contract Sum."

#### **Work not in accordance with the Contract**

3.13.1 After "removal from the site" **insert** "or rectification".

3.13.2 In lines 1/2 **delete** "(to which the proviso in clause 3.9.1 applies)".

3.13.3 In lines 5/6 after "be made to the Contract Sum" **insert** "and clauses 2.25 and 2.26.2.3 shall not apply to any instructions issued under this clause" and **delete** the remainder of the clause.

#### **CDM Regulations**

3.16.6 **Insert** new clause 3.16.6:

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

#### **Items included in adjustments**

4.2.5 At the end of the clause **insert** "Provided always that the Contractor shall not be entitled to any payment for increased costs of preliminaries arising from the expenditure of any Provisional Sum."

#### **Taxes**

4.4 **Insert** the following in lieu of existing clause 4.4:

4.4.1 In this clause 4.4, the following definitions shall apply:

4.4.1.1 HMRC means HM Revenue & Customs;

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

4.4.1.3 Reverse Charge means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and

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



4.4.1.5 Tax Point means the time of supply for VAT purposes as defined in Regulation 93 of Part XI of the VAT Regulations 1995.

4.4.2 In respect of the Supplies made with a Tax Point, for VAT purposes, before 1 March 2021, the provisions of clauses 4.4.1 to 4.4.4 (inclusive) only of this clause 4.4 shall apply. In respect of Supplies made with a Tax Point on or after 1 March 2021, the provisions of clauses 4.4.1 to 4.4.6 (inclusive) of this clause 4.4 shall apply.

4.4.3 The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 4.4 notwithstanding any other provision of this Contract.

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

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

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

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

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

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

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

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

#### **Interim Payments – Contractor's Interim Payment Applications, due dates and Payment Notices**

4.7.6 **Insert** new clause 4.7.6:

"4.7.6 An Interim Payment Application may be an electronic invoice provided it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870."

#### **Interim and final payments – final date and amount**

4.9.1 In line 1 **insert** "21 days" in lieu of "14 days".

#### **Pay Less Notices and other general provisions**

4.10.4 **Insert** the following in lieu of existing clause 4.10.4:

“Any right of the Employer to deduct or set-off any amount (whether arising under any term of this Contract or under any rule of law or of equity) shall be exercisable against any monies due or to become due to the Contractor, whether or not such monies include or consist of any Retention.”

#### **Ascertainment – Alternative B**

4.13.1.2 Before the semi-colon at the end of the clause **insert** “and provided further that the Contractor has supplied to the Employer reasonable evidence that property in such materials or goods is vested in the Contractor and that no third party has validly retained title to the same and that the property in the same will pass to the Employer”.

#### **Conclusivity of valuations**

4.14A **Insert** new clause 4.14A:

“4.14A Neither the issue by the Employer of any valuation nor the payment of any amount by the Employer to the Contractor under any valuation shall:

4.14A.1 prejudice or adversely affect the right of either the Contractor or the Employer to contend that the Works have not been properly valued and that any amount has been improperly paid or withheld. In making any evaluation the Employer shall be entitled to reconsider and if necessary adjust the assessments made by him in arriving at any previous valuation; and/or

4.14A.2 constitute or imply or be evidence of the Employer’s approval or acceptance of any design, work, materials or equipment forming part of the Works nor shall in any way lessen or otherwise affect the Contractor’s responsibilities and liabilities under this Contract.”

#### **Listed Items**

4.15.2.1 **Insert** the following at the end of the sub clause:

“and has provided evidence of such in the form of a vesting certificate as provided or approved by the Employer;”

#### **Rules on treatment of Retention**

4.16 **Insert** the following in lieu of existing clause 4.16:

“The Employer shall be under no fiduciary obligation with regard to any Retention and shall be under no obligation to set aside in a separate account any amount representing Retention and the Employer’s interest in the Retention shall be as beneficial owner and shall not be fiduciary as trustee.”

#### **Matters materially affecting regular progress**

4.19.1 In line 4 after “subject to clause 4.19.2” **insert** “and 4.19.3”.

4.19.3 **Insert** new clause 4.19.3:

“4.19.3 The Contractor shall not be entitled to reimbursement for any loss and/or expense that he has not made reasonable and proper efforts to avoid or reduce such loss and expense.”

4.19A **Insert** new clause 4.19A:

“4.19A Any delay in the regular progress of the Works caused by a matter or matters referred to in clause 4.21 which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.”

## **Relevant Matters**

- 4.21 In line 1 following “Relevant Matters” **insert** “(but only to the extent that such matters are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Sub-Contractor or supplier or their respective servants or agents)”
- 4.21.5 At the end of the clause **insert** “or, in the case of any impediment or prevention, save to the extent that the same is in consequence of the reasonable exercise of the rights of the Employer under this Contract.”
- 4.21.6 **Insert** new clause:
- “4.21.6 the discovery of Asbestos in accordance with clause 11.2.”

## **Reservation of Contractor’s rights and remedies**

- 4.23 **Insert** the following in lieu of existing clause 4.23: “Reimbursement of the Contractor for loss and/or expense under clauses 4.20, 4.21 and 4.22 shall be deemed to be full compensation for the Contractor in respect of the matters for which the compensation is paid and the Employer shall have no further liability to the Contractor in respect of such matters arising under the Contract or generally at law.”

## **Final Statement and Final Payment**

- 4.24.5 In line 1 **insert** “three months” in lieu of “one month”.

## **Definition of Changes**

- 5.1.1.4 **Insert** new clause:
- “5.1.1.4 the acceleration of the Completion Date for the Works or Section.”
- 5.1.2.3 **Insert:** “(except where the Employer requires the Contractor during the Rectification Period to remedy any defect, shrinkage or other fault outside the normal working hours of the Contractor)” after “limitations of working hours”.

## **Valuation of Changes and provisional sum work**

- 5.2 At the end of the hanging paragraph **insert** “save where such Change has been necessitated by any negligence, omission or default of the Contractor, in which event no addition shall be made to the Contract Sum.”
- 5.2.3 **Insert** “Not Used” in lieu of existing clause 5.2.3.

## **Change of conditions for other work**

- 5.6 At the end of the clause 5.6 before the full stop, **insert:** “, provided always that the substantial change in the conditions does not arise by reason of any error, omission, negligence or default of the Contractor or the Contractor’s Persons”.

## **Contractor’s liability – personal injury or death**

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

## **Contractor’s liability – loss, injury or damage to property**

**Renumber** clause 6.2 as 6.2.1:

- 6.2 In line 1 **insert** “The” in lieu of “Subject to clause 6.3, the”.

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

In line 4, after “Works”, **insert** “or of any other obligations pursuant to section 2 or section 3 of the Conditions”.

6.2.2 **Insert** new clause 6.2.2:

“6.2.2 Without prejudice to the generality of clause 6.2.1 the Contractor shall:

6.2.2.1 at all times prevent any trespass, public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on a public highway) or other interference with the rights of any adjoining or neighbouring land owner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions;

6.2.2.2 defend or at the Employer’s option assist the Employer in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise; and

6.2.2.3 be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever and howsoever arising resulting from any such nuisance or interference, save only where such nuisance or interference is a consequence of a Change or other instruction of the Employer (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Contractor or any Sub-Contractor or supplier) and which could not have been avoided by the Contractor using all reasonable and practicable means. For the avoidance of doubt the Employer may issue to the Contractor such instructions as he considers necessary if any injunction is granted or court order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Change.”

6.2.3 **Insert** new clause 6.2.3:

“6.2.3 Without prejudice to the Contractor’s obligations under clause 6.2.2, if the carrying out of the Works or out of any other obligations pursuant to section 2 or section 3 of the Conditions is likely to necessitate any interference (including the oversail of any tower crane jib) with the right of adjoining or neighbouring land owners, tenants or occupiers, then the Contractor shall without cost to the Employer obtain the prior written agreement of such land owners, tenants or occupiers and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement without cost to the Employer.”

### **Loss or damage to Existing Structures or their contents**

6.3.1 At the end of the clause **insert** “occurring while the Employer is required to maintain such insurance pursuant to this Contract.”

6.3.1 **Insert** the following in lieu of existing clause 6.3.1:

“The Contractor’s liability and indemnity under clause 6.2 in respect of any property real or personal shall include any loss or damage to Existing Structures and to any of their contents.”

6.3.2 **Insert** “Not Used” in lieu of existing clause 6.3.2.

6.3.3 **Insert** “Not Used” in lieu of existing clause 6.3.3.

## **Contractor's insurance of liability of Employer**

6.5.1 **Insert** "If the Contract Particulars" in lieu of "If the Employer's Requirements".

6.5.1.4 **Delete** "insure" and **replace** with "procure cover is effected for the Specified Perils".

## **Related definitions**

6.8 In the definition of Joint Names Policy after "Contractor" **insert** "and any one or more third persons specified in writing by the Employer to the Contractor, being persons having or acquiring an interest in or an organisation providing finance in connection with the Sites or the Works".

## **Sub-contractors – Specified Perils cover under Works Insurance Policies**

6.9.1 In line 1 **delete** ", where Insurance Option A applies, and the Employer, where Insurance Option B or C applies,".

In line 2 after the word "Policy" **insert** ", pursuant to paragraph C.2 of Schedule 3".

## **Terrorism Cover – policy extensions and premiums**

6.10.1 In lines 2/3 **insert** "pursuant to paragraph C.2 of Schedule 3" in lieu of "where Insurance Option A applies, or the Employer, where Insurance Option B or C applies".

6.10.2 In line 1 **delete** "Insurance Option A applies and" and **insert** "The" in lieu of "the".

In line 1 after the word "required" **insert** "pursuant to paragraph C.2 of Schedule 3".

6.10.3 In line 1 **insert** "In the event that" in lieu of "Where Insurance Option A applies and".

## **Terrorism Cover – non-availability – Employer's options**

6.11.3 In line 1 **insert** "If" in lieu of "Where Insurance Option A applies and".

## **Loss or damage – insurance claims and reinstatement**

6.13.3 In lines 3/4 **delete** ", and from any policies covering Existing Structures or their contents that are effected by the Employer".

6.13.5 **Insert** "In respect of the Works Insurance Policy:" in lieu of "Where Insurance Option A applies:"

6.13.6 In line 1 **delete** "Insurance Option B or paragraph C.2 of Insurance Option C applies or where"

## **Loss or damage to Existing Structures – right of termination**

6.14 In line 2 **insert** "the Employer may" in lieu of "either Party may, if it is just and equitable".

In line 3 **insert** "Contractor" in lieu of "other".

In line 4 **insert** "and the provisions of clause 8.12 shall apply." in lieu of ". If such notice is given, then:"

6.14.1 **Delete** clause 6.14.1.

6.14.2 **Delete** clause 6.14.2.

## **Obligation to insure**

6.15 **Insert** the following in lieu of existing clause 6.15:

- “6.15.1 The Contractor warrants that he has taken out PI Insurance covering all of his design and professional obligations under this Contract (including in connection with any errors or omissions in the performance of his professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity of the type and amount not less than that stated in the Contract Particulars and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works pursuant to clause 2.27, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.
- 6.15.2 Any increased or additional premium required by insurers by reason of the Contractor’s own claims record or other acts, omissions, matters or things peculiar to the Contractor shall be deemed to be within commercially reasonable rates.
- 6.15.3 The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates or is no longer available and/or if for any other reason the Contractor is unable to maintain and/or is not maintaining such insurance in which case the Contractor shall take out and maintain a PI Insurance policy having the maximum limit of indemnity and the widest cover which is available to the Contractor upon, subject to clause 6.15.2, commercially reasonable rates and give notice of the same to the Employer and shall further discuss means of best protecting the respective positions of the Employer and the Contractor in respect of the Works.
- 6.15.4 The Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 6.15.5 As and when reasonably required to do so by the Employer, the Contractor shall:
- 6.15.5.1 produce for inspection documentary evidence that his PI Insurance is being maintained in accordance with this clause 6.15; and
  - 6.15.5.2 provide confirmation that any occurrence or claim, or of circumstances likely to give rise to a claim, have been properly notified to his insurer in accordance with the requirements of his policy.”

6.16 **Delete** clause 6.16.

#### **Breach of Joint Fire Code – Remedial Measures**

- 6.19.2 At the end of the clause **insert** “or may be recoverable from the Contractor by the Employer as a debt.”
- 6.21 **Insert** new clause 6.21:

#### **“Evidence of Policies**

- 6.21 To the extent that the Contractor has procured any project insurance policies he shall provide to the Employer:

- 6.21.1 copies on request of such insurance policies (including all documents evidencing any amendments, extensions or variations to all such policies) and the Employer shall be entitled to inspect them during ordinary business hours;
- 6.21.2 evidence that the premiums payable under such policies insurances have been paid and that the insurances are in full force and effect in accordance with this section 6 and Annex 21; and
- 6.21.3 on or before the date of expiry of any such policy satisfactory evidence that the relevant insurance has been or is being renewed or extended.”

#### **General**

- 7. **Insert** the following in lieu of the whole of existing Section 7:
- “7.1 The Contractor may not assign or charge the benefit of this Contract or any right arising under it without the written consent of the Employer.
- 7.2 The Employer’s rights under this Contract may be assigned without the consent of the Contractor by absolute assignment on two occasions.
- 7.3 The Contractor shall not be entitled to contend that any person to whom this Contract is assigned in accordance with clause 7.2 is precluded from recovering under this Contract any loss incurred by such assignee resulting from any breach of this Contract, (whenever happening) by reason that such person is an assignee and not a named promisee under this Contract.”

#### **Meaning of insolvency**

- 8.1.4.1 **Delete** “he enters into an arrangement, compromise or composition in satisfaction of his debts” and replace with:  
“he commences negotiations with all or any class of his creditors with a view to rescheduling any of his debts, or makes a proposal for or enters into any compromise or arrangement with any of his creditors”.
- 8.1.4.2 At the end of sub-clause 8.1.4.2, **delete** the full stop and **replace** with “; or”.
- 8.1.4.3 **Insert** a new clause 8.1.4.3:  
“8.1.4.3 he applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.”

#### **Notices under Section 8**

- 8.2.1 At the end of the clause **insert** “provided always that this clause 8.2.1 shall not apply to any notice or notices given pursuant to clause 8.5.”

#### **Default by Contractor**

- 8.4.1.3 In line 2, after “remove”, **insert** “or rectify”.
- 8.4.1.5 After “3.16” **insert** “;” in lieu of ‘,’.
- 8.4.1.6 **Insert** new clause:  
“8.4.1.6. fails to comply with clause 6.15.”
- 8.4.1.7 **Insert** new clause:  
“8.4.1.7 fails to comply with Articles 9, 10, 11, 12, 13, 14, 15 and/or 16 or clause 2.1.5.”

#### **Corruption and regulation 73(1)(b) of the PC Regulations**

- 8.6 **Insert** the following in lieu of existing clause 8.6:

## **Prevention of Fraud and Bribery**

- 8.6.1 The Contractor represents and warrants that neither he, nor to the best of his knowledge any of his employees, have at any time on or before the date of this Contract:
  - 8.6.1.1 committed a Prohibited Act or been formally notified that he is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 8.6.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 8.6.2 During the carrying out of the Works the Contractor shall not:
  - 8.6.2.1 commit a Prohibited Act; and/or
  - 8.6.2.2 do or suffer anything to be done which would cause the Employer or any of the Employer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 8.6.3 During the carrying out of the Works the Contractor shall:
  - 8.6.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 8.6.3.2 keep appropriate records of his compliance with this Contract and make such records available to the Employer on request; and
  - 8.6.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Employer on request) to prevent him and any Contractor's Persons or any person acting on the Contractor's behalf from committing a Prohibited Act.
- 8.6.4 The Contractor shall notify the Employer immediately in writing if he becomes aware of any breach of clause 8.6.1, or has reason to believe that he has or any of his employees or Sub-Contractors have:
  - 8.6.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 8.6.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 8.6.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 8.6.5 If the Contractor shall make a notification to the Employer pursuant to clause 8.6.4, the Contractor shall respond promptly to the Employer's enquiries, co-operate with any investigation, and allow the Employer to audit any books, records and/or any other relevant documentation in accordance with this Contract.



- 8.6.6 If the Contractor breaches Clause 8.6.3, the Employer may by notice require the Contractor to remove from carrying out the Works any Contractor's Person whose acts or omissions have caused the Contractor's breach.

**Termination for corrupt gifts and fraud**

- 8.6.7.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of his or their agents or shareholders commits any Prohibited Act, the Employer shall be entitled to act in accordance with the provisions of this clause 8.6.7.
- 8.6.7.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, the Employer may terminate the Contractor's employment under this Contract by giving notice to the Contractor.
- 8.6.7.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate unless, within 20 Business Days of receipt of such notice, the Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.7.4 If the Prohibited Act is committed by a Sub-Contractor of the Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the relevant subcontract and procures the carrying out of such part of the Works by another person.
- 8.6.7.5 If the Prohibited Act is committed by an employee of a Sub-Contractor of the Contractor acting independently of that Sub-Contractor, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.7.6 If the Prohibited Act is committed by any other persons not specified in clauses 8.6.7.2 to 8.6.7.5, the Employer may give notice to the Contractor of termination and the Contractor's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the carrying out of such part of the Works by another person.
- 8.6.7.7 Any notice of termination under this clause 8.6.2 shall specify:
- 8.6.7.7.1 the nature of the Prohibited Act;
  - 8.6.7.7.2 the identity of the party whom the Employer believes has committed the Prohibited Act; and
  - 8.6.7.7.3 the date on which the Contractor's employment under this Contract will terminate, in accordance with the applicable provision of this clause.
- 8.6.7.8 In this clause 8.6.2 the expression "not acting independently of" (when used in relation to the Contractor or any Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or any of its Sub-Contractors.
- 8.6.8 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment under this Contract where the circumstances set out in Regulation 73(1)(b) of the PC Regulations apply."

## **Termination – Contractor to vacate the Sites**

8.6A **Insert** new clause 8.6A:

“8.6A Upon the termination of the Contractor’s employment under this Contract (and any purported termination by notice given by the Employer) the Contractor shall forthwith vacate the Sites.”.

## **Consequences of termination under clauses 8.4 to 8.6**

8.7.2.1 At the end of the clause **insert** “If within a reasonable time after such requirement has been made the Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to him, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.”.

8.7.4 **Insert** the following in lieu of existing clauses 8.7.4.1, 8.7.4.2 and 8.7.4.3:

“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;”.

## **Insolvency of Employer**

8.10.3 At the end of the clause **insert** “and an extension of time for completion shall be given under clause 2.25 equal to the period of suspension.”.

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

8.11.1 **Insert** “Force Majeure” in lieu of “force majeure”.

## **Termination at will**

8.11A **Insert** new clause 8.11A as follows:

“8.11A.1 The Employer may terminate the Contractor’s employment under this Contract at any time by complying with his obligations under clause 8.11A.2.

8.11A.2 If the Employer wishes to terminate the Contractor’s employment under this Contract under this clause 8.11A he must provide written notice (hereinafter called a “**Termination Notice**”) to the Contractor stating:

8.11A.2.1 that the Employer is terminating the Contractor’s employment under this Contract under this clause 8.11A.1; and

8.11A.2.2 that the Contractor’s employment under this Contract will terminate on the date specified in the Termination Notice which must be a minimum of twenty (20) Business Days after the date of the Termination Notice.

8.11A.2 The Contractor’s employment under this Contract will terminate on the date specified in the Termination Notice referred to in clause 8.11A.2.”

## **Consequences of Termination under Clauses 8.9 to 8.11A, etc.**

8.12.1 In the first line **insert** “8.11A” in lieu of “8.11”.

8.12.3.3 At the end of the clause **insert** “and”.

8.12.3.4 **Insert** “.” in lieu of “;”.

8.12.3.5 **Delete** clause 8.12.3.5.

8.12.4 **Delete** clause 8.12.4.

### **Adjudication**

9.2.2.2 At the end of the clause **insert** “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;”.

9.2.3 **Insert** new clause 9.2.3:

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

9.2.4 **Insert** new clause 9.2.4:

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

9.2.5 **Insert** new clause 9.2.5:

“9.2.5 the Adjudicator shall notify the Contractor and the Employer as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication or the Parties.”.

### **Arbitration**

9.3 **Delete** clause 9.3.

9.4 **Delete** clause 9.4.

9.5 **Delete** clause 9.5.

9.6 **Delete** clause 9.6.

9.7 **Delete** clause 9.7.

9.8 **Delete** clause 9.8.

## **SECTION 10 – SITES CONDITIONS**

10 **Insert** new clause 10:

### **“Sites conditions**

10.1 Save as provided for in Clause 10.2, the Contractor shall have no liability in respect of the Physical Conditions and/or any other conditions of or affecting the Site.

10.2 The Contractor has had an opportunity to undertake a non-invasive visual inspection of the Physical Conditions at the Base Date and, to the extent reasonably practicable from the form and degree of non-invasive visual inspection carried out by the Contractor, shall be deemed to have obtained all necessary information as to risks contingencies and all other circumstances in respect of the Physical Conditions which may influence or affect the execution of the Works reasonably ascertainable from such non-invasive visual inspection. No failure on the part of the Contractor to discover or foresee such condition risk contingency or circumstance to the extent that the same ought reasonably to have been discovered by such non-invasive visual inspection as that carried out by the Contractor shall entitle the Contractor to an addition to the Contract Sum or have a claim for an extension of time but any such condition, risk, contingency or circumstance not deemed as reasonably discoverable by such non-invasive visual inspection as carried out by the Contractor shall be treated as a Change.

- 10.3 Notwithstanding any other provision of this Contract, the Contractor shall have no liability for the adequacy or suitability of the existing structure (including in respect of the loads to be applied as a result of the Works) for the carrying out of the Works and/or the addition of the Works thereto and any such inadequacy or lack of suitability shall be treated as a Change.
- 10.4 Notwithstanding that the Employer makes no representation or warranty as to the accuracy or completeness of any survey report or documents prepared by or on behalf of itself, the Contractor shall be entitled to rely upon any survey report or other document provided by or on behalf of the Employer regarding any such matter as is referred to in this clause 10. To the extent that any such surveys reports or documents prove to be inadequate, inaccurate or incomplete such inadequacy, inaccuracy and/or incompleteness shall be treated as a Change.”

## **SECTION 11 - ASBESTOS**

11 **Insert** new clause 11:

### **“Asbestos**

- 11.1 Unless the exposure arises directly or indirectly as a result of any act or omission of the Contractor or any Contractor’s Person, the Employer accepts full responsibility (including any financial or other consequences which arise directly or indirectly) for death and personal injury in respect of exposure to Asbestos in the Existing Buildings, where exposure takes place prior to the date on which the Contractor takes control of the Sites.
- 11.2 The discovery of any Asbestos in the Refurbished Buildings which has not been identified in any survey shall be deemed to be a Relevant Event and Relevant Matter subject to and in accordance with clauses 2.25 and 4.20. Any work which is instructed by the Employer to be carried out in consequence of the discovery of such Asbestos shall be deemed, without double counting, to be a Change.”

## **SECTION 12 – DEFECTS IN EXISTING BUILDINGS**

12 **Insert** new clause 12:

### **“Defects in Existing Buildings**

- 12.1 The Contractor accepts, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any defect caused by the Contractor carrying out the Works.

## **SECTION 13 – SET OFF AND OTHER REMEDIES**

13 **Insert** new clause:

### **“Set off and other remedies**

- 13.1 Nothing contained in this Contract (other than as to the giving of notices) shall oust or limit any right of the Employer under any statute or rule of law or of equity in the nature of set-off or abatement of price.
- 13.2 In the event that the Contractor becomes Insolvent the Employer retains the right to withhold, deduct or to set-off any amount (whether arising under any term of this Contract, or under any rule of law or of equity) including without limitation the cost to the Employer of re-procuring the Project with a new contractor, against any monies due or to become due to the Contractor under this Contract or any other contract entered into between the

Employer and the Contractor. The Employer shall mitigate all losses incurred as a consequence of the Contractor's Insolvency.

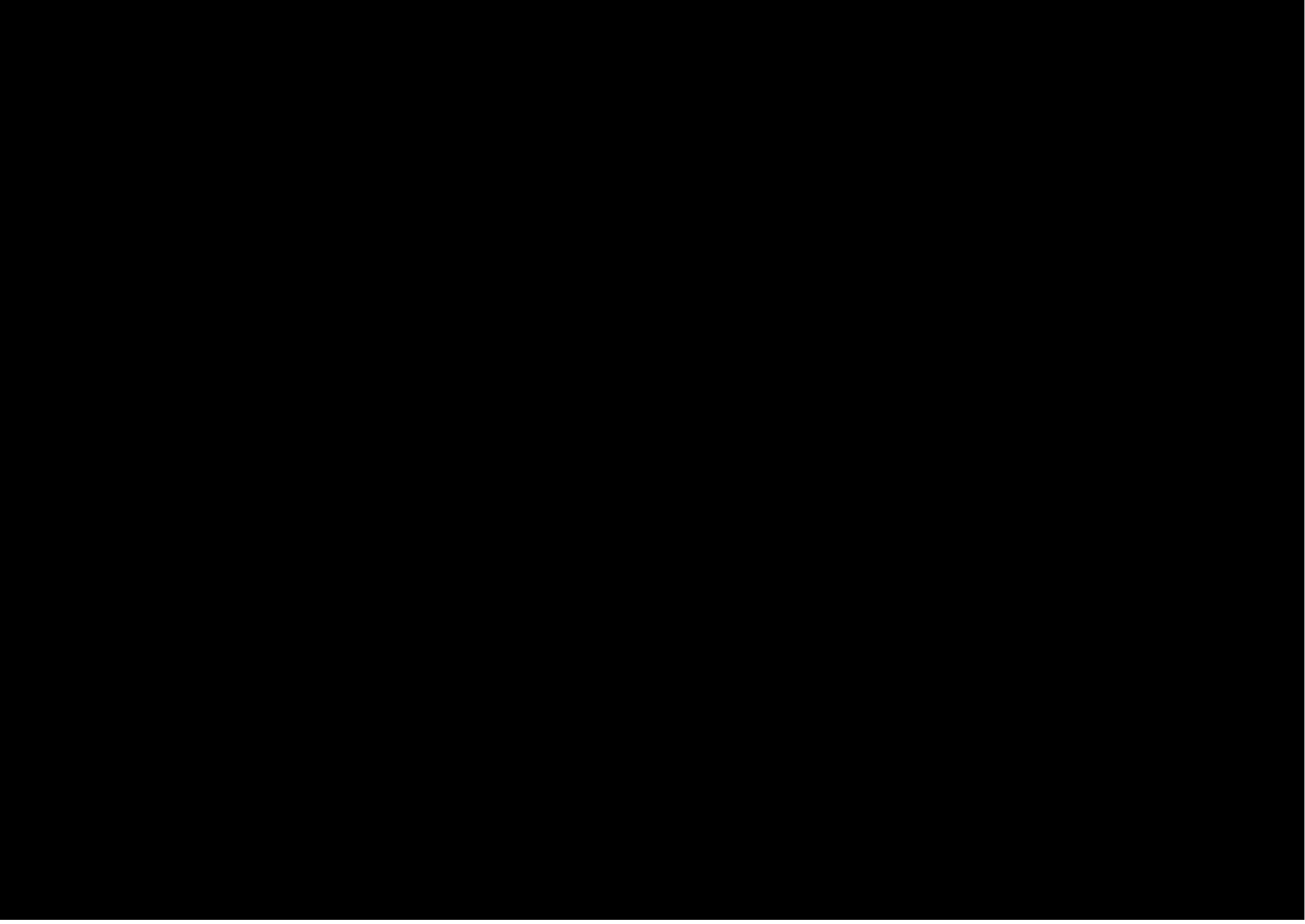
- 13.3 If the Contractor fails to comply with any requirement of clause 6.15 or if the Contractor becomes Insolvent so that his covenant is impaired, then without prejudice to any other remedies the Employer may have, the Employer shall be entitled to recover from the Contractor any premiums reasonably incurred to effect insurance (such as inherent defects insurance or other suitable cover) in order to arrange suitable alternative protection."

## **SCHEDULE 1 – DESIGN SUBMISSION PROCEDURE**

- 7 At the end of paragraph 7 **insert** "Where the Contractor acknowledges the Contractor's Design Document was not in accordance with the Employers Requirements, the re-submission shall be treated as a first submission of the Contractor's Design Documents as described in paragraph 5.1."
- 9 **Insert** new paragraph:
- "9 For the avoidance of doubt, no commentary made in the processes described in paragraph 5 shall be treated as a Change unless instructed by the Employer as such."
- 10 **Insert** new paragraph
- "10 List of Contractor's Design Documents to be reviewed pursuant to this Schedule 1 set out on the following page:





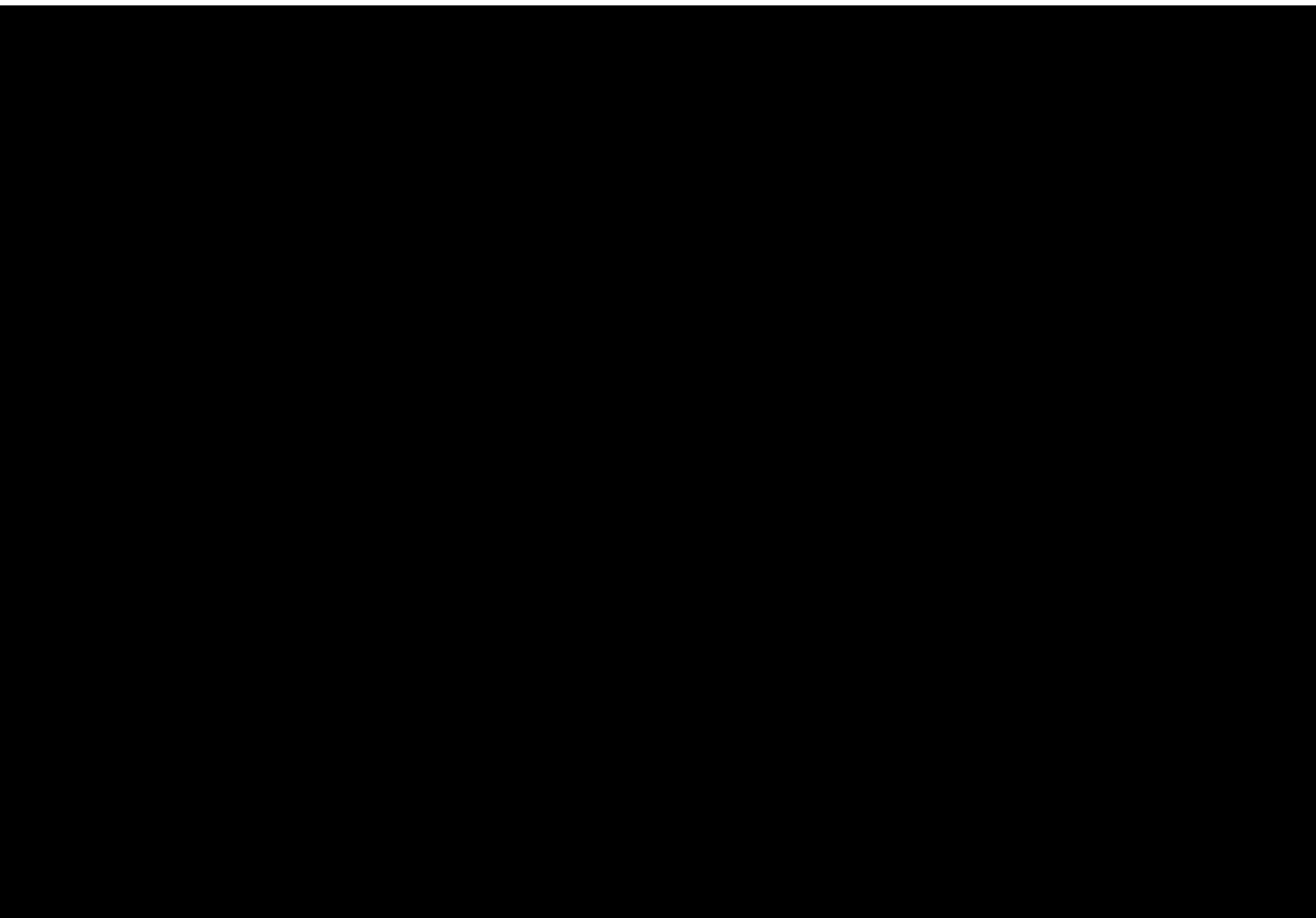






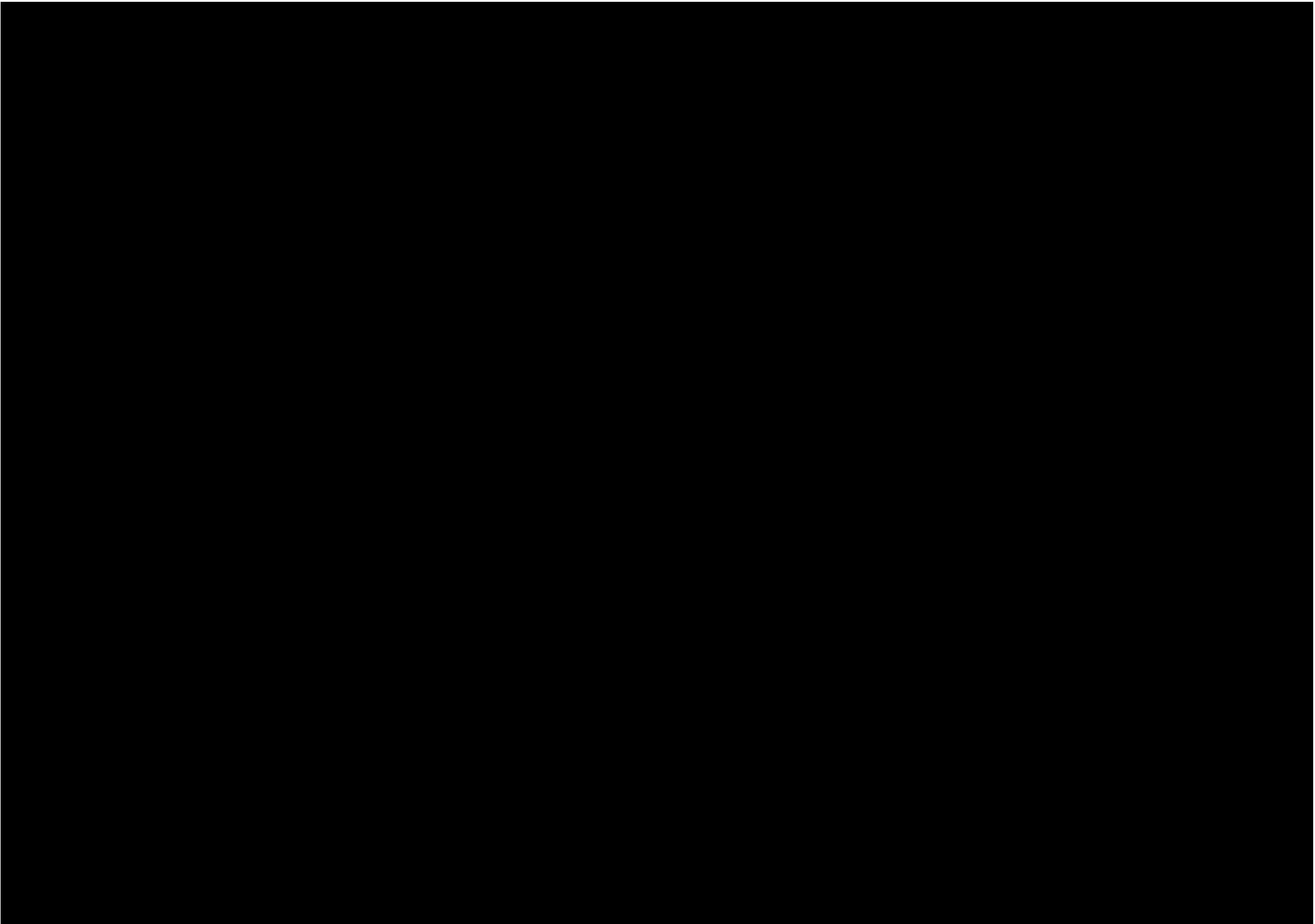


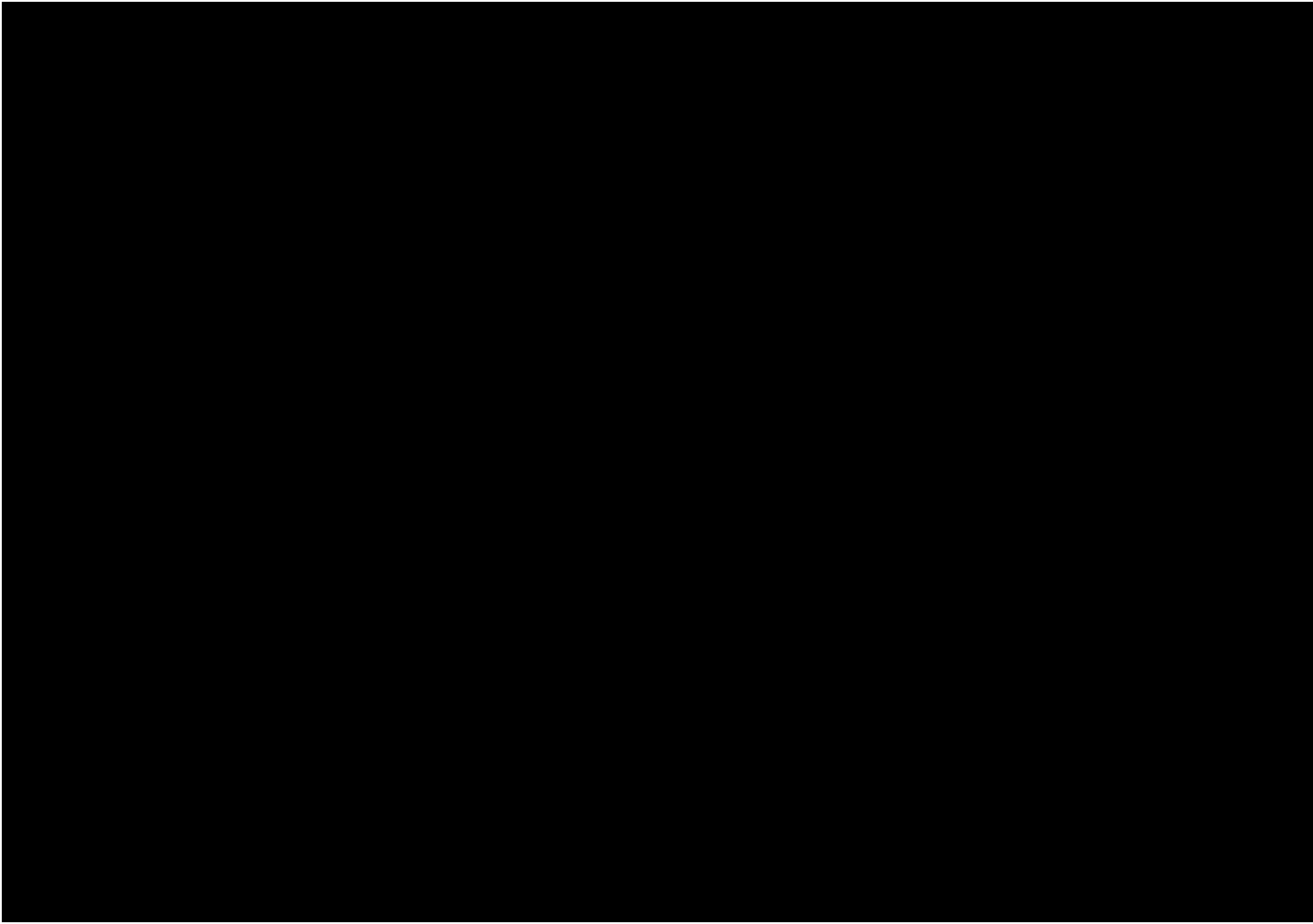




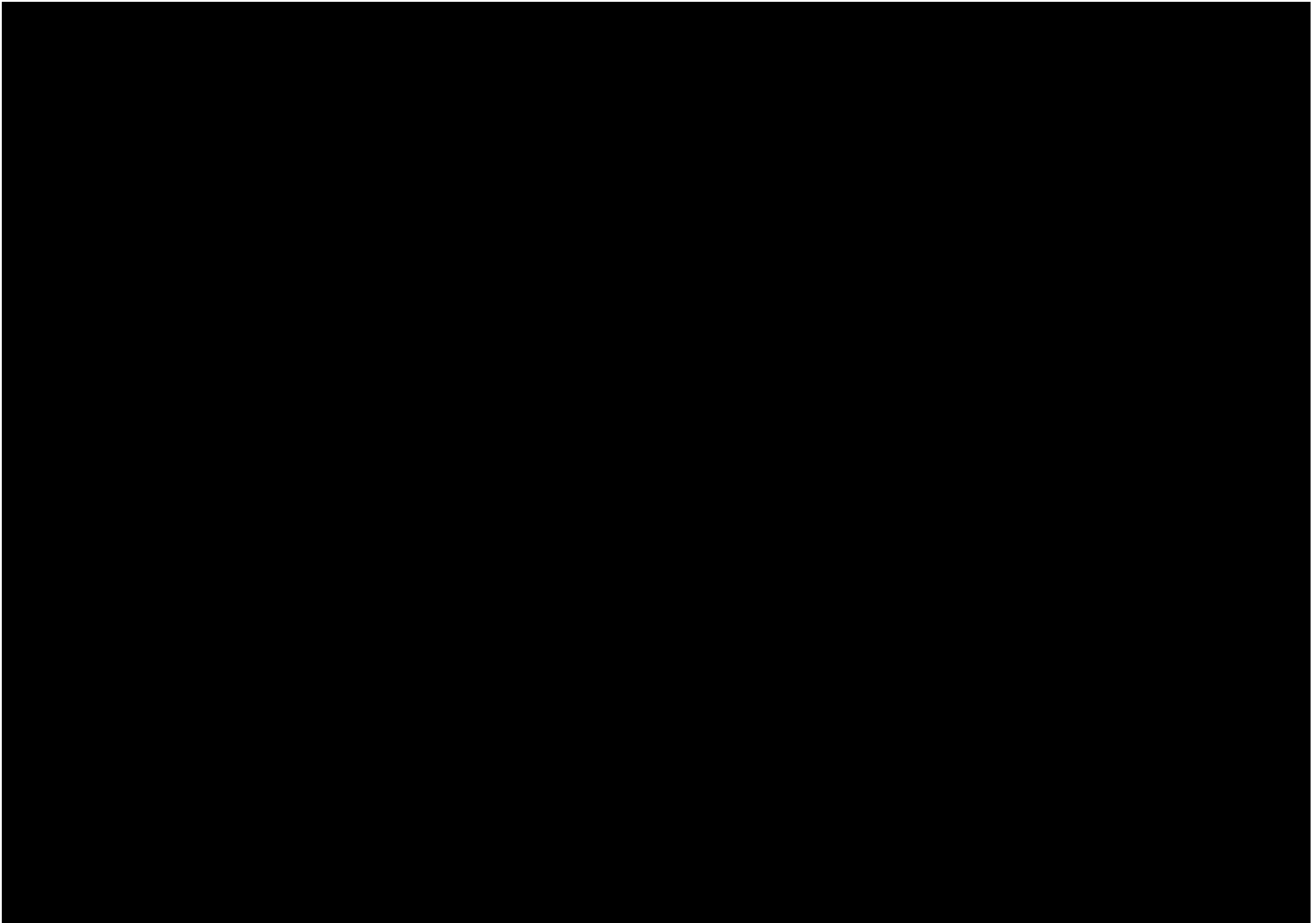




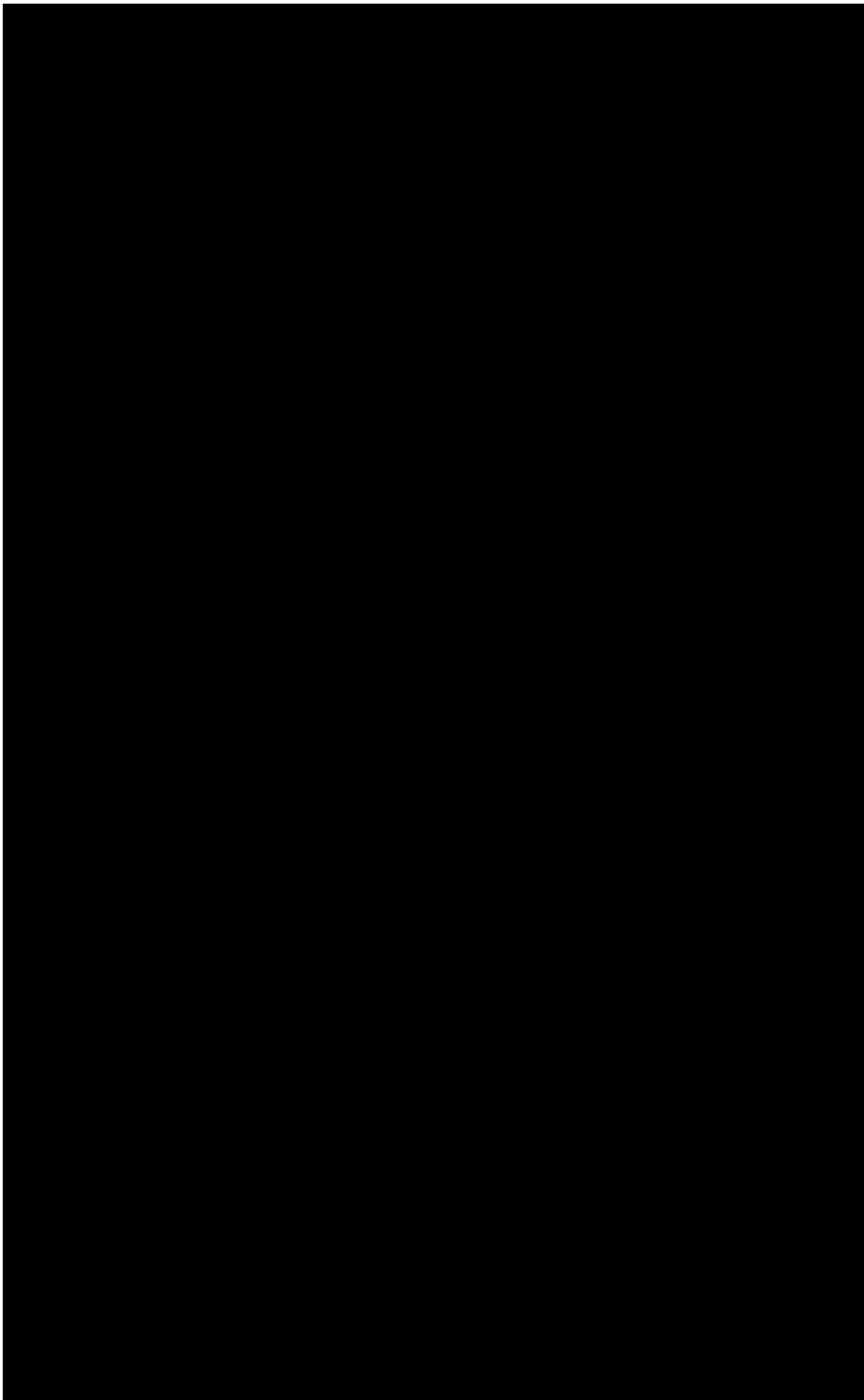












## **SCHEDULE 3 – INSURANCE OPTIONS**

### **Insurance Option C**

**Delete** the heading “(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)”.

#### **Paragraph C.1**

C.1 **Insert** the following in lieu of existing paragraph C.1:

#### **“Existing Structures and contents – cover for Specific Perils**

C.1 In respect of the Existing Structures together with the contents of them owned by the Employer or for which he is responsible, the Employer shall procure that cover is effected (but without the obligation to insure) for the full cost of reinstatement or repair of loss or damage due to any of the Specified Perils up to and including the date of issue of the Practical Completion Statement or (where applicable) last Section Completion Statement or (if earlier) the date of termination of the Contractor’s employment (whether or not the validity of that termination is contested).”

#### **Paragraph C.2**

In line 1 **insert** “Contractor” in lieu of “Employer”.

In line 2 after the word “Insurance” **insert** “with insurers approved by the Employer”.

#### **Paragraph C.4**

C.4 **Insert** new paragraph:

“C.4 The Contractor shall send to the Employer’s Agent for deposit with the Employer the Joint Names Policy referred to in paragraph C.2, each premium receipt for it and any relevant endorsements of it. If the Contractor defaults in taking out or maintaining the Joint Names Policy as required by paragraph C.2, the Employer may himself take out and maintain a Joint Names Policy against any risk in respect of which the default has occurred and the amount paid or payable by him in respect of premiums may be deducted by him from any sums due to the Contractor under this Contract or shall be recoverable from the Contractor as a debt.”

#### **Paragraph C.5**

C.5 **Insert** new paragraph:

#### **“Use of Contractor’s annual policy – as alternative**

C.5 If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:

1. provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph C.2; and
2. is a Joint Names Policy,

that policy shall satisfy the Contractor's obligations under paragraph C.2. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars."

ANNEX 1

CONTRACTOR WARRANTY

DATED \_\_\_\_\_ 20[ ]]

[CONTRACTOR]

and

[ ]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is dated

20[ ] BETWEEN:

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

## BACKGROUND

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

## 1. DEFINITIONS AND INTERPRETATIONS

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

## 2. OPERATIVE PROVISIONS

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

## 3. CONTRACTOR’S WARRANTIES AND LIABILITIES

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

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

- (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Contractor shall have no liability under this clause 3 that is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Building Contract as joint employer.
- 3.3 For the avoidance of doubt the Contractor warrants to the Beneficiary that the Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Employer or that the Employer has suffered no loss. The Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Employer of any monies due under the Contract.
- 4. **COPYRIGHT**
- 4.1 The Intellectual Property Rights in the Contractor's Design Documents prepared by or on behalf of the Contractor in relation to the Building Contract and the work executed by him remains the property of the Contractor. The Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Contractor's Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Contractor's Design Documents or the use of the Intellectual Property Rights in the Contractor's Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.
- 4.2 The Beneficiary may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 4.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Beneficiary.
- 4.3 In the event that the Contractor does not own the copyright or any Intellectual Property Rights in any of the Contractor's Design Documents the Contractor shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Contractor is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Contractor shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.4 The Contractor waives any moral right to be identified as author of the Contractor's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Contractor's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.5 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Contractor in relation to the Contractor's Design Documents the Contractor undertakes, if



the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.

- 4.6 The Contractor warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Contractor's Design Documents.
- 4.7 The Contractor shall supply copies of the Contractor's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.8 In carrying out the Works the Contractor shall not infringe any Intellectual Property Rights of any third party. The Contractor shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

## 5. **PROFESSIONAL INDEMNITY INSURANCE**

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

- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Contract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than £10,000,000 (ten million pounds) any one claim but separate aggregate limits of the same level for i) pollution/contamination, ii) asbestos and iii) cladding/fire safety and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

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

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

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

## 6. **ASSIGNMENT**

- 6.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two (2) occasions only and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 6.2 The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

## 7. **NOTICES**

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

7.1.1 Contractor: [e-mail address]<sup>1</sup>

7.1.2 Beneficiary: [e-mail address]<sup>2</sup>

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

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

## 8. **BENEFICIARY'S REMEDIES**

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

## 9. **INSPECTION OF DOCUMENTS**

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

## 10. **SUB-CONTRACTORS**

Following a written request from the Beneficiary the Contractor will (unless it has already done so) procure that its sub-contractors shall execute a deed of collateral warranty in the

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<sup>1</sup> Insert e-mail address

<sup>2</sup> Insert e-mail address

relevant form specified in the Building Contract in favour of any person in whose favour the Building Contract obliges the Contractor to give or procure the giving of such a warranty.

11. **SEVERABILITY**

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

12. **WAIVER**

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

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

13. **THIRD PARTY RIGHTS**

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

14. **GOVERNING LAW AND JURISDICTION**

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

15. **COUNTERPARTS**

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

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

EXECUTED AS A DEED by

CONTRACTOR acting by a Director

and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by

[BENEFICIARY] acting by  
acting by a Director and  
its Secretary/two Directors

Director

Secretary/Director

**OR**

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

Authorised Signatory

ANNEX 2

Principal Sub-Contractor Warranty in favour of the Employer

DATED \_\_\_\_\_ 20[ ]]

[PRINCIPAL SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is made on

20[ ] BETWEEN:

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

## BACKGROUND

- (A) The Employer has appointed the Contractor under a building contract (the “**Building Contract**”) to carry out and complete the Works in relation to the Sites.
- (B) The Principal Sub-Contractor has been appointed by the Contractor under a subcontract (the “**Subcontract**”) in relation to the [ ] element of the Works (the “**Subcontract Works**”).<sup>3</sup>
- (C) The Principal Sub-Contractor is obliged under the Subcontract to enter into this Deed in favour of the Employer.
- (D) The Principal Sub-Contractor and the Contractor have agreed to duly execute and deliver this Deed in favour of the Employer.

## 1. DEFINITIONS AND INTERPRETATIONS

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

## 2. OPERATIVE PROVISIONS

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

## 3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

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

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

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<sup>3</sup> Insert details of relevant sub-contract package.

- (a) any design of the Subcontract Works;
  - (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
  - (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
  - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration that it would have had and shall be entitled in any action or proceedings by the Employer to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Employer had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Employer that the Principal Sub-Contractor shall not raise any defence to a claim by the Employer under this Deed on the grounds that the losses in respect of which the Employer seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.

#### 4. **COPYRIGHT**

- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by it remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents for

purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

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

## 5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Employer that it:
  - 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than ten million pounds (£10,000,000) in the aggregate with a minimum of one (1) automatic full



reinstatement of the aggregate indemnity limit in any one (1) year of insurance<sup>4</sup> and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

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

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

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

## 6. **NOTICES**

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

6.1.1 Principal Sub-Contractor: [e-mail address]<sup>5</sup>

6.1.2 Employer: [e-mail address]<sup>6</sup>

6.1.3 Contractor: [e-mail address]<sup>7</sup>

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

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

## 7. **ASSIGNMENT**

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<sup>4</sup> Cover to reflect the type of PI insurance held by each sub-contractor.

<sup>5</sup> Insert e-mail address

<sup>6</sup> Insert e-mail address

<sup>7</sup> Insert e-mail address

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

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

## 8. **EMPLOYER'S REMEDIES**

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

## 9. **INSPECTION OF DOCUMENTS**

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

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

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

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

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

10.2 Any notice given by the Principal Sub-Contractor pursuant to clause 10.1 above shall:

10.2.1 specify the Principal Sub-Contractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or for discontinuing or suspending its performance under it (as applicable);

10.2.2 specify any other breaches by the Contractor; and

10.2.3 state the amount (if any) of monies outstanding under the Subcontract (whether or not such amounts result from a breach entitling the Principal Sub-Contractor to terminate or treat as terminated or repudiated the Subcontract or to discontinue or

suspend the performance of any duties or obligations under the Subcontract (as applicable)).

- 10.3 Within the period of any notice given by the Principal Sub-Contractor pursuant to clause 10.1:
- 10.3.1 the Employer may give written notice to the Principal Sub-Contractor that the Employer will henceforth become the client under the Subcontract to the exclusion of the Contractor and thereupon the Principal Sub-Contractor will admit that the Employer is its client under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds but subject always to clause 10.3.2 below;
  - 10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and
  - 10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Principal Sub-Contractor under the Subcontract accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.
- 10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Principal Sub-Contractor, the Employer will not be under any obligation to the Principal Sub-Contractor nor will the Principal Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Principal Sub-Contractor pursuant to clause 10.3.1 or clause 10.5 of this Deed.
- 10.5 The Principal Sub-Contractor further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the Building Contract is terminated, the Principal Sub-Contractor, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Subcontract.
- 10.6 If the Principal Sub-Contractor is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.
- 10.7 The Contractor acknowledges that the Principal Sub-Contractor will be entitled to rely on a notice given to the Principal Sub-Contractor and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.
- 10.8 The Employer may by notice in writing to the Principal Sub-Contractor and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.

10.9 Upon request by the Employer the Principal Sub-Contractor agrees to co-operate with the Employer in determining the duties performed or to be performed by the Principal Sub-Contractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract and the Building Contract.

10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Subcontract operates by reference to the existence and application of the Building Contract, the Subcontract shall be administered and construed as though the Building Contract was continuing and the Subcontract shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

11. **SUB-CONTRACTORS**

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

12. **SEVERABILITY**

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

13. **WAIVER**

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

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

14. **THIRD PARTY RIGHTS**

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

15. **GOVERNING LAW AND JURISDICTION**

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

16. **CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has entered into this Deed in order to acknowledge the arrangements effected hereby and undertakes to each of the Employer and the Principal Sub-Contractor to observe the provisions of this Deed at all times and not in any way to prejudice or affect

the enforcement hereof or to do or permit to be done anything which would be a breach hereof.

17. **COUNTERPARTS**

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

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

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

Director  
Director/Secretary

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

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

**OR**

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

Authorised Signatory

**OR**

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

Director

Director/Secretary

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

Director

Director/Secretary

Principal Sub-Contractor Warranty in favour of a third party

DATED \_\_\_\_\_ 20[ ]]

[PRINCIPAL SUB-CONTRACTOR]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is made on

20[ ] BETWEEN:

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

## BACKGROUND

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

## 1. DEFINITIONS AND INTERPRETATIONS

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

## 2. OPERATIVE PROVISIONS

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

## 3. PRINCIPAL SUB-CONTRACTOR’S WARRANTIES AND LIABILITIES

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

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

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<sup>8</sup> Insert details of relevant sub-contract package.



- (b) the selection and standards of all goods, materials, equipment or plant for the Subcontract Works;
- 3.1.3 it has not and shall not use, and subject to the standard of skill, care and diligence set out in clause 3.1.2, nor permit, specify or approve for use in connection with the Subcontract Works any materials which at the time of use:
  - (a) are known to be deleterious (either to health and safety or to the durability of the Subcontract Works); or
  - (b) contravene the Statutory Requirements, any relevant standard or code of practice issued from time to time by the BSI Group relating to standards or Good Industry Practice; or
  - (c) do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of use.
- 3.2 The Principal Sub-Contractor shall have no liability under this clause 3 than is greater or of longer duration than it would have had and shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set-off or counterclaim) if in lieu of this Deed the Beneficiary had been a party to the Subcontract as joint employer.
- 3.3 For the avoidance of doubt the Principal Sub-Contractor warrants to the Beneficiary that the Principal Sub-Contractor shall not raise any defence to a claim by the Beneficiary under this Deed on the grounds that the losses in respect of which the Beneficiary seeks damages, compensation or other relief are not losses suffered or to be suffered by the Contractor or that the Contractor has suffered no loss. The Principal Sub-Contractor shall not be entitled to rely upon set off, counterclaim or defence arising from non-payment by the Contractor of any monies due under the Subcontract.
- 4. **COPYRIGHT**
- 4.1 In this clause 4 “**Principal Sub-Contractor’s Design Documents**” means the drawings, designs, charts, specifications, plans, models including building information models, design details, photographs, reports and other documents or materials in its native format (excluding internal memoranda, internal documents, working papers and templates) created, amended and/or developed by or for the Principal Sub-Contractor in relation to the Subcontract Works (including any updates, amendments, additions and revisions), together with, where applicable, any other design documents or information to be provided by it under the BIM Protocol.
- 4.2 The Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents prepared by or on behalf of the Principal Sub-Contractor in relation to the Subcontract and the work executed by him remains the property of the Principal Sub-Contractor. The Principal Sub-Contractor hereby grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to use and reproduce the Principal Sub-Contractor’s Design Documents for any and all purposes connected with the construction, use, alterations or demolition of the Site. Such licence entitles the Beneficiary to grant sub-licences to third parties in the same terms as this licence provided always that the Principal Sub-Contractor shall not be liable to any licensee for any use of the Principal Sub-Contractor’s Design Documents or the use of the Intellectual Property Rights in the Principal Sub-Contractor’s Design Documents for purposes other than those for which the same were originally prepared by or on behalf of the Principal Sub-Contractor.

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

## 5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Principal Sub-Contractor hereby covenants with the Beneficiary that it:
- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Subcontract (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than ten million pounds (£10,000,000) in the aggregate with a minimum of one (1) automatic full reinstatement of the aggregate indemnity limit in any one (1) year of insurance<sup>9</sup> and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is

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<sup>9</sup> Cover to reflect the type of PI insurance held by each sub-contractor.

available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Principal Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

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

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

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

## 6. **NOTICES**

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

6.1.1 Principal Sub-Contractor: [e-mail address]<sup>10</sup>

6.1.2 Beneficiary: [e-mail address]<sup>11</sup>

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

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

## 7. **ASSIGNMENT**

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

7.2 The Principal Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such

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<sup>10</sup> Insert e-mail address

<sup>11</sup> Insert e-mail address

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

8. **BENEFICIARY'S REMEDIES**

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

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONTRACTORS**

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

11. **SEVERABILITY**

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

12. **WAIVER**

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

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

13. **THIRD PARTY RIGHTS**

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

14. **GOVERNING LAW AND JURISDICTION**

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

15. **COUNTERPARTS**

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

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

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

Director

Director/Secretary

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

Authorised Signatory

**OR**

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

Director

Director/Secretary

### ANNEX 3

#### Design Consultant Appointment

## **STANDARD SUB-CONSULTANCY AGREEMENT**

**Between ISG Construction Limited**

**and a Sub-Consultant**

**THIS DEED** is made the       day of       20

### **B E T W E E N:-**

- (1) ISG Construction Limited (00450103) whose registered office is situated at:- Aldgate House, 33 Aldgate High Street, London EC3N 1AG ("ISG"); and
- (2) [insert full name of Sub-Consultant and (if relevant) Company Number] of/whose registered office is situated at:- [insert address]

("the Sub-Consultant").

### **WHEREAS:-**

- A. ISG have entered into or intend to enter into a contract with the Client to carry out and complete the works as more particularly described therein at the site identified in Schedule 1 ("the Project").
- B. ISG wish to appoint the Sub-Consultant to carry out certain consultancy services in relation to the Project.
- C. ISG and the Sub-Consultant have entered into this Deed for the purposes of defining the terms and conditions under which the Sub-Consultant will provide such consultancy services.

### **NOW IT IS HEREBY AGREED as follows: -**

#### **1. DEFINITIONS**

- 1.1 The following definitions shall apply:-

"ISG Project Manager"	shall mean the person named as such in Schedule 1 or any replacement of him notified from time to time under this Deed;
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"the Client"	shall mean the person, firm or company named in Schedule 1 with whom ISG have entered into or intend to enter into the Main Contract;
"the Fee"	shall mean the amount stated in or calculated in accordance with the provisions of Schedule 1 payable to the Sub-Consultant for the performance of the Sub-Consultant Services in accordance with this Deed;
"the Main Contract"	shall mean the agreement between ISG and the Client in relation to the Project, a copy of which shall be available for inspection at ISG's offices on reasonable prior notice;
"the Material"	shall mean all drawings, specifications, reports, calculations and other work and documents prepared by or on behalf of the Sub-Consultant;
"the Relevant Policies"	shall mean ISG's Ethics, Anti-bribery and Anti-corruption Policies, in each case as ISG may update them from time to time;
"the Relevant Requirements"	shall mean all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977;
"the Sub-Consultant's Project Manager"	shall mean the person named as such in Schedule 1 any replacement of him appointed from time to time under this Deed;
"the Sub-Consultant Services"	shall mean the services which are to be provided by the Sub-Consultant pursuant to this Deed, as set out in Schedule 2, together with any additional services instructed in accordance with Clause 8.

## 1.2 Interpretation

- 1.2.1 Subject to applicable law (including without limitation as to fraudulent misrepresentation), this Deed supersedes any previous arrangements between ISG and the Sub-Consultant in respect of the Sub-Consultant Services (whether oral or written and including without limitation any letter of intent).



- 1.2.2 References to any legislation or section or provision thereof include any statutory modification or re-enactment of or statutory provision substituted for that legislation, section or provision.
- 1.2.3 Subject to the mandatory provisions of any statute, no rule of contract interpretation applies to the disadvantage of a party on the basis that such party put forward the Deed or any part thereof.
- 1.2.4 No consent, approval or certificate shall relieve the Sub-Consultant of its obligations hereunder.

## **2. General Obligations**

- 2.1 Notwithstanding the date of this Deed, the Sub-Consultant's engagement shall take effect from the date when the Sub-Consultant first commenced performance of the Sub-Consultant Services.
- 2.2 The Sub-Consultant shall carry out the Sub-Consultant Services to the reasonable satisfaction of ISG and upon the terms and conditions set out in this Deed. The Sub-Consultant shall, in addition, provide to ISG such further advice and assistance which is consistent with the scope of the Sub-Consultant Services as ISG may reasonably require from time to time to enable ISG to comply with the terms of the Main Contract.
- 2.3 Without prejudice to Clause 2.2, the Sub-Consultant warrants to ISG that he has exercised and will continue to exercise in the performance of the Sub-Consultant Services all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant experienced in the provision of like services for projects of a similar size, scope and complexity to the Project.
- 2.4 The Sub-Consultant shall be deemed to have knowledge of the provisions of the Main Contract (other than the details of ISG's prices thereunder) insofar as they relate to the Sub-Consultant Services.
- 2.5 Save where the provisions of this Deed otherwise require, the Sub-Consultant shall so carry out the Sub-Consultant Services set out in Schedule 2 (insofar as they relate to ISG's obligations under the Main Contract) that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by ISG of any of its obligations under the Main Contract and the Sub-Consultant shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of ISG under the Main Contract which relate to the Sub-Consultant Services.
- 2.6 Without limiting Clauses 2.4 and 2.5, the Sub-Consultant represents and warrants that it has had sufficient opportunity to review the design in the Main Contract (including without limitation any design within the Employer's Requirements as such term is defined in the Main Contract) and shall review any design in any variations or amendments issued to ISG under the terms of the Main Contract and is satisfied that all such design is accurate, adequate and sufficient to

enable the Sub-Consultant to perform and complete the Sub-Consultant Services in accordance with this Deed and the Main Contract. The Sub-Consultant agrees that, unless ISG is not responsible for the same under or in connection with the terms of the Main Contract, it shall be responsible for any errors or omissions in all such design insofar as the same relates to the discipline for which the Sub-Consultant is appointed. The Sub-Consultant shall:

- 2.6.1     notify ISG forthwith upon becoming aware of such error or omission;
  - 2.6.2     not be entitled to any additional payment to correct any such errors or omissions but upon ISG's request shall correct the same at its own cost;
  - 2.6.3     pay to ISG (and ISG shall be entitled to deduct from sums otherwise due to the Sub-Consultant) the amount of any liquidated damages or other sums levied against ISG by the Client to the extent the levying of the same was caused or contributed to by such error or omission;
  - 2.6.4     at ISG's request, employ such additional resource as may be required to minimise the amount of any delay arising out of such error or omission at the Sub-Consultant's own cost.
- 2.7     Without prejudice to Clauses 2.2 to 2.6 (inclusive), the Sub-Consultant shall use the degree of skill, care and diligence referred to in Clause 2.3 to ensure that materials specified for use by him in the Project are in accordance with the guidance contained in the publication "Good Practice in Selection of Construction Materials" (1997: Ove Arup & Partners) and are not
- 2.7.1     generally known at the time of specification to be harmful to health or detrimental to safety; or
  - 2.7.2     likely to adversely affect durability in the circumstances in which they are used; or
  - 2.7.3     do not meet British and European Standards (where these apply) or codes of practice or good building practice.
- 2.8     The Sub-Consultant shall exercising the degree of skill, care and diligence required by Clause 2.3 carry out the Sub-Consultant Services in compliance with and so as to ensure that the Material shall comply with all the requirements of any directly applicable provisions of the EU Treaty, or any EU regulation, any statutory enactment or any regulation, rule or order made pursuant thereto or any regulation or bye-law of any local authority or under and pursuant to any notices served under any such enactment, regulation, rule or order, regulation or bye-law.
- 2.9     The Sub-Consultant shall perform all the functions and duties required of a "Designer" under the Construction (Design and Management) Regulations 2015 (the "Regulations"). The Sub-Consultant warrants that it has the requisite skills, knowledge and experience and level of

resource to act as a “Designer” for the Project and that it has and will continue to put in place adequate arrangements (including allocating sufficient time and other resources) to enable it fully to perform all functions and duties required of it under the Regulations.

- 2.10 The Sub-Consultant hereby acknowledges that any negligence, omission or default by the Sub-Consultant in the performance of his obligations under this Deed may result in ISG committing breaches of and becoming liable in damages under the Main Contract and other contracts made by ISG in connection with the Sub-Consultant Services and may occasion further loss or expense to ISG in connection with the Sub-Consultant Services and all such damages, loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the Sub-Consultant.

3. **Co-ordination**

- 3.1 The Sub-Consultant shall provide full-time, or otherwise as may be required by ISG in writing, the Sub-Consultant's Project Manager who shall co-ordinate and manage the Sub-Consultant Services and who shall have full authority to act on behalf of the Sub-Consultant for all purposes in connection with this Deed. The Sub-Consultant shall not change the Sub-Consultant's Project Manager without the prior written approval of ISG (such approval not to be unreasonably withheld) and, if such approval is given, the Sub-Consultant shall replace him with a person who shall have been approved by ISG in writing (such approval not to be unreasonably withheld).
- 3.2 ISG shall provide from time to time as may be necessary the ISG Project Manager who shall have full authority to act on behalf of ISG for all purposes in connection with this Deed. ISG shall notify the Sub-Consultant in writing from time to time of any replacement of the ISG Project Manager.

4. **Instructions and Directions**

- 4.1 The Sub-Consultant shall comply with all reasonable instructions and directions in relation to the Sub-Consultant Services and/or this Deed issued to him by the ISG Project Manager.
- 4.2 The Sub-Consultant shall not comply with any instructions or directions which are directly received by him from the Client or any person other than ISG. If the Sub-Consultant shall receive any such direct instructions or directions, he shall forthwith inform ISG and shall supply ISG with a copy of such instruction or direction, if given in writing.

5. **Programme of Work**

- 5.1 The Sub-Consultant shall provide the Sub-Consultant Services in accordance with the programme of work set out in Schedule 1 or, if there is no such programme, as and when from time to time may be necessary or as may reasonably be directed by ISG.

- 5.2 Notwithstanding Clause 5.1, ISG may direct the Sub-Consultant to amend or vary the sequence of work shown in the said programme of work if, in its opinion, such amendment or variation is necessary for the proper co-ordination of the Sub-Consultant Services with the performance of ISG's other obligations under the Main Contract or is necessary to ensure the satisfactory completion of the works under the Main Contract.

6. **Facilities**

- 6.1 Unless it is expressly stated in Schedule 1 that ISG shall provide any equipment or facilities to the Sub-Consultant, the Sub-Consultant shall provide everything necessary for the satisfactory performance of the Sub-Consultant Services in accordance with this Deed.

7. **Terms of Payment**

- 7.1 Subject to Clauses 7 and 8, ISG shall pay to the Sub-Consultant the Fee as full remuneration for the performance of the Sub-Consultant Services in accordance with this Deed and the Fee shall be deemed to be inclusive payment for the Sub-Consultant Services and for all instructions or directions in relation to them and for all costs, expenses and overheads of every kind incurred by the Sub-Consultant in the performance of them.
- 7.2 The Fee shall (subject to ISG's rights of set-off and deduction) be payable in the instalments stated in Schedule 1 (the "specified dates"). ISG shall be entitled to reschedule such instalments appropriately if at any time the amount of Fee which would otherwise be due and payable does not correspond as a proportion of the whole of the Fee to the Sub-Consultant Services performed as a proportion of the whole of the Sub-Consultant Services. The due date for payment of each instalment shall be the specified date and the Sub-Consultant shall submit an invoice within 5 days thereof. The Sub-Consultant's invoice shall state the amount the Sub-Consultant considers due to him as at the due date and the basis on which such amount has been calculated and shall be accompanied by such documents, receipts and vouchers as may reasonably be required by ISG. The final date for payment shall be 30 days after the relevant due date save that if the Sub-Consultant invoice is issued late, the final date for payment shall be postponed by the same number of days by which the Sub-Consultant's invoice is late.
- 7.3 If ISG intends to pay less than the amount stated as due from him in the Sub-Consultant's invoice, ISG shall not later than 5 days before the relevant final date for payment give notice to the Sub-Consultant of that intention (a "Pay Less Notice") specifying the amount ISG considers to be due to the Sub-Consultant at the date the notice is given and the basis on which that amount has been calculated. Where such notice is given, ISG shall pay the Sub-Consultant not less than the amount stated as due in that notice on or before the final date for payment. If no Pay Less Notice is given in respect of any invoice, ISG shall pay the amount stated in that invoice on or before the final date for payment.

7.4 If ISG fails to pay the Sub-Consultant any amount properly due under this Deed by the final date for payment thereof:

7.4.1 ISG shall pay the Sub-Consultant in addition to the amount not properly paid simple interest thereon at a rate of 2% above the official dealing rate of the Bank of England current at the date that the relevant payment under this Deed became overdue for the period until such payment is made. The parties agree this to be a substantial remedy.

7.4.2 The Sub-Consultant may, having given ISG at least seven days' notice of the intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance, to suspend performance of any or all his obligations to ISG under this Deed. The right to suspend performance ceases when ISG makes payment in full of the amount referred to in the first paragraph of clause 7.4. Where the Sub-Consultant exercises the right to suspend his obligations under this sub-clause 7.4.2, ISG will pay to the Sub-Consultant a reasonable amount in respect of costs and expenses reasonably incurred by the Sub-Consultant as a result of exercising such right and such amount shall be included in the next invoice submitted by the Sub-Consultant after they were incurred (together with such substantiation of that amount as ISG may reasonably require). Any period during which performance is suspended in pursuance of, or in consequence of the exercise of, the right under this clause 7.4.2 shall be disregarded in computing for the purposes of any contractual limit the time taken, by the party exercising the right by a third party, to complete any work under this Deed directly or indirectly affected by the exercise of the right.

7.5 ISG shall pay to the Sub-Consultant the total amount of Value Added Tax properly chargeable by the Sub-Consultant on the supply to ISG of any goods or services under this Deed. Provided that ISG shall only be liable to pay Value Added Tax to the Sub-Consultant on the Value Added Tax exclusive amount of any disbursement or expense reimbursable by ISG under this Deed.

7.6 Notwithstanding anything to the contrary elsewhere in this Deed, if the Client is Insolvent as defined in clause 7.7, ISG shall not be obliged to make any further payment to the Sub-Consultant of any amount which is due or may become due to the Sub-Consultant unless ISG has received payment in respect thereof from the Client and then only to the extent of such receipt.

7.7 Insolvency for the purposes of Clause 7.6 of this Deed shall be defined as follows:-

7.7.1 A company becomes Insolvent:

1. when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986,

2. on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part,
3. on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act, or
4. on the making of a winding-up order under Part IV or V of that Act.

7.7.2 A partnership becomes Insolvent:

1. on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act, or
2. when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors, or
3. each partner is the subject of an individual arrangement or any other event or proceedings referred to in Clause 7.7.

7.7.3 An individual becomes Insolvent:

1. on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986, or
2. on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

7.7.4 A company, partnership or individual shall also be treated as Insolvent:-

1. if it enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction), or
2. on the occurrence of any event corresponding to those specified in Clauses 7.7.1, 7.7.2 or 7.7.3 under the law of Northern Ireland or of a country outside the United Kingdom.

7.8 Subject to Clause 7.3, any sum of money recoverable from or payable by the Sub-Consultant under or in connection with this Deed may be deducted from any sum then due or which may at any time thereafter become due to the Sub-Consultant under this Deed or under any other agreement between the Sub-Consultant and ISG and any sum of money recoverable by ISG from or payable to ISG by the Sub-Consultant under or in connection with any other agreement may be

deducted from any sum then due or which at any time thereafter may become due to the Sub-Consultant under this Deed.

8. **Additions to the Fee**

8.1 If ISG instructs the Sub-Consultant, in writing, to perform any duties other than those listed or reasonably inferred from those listed in Schedule 2, the Sub-Consultant shall perform such services in accordance with this Deed. The Sub-Consultant shall also perform additional services where the Sub-Consultant has informed the ISG Project Manager in writing of the need for the additional services and the reasons for it and has obtained the approval of the ISG Project Manager to the performance of such additional services in writing. Any such instruction or approval may indicate the maximum budget for additional fees which shall not be exceeded without further approval having been obtained. The above provisions shall be conditions precedent to any payment being due from ISG for any additional services provided by the Sub-Consultant. Payment for any additional services performed pursuant to this Clause 8 shall be made by a fair and reasonable adjustment to the Fee to be agreed, if possible, between the parties.

8.2 The Sub-Consultant shall have no right or remedy pursuant to any provision of this Deed, whether by adjustment to the Fee or as additional fees or otherwise or in damages at common law or in tort or pursuant to any other theory of law to the extent that any matter listed in Schedule 1 (Notifiable Diseases) and/or Schedule 2 (Causative Agents) of the Health Protection (Notification) Regulations 2010 has any affect, whether direct or indirect, on the Sub-Consultant Services or on the programme of the work.

9. **Documentation**

9.1 The Sub-Consultant hereby grants to ISG a royalty-free, irrevocable, non-exclusive licence to use Material and the designs contained in it for any purpose related to this Deed and to the Main Contract. Such licence shall carry the right to grant such sub-licences as ISG may think fit. The Sub-Consultant shall not be liable for any use by ISG or its sub-licensees of the Material for any purpose other than that for which the same were prepared and provided by or on behalf of the Sub-Consultant.

10. **Confidentiality**

10.1 The Sub-Consultant shall not, during the performance of the Sub-Consultant Services (save in the proper course of his duties) or at any time after expiry or termination of this Deed, disclose to any person or make use of any confidential information which he has obtained or may in the course of this Deed obtain relating to ISG, the Client, the Main Contract or otherwise, nor shall he disclose to any person anything contained in this Deed without the prior written authority of ISG. This restriction shall continue to apply, without limitation, unless and until such information becomes public knowledge through no fault of the Sub-Consultant. Provided always that the Sub-Consultant may

disclose any such information to his insurers or to his lawyers for insurance purposes or for the obtaining of legal advice in relation to this Deed.

- 10.2 The Sub-Consultant shall not, without the prior written approval of ISG publish, alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the Sub-Consultant Services and/or the Project, nor shall he impart to any publication, journal or newspaper or any radio or television programme any information regarding the Sub-Consultant Services and/or the Project.

## 11. **Insurances**

- 11.1 Without prejudice to his obligations under this Deed or otherwise at law, the Sub-Consultant shall maintain, for a period of twelve years from the date of issue of the certificate of making good defects under the Main Contract (provided always that such insurance is available in the market on reasonable terms), insurances with limits of indemnity of not less than the sum stated in Schedule 1 (and with an excess sum not greater than that stated in Schedule 1) for any one occurrence or series of occurrences arising out of any one event in respect of:-

- (a) any negligence, omission or default on the part of the Sub-Consultant in the performance of the Sub-Consultant Services; and
- (b) any liability, damage, loss, expense, cost, claim or proceeding in respect of personal injury to or death of any person or injury or damage to any property arising out of or in connection with the Sub-Consultant Services and caused or contributed to by any negligence, omission or default of the Sub-Consultant, his employees, agents or sub-contractors.

Should such insurance cease to be available on reasonable terms, the Sub-Consultant shall immediately inform ISG in order that the parties can discuss means of best protecting the respective positions of the Sub-Consultant and ISG in the absence of such insurance.

- 11.2 As and when the Sub-Consultant is reasonably required to do so by ISG, the Sub-Consultant shall produce for inspection documentary evidence that the insurances required by Clause 11.1 are being properly maintained.
- 11.3 Should the Sub-Consultant be in breach of his obligations under Clauses 11.1 or 11.2, ISG or the Client may themselves insure against any risk in respect of which the breach shall have occurred and ISG may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Sub-Consultant under this Deed or recover from them the Sub-Consultant as a debt.

## 12. **Assignment and Sub-Letting**

- 12.1 The Sub-Consultant shall not purport to assign or transfer any right or obligation under this Deed to any person without the prior written consent of ISG. In particular, but without limitation, the Sub-



Consultant shall not, without the prior written consent of ISG, sub-contract to any person the performance of any of the Sub-Consultant Services.

No sub-contracting by the Sub-Consultant and no consent by ISG to any sub-contracting shall in any way relieve the Sub-Consultant from any liability or obligations under or in connection with this Deed.

- 12.2 ISG shall be entitled to assign all or any of its rights and benefits in any under this Deed at any time to any of ISG's direct or indirect holding companies, any of ISG's direct or indirect subsidiaries (within the meaning of Sections 736 and 736A of the Companies Act 1985 as amended) and any other company in which ISG or any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by Section 744 of the Companies Act 1985 as amended) without the consent of the Sub-Consultant being required. ISG shall give the Sub-Consultant written notice of any such assignment. Subject to Clause 13, no other assignment or transfer by ISG of its rights and obligations in and under this Deed shall be permitted without the Sub-Consultant's consent (which shall not be unreasonably withheld).

13. **Termination of Main Contract**

- 13.1 If the Main Contract is terminated or discharged or if the engagement of ISG is terminated by either party in accordance with the provisions of the Main Contract, then either:-

13.1.1 If the Client so desires, ISG's rights and/or obligations under this Deed shall be transferred to the Client and the Sub-Consultant agrees to execute any document necessary to effect such transfer; or

13.1.2 ISG may at any time thereafter terminate the Sub-Consultant's engagement under this Deed forthwith by notice to the Sub-Consultant in writing.

- 13.2 Upon any termination under Clause 13.1.2, the Sub-Consultant shall (subject to any rights of set-off ISG may have) be entitled to be paid any amounts which have accrued due to him under this Deed prior to the date of such termination less the amount of any payments in respect of the Fee previously made by ISG to the Sub-Consultant but ISG shall not otherwise be liable to the Sub-Consultant for any loss or damage suffered by him by reason of such termination. The Sub-Consultant shall submit an invoice in respect of any amounts due to him in accordance with this clause within 14 days of the date of such termination. Such invoice shall be treated as an invoice submitted under Clause 7.2 of this Deed and the procedures set out in Clauses 7.2 - 7.3 shall apply in respect of such invoice.

14. **Termination for Breach**

- 14.1 In the event of a material or persistent breach by the Sub-Consultant of his obligations under this Deed which the Sub-Consultant shall fail to remedy after receiving a 14-day notice from ISG

specifying the breach and requiring its remedy, then ISG may at any time thereafter terminate the Sub-Consultant's engagement under this Deed forthwith by notice to the Sub-Consultant in writing.

14.2 Upon any termination under Clause 14.1, the rights and liabilities of the Sub-Consultant and ISG shall be the same as if the Sub-Consultant had repudiated this Deed and ISG had by its notice elected to accept such repudiation.

14.3 In the event of a material or persistent breach by ISG of its obligations under this Deed which ISG shall fail to remedy after receiving a 14-day notice from the Sub-Consultant specifying the breach and requiring its remedy, then the Sub-Consultant may at any time thereafter terminate its engagement under this Deed forthwith by notice to ISG in writing.

14.4 Upon termination under Clause 14.3, the rights and liabilities of the Sub-Consultant and ISG shall be the same as if ISG had repudiated this Deed and the Sub-Consultant had by its notice elected to accept such repudiation.

## 15. **General Obligations on Termination**

15.1 The Sub-Consultant shall on any termination of its engagement under this Deed howsoever arising assume and perform hereunder all the obligations and liabilities arising on termination of the Main Contract in relation to the Sub-Consultant Services.

15.2 Termination of the Sub-Consultant's engagement under this Deed howsoever arising shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination.

15.3 The provisions of this Deed shall (subject to the provisions of the Limitation Act 1980 or any re-enactment or amendment thereof) continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

## 16. **Collateral Agreements**

16.1 Where this Clause is stated in Schedule 1 to apply, the rights in favour of the persons referred to in Schedule 1 which are set out in Schedule 3 shall vest in that person on the date of receipt by the Sub-Consultant of ISG's notice to that effect, stating the name of the person and the nature of his interest in the Project. Notwithstanding any requirement for the consent of any third party under section 2 of the Contracts (Rights of Third Parties) Act 1999 ("the Act"), ISG and the Sub-Consultant shall be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of this Deed, and to terminate this Deed without the consent of any third party being required. Notwithstanding the foregoing, ISG and the Sub-Consultant shall not be entitled to amend or vary the express provisions of Schedule 3 without the consent of the relevant third party where and to the extent that section 2 of the Act requires such consent.

- 16.2 Where this Clause is stated in Schedule 1 to apply, within 10 working days of any request from ISG so to do, the Sub-Consultant shall execute agreements in the terms annexed hereto in Schedule 3 in favour of the persons referred to in Schedule 1.
- 16.3 The Sub-Consultant hereby appoints ISG as its true and lawful attorney for and in the name of and on behalf of the Sub-Consultant to complete any such agreement and to execute and perfect any such agreement in the terms set out in Schedule 3, and the Sub-Consultant hereby agrees to ratify and confirm whatever ISG shall do by virtue of this power of attorney and declares this power to be irrevocable pursuant to Section 4 of the Power of Attorney Act 1971. Provided that ISG shall not exercise the power hereby granted unless it shall have notified the Sub-Consultant of its intention so to do and the Sub-Consultant shall have failed to deliver any such agreement within 10 working days of ISG's request so to do.
- 16.4 Save where Clause 16.1 is stated in Schedule 1 to apply, for the purposes of the Act nothing in this Deed confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

17. **Disputes**

- 17.1 The construction, validity and performance of this Deed shall in all respects be governed by English law.
- 17.2 Either party to this Deed shall have the right to refer any dispute or difference arising under or in connection with this Deed to adjudication in accordance with the terms of this Deed at any time.
- 17.3 Any difference or dispute which is to be referred to adjudication in accordance with clause 17.2 shall be referred to an adjudicator nominated by the Royal Institution of Chartered Surveyors.
- 17.4 Any adjudication under this Deed shall be conducted in accordance with the provisions of Part I of the Scheme for Construction Contracts (England and Wales) Regulations as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011, amended as follows:-
- 17.4.1 Insert "or in connection with" before "the contract" in line 2 of paragraph 1(1).
- 17.4.2 Add an additional paragraph 1(4) as follows: -
- “1(4) The notice of adjudication shall be accompanied by the referring party's intended referral notice and all documents which are to be included in the referring party's referral notice.”
- 17.4.3 Insert a new paragraph 7A as follows:

"7A(1) The responding party shall have the right to respond in writing to the referral notice. Any such written response shall be referred to the adjudicator not later than seven days from the date of the referral notice."

7A(2) Any such written response shall be accompanied by copies of, or extracts from, any documents the responding party intends to rely upon.

7A(3) The responding party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs (1) and (2), send copies of those documents to every other party to the dispute."

17.4.4 insert after "expenses" in line 2 of paragraph 8(4) "and the parties' liability therefor".

17.4.5 Not used.

17.4.6 insert "or the written response and any other documents given under paragraph 7A(2)" at the end of paragraph 13(a).

17.4.7 Insert "and obtained their consent (which shall not be unreasonably withheld)" before "appoint experts" in line 2 of paragraph 13(f).

17.4.8 Delete "one person" in line 2 of paragraph 16(2) and substitute "three people".

17.4.9 The decision of an adjudicator appointed under this Deed shall be binding until the dispute or difference is finally determined by legal proceedings in the English Courts.

17.4.10 An adjudicator appointed under this Deed shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of an adjudicator appointed under this Deed is similarly protected.

17.5 If any dispute or difference arises between ISG and the Sub-Consultant in connection with or arising out of this Deed or the carrying out of the Sub-Consultant Services, it shall, subject to clauses 17.2 to 17.4, be dealt with in legal proceedings and the parties submit to the exclusive jurisdiction of the Courts of England and Wales in relation thereto.

## 18. **Bribery and Corruption**

18.1 The Sub-Consultant shall and shall procure that persons associated with it or other persons who are performing any of the Sub-Consultant Services (including any sub-sub-consultants) shall:

18.1.1 comply with (and not do, or omit to do, any act that will cause or lead ISG to breach) the Relevant Requirements and / or relevant Policies;

18.1.2 maintain and enforce its own anti-bribery policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010.

18.2 Breach of this clause 18 shall be deemed a material breach under clause 14.1.

19. **Notices**

Any notice to be given hereunder shall either be delivered personally or sent by special delivery post. The addresses for service of ISG and of the Sub-Consultant shall be those stated in Schedule 1 or such other address for service in England as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:-

- (a) If personally delivered, at the time of delivery; and
- (b) if posted, at the expiry of 48 hours after posting.

In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing the same was properly addressed and despatched, as the case may be.

20. **Periods of Time**

Where under this Deed an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day shall be excluded.

**IN WITNESS** whereof this DEED was executed by ISG and by the Sub-Consultant as a deed the day and year first before written.

## **SCHEDULE 1**

1. The Client is
2. The Site of the Project is
3. The ISG Project Manager is
4. The Sub-Consultant's Project Manager is
5. Programme of work:

[insert schedule for the preparation of design documents and provision of Sub-Consultant Services or identify a document which should be annexed.]

6. [Identify any equipment or facilities to be provided by ISG (not the Client) to the Sub-Consultant.]

7. The Fee is .

[State amount or method of calculation]

8. The Fee shall be paid by instalments as follows:-

[Instalments should be listed here as either (a) milestones/stages, in adequate details to clearly identify the point at which when payments are due, or (b) specific drawdown dates. These must mirror the provisions of the "Main Contract"].

9. Limits of indemnity:

Clause 11.1(a): [Insert minimum amount of professional indemnity insurance the Sub-Consultant must carry]

Clause 11.1(b): [Insert minimum amount of public liability insurance the Sub-Consultant must carry]

Maximum excess sum: £50,000

10. Address for Service:

ISG: [Insert address](#)

For the attention of: [\[Insert position of person in company to whom the notice must be sent eg Company Secretary\]](#)

Sub-Consultant: [\[Insert address – \[must be an address in England, Wales or Scotland\]\]](#)

For the attention of: [\[Insert position of person to whom the notice must be sent eg Company Secretary\]](#)

11. Persons for whom third party rights/collateral agreements are required (Clause 16.1/Clause 16.2 refers):-

[\[Check Main Contract and insert names/categories of persons \(including if appropriate the Employer\) in whose favour the Sub-Consultant must provide warranties/third party rights as required by the Main Contract\]](#)

12. Clause 16.1 applies/does not apply.

13. Clause 16.2 applies/does not apply

[\[Check Main Contract to see whether the Sub-Consultant must provide third party rights or collateral warranties. If third party rights, delete “does not apply in respect of Clause 16.1 and “applies” in respect of Clause 16.2”. If warranties, delete “applies” in respect of Clause 16.1 and “does not apply” in respect of Clause 16.2. If Main Contract requires the Sub-Consultant to provide both third party rights and collateral warranties then delete “does not apply” for both Clause 16.1 and Clause 16.2\]](#)

## **SCHEDULE 2**

[insert full description of Sub-Consultant Services]

[If the Sub-Consultant is the Lead Consultant, remember to include a service which requires the Sub-Consultant to co-ordinate and integrate all of the design for the Project]



### **SCHEDULE 3**

The terms of any third party rights and/or collateral warranties that the Sub-Consultant is required to provide are set out below. Alternatively, if none are set out below, they are the appropriate forms annexed to or referred to in the Main Contract.

[Insert form of warranty or third party rights]

SIGNED as a Deed by )  
as attorney for ISG Construction Limited )  
Power of Attorney dated 01/10/2023 )  
 )  
in the presence of:- )

Name, address and occupation of witness

SIGNED AND DELIVERED )  
as a Deed by )  
[Insert name of Sub-Consultant] )  
acting by )  
[two directors/a director and )  
its secretary] )  
in the presence of:- )

Director

Director/Secretary

ANNEX 4

Consultant Warranty in favour of Employer

DATED \_\_\_\_\_ 20[ ]]

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is dated

20[ ] BETWEEN:

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

## BACKGROUND

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

## 1. DEFINITIONS AND INTERPRETATIONS

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

## 2. OPERATIVE PROVISIONS

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

## 3. CONSULTANT’S WARRANTIES AND LIABILITIES

### 3.1 The Consultant warrants to the Employer that:

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

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

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

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

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

#### 4. **COPYRIGHT**

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

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

4.3 The Employer may assign, novate or otherwise transfer his rights and obligations under the licence granted pursuant to clause 4.2 to a Crown Body or to anybody (including any private

sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Employer.

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

## 5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant hereby covenants with the Employer that it:
  - 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [ten million pounds (£10,000,000) each and every claim] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and

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

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

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

## 6. **NOTICES**

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

6.1.1 Consultant: [e-mail address]<sup>12</sup>

6.1.2 Employer: [e-mail address]<sup>13</sup>

6.1.3 Contractor: [e-mail address]<sup>14</sup>

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

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

## 7. **ASSIGNMENT**

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

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

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<sup>12</sup> Insert e-mail address

<sup>13</sup> Insert e-mail address

<sup>14</sup> Insert e-mail address

8. **EMPLOYER'S REMEDIES**

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

9. **INSPECTION OF DOCUMENTS**

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

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

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

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

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

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

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

10.2.2 specify any other breaches by the Contractor; and

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

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

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

10.3.2 if the Employer has given such notice as aforesaid or under clause 10.5 below, the Employer shall accept liability for the Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding

breach by the Contractor which is properly specified and which is capable of remedy by the Employer; and

10.3.3 if the Employer has given such notice as aforesaid or under clause 10.5, the Employer will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Appointment.

10.4 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Consultant, the Employer will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Consultant pursuant to clause 10.3.1 or clause 10.5 of this Deed.

10.5 The Consultant further covenants with the Employer that if employment of the Contractor under the Building Contract is determined or the Building Contract is terminated, the Consultant, if requested by the Employer by notice in writing and subject to clause 10.3.2 and clause 10.3.3, will accept the instructions of the Employer to the exclusion of the Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing to enter into a novation agreement whereby the Employer is substituted for the Contractor under the Appointment.

10.6 If the Consultant is requested to enter into a novation agreement pursuant to clause 10.5 above, the Contractor agrees to enter into the same at the request of the Employer.

10.7 The Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant and the Contractor by the Employer under clause 10.5 as conclusive evidence that the employment of the Contractor under the Building Contract has been determined or the Building Contract is terminated.

10.8 The Employer may by notice in writing to the Consultant and the Contractor appoint another person to exercise its right under this clause 10 subject to the Employer remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.

10.9 Upon request by the Employer the Consultant agrees to co-operate with the Employer in determining the duties performed or to be performed by the Consultant and to provide a copy of the Appointment and any variations thereto and details of all monies paid and due under the Appointment and the Building Contract.

10.10 As from the date of service of notice under clause 10.3.1 or 10.5 to the extent that the Appointment operates by reference to the existence and application of the Building Contract, the Appointment shall be administered and construed as though the Building Contract was continuing and the Appointment shall therefore continue, subject to amendment only as necessary to reflect the fact that the Building Contract have in fact terminated and the Employer has undertaken the obligations set in clause 10.3.2.

## 11. **SUB-CONSULTANTS**

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



12. **SEVERABILITY**

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

13. **WAIVER**

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

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

14. **LIABILITY OF PARTNERS**

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

15. **THIRD PARTY RIGHTS**

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

16. **GOVERNING LAW AND JURISDICTION**

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

17. **CONTRACTOR ACKNOWLEDGEMENT**

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

18. **COUNTERPARTS**

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

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

EXECUTED AS A DEED by

[CONSULTANT] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

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

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

**OR**

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

Director

Director/Secretary

**OR**

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

Authorised Signatory

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

Director

Director/Secretary

Consultant Warranty in favour of a third party

DATED \_\_\_\_\_ 20[ ]

[CONSULTANT]

and

[BENEFICIARY]

DUTY OF CARE DEED

relating to [ ]

THIS DEED is dated

20[ ] BETWEEN:

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

## BACKGROUND

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

## 1. DEFINITIONS AND INTERPRETATIONS

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

## 2. OPERATIVE PROVISIONS

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

## 3. CONSULTANT’S WARRANTIES AND LIABILITIES

### 3.1 The Consultant warrants to the Beneficiary that:

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

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

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

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

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

#### 4. **COPYRIGHT**

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

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

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

- 4.4 In the event that the Consultant does not own the copyright or any Intellectual Property Rights in any of the Consultant's Design Documents the Consultant shall use all reasonable endeavours to procure the right to grant such rights to the Beneficiary to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the Consultant is unable to procure the right to grant to the Beneficiary in accordance with the foregoing the Consultant shall procure that the third party grants a direct licence to the Beneficiary on industry acceptable terms.
- 4.5 The Consultant waives any moral right to be identified as author of the Consultant's Design Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Consultant's Design Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the Beneficiary or any licensee or assignee of the Beneficiary.
- 4.6 In the event that any act unauthorised by the Beneficiary infringes a moral right of the Consultant in relation to the Consultant's Design Documents the Consultant undertakes, if the Beneficiary so requests and at the Beneficiary's expense, to institute proceedings for infringement of the moral rights.
- 4.7 The Consultant warrants to the Beneficiary that he has not granted and shall not (unless authorised by the Beneficiary) grant any rights to any third party to use or otherwise exploit the Consultant Design Documents.
- 4.8 The Consultant shall supply copies of the Consultant's Design Documents to the Beneficiary upon paying a reasonable copying charge.
- 4.9 In carrying out the Services the Consultant shall not infringe any Intellectual Property Rights of any third party. The Consultant shall indemnify the Beneficiary against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

## 5. **PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Consultant hereby covenants with the Beneficiary that it:
- 5.1.1 has taken out PI Insurance covering all of its design and professional obligations under the Appointment (including in connection with any errors or omissions in the performance of its professional services, including but not limited to design professional advice and/or services, any defects and/or insufficiency of design) upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with licensed insurers lawfully carrying on such insurance business in the United Kingdom, with a limit of indemnity not less than [ten million pounds (£10,000,000) each and every claim] and shall maintain the same until the expiry of twelve (12) years after the date of Practical Completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof; and
- 5.1.2 will provide evidence (as and when reasonably required to do so by the Beneficiary) documentary evidence that its PI Insurance is being maintained in accordance with this clause 5 and details of cover.

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

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

## 6. **NOTICES**

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

6.1.1 Consultant: [e-mail address]<sup>15</sup>

6.1.2 Beneficiary: [e-mail address]<sup>16</sup>

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

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

## 7. **ASSIGNMENT**

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

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

## 8. **BENEFICIARY'S REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence and no provisions in this Deed

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<sup>15</sup> Insert e-mail address

<sup>16</sup> Insert e-mail address



are intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.

9. **INSPECTION OF DOCUMENTS**

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

10. **SUB-CONSULTANTS**

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

11. **SEVERABILITY**

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

12. **WAIVER**

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

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

13. **LIABILITY OF PARTNERS**

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

14. **THIRD PARTY RIGHTS**

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

15. **GOVERNING LAW AND JURISDICTION**

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

16. **COUNTERPARTS**

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

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

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

Director  
Director/Secretary

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

Authorised Signatory

**OR**

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

Director  
Director/Secretary

ANNEX 5

NOT USED

ANNEX 6

PARENT COMPANY GUARANTEE

DATED \_\_\_\_\_ 20[ ]

[GUARANTOR]

and

[EMPLOYER]

PARENT COMPANY GUARANTEE

**THIS AGREEMENT** dated

20[ ] is made **BETWEEN:**

(1) [ ] whose registered office is at [ ]  
[ ] (the “**Guarantor**”); and

(2) [ ] of [ ]

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

## **BACKGROUND**

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

**IT IS AGREED** as follows:

### **1. GUARANTEE**

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

### **2. PERFORMANCE OBLIGATIONS AND INSOLVENCY**

#### **2.1 If, at any time:**

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

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

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

### **3. LIABILITY**

- 3.1 As between the Guarantor and the Employer (but without affecting the Obligations), the Guarantor shall remain liable under this Guarantee as if he were the sole principal obligor and not merely a guarantor.

- 3.2 Subject to the provisions of clause 5, the Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it was the sole principal obligor including, but not limited to:
- 3.2.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Works or to the Contract or any related documentation;
  - 3.2.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Contractor;
  - 3.2.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
  - 3.2.4 the dissolution, amalgamation, reconstruction, reorganisation of the Contractor;
  - 3.2.5 any defect in any provision of the Contract or any of the Obligations;
  - 3.2.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the Contractor;
  - 3.2.7 any compromise of any dispute with the Contractor;
  - 3.2.8 any failure of supervision to detect or prevent any fault of the Contractor; or
  - 3.2.9 any assignment of the benefit of the Contract.

#### **4. ASSIGNMENT**

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

#### **5. LIMIT OF LIABILITY**

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

#### **6. THIRD PARTY RIGHTS**

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

## 7. NOTICES

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

7.1.1 Guarantor: [e-mail address]<sup>17</sup>

7.1.2 Employer: [e-mail address]<sup>18</sup>

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

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

## 8. GOVERNING LAW

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

## 9. COUNTERPARTS

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

EXECUTED AS A DEED by

[GUARANTOR] acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

[THE CORPORATE SEAL of the )  
SECRETARY OF STATE FOR )

---

<sup>17</sup> Insert e-mail address

<sup>18</sup> Insert e-mail address

EDUCATION] herewith affixed is )  
authenticated by:

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

**OR**

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

.....  
Authorised Signatory]

**OR**

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

.....  
Director

.....  
Director/Secretary



ANNEX 7

NOT USED

ANNEX 8

NOT USED

ANNEX 9

NOT USED

ANNEX 10

CONSTRUCTION PROGRAMME



















ANNEX 11

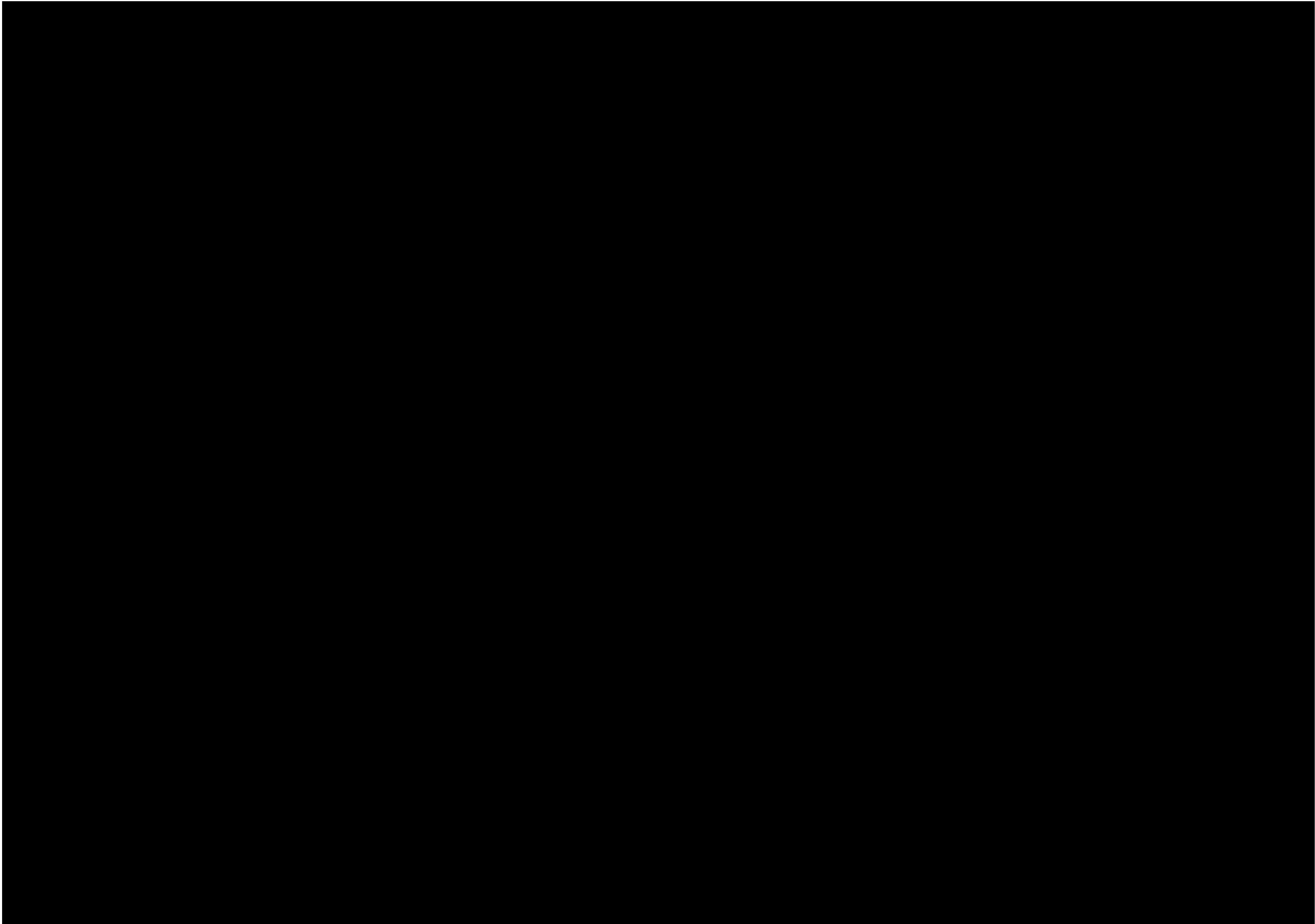
NOT USED

ANNEX 12

NOT USED

ANNEX 13

SITE PLAN





ANNEX 14  
SITE SURVEY



the 1990s, the number of people in the United States who are obese has increased by 100% (Flegal et al. 2002). In the United Kingdom, the prevalence of obesity has increased from 10% in 1980 to 16% in 1997 (Health Survey for England 1997). In the United States, the prevalence of obesity has increased from 15% in 1980 to 23% in 1994 (Flegal et al. 2002).

Obesity is a complex condition, with many causes and consequences. It is a leading cause of death and disability in the United States, and a major public health problem in many other countries. Obesity is associated with a number of health problems, including heart disease, diabetes, and certain types of cancer. It is also associated with social and psychological problems, such as discrimination and low self-esteem.

There are many factors that contribute to obesity, including genetics, diet, and physical activity. In the United States, the prevalence of obesity has increased significantly in the past few decades, and this is largely due to changes in diet and physical activity. In the United Kingdom, the prevalence of obesity has also increased, but at a slower rate than in the United States.

Obesity is a complex condition, and it is important to understand the many factors that contribute to it. In the United States, the prevalence of obesity has increased significantly in the past few decades, and this is largely due to changes in diet and physical activity. In the United Kingdom, the prevalence of obesity has also increased, but at a slower rate than in the United States.

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\_\_\_\_\_

ANNEX 15

NOT USED

ANNEX 16

NOT USED

ANNEX 17

NOT USED

ANNEX 18

NOT USED

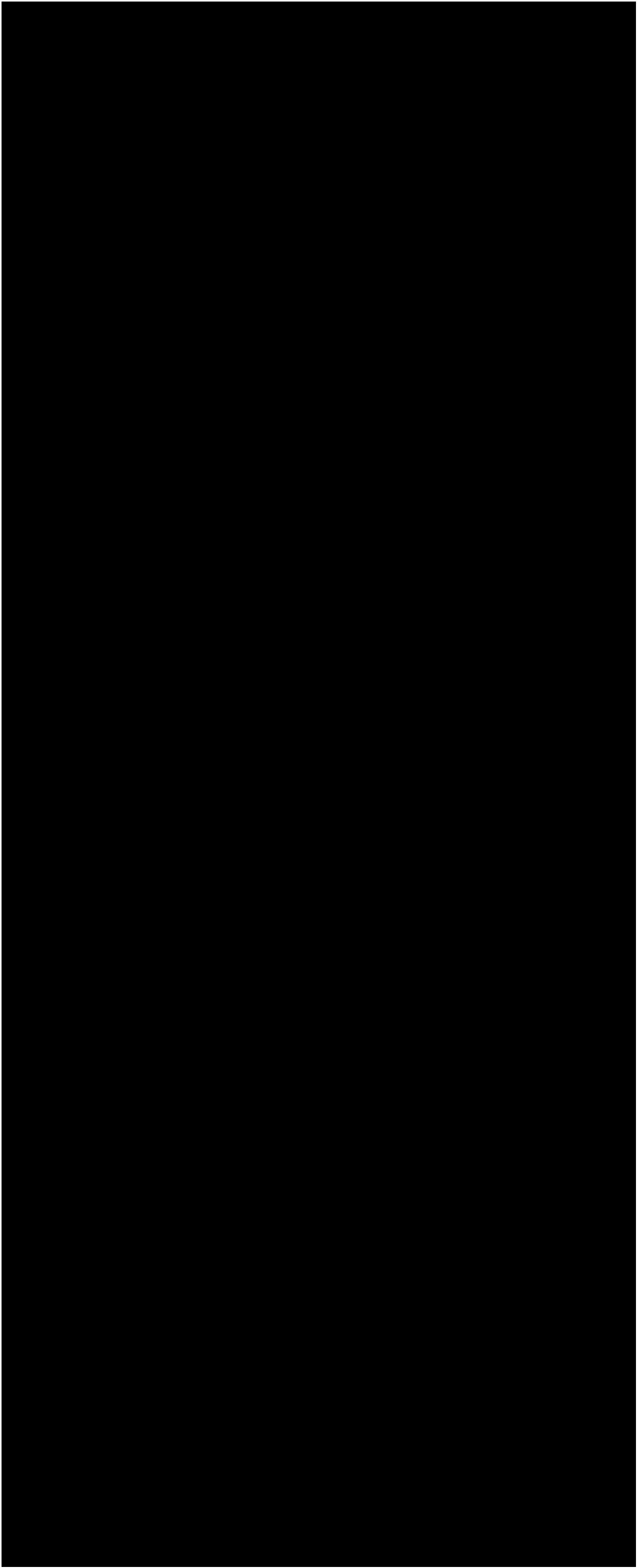
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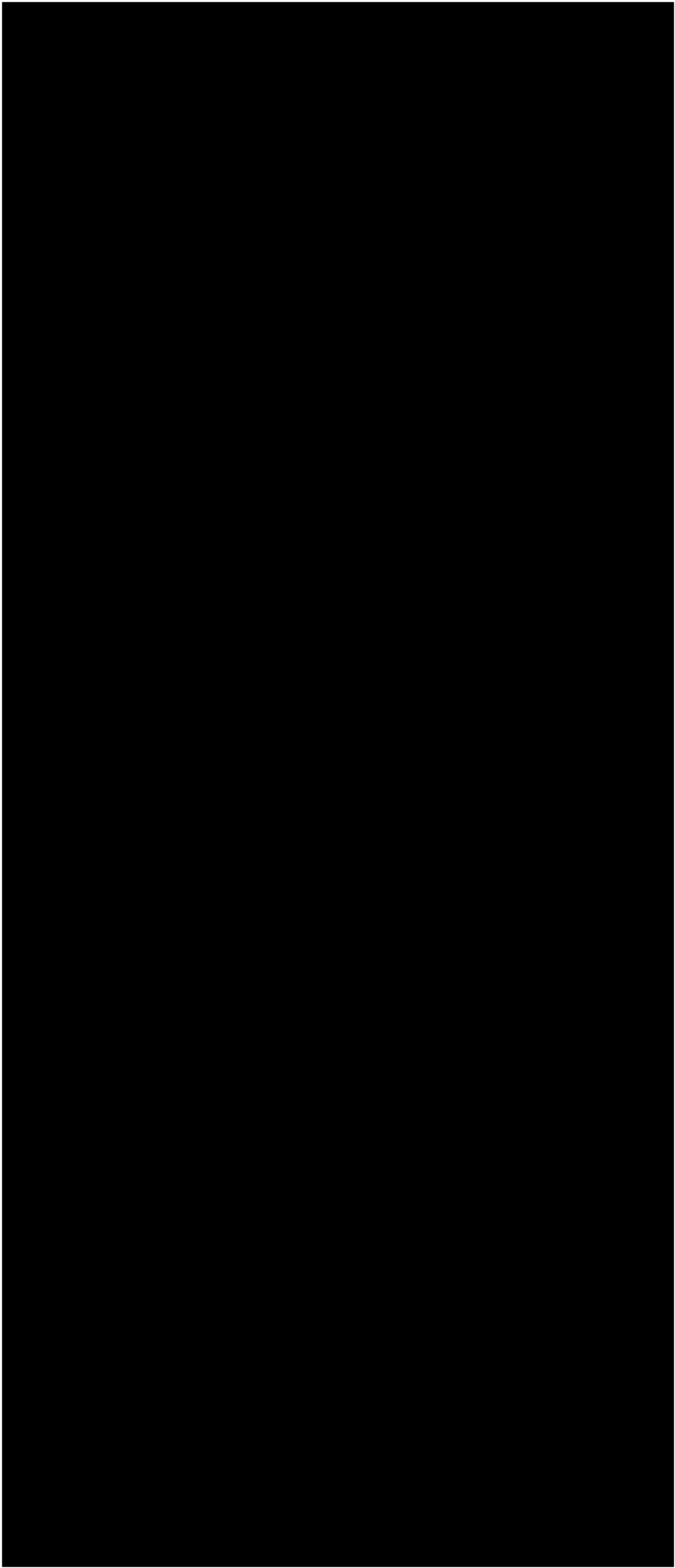
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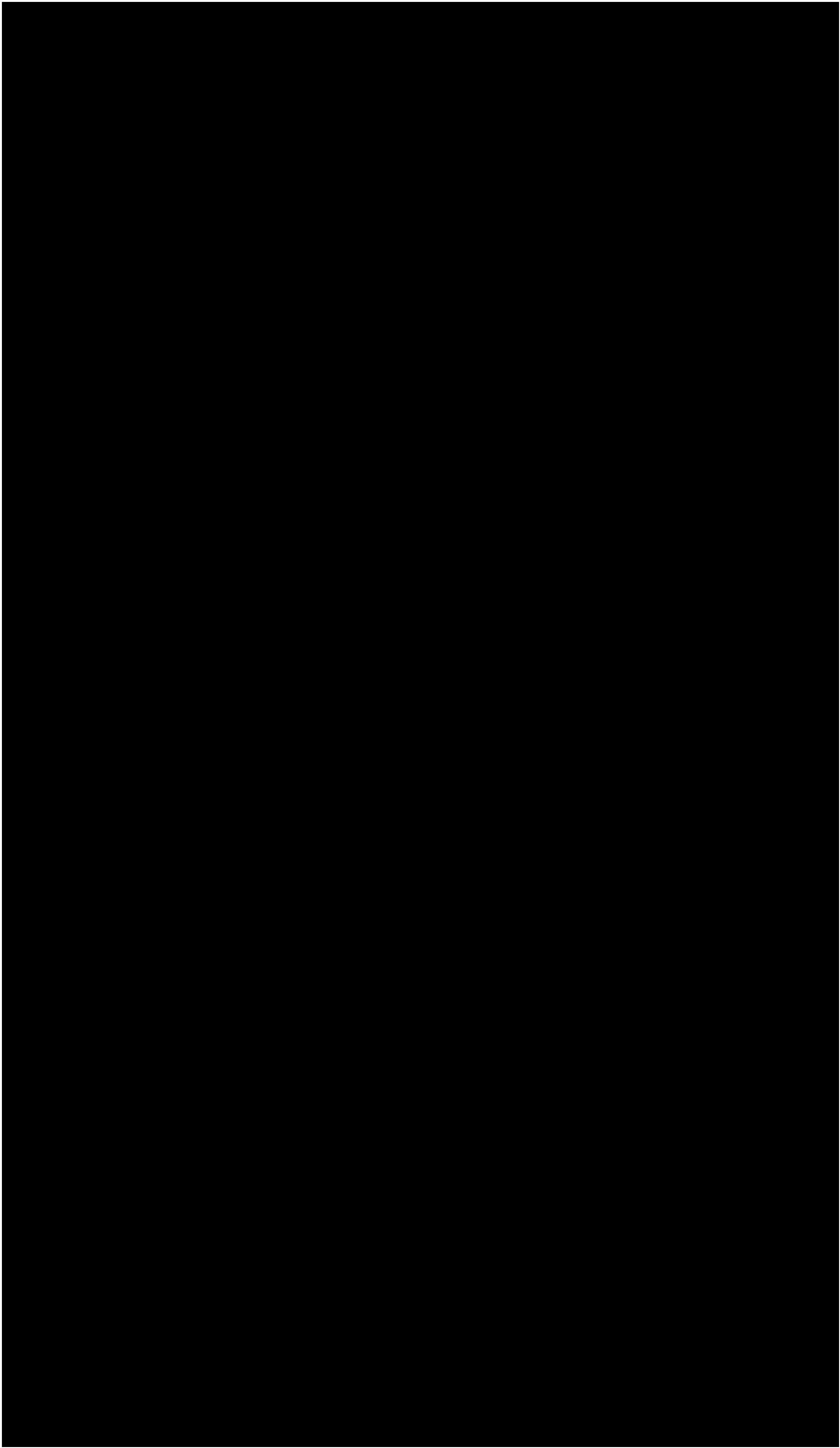


ANNEX 20

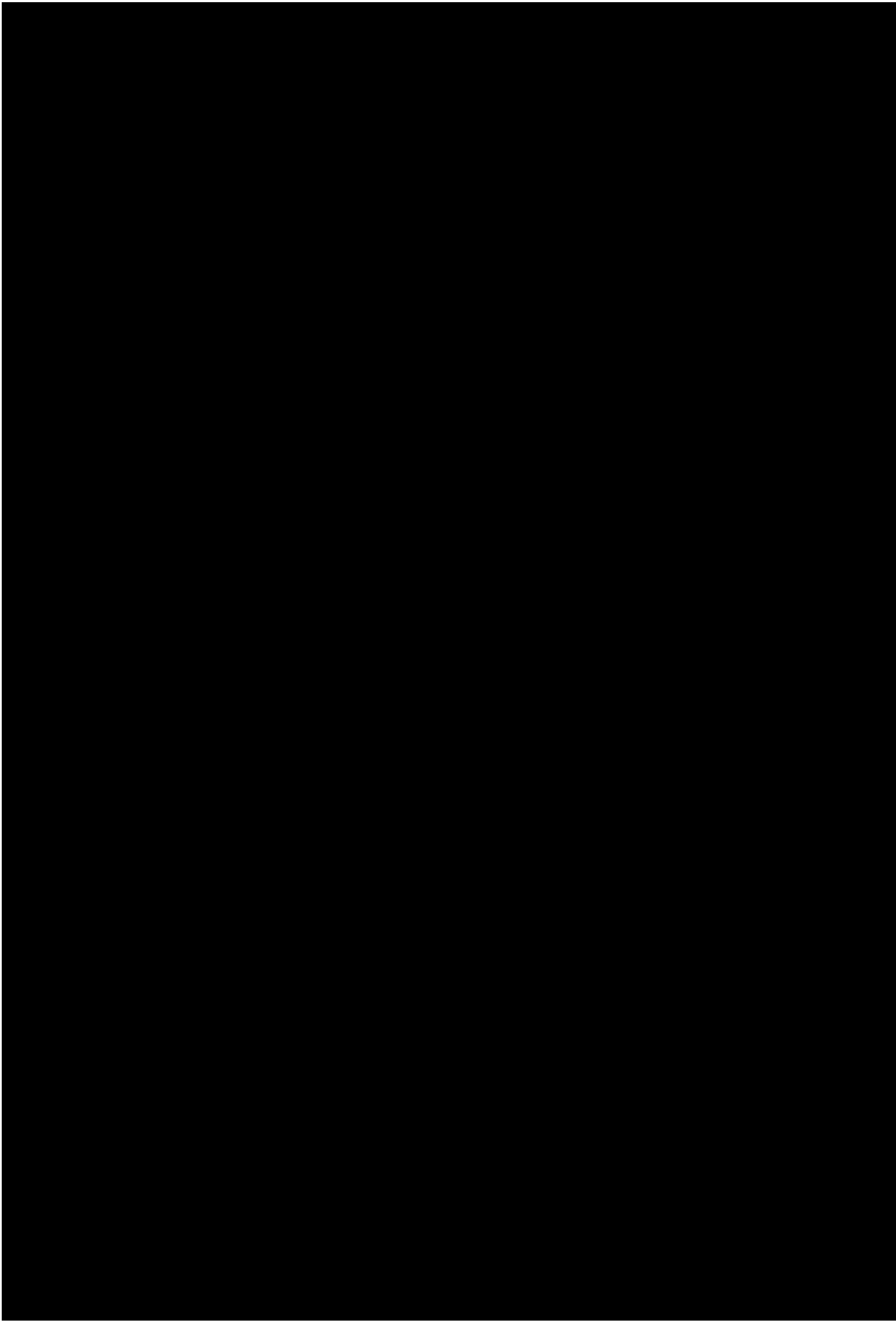
REQUIREMENTS FOR PRACTICAL COMPLETION

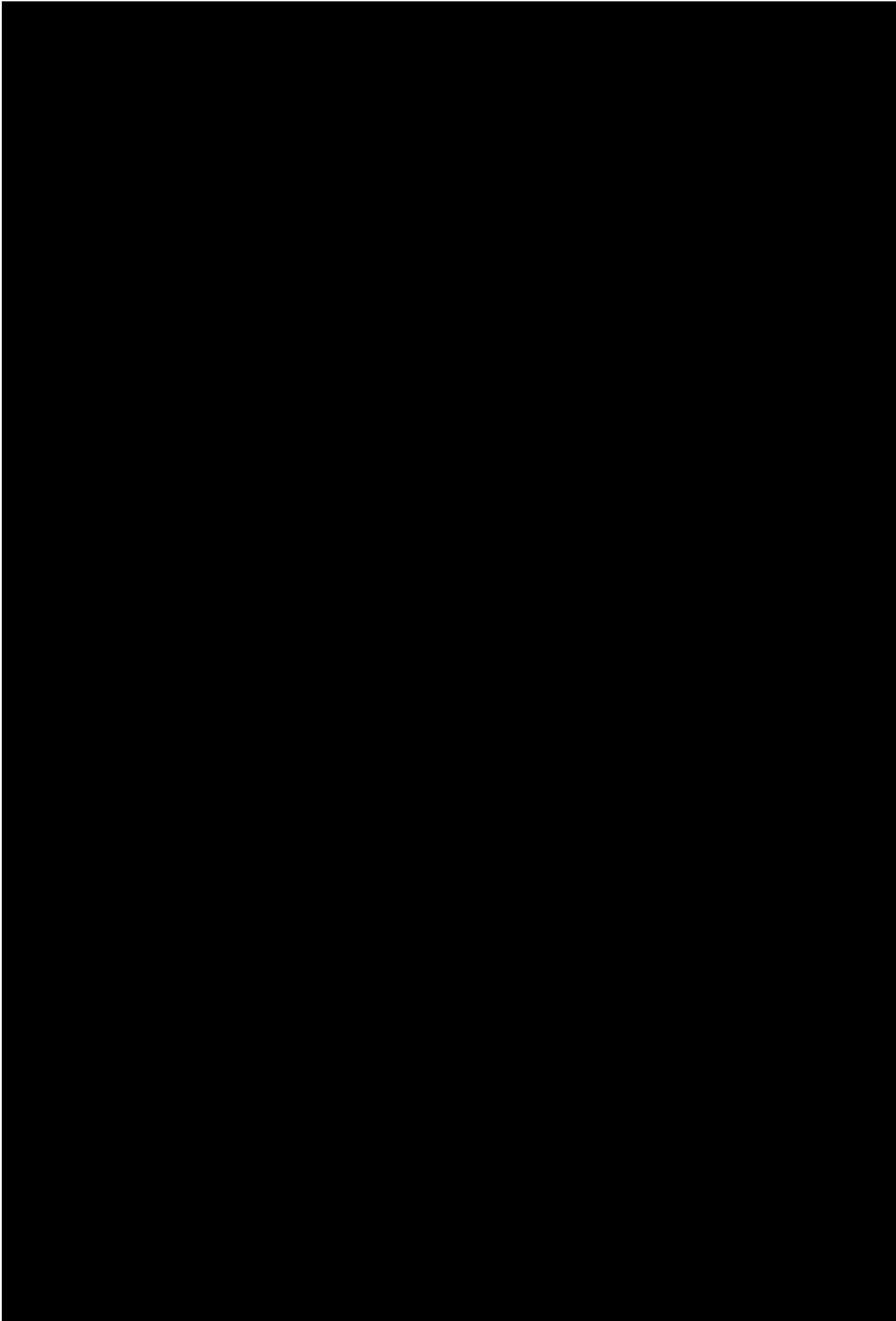


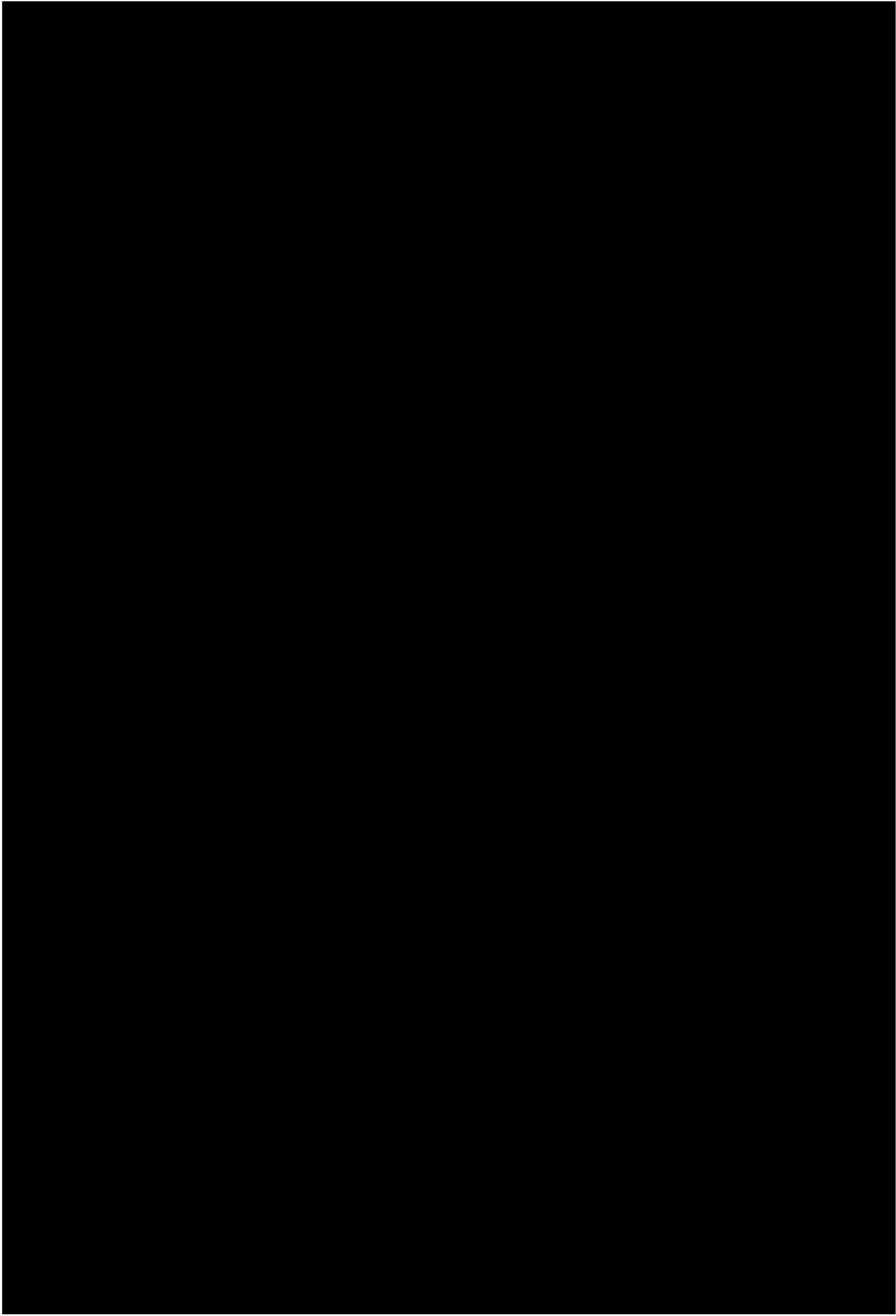




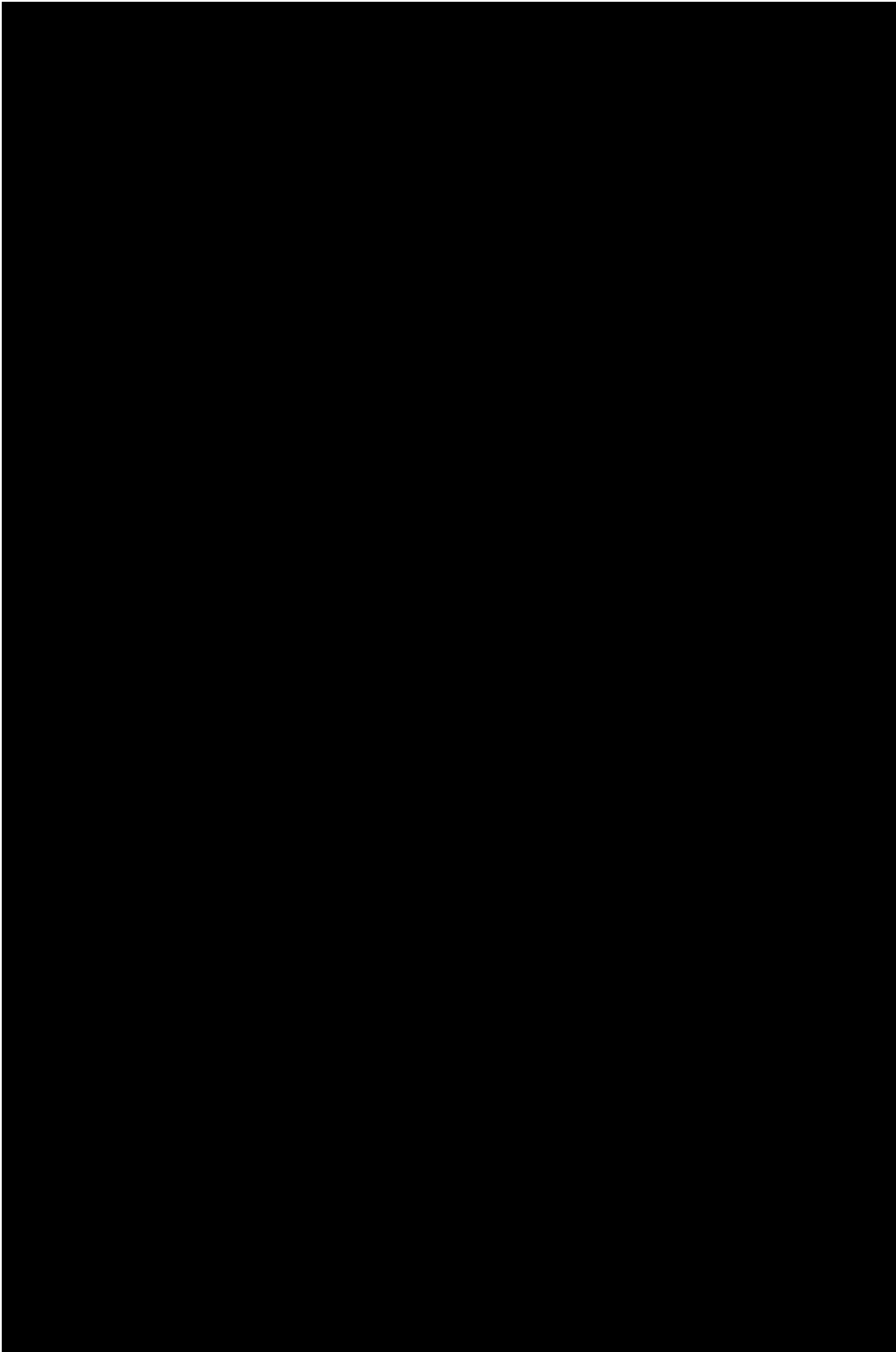


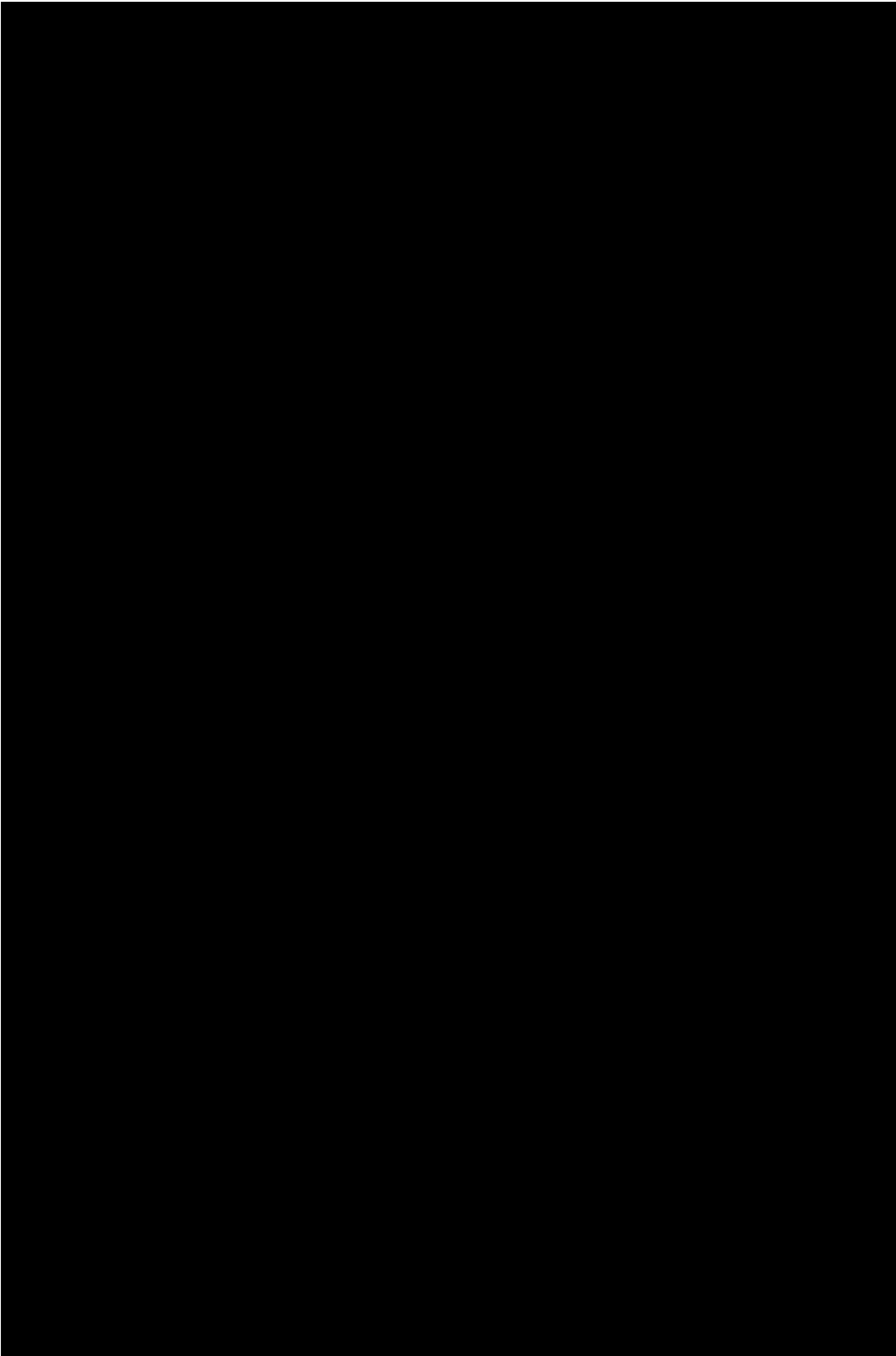


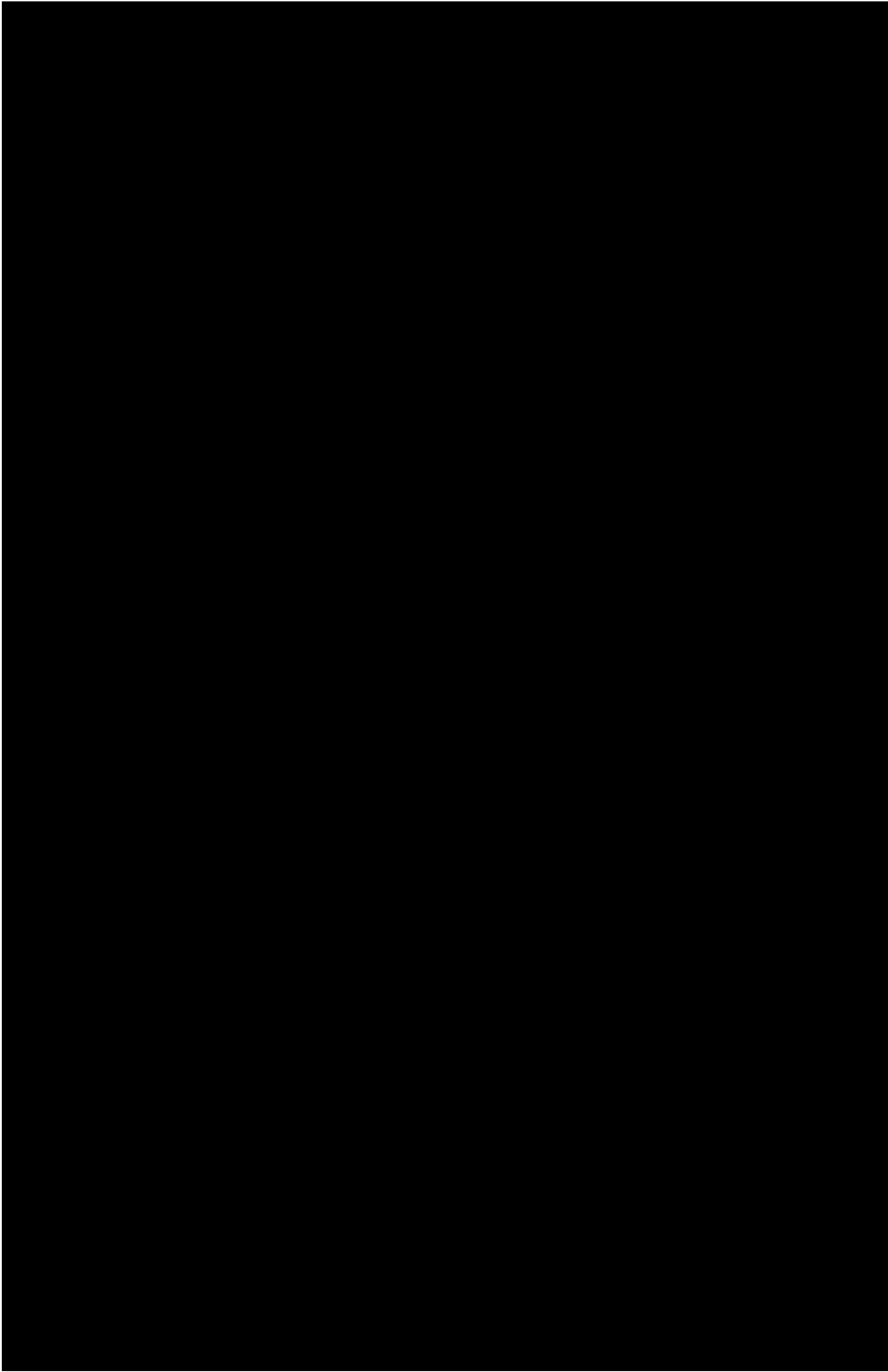












ANNEX 21

NOT USED

ANNEX 22

NOT USED

ANNEX 23  
ACCESS REGIME







ANNEX 24

This USB contains the Employer's Requirements, Contractor's Proposals,  
Contract Sum Analysis and Annex 14 Site Surveys

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**Signed by Secretary of State for Education**

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**Signed by ISG CONSTRUCTION LIMITED**